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Independent Pension Asset Expert Panel

Terms of Reference
October 6, 2016 1:15 P.M.

Governance

An expert panel is being established as a short-term advisory body appointed by the President of the Treasury Board to review the application of the Public Sector Accounting Standards (PSAS) to accounting for pension assets and provide advice to government. The final report will be submitted to the President of the Treasury Board and provided to the Auditor General of Ontario. It will be made public thereafter. The future accounting for the pension assets in preparation of the province's financial statements will be guided by the report of the panel.

The Public Sector Accounting Board established a task force to review the standards on pension plans. Should its review result in changes to the standards, these new standards would be applied by the province.

Mandate

The expert panel's mandate is to deliver advice and recommendations to the government on the application of PSAS to the recognition and measurement of pension assets. The expert panel's advice and recommendations to the government will consider:

- The requirement regarding control with respect to recognizing a pension asset for a joint defined benefit plan
- The requirement regarding control with respect to recognizing a pension asset for other pension plans
- Appropriate valuation techniques to measure a pension asset that take into consideration future decision making authority by plan sponsors
- Recommendations to the Employee Future Benefits Task Force of the Public Sector Accounting Board regarding issues that should be considered in its review of the retirement and post-employment benefits standards.

Timelines

A report to the President of the Treasury Board and the Auditor General of Ontario is due by the end of 2016.

Membership

The panel will comprise experts in the areas of jointly sponsored pension plans, actuarial modelling for pension plans and Public Sector Accounting Standards. All members will be appointed by the President of the Treasury Board.

Support

The province will identify individuals to support the panel and work collaboratively to provide information related to the pension plans sponsored by the province of Ontario.

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[Available Online](#)
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B2 - Osler Opinion dated September 20, 2016.pdf

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Dear Sirs:

Accounting Treatment of Surplus in the Ontario Teachers' Pension Plan

I. BACKGROUND

We understand the pertinent background facts to be the following:

1. The Ontario Teachers' Pension Plan (the "**OTPP**") is a jointly-sponsored defined benefit pension plan established under the *Teachers' Pension Act* (Ontario) and is, subject to certain exceptions, required to comply with the *Pension Benefits Act* (Ontario) as well as the *Income Tax Act* (Canada).
2. The sponsors of the OTPP are the Province of Ontario (the "**Province**") and the Ontario Teachers' Federation (the "**OTF**") (collectively, the "**Sponsors**").

3. We understand that as at March 31, 2016 the Province's Statement of Financial Position (the "**Public Accounts**") includes a pension asset totalling \$10.6 billion (the "**Pension Asset**") related in part to an accounting surplus under the OTPP.¹
4. The Office of the Auditor General has indicated that because the Province does not have the legally enforceable right to unilaterally access the assets of the plan, and in the absence of that right, because the Province does not have an agreement in place with the OTF as of March 31, 2016 with respect to how the surplus would be utilized such that it would provide a benefit to the Province, the Pension Asset as presented in the Public Accounts should be removed.²

You asked us to consider the processes pursuant to which the Province may utilize surplus assets in the OTPP in accordance with the Plan Documentation (as defined below), and to identify any considerations that might inform the expectations of the Province as a Sponsor regarding the basis upon which decisions will be made relating to surplus utilization. We are not providing an opinion on the proper application of the accounting standards to the present situation, as that is an issue for the accountants to address.

II. SCOPE OF OPINION

For the purposes of our opinion, we considered the following documentation (collectively, the "**Plan Documentation**"):

1. The Ontario Teachers' Pension Plan (the "**OTPP**" or "**plan**");
2. The Agreement between Her Majesty the Queen in right of the Province of Ontario represented by the Minister of Education and Training and The Ontario Teachers' Federation represented by its Executive (the "**Partners' Agreement**");
3. The Funding Management Policy (the "**FMP**"), which forms Appendix "A" to the Partners' Agreement; and
4. The Term Sheet agreed to by the Sponsors dated March 13, 2013 (the "**2013 Term Sheet**") describing the implications of the Freeze Period (as defined below) on the FMP.

¹ See letter from Bonnie Lysyk (Auditor General) to Greg Orenszak (Deputy Minister, Treasury Board) and Scott Thompson (Deputy Minister, Ministry of Finance), dated September 13, 2016. Part of the surplus relates to another pension plan; we understand that \$10.1 billion relates to the OTPP.

² *Ibid.*

We have also considered the following legislation/regulations:

1. The *Teachers' Pension Act* (Ontario) (the “**Teachers' Act**”); and
2. The *Pension Benefits Act* (Ontario) (the “**PBA**”) and the regulations thereunder (the “**PBR**”).

As per your instructions, we have not evaluated the ability of the Province to benefit from the *withdrawal* of surplus assets from the OTPP (although certain provisions of the FMP cited herein relate to both the withdrawal and other utilization of surplus). Rather, this opinion identifies the processes pursuant to which the Province may receive a financial benefit through the *utilization* of OTPP surplus (e.g., as a result of either a temporary reduction in the Province's contribution obligations (a contribution holiday) or through changes to the contribution formula that reduce the Province's contribution obligations).

We note that the concept of an *accounting* surplus is distinct from surplus identified in a funding valuation prepared in respect of the OTPP (a “**Funding Valuation**”). Where surplus has been identified in a Funding Valuation, the Plan Documentation provides the Sponsors with certain avenues pursuant to which the Funding Valuation surplus can be utilized. Any reference to “surplus” in this opinion, unless expressly stated otherwise, relates to the surplus identified by the actuary for the OTPP in a Funding Valuation and not to the accounting surplus identified in the Public Accounts. We understand that pursuant to the applicable accounting standards, the recognition of part or all of the accounting surplus on the Public Accounts depends on the ability of the Province to benefit from any surplus in the pension fund over the life of plan.

This opinion does not purport to draw any conclusions, express or implied, about the application of the accounting standards to the present circumstances; rather, it is solely intended to provide the Province with information concerning the legal framework governing the utilization of surplus under the OTPP so as to allow the Province's accountants to determine whether a related Pension Asset should appear on the Public Accounts.

III. SUMMARY OF OUR CONCLUSIONS

A brief summary of our material conclusions is set forth below (all capitalized terms are defined herein):

1. Paragraph 10(1)3 of the Teachers' Act provides that the Minister of Education and the executive of the OTF may enter into an agreement that provides for certain matters, including: “3. The sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund by the Minister, the employers who contribute under the plan and the active plan members”. This is a

fundamental legislative pronouncement that the Province and the members of the plan are meant to “share” both upside (surplus) and downside (deficit) under the plan. Although it is not an express statement of 50/50 sharing, it would presumably inform the expectations of the Sponsors regarding how any surpluses are to be utilized. We note that the Sponsors have in fact entered into such an agreement, in the form of the Partners’ Agreement (to which is appended the FMP).

2. The Plan Documentation (specifically the FMP) and applicable legislation allow for the Sponsors to utilize surplus in a variety of ways, depending on the funded status of the OTPP. These surplus utilization options include the following avenues through which the Province may receive a financial benefit through the utilization of surplus (the three “zones” describe different levels of surplus, a greater amount of surplus being required in order for the next “zone” to come into play):
 - a. In the Restoration Zone, a Restoration Contribution Reduction may be approved once certain other requisite conditions have been met.
 - b. In the Temporary Improvement Zone, surplus may be utilized to provide a temporary contribution reduction (i.e., a contribution holiday), either as a stand-alone measure or in combination with other surplus utilization options (i.e., benefit improvements or surplus withdrawal).
 - c. In the Permanent Improvement Zone, surplus may be utilized to permanently reduce the current contribution obligations of the employers and the members, either as a stand-alone measure or in combination with changes to benefits.

Notwithstanding the foregoing, under the FMP the Sponsors have the discretion to, by mutual agreement, utilize surplus in any other manner.

3. Any enforceable legal right to obtain some value from any surplus pursuant to the Partners’ Agreement (and FMP appended thereto) would be grounded in the law of contract. As the relevant provisions of the FMP require the Sponsors to agree upon the manner in which surplus is to be utilized, neither Sponsor has a legally enforceable right to unilaterally utilize surplus in the OTPP. As such, the provisions in the FMP that contemplate the ability for the Province to receive a financial benefit through the utilization of surplus would not, in and of themselves, give rise to a legally enforceable right. What the Province does have, however, is a right to negotiate with the OTF the use of surplus that may arise under the plan, at least in the context of an actuarial valuation that discloses surplus and that is to be filed with the regulators.

4. Notwithstanding the foregoing, the Plan Documentation and applicable legislation give rise to the following considerations which may shape the Sponsors' expectation as to the basis upon which surplus will be utilized (and potentially lead to an expectation of equal sharing of the benefit of any surplus, at least over time):
 - a. The Teachers' Act prohibits the total amount of the contributions payable by the Province (and other participating employers) to exceed the amount of contributions paid by or on behalf of active members in respect of credited service for the year (subject to certain exceptions for payment of a solvency deficiency and where there are insufficient cash and liquid assets in the fund).³ In practice, this has resulted in 50/50 sharing of the regular contribution costs between the participating employers (including the Province) and plan members since the OTPP became jointly sponsored.⁴
 - b. The history of surplus utilization after the OTPP became a jointly-sponsored plan and prior to the date that the FMP was established demonstrates a past practice of the Sponsors equally sharing (in the aggregate) the financial benefits of surplus utilization, although surplus was not shared equally each time. Since the time the FMP was established, the OTPP has not reached the requisite level of surplus such that the Sponsors could negotiate its utilization under the Temporary Improvement Zone or Permanent Improvement Zone.
 - c. The inability for either party to unilaterally require surplus to be utilized in a particular manner (subject to the OTF Call Right), and the requirement to negotiate and agree (or in the absence of agreement, arbitrate) presents the Sponsors with an equal opportunity to benefit from surplus utilization.
 - d. One could argue that the obligation to bargain in "good faith" found in the Partners' Agreement may include the obligation to take into account the

³ Teachers' Act, subsections 5(1.1), (3) and (7).

⁴ We note that for the period from January 1, 2008 to December 31, 2008, the employee contribution rate was slightly lower than the employer contribution rate for earnings both above and below the Year's Maximum Pensionable Earnings ("YMPE") (9.6%/11.2% versus 10.4%/12%, respectively). It is our understanding that member contribution rates in 2008 were partially subsidized by the OTF with a credit reserve from the 1998 to 2001 pension negotiations, which accounts for this difference. See, Ontario Teachers' Pension Plan: "How Contribution Rates Have Evolved" available at: <https://www.otpp.com/documents/10179/20940/-/5e471c2b-23f1-44e6-b5c1-d22e3e50dbc3/How+Contribution+Rates+Have+Evolved.pdf>

“sharing” principles described elsewhere in this opinion, given that the OTPP is a jointly-sponsored plan.

We note that it is our understanding that it is certainly the Province’s expectation that the benefit of any surplus under the plan will in fact be shared equally between the Province and the members, over time.

5. In the event that the Sponsors cannot agree upon how surplus is to be utilized in the Restoration Zone, the Temporary Improvement Zone or the Permanent Improvement Zone, the matter can be submitted to an arbitration board of three arbitrators. Arbitration provisions are generally procedural in nature and therefore do not provide a strong foundation upon which to base parties’ reasonable expectations about their substantive rights under an agreement. To resolve a dispute, the arbitration board would engage in an exercise in interpretation of the operative substantive provisions of the relevant governing documents, including any applicable statutory provisions. However, the arbitral award must meet certain mandatory conditions set forth in the Partners’ Agreement. Among other things, the arbitral award is required to ensure that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members (section 92(c) of the Partners’ Agreement).

As part of the arbitration board’s interpretation exercise of the relevant governing documents, in the event of ambiguity in the written terms of the documents, evidence of the parties’ post-agreement practices can be admitted as an aid to interpreting the agreement. Past practices may illustrate the parties’ intentions at the time of the agreement. These considerations of past practices would be in conjunction with any explicit mandatory considerations set out in the governing document, e.g. prevailing economic conditions and the overall state of the provincial economy under section 91 of the Partners’ Agreement. The past practices which the arbitrator may consider would include those described herein: the long history of 50/50 member/employer contributions to the plan, and the equal sharing of surpluses prior to 2003 (from 2003 onwards the plan was mostly in deficit, with surpluses used to restore foregone escalated adjustments for members).

IV. FRAMEWORK IN THE PLAN DOCUMENTATION FOR SURPLUS UTILIZATION BY THE SPONSORS

1. Joint Sponsorship Plan Design and Cost Sharing

The OTPP qualifies as a “jointly sponsored pension plan” (“JSPP”) under the PBA, which has three material implications relevant to the present analysis:

1. Plan Governance – Under a JSPP, the employers (or any persons or entities who make contributions on behalf of the employers or represent the employers) and the members of the pension plan (or any representatives of the members) are jointly responsible for making all decisions about the terms and conditions of the pension plan and any amendments to the pension plan.⁵
2. Funding – The OTPP (and certain other prescribed JSPPs) are exempt from solvency funding requirements under the PBR.⁶
3. Cost Sharing – In a defined benefit pension plan which does not qualify as a JSPP, the employer is solely responsible for funding any going concern unfunded liability or solvency deficiency. Given that the OTPP qualifies as a JSPP, however, the PBA permits members to be required to make contributions in respect of any going concern unfunded liability or solvency deficiency.⁷

With respect to the cost-sharing principle referred to in #3 above, the Teachers' Act contains limitations on the contributions that the Province (and other participating employers) may make under the OTPP:

5(1.1) The total amount of the contributions payable by the Minister of Education and the employers who contribute under the pension plan in respect of any year shall not exceed the amount of contributions payable by or on behalf of active plan members in respect of credited service for that year.

Despite this general principle, under the Teachers' Act the Province is required to make additional contributions to the OTPP fund in the event that there are insufficient assets to make required payments out of the fund in any particular year.⁸ The Province is also permitted to make additional contributions in respect of a solvency deficiency⁹ (although, as noted above, solvency funding is not required under the OTPP). Notwithstanding that subsection 5(1.1) of the OTPP provides a *cap* on the Province's normal cost contribution obligation, rather than requiring 50/50 cost sharing, we understand that in practice there has been 50/50 cost sharing of the normal contribution cost under the OTPP since the OTPP became jointly sponsored (and for the majority of periods of time since the

⁵ PBR, subsection 3.1(1).

⁶ PBR, subsection 1.3.1(3).

⁷ See PBA, subsection 1(2) and subsection 55(4).

⁸ Teachers' Act, subsection 5(3).

⁹ Teachers' Act, subsection 5(7).

inception of the plan in 1917).¹⁰ The plan text itself also provides for equal contributions, at the basic level (see sections 25(1) and 26(1)).

Currently, the Sponsors are also required to mutually agree upon how any plan deficits are to be addressed.¹¹ While not binding upon the Sponsors, the FMP indicates that deficits may be addressed through increases to the contribution rates, lowering the amount of indexation and/or other decreases in benefits.

Joint governance and cost sharing form two of the core features of the OTPP. Consistent with the equal sharing of risk permitted under the JSPP plan design, there is a requirement for decisions relating to plan design and plan amendments to be made jointly by the Sponsors. In this regard, the FMP requires the Sponsors to negotiate and agree upon decisions relating to surplus utilization. Accordingly, the Sponsors can be said to have equal *opportunity* to benefit from surplus utilization through the negotiation process.

2. Provisions in the Legislation and Plan Documentation Relating to the Utilization of Surplus

(a) Pension Benefits Act

While they do address surplus withdrawals (which are not addressed in this opinion), the PBA and PBR do not otherwise mandate any particular use of ongoing surplus that may arise in a pension plan, e.g. for benefit improvements or contribution holidays. One must therefore look to the Teachers' Act, and to the Partners' Agreement and FMP in order to determine how ongoing surplus is dealt with under the OTPP.

(b) Teachers' Pension Act (Ontario)

Paragraph 10(1)3 of the Teachers' Act provides that the Minister of Education and the executive of the OTF may enter into an agreement (i.e., the Partners' Agreement) that provides for certain matters, including: "3. The sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund by the Minister, the employers who contribute under the plan and the active plan members". This is a

¹⁰ See, Ontario Teachers' Pension Plan: "How Contribution Rates Have Evolved" available at: <https://www.otpp.com/documents/10179/20940/-/5e471c2b-23f1-44e6-b5c1-d22e3e50dbc3/How+Contribution+Rates+Have+Evolved.pdf> As noted above, for the period from January 1, 2008 to December 31, 2008 the employee contribution rate was slightly lower than the employer contribution rate for earnings both above and below the YMPE (9.6%/11.2% versus 10.4%/12%, respectively). It is our understanding that member contribution rates in 2008 were partially subsidized by the OTF with a credit reserve from the 1998 to 2001 pension negotiations, which accounts for this difference.

¹¹ See, for example, Section 3.09 and 3.11 of the FMP.

fundamental legislative pronouncement that the Province and the members of the plan are meant to “share” both upside (surplus) and downside (deficit) under the plan. Although it is not an express statement of 50/50 sharing, it would presumably inform the expectations of the Sponsors regarding how any surpluses are to be utilized.

(c) Partners’ Agreement and FMP

While the Partners’ Agreement itself does not address the utilization of surplus, the notion that the Sponsors have “agreed to establish a partnership” for the purposes of designing and administering the OTPP and managing the OTPP fund¹² is reinforced throughout the Partners’ Agreement. For example, Section 4 of the Partners’ Agreement provides that “[t]he partnership established by this agreement is intended to govern all aspects of the plan and the fund...” Similarly, Section 8 of the Partners’ Agreement notes that the partners are jointly responsible for “designing the plan structure, setting the benefits of the plan, developing new policy, deciding what the contribution rate will be, what the funding levels, margins and contingency reserves will be, making changes to the plan, this agreement or other plan documents, deciding whether or not to file a valuation more frequently than required by the *Pension Benefits Act*, appointing the Board, and defining the role of the Board”. The expectations of the Sponsors regarding how surpluses are to be utilized are presumably informed by the commitment noted above for the partnership established “to govern all aspects of the plan and the fund”.

The procedures pursuant to which surplus may be withdrawn or utilized from the OTPP are identified in the FMP (which forms Appendix “A” to the Partners’ Agreement).

We understand that the FMP was first established in March 2003, as a supplement to the Partners’ Agreement, to provide a guidance framework to the Sponsors for decision-making when the OTPP has a funding surplus or shortfall. Prior to the creation of the FMP, the OTPP was considered fully funded (and surplus could be utilized, including through permanent benefit improvements) where assets equalled at least 100% of liabilities. The FMP is intentionally conservative through prioritizing the preservation of assets until a sufficient surplus “cushion” has been built to justify the utilization of surplus for contribution reductions or benefit improvements.

The FMP contemplates five “funding zones”, each defined by a range. These funding zones provide the Sponsors with guidance as to when, based upon the funding level of the plan, it may be appropriate to (amongst other things) increase or decrease benefits, raise or lower contribution rates or conserve assets. The Sponsors always have the discretion, however, to agree to pursue a course of action that is not expressly provided for in the

¹² Partners’ Agreement, section 1.

FMP. As will be discussed below, the ultimate discretion of the Sponsors is reflected throughout various provisions of the FMP.¹³

In the context of plan surpluses, three funding zones are of relevance, each of which is discussed below in greater detail.

(i) Restoration Zone

Article III of the FMP (Funding Zone – Restoration) (the “**Restoration Zone**”) is the “fully funded” zone where assets equal at least the liabilities, determined on the basis set out in the FMP. It is our understanding that the OTPP is currently in the Restoration Zone.

In the Restoration Zone, benefits cannot be improved and contributions cannot be reduced until certain actions are taken to restore past benefit reductions or past contribution increases. In this regard, Section 3.06 of the FMP provides the following:

Section 3.06 *Application of Restoration Basis Excess*: For purposes of clarity, excesses identified pursuant to Section 3.05 shall be applied in the following order, provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors:

(a) *Bring Escalated Adjustments to 50% for Post-2013 Service*: to provide escalated adjustments up to 50% of the CPI adjustment in respect of service accrued after 2013 for the period covered by the valuation, and assumed thereafter at the same rate;

(b) *Bring Escalated Adjustments to 100%*: to provide escalated adjustments up to 100% of the CPI adjustment for the period covered by the valuation, and assumed thereafter at the same rate;

(c) *Restore Escalated Adjustments for Post-2013 Years*: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2013, to the current accumulated adjustment ratio for the period from 2010 to 2013, beginning with the first year in which current escalated adjustments were less than 50% of the run-rate escalated adjustments;

(d) *Restore Escalated Adjustments for Post-2009 Years*: to provide escalated adjustments to increase, to the extent possible, the current

¹³ See, for example, the opening words of Section 3.06 of the FMP, which section provides for various uses of surplus: “... provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors”. See also Section 4.05 and 5.05.

accumulated adjustment ratio for each year after 2009 to the run-rate accumulated adjustment ratio, beginning with the first year in which current escalated adjustments were less than run-rate escalated adjustments;

(e) Provide Benefit Increases or Contribution Rate Reductions: to provide the following:

- (i) an increase in benefits, where the present value of current benefits is less than the present value of run-rate benefits,
- (ii) a reduction in contribution rates, where the present value of current contributions exceeds the present value of basic contributions, or
- (iii) a combination of (i) and (ii).

In summary, the Restoration Zone allows for surplus to be utilized to “restore” foregone indexation (Sections 3.06(a)-(d))¹⁴ and then to either increase benefits to the “run-rate benefit” level (i.e., the long-term target level) or to lower contributions to the basic target rate (or a combination of these two options) (Section 3.06(e)). While the FMP contemplates that the actions will typically be taken sequentially (i.e., starting with Section 3.06(a) and ending with the actions in Section 3.06(e)), the Sponsors are required to first agree to the actions taken under Section 3.06 and have the discretion to apply the actions in a different order or to take different action (or to take no action to utilize the surplus).¹⁵

As noted, under Section 3.06(e), surplus can be utilized to reduce contribution rates “where the present value of current contributions exceed the present value of basic contributions” (the “**Restoration Contribution Reduction**”). We understand that in 2001 the Sponsors agreed to a 1.1% increase to both member/employer contributions (phased in over a three year period) to address a funding deficit in the OTPP and that the Restoration Contribution Reduction under Section 3.06(e) would permit these additional contributions to be eliminated, thus restoring contributions to the “basic” level.

The 2013 Term Sheet sets out an agreement between the Sponsors that is in effect from December 31, 2012 to December 30, 2017 (the “**Freeze Period**”), the terms of which are reflected in the FMP. Under Section 3.08 of the FMP, there are certain limits (relating to

¹⁴ This is achieved by first increasing go-forward indexing to 50% for the post-2013 service period, then to 100% on all post-2009 service periods and next, by restoring current pension amounts to a certain prescribed level starting with the years where indexing was less than 50% until all years of partial indexation are restored to the same level and then by restoring indexation to 100% for all service periods.

¹⁵ As noted above, pursuant to Section 3.06 of the FMP, “the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors...”

the funded status of the OTPP) on the ability to make escalated adjustments or to improve benefits pursuant to Section 3.06 during the Freeze Period.

As noted below, no action can be taken under the Temporary Improvement Zone (as defined below) or the Permanent Improvement Zone (as defined below) until all restorative actions under Section 3.06 of the FMP have been provided for (subject to the general discretion of the Sponsors to deviate from the guidelines set out in the FMP).

(ii) Temporary Improvement Zone

Article IV of the FMP (Funding Zone – Temporary Improvements) (the “**Temporary Improvement Zone**”) was added to the FMP in March 2015 and allows for: (i) temporary contribution decreases (a contribution holiday), (ii) surplus distribution, and/or (iii) benefit improvements, provided in each case that the plan’s funding level reaches thresholds set out in the FMP.

We understand that in this zone the plan is considered well-funded and able to afford temporary changes, so long as they do not increase the long-term cost of the OTPP. Surplus cannot be utilized under the Temporary Improvement Zone until the Sponsors have provided for all of the changes specified in Section 3.06 of the Restoration Zone (again, subject to the general discretion of the Sponsors to deviate from the guidelines set out in the FMP).¹⁶

In all cases the Sponsors’ prior agreement is required in order for there to be a temporary contribution decrease, a surplus distribution or a benefit improvement.¹⁷ Where the Sponsors agree to a change that would result in surplus being distributed or utilized for a temporary benefit improvement, the Sponsors are required to enter into a written agreement “governing the manner in which the contributions by the Minister and employers may be adjusted to offset any surplus distribution or temporary improvement of benefits that is reflected in the value of the liabilities.”¹⁸ We understand that this provision is a recognition of the partnership of the Province and the OTF, and requires the Sponsors to enter into an agreement addressing the possible value to be obtained by the Province where there is a decision to provide value to the members (but the provision is not a guarantee that such value will in fact be provided to the Province).

We note that, as a temporary measure, the OTF has “first call” rights on 100% of the surplus disclosed in valuation report with a valuation date after December 30, 2017, up to

¹⁶ FMP, section 4.03

¹⁷ FMP, section 4.05.

¹⁸ FMP, section 4.06

certain amounts as set out in the FMP (the “**OTF Call Right**”).¹⁹ The 2013 Term Sheet indicates that “[t]his is a one-time arrangement intended to compensate Plan members for absorbing 100% (rather than 50%) of funding shortfalls arising in the government initiated Freeze Period.” In other words, this one-time opportunity to benefit from surplus utilization is directly linked to the asymmetrical assumption of risk by OTPP plan participants during the Freeze Period. In light of the Freeze Period and the OTF Call Right, it is our understanding that no actions under the Temporary Improvement Zone will be permitted until the Freeze Period has ended and the OTF Call Right in Article VI of the FMP has been satisfied.²⁰

To summarize, the OTF has a contractual right to the future utilization of surplus, up to the value of the OTF Call Right. OTF cannot utilize any surplus available in the OTPP under this negotiated right until the Freeze Period has ended (on December 30, 2017) and a valuation after such date identifies the existence of surplus available for utilization. In light of this negotiated right, surplus cannot be utilized under the Temporary Improvement Zone or the Permanent Improvement Zone (e.g., to cause a temporary or permanent reduction to contributions) until the OTF Call Right has first been satisfied. Once the OTF Call Right has been satisfied, the *status quo* under the FMP will be restored (i.e., the agreement of the parties will be required for any utilization of surplus). In other words, the OTF Call Right reflects a “one-time” agreement and is expressly “without prejudice or precedent for any future situation”.²¹ It is our understanding that the quantum of the OTF Call Right is not presently expected to be material.

(iii) Permanent Improvement Zone

Where the surplus reaches certain levels as set out in the FMP, Article V of the FMP (Funding Zone – Permanent Improvements) (the “**Permanent Improvement Zone**”) will apply. We understand that in the Permanent Improvement Zone adequate funding security is considered to exist to support permanent changes (either an improvement in benefits or a reduction in contributions).

Under the FMP framework, these changes can be introduced only once the Sponsors have already provided for the changes specified in Section 3.06 (i.e., no further action to restore benefits remains to be taken under the Restoration Zone), subject to the general discretion of the Sponsors to deviate from the guidelines set out in the FMP.²²

¹⁹ FMP, section 6.03.

²⁰ See FMP, subsection 1.05(f) and sections 4.05 and 4.09.

²¹ 2013 Term Sheet, paragraph 11(d).

²² FMP, section 5.03.

The Sponsors are required to mutually agree to any change made in the Permanent Improvement Zone. As in the Temporary Improvement Zone, where the Sponsors have agreed to a change which would result in an improvement to member benefits, the Sponsors would be required to enter into a written agreement “governing the manner in which the contributions by the Minister and employers may be adjusted to offset any change in current benefits that is reflected in the value of the liabilities.”²³

In light of the Freeze Period and the OTF Call Right, it is our understanding that no actions under the Permanent Improvement Zone will be permitted until the Freeze Period has ended and the OTF Call Right in Article VI of the FMP has been satisfied.²⁴

3. History of Surplus Utilization

The history of OTPP surplus utilization from the time the OTPP became a jointly-sponsored pension plan²⁵ to the date that the FMP was established (in March 2003) demonstrates a past practice of the Sponsors equally sharing (in the aggregate) the benefits of surplus utilization:

Valuation Date	Surplus/(Deficit)	OTF	Ontario Government	Surplus Remaining
1990	\$(7.8 billion) unfunded liability	Increased contributions by 1% to 8.9%	Agreed to make a series of special payments to eliminate the unfunded liability and match increased contributions	Special payments considered an asset bringing the plan to a \$0 surplus
1993	\$1.5 billion	\$325 million to offset social contract days	Eliminated special payments for \$1.2 billion saving	\$0
1996	\$0.7 billion	\$0.6 billion for benefit improvements and RCA contributions	N/A	\$0.1 billion
1998	\$6.8 billion	\$2.2 billion for benefit improvements	\$4.6 billion to reduce the value of remaining special payments	\$0

²³ FMP, section 5.05(b).

²⁴ See FMP, sections 5.05 and 5.08.

²⁵ The Partners’ Agreement is dated July 15, 1991.

1999	\$3.5 billion	N/A	\$3.5 billion to reduce the value of remaining special payments	\$0
2001	\$6.8 billion	\$6.2 billion for benefit improvements	N/A	\$0.6 billion
2002	\$1.9 billion	Sponsors agreed not to make any changes to benefits or contributions		\$1.9 billion
Total		\$9.3 Billion	\$9.3 Billion	

* Source: Ontario Teachers' Pension Plan Board "Report on Funding" (April 2002)

Although surplus utilization prior to 2003 may not have been 50/50 each time, from 1990 to 2002 the aggregate value obtained by each of the Sponsors was equal. In certain instances where the Province received a disproportionate share of the financial benefits from surplus utilization, a commitment was made to the OTF that they would receive future surplus available for utilization. In 1998, \$6.8 billion in surplus was utilized to cause a \$2.2 billion benefit improvement and to provide the Province with a \$4.6 billion reduction in the value of special payments owed by the Province. As part of this negotiation, the OTF and the Province agreed to allow future surplus to be utilized to eliminate the Province's remaining special payments (which resulted in \$3.5 billion surplus being utilized in 1999 to reduce the value of the Province's remaining special payments) and a commitment was made for the next \$6.2 billion in surplus to be available to OTF for benefit improvements (such surplus being utilized for benefit improvements in 2001).²⁶

As noted above, the FMP was introduced in March 2003 to provide a guidance framework to the Sponsors when the OTPP has a funding surplus or shortfall. It is our understanding that there have been at least 2 material amendments to the FMP framework since its introduction. Below is a summary of the key funding decisions since the introduction of the FMP:

Year	Valuation Status and Key Decisions
2003	\$1.5 billion surplus; no changes to benefits or contribution levels. Funding Management Policy adopted by plan sponsors.
2005	A preliminary \$6.1 billion shortfall was resolved, leaving plan with a \$0.1 billion surplus. Shortfall resolved with special contribution rate increases, totalling 3.1% of base earnings by

²⁶ See Ontario Teachers' Pension Plan, "Key Funding Decisions Since 1990", available at: <https://www.otpp.com/documents/10179/765840/-/d4e2fea5-624d-420f-af15-e2daf9bc2711/Key+Funding+Decisions.pdf>

	2009 for teachers, the Ontario government and other employers. OTF used the \$76 million contingency reserve set aside in 2001 to reduce contribution rate increases for members in 2008.
2008	A preliminary \$12.7 billion shortfall was resolved with the introduction of conditional inflation protection for pension benefits earned after 2009 and an increase in the basic contribution rate for members and the government to 9% from 8%. Employers agree to make special payments equal to any annual pension increases retirees forgo to a maximum of 50% missed inflation.
2009	A preliminary \$2.5 billion shortfall was resolved primarily by assuming a slightly higher long-term rate of return on investments: yield on real-return bonds plus 1.5%, versus real-return bonds plus 1.4%. Other minor changes made to assumptions to reflect recent plan experience.
2011	A preliminary \$17.2 billion shortfall was resolved with a 1.1% contribution rate increase (phased in over three years), slightly smaller annual cost-of-living increases for teachers who retired after 2009, and recognition of current contribution rate as the permanent base rate.
2012	\$9.6 billion preliminary shortfall adjusted to reflect changes in mortality assumptions and impact of two-year freeze on teachers' salaries. 2012 shortfall resolved by making inflation protection for pension credit earned after 2013 fully conditional on plan's funded status and providing slightly smaller pension increases, beginning in 2014, for members who retired after 2009. These changes enabled the plan to assume a slightly higher discount rate. The changes left the plan with a \$200 million surplus at Jan. 1, 2012.
2014	\$5.1 billion preliminary funding surplus used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided each year since they retired. The surplus funds were also used to raise conditional inflation protection to 60% of the increase in the cost of living for the portion of retirees' pensions earned after 2009. Both changes are effective with January 2015 pension payments.
2015	Some of the \$6.8 billion preliminary funding surplus was used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided on January 1, 2015. The surplus funds were also used to raise conditional inflation protection for pension credit earned after 2009 to 70% from 60% of the increase in the cost of living. Both changes were effective January 2016. In addition, some surplus funds were reserved to help facilitate stability in contribution and benefit levels should a future funding valuation show a decline in assets or increase in pension costs.

* Source: Ontario Teachers' Pension Plan, "Key Funding Decisions Since 1990"

In September 2016, the Sponsors announced that a portion of the \$13.2 billion in funding surplus would be utilized to restore inflation increases, with the remaining surplus funds

to be reserved “to help facilitate stability in contribution and benefit levels should a future funding valuation show a decline in assets or increase in pension costs”.²⁷

In summary, surplus has been utilized three times since the FMP was introduced – in each of 2014, 2015 and 2016 escalated adjustments were provided to increase the pensions of members who had retired after 2009. As noted above, the OTPP is currently in the Restoration Zone which, pursuant to Section 3.06, prioritizes the utilization of surplus to “restore” foregone indexation before any other actions are taken with respect to surplus. In other words, since the FMP was established the OTPP has not reached a level of surplus under the FMP which would allow for the Sponsors to enter into an agreement regarding its utilization under the Temporary Improvement Zone or the Permanent Improvement Zone.

It is also notable that, consistent with the 50/50 cost sharing principle under the plan, there is recent precedent for the Sponsors agreeing to equally share in the cost of funding a plan deficit (as with the case of surplus utilization, the Sponsors are required to mutually agree upon how to address any funding deficit in the OTPP). Specifically, the preliminary \$17.2 billion shortfall identified in 2011 was resolved through a 1.1% increase to the contribution rate for both the participating employers and plan members (phased in over a three-year period).

Given the historical use of surplus under joint sponsorship of the OTPP prior to the adoption of the FMP, and the fact that over that time the Sponsors shared equally in surpluses, it may be that the Sponsors will expect to also share future surpluses on an equal basis, at least over time (we understand that it is certainly the Province’s expectation that this will happen). In any event, based on the Plan Documentation, both parties will have an equal opportunity to benefit from surplus utilization through the negotiation process.

V. LEGAL RIGHT OF THE PROVINCE TO UNILATERALLY UTILIZE SURPLUS

As discussed in Part IV of this opinion, the Plan Documentation allows for the Sponsors to agree to utilize surplus in a variety of circumstances, depending on the funded status of the OTPP. These surplus utilization options include the following avenues through which the Province may potentially receive a financial benefit through the utilization of surplus:

²⁷ Ontario Teachers’ Pension Plan, “Funding News”, available at: <https://www.otpp.com/corporate/plan-funding/funding-updates>. We assume that a written agreement was reached by the Sponsors in this regard; however, we have not been provided with a copy of such agreement.

1. In the Restoration Zone, a Restoration Contribution Reduction may be agreed upon, once certain other requisite conditions have been met.
2. In the Temporary Improvement Zone, surplus may be utilized to provide a temporary contribution reduction (a contribution holiday), either as a stand-alone measure or in combination with other surplus utilization options (i.e., benefit improvements or surplus withdrawal).
3. In the Permanent Improvement Zone, surplus may be utilized to permanently reduce the current contribution obligations of the employers and the members, either as a stand-alone measure or in combination with changes to benefits.

Notwithstanding the foregoing, as noted above, the Sponsors have the discretion to, by mutual agreement, utilize surplus in any other manner agreed upon. (For example, Section 5.05 which relates to the Permanent Improvement Zone provides that “the partners may apply all or part of the [surplus] to change current benefits, current contributions, or both”, subject to certain conditions.)

Any enforceable legal right of the Province to utilize surplus pursuant to the Partners’ Agreement (and FMP appended thereto) would be grounded in the law of contract, the Partners’ Agreement and the appended FMP being a contract between the Sponsors. A contract is an agreement “...which gives rise to an obligation that may be enforced in the courts.”²⁸ It is our view that the relevant provisions in the Partners’ Agreement²⁹ that contemplate the ability for the Province to receive a financial benefit through the utilization of surplus do not, by themselves, give rise to a legally enforceable right to unilaterally dictate the use of surplus. Such a legally enforceable right would only arise by agreement between the Sponsors, either through negotiations or mediation, or if an order were issued by a board of arbitration as contemplated by the dispute resolution mechanisms found in the Partners’ Agreement (see Section VI of this Opinion for further discussion of the impact of binding arbitration on the Sponsors’ legal rights).

In this regard, the FMP can be thought of as being similar to an “agreement to agree,” which does not create an enforceable legal interest in relation to the utilization of surplus.³⁰ What the Province does have, however, is a right to negotiate with the OTF the

²⁸ CED – Contracts – I Basis of Contract – 1 – Contract Defined.

²⁹ Article III, Section 3.06; Article IV, Section 4.05; and Article V, Section 5.05.

³⁰ For a statement of the principle that an “agreement to agree” is not an enforceable legal interest, see, for example: *Simpson v. Canada (Attorney General)*, 2011 ONSC 5637 at para. 60 citing *Ward v. Ward*, 2011 ONCA 178 and *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.*, 1991 CanLII 2734 (Ont CA). See also G. H. L. Fridman, *The Law of Contract in Canada*, 6th ed (Toronto: Carswell

use of surplus that may arise under the plan, at least in the context of an actuarial valuation that discloses surplus and that is to be filed with the regulators.

In addition, when a valuation is prepared to be filed and the Sponsors have to discuss the treatment of a surplus disclosed in the valuation, section 74 of the Partners' Agreement requires the Sponsors "to bargain in good faith and make every reasonable effort to reach an agreement on the changes, if any, that will be made to the plan". One might therefore argue that that obligation of good faith may include the obligation to take into account the "sharing" principles described elsewhere in this opinion, given that the OTPP is a jointly-sponsored plan.

As will be discussed below, where the Sponsors are unable to agree upon the utilization of surplus pursuant to the negotiation/mediation processes set forth in the Partners' Agreement, there is an ability for the Sponsors to submit the matter to arbitration. The issuance of an order by an appointed board of arbitration regarding the use of surplus funds under the OTPP would create a legally enforceable right, as the submission to the board of arbitration would constitute a proceeding under the *Arbitrations Act* – as specified in paragraph 87 of the Partners' Agreement – that is enforceable by a court.³¹

VI. IMPACT OF BINDING ARBITRATION ON THE SPONSORS' LEGAL RIGHTS

Section 8.01 of the FMP provides the following:

Section 8.01 Unless the partners mutually agree to the contrary, they shall follow the procedures described in paragraphs 74 to 100 when determining the plan changes arising from Section 3.07.

We first note that the mediation/arbitration process would not be triggered unless there is an actuarial valuation to be filed with the regulators that requires the Sponsors to agree on how any surplus or deficit is to be addressed. If a valuation is prepared in a year when no filing is required (filings generally only being required every three years), and the Sponsors do not agree to file the valuation, then the Sponsors do not necessarily have to address funding and benefit issues and therefore no negotiations may occur.

The processes in paragraphs 74 to 100 of the Partners' Agreement that are referred to in Section 8.01 of the FMP provide, amongst other things, for the following:

Publishing, 2011) at 23 where the author states "There cannot be a contract to enter into a contract. Nor can there be a contract to negotiate, i.e., an agreement to agree."

³¹ Section 50(1) of the *Arbitration Act, 1991*, SO 1991, c 17 states "A person who is entitled to enforcement of an award made in Ontario or elsewhere in Canada may make an application to the court to that effect."

- The Sponsors are required to meet to bargain in good faith and make every reasonable effort to reach an agreement on the changes, if any, that will be made to the plan (section 74);
- The parties may at any point appoint a mediator by agreement of the parties or by a method to which they agree at that time (section 77);
- If the parties agree, the mediator may be appointed as a mediator/arbitrator in which case the appointee will decide on the process and time frame for conducting mediation/arbitration (section 80);
- Within 30 days of appointment, the mediator will prepare a confidential report setting out his or her views on the positions of the two partners and containing a recommendation (section 82);
- If the partners do not accept the report within 14 days of its being delivered to them it will be destroyed and an arbitration board will be appointed (section 84);
- This agreement together with a referral to a board of arbitration constitutes a submission under the *Arbitration Act, 1991*³² (section 87);
- The board of arbitration in making an award will consider prevailing economic conditions and the overall state of the provincial economy (section 91);
- The award made by the board of arbitration, must comply with certain prescribed requirements, including to “provide that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members” (section 92(c));
- The Board will prepare a final valuation of the plan which implements all of the changes to the plan which have been awarded or agreed to by the partners (section 94);
- The Sponsors may agree to change the procedure described in this agreement, either for one round of negotiations or for all future negotiations; and
- Pursuant to Section 8.02 of the FMP, certain limitations on amendments set out in the FMP also apply to an award made by a board of arbitration (generally, these limitations are intended to ensure that the plan is adequately funded after providing for the utilization of surplus).

³² SO 1991, c. 17 (the “*Arbitration Act*”).

The Partners' Agreement and the FMP contain no general arbitration clause governing all disputes relating to the agreement, although Section 14 of the Partners' Agreement provides for the possibility of voluntary arbitration. We are not aware of any instance where the arbitration provisions have been invoked by the parties since the FMP was established. It is not immediately clear whether disputes relating to the utilization of surplus under Article IV of the FMP (i.e., the Temporary Improvement Zone) and under Article V of the FMP (i.e., the Permanent Improvement Zone) would be subject to arbitration.³³ It is our understanding from discussions with OTPP's internal legal counsel, however, that the arbitration provisions in the FMP would be expected to apply to disputes relating to the utilization of surplus under each of these provisions.

Where a matter has been submitted to arbitration, case law has established that the agreement between the parties that is being arbitrated is the fundamental source of subject matters that come within the arbitration board's jurisdiction.³⁴ The parties are free to design their own procedures, including setting the scope of the arbitration board's jurisdiction and specifying the potential outcomes of the arbitration (subject to certain default appeal rights and mandatory grounds to set aside an award under the *Arbitration Act*). The arbitration board is empowered to make binding decisions because of the arbitration agreement, including any limitations on that authority. Canadian courts have traditionally granted deference to arbitration awards.

Arbitration provisions are generally procedural in nature and therefore do not provide a strong foundation upon which to base parties' reasonable expectations about their substantive rights under an agreement. To resolve a dispute, the arbitration board would engage in an exercise in interpretation of the operative substantive provisions of the relevant governing documents, including any applicable statutory provisions. However, as noted above, under section 92 of the Partners' Agreement, the arbitral award must meet certain mandatory conditions. Among other things, the arbitral award is required to provide that the contributions of the Minister and those employers who are required to contribute are equal to the contributions of members (section 92(c) of the Partners'

³³ On the one hand, Section 8.01 of the FMP provides for the procedures in the Partners' Agreement relating to arbitration to apply "when determining the plan changes arising from Section 3.07". This may suggest that only disputes relating to the utilization of surplus under Article III (i.e., the Restoration Zone) can be arbitrated. On the other hand, Section 8.03 of the FMP provides that "Subject to the 2013 Term Sheet, nothing in Article II to Article IX affects the timing of the triennial negotiation, mediation and arbitration process referred to in paragraph 72 to 100", which may suggest that any agreement relating to the utilization of surplus, including under Article IV or Article V of the FMP, may be subject to arbitration (when a valuation is to be filed the parties have to agree on how any surplus – including surplus in the Temporary Improvement Zone and Permanent Improvement Zone, if any – will be used).

³⁴ See for example: *Desputeaux v. Éditions Chouette* (1987) Inc., [2003] 1 SCR 178, para. 22.

Agreement). The arbitration board does not have discretion to ignore this mandatory provision, although the provision would need to be given effect within the context of the relevant documents and applicable statutes, interpreted as a whole, and other relevant factors, such as past conduct of the parties. As part of the arbitration board's interpretation exercise of the relevant governing documents, in the event of ambiguity in the written terms of the documents, evidence of the parties' post-agreement practices can be admitted as an aid to interpreting the agreement. Past practices may illustrate the parties' intentions at the time of the agreement. These considerations of past practices would be in conjunction with any explicit mandatory considerations set out in the governing document, e.g. prevailing economic conditions and the overall state of the provincial economy under section 91 of the Partners' Agreement. The past practices which the arbitrator may consider would include those described above: the long history of 50/50 member/employer contributions to the plan, and the equal sharing of surpluses prior to 2003 (from 2003 onwards the plan was mostly in deficit, with surpluses used to restore foregone escalated adjustments for members).

Yours truly,

A handwritten signature in dark ink, appearing to read "Osler, Hoskin & Harcourt LLP". The signature is written in a cursive, flowing style.

Osler, Hoskin & Harcourt LLP
JS/DR/JM:jm

B3 - Koskie Minsky BC Comparison.pdf

September 23, 2016

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Via E-mail – len.hatzis@ontario.ca

Len Hatzis
Deputy Director
Legal Services Branch | Treasury Board Secretariat
77 Wellesley Street West, 9th Floor
Toronto ON M7A 1N3

Dear Mr. Hatzis:

Re: Legal Opinion Concerning Surplus Rights in regard to the Ontario Teachers' Pension Plan, the OPSEU Pension Plan, the British Columbia Municipal Pension Plan, the British Columbia Public Service Pension Plan, the British Columbia Teachers' Pension Plan and the British Columbia Colleges Pension Plan
Our File No.: 162080

You have requested our legal opinion concerning the authorities of the sponsors and plan administrators of the above-captioned Plans with respect to ongoing surpluses in those plans.

In general, the sponsors of these pension arrangements are governments and sometimes other employer associations (the employer sponsor), and trade unions (the employee sponsor, or 'partner'). The 'plan administrators' of each Plan are either boards of trustees or, in the case of the OTPP, a board of directors. Plan administrators are independent entities that owe fiduciary obligations to the members of the Plan they administer.

The constating documents for each Plan set out the respective rights of the sponsors of each arrangement, and describe as well the powers of the fiduciary administrator of each Plan. In some cases, there is a clear differentiation between the powers of the sponsors and the powers of the plan administrators; in other cases, both the sponsors and the fiduciary administrator may have powers with respect to the same issue.

Below, we briefly review the relevant provisions of the constating documents for each of these Plan arrangements. Then, we summarize our opinions concerning the respective powers of the Plan sponsors and the fiduciary administrators in regard to surpluses arising under each arrangement.

This opinion is based on the documents referenced herein. In the event that there are any other constating documents with respect to any of the Plans described below, the conclusions expressed in this opinion may change and cannot be relied upon.

In general, the Plans' constating documents sometimes refer to "surplus", and other times to "actuarial gains" or "excess assets". The term "surplus" may refer either to an ongoing surplus, or to a surplus that is crystalized upon the termination and wind-up of a plan. For the purposes of this opinion, we treat these terms as being equivalent.

I. ONTARIO PLANS

A. Ontario Teachers' Pension Plan ("OTPP")

The OTPP is governed by:

- (a) the *Teachers' Pension Act*, R.S.O. 1990, c.T.1 (the "TPA");
- (b) Plan text for the OTPP (the "Plan text");
- (c) an Agreement between Her Majesty the Queen in right of the Province of Ontario represented by the Minister of Education and Training (the "Minister") and The Ontario Teachers' Federation represented by its Executive (the "OTF"), dated July 15, 1991 (the "Partners' Agreement"), as amended; and
- (d) a Funding Management Policy, attached as Appendix "A" to the Partners Agreement.

The TPA provides, at sections 5(1) and 5(1.1), that the Minister of Finance is required to pay from the Consolidated Revenue Fund contributions payable by the Minister of Education and provides that the total amount of such contributions "...shall not exceed the amount of contributions payable by or on behalf of active Plan members in respect of credited service for that year" (section 5(1.1)). The Plan text requires, at section 25, "that the Minister of Education contribute to the OTPP an amount equal to the required contributions made during the year before the preceding year by or on behalf of those members for whom the Minister is required to make employer contributions" (section 25(1)). Additional provisions of section 25 of the Plan text contain other provisions with respect to the Minister's obligation to make contributions to the OTPP.

The Partners' Agreement stipulates, at section 8 that the Partners are generally responsible for benefits and contribution rates:

- "8. The partners will be responsible for designing the plan structure, setting the benefits of the plan, developing new policy, deciding what the contribution rate will be, what the funding levels, margins and contingency reserves will be, making changes to the plan, this agreement or other plan documents, deciding whether or not to file a valuation more frequently than required by the *Pension Benefits Act*, appointing the Board, and defining the role of the Board."

By contrast, section 19 of the Partners Agreement sets out the responsibilities of the OTPP Board, and does not confer any authority on the OTPP Board to change benefits or contribution rates that are provided under the OTPP. This means that the OTPP Board has no authority to use ongoing surpluses either to improve benefits or reduce contributions. Only the partners to the OTPP have the authority to utilize ongoing surpluses.

The process governing the use of ongoing surpluses by the Partners is set out in the partners' Agreement. It anticipates that the OTPP Board will prepare an actuarial valuation of the OTPP every three years (section 73). The Partners are then required to bargain in good faith with respect to the disposition of any surpluses, or any adjustments to address Plan deficiencies (section 74). Section 77 of the Partners' Agreement anticipates that the Partners may appoint a mediator to assist them and sections 84 and 86 of the Partners' Agreement provide for the

appointment of a Board of Arbitration to make a final and binding order with respect to the utilization of an ongoing surplus disclosed by the actuarial valuation. A Board of Arbitration is empowered to change contribution rates and/or benefits under the Plan, or to keep an amount of surplus in reserve, but is subject to certain limits that are set out in section 92.

B. The OPSEU Pension Plan ("OPTrust")

The OPTrust is governed by:

- (a) a Sponsorship Agreement made as of April 18, 1994 between Her Majesty the Queen in right of the Province of Ontario as represented by the Chair of the Management Board of Cabinet ("Ontario") and the Ontario Public Service Employees' Union ("OPSEU") (the "Sponsorship Agreement");
- (b) an Agreement and Declaration of Trust of the Trust Fund dated October 25, 1994 (the "Trust Agreement"); and
- (c) OPTrust Plan text.

Section 56 of the Sponsorship Agreement addresses the use of actuarial gains disclosed under an actuarial valuation report prepared after March 31, 1997. Section 56(d) provides that once the 'Transferred Initial Unfunded Liability' of the OPTrust has been fully liquidated (we understand that it has been liquidated), then actuarial gains disclosed by a valuation of the OPTrust are divided into two equal pools, one of which "...shall be used for the benefit of Ontario, to be applied against any special payments required to be made by Ontario and thereafter to reduce Ontario's normal costs..." and the other pool is to be used by OPSEU for the benefit of Plan Members (section 56(c) of the Sponsorship Agreement). Section 56(d) also anticipates that OPSEU and Ontario may collectively bargain an allocation of gains that is different from 50/50. This means that each of Ontario and OPSEU may utilize their pools, subject to applicable legislation, without the agreement of the other party.

The Trust Agreement provides that only the Sponsors (Ontario and OPSEU) may amend the Plan (section 4.02), and further specifies that the plan administrator, i.e. the Board of Trustees of the OPTrust, "...shall have no power to amend either the Plan or this Agreement" (section 4.03). Accordingly, under the Sponsorship Agreement and Trust Agreement, the OPTrust plan administrator has no authority to utilize actuarial gains. Rather, that authority is conferred, by section 56 of the Sponsorship Agreement on the Sponsors, being Ontario and OPSEU. Moreover, the OPTrust Board of Trustees is not able to increase OPTrust benefits using ongoing surpluses, as only the Sponsors of the OPTrust are able to amend the Plan.

II. BRITISH COLUMBIA PLANS

In British Columbia, the Municipal Pension Plan, the Colleges Pension Plan, the Teachers' Pension Plan and the Public Sector Pension Plan were all converted from employer sponsored pension plans to jointly sponsored plans in accordance with the *Public Sector Pension Plans Act*, S.B.C. 1999, c.44 (the PSPPA).

A. British Columbia Municipal Pension Plan (the "MPP")

The MPP is governed by:

- (a) Municipal Pension Plan Joint Trust Agreement (consolidated), updated to September 30, 2015 (the "MPP Trust Agreement"); and
- (b) Municipal Pension Plan Rules effective April 1, 2000 (current to November 19, 2015).

Under the MPP Trust Agreement, the following rules govern the Sponsors of the MPP and the Board of Trustees of that arrangement in regard to Plan surpluses:

The Board of Trustees may amend the MPP to utilize surpluses under section 11.5, provided that the conditions in 11.5(a) and (b) are met. These provisions permit the Board of Trustees to utilize Plan surpluses to improve Plan benefits for Plan members, provided that the surplus is sufficient to fund the benefit improvement "based on the open group of Plan Members and using a twenty-five year amortization schedule for the Plan actuarial excess to be used to fund the benefit improvement". Any benefit improvement made by the Board of Trustees cannot result in increased contribution rates nor can it create an unfunded liability. Any such improvement must also be consistent with the Trustees' fiduciary responsibilities. Within these parameters, however, the Board of Trustees of the MPP does have the authority to utilize Plan surpluses on an ongoing basis.

The MPP Partners may also amend the MPP using ongoing surpluses in accordance with section 11.3 of the MPP Trust Agreement. This section permits the Partners to direct the Board of Trustees to amend the Plan rules and requires the Board of Trustees to comply with that direction so long as three conditions are met: (a) the Partners first receive and consider the advice of the Board respecting the proposed amendment, (b) the proposed amendment is compliant with the Trustees' fiduciary responsibilities and (c) the proposed amendment will not result in the Plan failing to be funded in accordance with the PBSA going concern funding requirements. Significantly, the MPP constating documents contain no right of recourse to arbitration or other final and binding dispute resolution in the event that the MPP Partners cannot agree on surplus utilization. This contrasts with the OTPP Partners' Agreement, which does provide for third party determinations of differences arising between Partners with respect to surplus uses.

Accordingly, under the MPP, both the Partners and the plan administrator may utilize Plan surpluses by amending the Plan terms in regard to either or both of contribution rates and benefits.

It should be noted that, during a Transitional Period, the use of actuarial gains in the MPP is prescribed by Appendix "B" to the MPP Joint Trust Agreement. During the Transitional Period, all gains must first be used to eliminate unfunded liabilities. Then, actuarial gains must be applied to both (a) reconfigure employer contribution rates and (b) make specified benefit improvements. Employer contribution rates are to be reconfigured by eliminating the 'doubling' feature of employer contribution rates applicable to employees in certain Plan membership categories once they reach either 45 or 50 years of age (depending on the employment category). The transitional provisions prescribe the new base rates for each of the 5 categories of members in the BC, but also stipulate that employer contribution rates for two of the five

categories will be increased beyond those base rates to reflect the differential current service cost for those two groups. The surplus implications of the reconfiguration of employer contribution rates are not predictable, and depend, at least in part, on the relationship between the 'base rates' under the transitional provisions and the actual rates being paid by employers at the time of the reconfiguration. Once the employer contribution rates are reconfigured and the specified benefit improvements are made, then 50% of any additional actuarial excesses must be used to fund a contribution rate stabilization reserve, and the balance of the actuarial excess must be transferred to the Inflation Adjustment Account to an aggregate total of \$1 billion. The contribution rate stabilization reserve is intended to be shared on an equal (50/50) basis between Plan members and employers in order to maintain or reduce future contribution rates. Until such time as the objectives identified for the Transitional Period are fulfilled, there is no discretion left to either the Partners or the Board of Trustees to utilize ongoing MPP surpluses.

B. British Columbia Public Service Pension Plan ("PSPP")

The PSPP Joint Trust Agreement contains provisions regarding the authority of the Partners and the Board of Trustees to utilize ongoing surpluses that are equivalent to the provisions cited above with respect to the MPP. Accordingly, under the PSPP, both the Partners and the Board of Trustees have the authority, in the circumstances and subject to the conditions described in relation to the MPP, to utilize ongoing surpluses to reduce contributions or improve Plan Member benefits.

In this regard, section 10.3(c) of the PSPP Joint Trust Agreement expressly provides the Board of Trustees¹ with the authority to apply ongoing surpluses (the term used in the PSPP Joint Trust Agreement is "surplus assets") in one or more of the following manners:

1. transfer all or portions of surplus assets to the reserve established within the Pension Fund for stabilising contribution rates;
2. transfer all or portion of the surplus assets to the Inflation Adjustment Account;
3. apply all or a portion of the surplus assets to an equal reduction or elimination of Employer and Plan Member contributions to the Basic Account for a period of time;
4. apply all or a portion of the surplus assets to fund changes to the PSPP's benefit provisions provided that any change to benefits does not result in contribution rate increases, does not create or increase an unfunded liability, is consistent with the Trustees' fiduciary obligations and does not conflict the requirement (in s. 13.5) that, upon the termination and wind-up of the PSPP any remaining assets are to be equally shared between the employees and the employers.

At the same time, as is the case for the MPP, the Partners have the authority, pursuant to s.11.3 of the PSPP Joint Trust Agreement, to direct the Board of Trustees to amend the PSPP Plan rules and change either or both of the PSPP's contribution rates or benefits so long as the

¹ It is noteworthy that s. 14.2(c) of the PSPP Joint Trust Agreement stipulates that the Trustees are not acting in a fiduciary capacity when they make decisions that apply ongoing surpluses, and may take account of the financial and other interests of the party that appointed them.

Partners have received and considered the advice of the Board respecting both the cost and administrative impact of any proposed amendments, the amendment is not inconsistent with the Trustees' fiduciary responsibilities or any funding policy adopted by the board and the proposed amendment will not result in the PSPP failing to be funded in accordance with British Columbia's Pension Benefits Standards Act. Significantly, the PSPP constating documents contain no right of recourse to arbitration or other final and binding dispute resolution in the event that the MPP Partners cannot agree on surplus utilization. This contrasts with the OTPP Partners' Agreement, which does provide for third party determinations of differences arising between Partners with respect to surplus uses.

Section 15.4 of the PSPP Joint Trust Agreement provides that certain benefit improvements must be made using Plan surpluses that are identified in actuarial valuations dated March 31, 2001 and March 31, 2002. Unlike with respect to the MPP, the PSPP does not appear to have an indefinite 'Transitional Process' that commits all ongoing surpluses until the Transitional objectives are accomplished. Rather, the PSPP Trustees and Partners have had discretionary authority with respect to ongoing PSPP surpluses

C. British Columbia Teachers Pension Plan ("TPP")

The TPP is governed by:

- (a) a Joint Trust Agreement made as of April 2, 2001 between Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Finance and Corporate Relations (the "Government") and the British Columbia Teachers' Federation ("BCTF");
- (b) the TPP Rules.

The Joint Trust Agreement contains provisions permitting both the Partners and the TPP Board of Trustees to amend the Plan rules using ongoing Plan surpluses (section 11 of the Joint Trust Agreement). These provisions are the equivalent of the MPP Joint Trust Agreement provisions regarding the same matters, as described above. In particular, it is significant that the TPP constating documents contain no right of recourse to arbitration or other final and binding dispute resolution for either Partner in the event that they cannot agree on surplus utilization. This contrasts with the OTPP Partners' Agreement, which does provide for third party determinations of differences arising between Partners with respect to surplus uses.

As well, Appendix "B" to the TPP Joint Trust Agreement adopts special funding rules for a "Transitional Period" during which the Board of Trustees is directed to use surpluses to achieve specified contribution and benefit improvement outcomes. The transitional objectives for the TPP are not the same as for the MPP, although they entail both contribution rate changes and benefit improvements. In the case of the TPP, however, the transitional provisions build in a 4% reduction in the employer contribution rate from its July 1, 2010 level. As with the MPP, the Transitional Period is of indefinite duration, and only ends when the transitional objectives have been satisfied. During the transitional period, all ongoing surpluses are committed to the transitional objectives and no ongoing surpluses are available for discretionary reductions in contributions or surplus withdrawals.

D. British Columbia Colleges Pension Plan ("CPP")

The CPP is governed by:

- (c) the CPP Joint Trust Agreement made April 4, 2011; and
- (d) the CPP rules, effective June 22, 2012 (current to April 1, 2016).

The CPP Joint Trust Agreement allocates powers and authorities with respect to ongoing surpluses in the same way as the other BC Plans.

The Partners have the authority (s.14(2) of the Joint trust Agreement) to direct the Board to amend the Plan rules, and the Plan Board is required to amend those rules, provided that the Partners "first receive and consider the advice of the Board respecting both the cost and the administrative impact of implementing the proposed amendment" and the proposed amendment is not inconsistent with applicable law or the Trustees' fiduciary responsibilities. Significantly, the CPP constating documents contain no right of recourse to arbitration or other final and binding dispute resolution in the event that the CPP Partners cannot agree on surplus utilization. This contrasts with the OTPP Partners' Agreement, which does provide for third party determinations of differences arising between Partners with respect to surplus uses

Pursuant to subsection 14(4) of the CPP Joint Trust Agreement, the Board of Trustees is also permitted to amend the Plan rules and to utilize Plan surpluses so long as there is no resulting increased in contribution rates, there is no creation of, or increase in, an unfunded liability and the proposed amendment is consistent with the Trustees' fiduciary responsibilities. As with the other BC Plans, the Board of Trustees must use a twenty-five year period for the amortization of the Plan surplus.

Unlike the MPP, TPP and PSPP, the CPP Joint Trust Agreement has no transitional provisions that direct the Board of Trustees as to the application of ongoing surpluses during a transitional period.

III. SUMMARY AND CONCLUSIONS

A. Ontario Plans

OTPP - The governance arrangements with respect to the OTPP provide that the Partners that sponsor that arrangement, being the Minister of Education and the OTF, may utilize ongoing surpluses as they believe appropriate, subject only to the *Ontario Pension Benefits Act*, R.S.O. 1990, c.P.8 (the "Ontario PBA"). The Board of Directors of the OTPP, being the OTPP administrator for purposes of the PBA, has no authority with respect to the use of Plan surpluses. The OTPP Partners' Agreement anticipates that the Partners will, on a triennial basis, review the results of a preliminary actuarial valuation and determine whether and how they wish to adjust Plan benefits or contribution rates in view of any existing funding deficiencies or ongoing surpluses. The Partners are obliged to bargain in good faith with each other with respect to the disposition of ongoing surpluses, and may have recourse to mediation and final and binding arbitration should they not reach an agreement on their own. An arbitration panel may apply ongoing surpluses to improve benefits or reduce contributions, subject to the limitations set out in section 92 of the Partners Agreement.

OPTrust - The OPTrust governing documents also stipulate that it is the Sponsors of the OPTrust, being the Province of Ontario and OPSEU, who have the authority to utilize ongoing Plan surpluses. OPTrust's Board of Trustees, being the OPTrust administrator for purposes of the Ontario PBA, has no authority to utilize ongoing Plan surpluses. Pursuant to section 56(c) of the OPTrust Sponsorship Agreement, ongoing surpluses are divided into two equal pools (although the equal division may be altered through collective bargaining), and each of Ontario and OPSEU may utilize those pools without the agreement of the other party. In other words, Ontario may unilaterally determine the disposition of its pool, and OPSEU may unilaterally determine the disposition of its pool, subject only to Ontario's PBA. Neither OPSEU nor Ontario requires the agreement of the other party in order to utilize its allocated amount of ongoing surplus.

B. BC Plans

Ongoing Surpluses - All of the BC Plans follow the same pattern with respect to the authority to use ongoing surpluses. In the normal course, the Boards of Trustees of the BC Plans, unlike their Ontario counterparts, are permitted to utilize ongoing surpluses through the amendment of the Plan rules governing contributions and benefits, so long as the amendment of the Plan rules does not result in an increased contribution rate for employees or employers, does not create or increase an unfunded liability in the Plan and is otherwise compliant with applicable legislation and the Trustees' fiduciary obligations.

At the same time, each of the BC Plans also permits the Plan Partners to utilize ongoing surpluses by directing the Board of Trustees to amend the Plan rules. The Partners may so direct the Board of Trustees after receiving advice from the Board with respect to the costs of any Plan amendment and the administrative implications of such an amendment, and so long as the proposed amendment is compliant with law and with the Trustees' fiduciary obligations. However, unlike for the OTPP, the BC Plans' constating documents provide neither Partner with a right of recourse to a third party for a final and binding determination concerning surplus utilization.

Transitional Period - In addition, three of the four BC Plans we have reviewed (MPP, TPP and, for only two years, the PSPP) contain special rules governing the utilization of ongoing surpluses during a "Transitional Period". In these cases, the Transitional rules require that ongoing surpluses that emerge during the Transitional Period are to be used to restructure the employer contribution obligation and improve benefits. In the cases of the MPP and TPP, the Transitional Periods do not come to an end until all of the intended uses of ongoing surplus during the Transitional Period have been fulfilled. We are not currently aware as to whether the Transitional Periods for the MPP and the TPP remain ongoing, or have terminated. Until such time as the objectives identified for the Transitional Periods are fulfilled, there is no discretion left to either the Partners or the Board of Trustees to utilize ongoing MPP surpluses.

We trust that these comments have been of assistance to you. Should you have any questions in regard to them, please do not hesitate to contact the undersigned.

Yours truly,

KOSKIE MINSKY LLP



Murray Gold

MG:jn

B4 - Note to OAG with supporting rate analysis (Sep 9th).pdf

Petsche, Nadine (TBS)

From: Petsche, Nadine (TBS)
Sent: September 9, 2016 6:18 AM
To: Bill Pelow (Bill.Pelow@auditor.on.ca)
Cc: Barry Neilson (Barry.Neilson@auditor.on.ca); David.Catarino@auditor.on.ca; Audelyn Budihardjo (Audelyn.Budihardjo@auditor.on.ca); Bonnie.Lysyk@auditor.on.ca
Subject: FW: Pension Asset Ceiling (Follow-up to OAG/OPCD Discussion on Sept. 7)
ATTACHMENTS
Attachments: Financial Statements 2000.pdf; Pension Discount Rate Analysis for AG.xlsx

Bill,
I understand that there may have been some issues opening the attachments included in my previous note. Please find the related docs attached to this email.
Thanks.
Nadine

From: Petsche, Nadine (TBS) [<mailto:Nadine.Petsche@ontario.ca>]
Sent: Thursday, September 08, 2016 8:17 PM
To: Bill Pelow
Cc: Barry Neilson; David Catarino; Audelyn Budihardjo; Bonnie Lysyk
Subject: Pension Asset Ceiling (Follow-up to OAG/OPCD Discussion on Sept. 7)
Importance: High

Bill,

Further to our discussion on PSAB's pension asset ceiling test (as related to OTPP and OPSEUPP), we have assembled some additional information that we believe should be considered in reaching a conclusion on this issue for the 2015-16 Public Accounts.

In summary, our understanding of the OAG's position is that:

- The pension asset for TPP of \$10.1 billion should be written off and that it exists primarily due to the difference in the discount rates used in TPP's standalone financial statements vs. the discount rate used by the Province (which was described as fictitious).
- The AG has requested additional disclosure in the notes to the 2015-16 financial statements regarding the Province's ability to realize the benefit of the asset, should the final view conclude the writing off the asset is not required.
- While our discussion focused exclusively on TPP, we have assumed the same view holds for OPSEU. (Please advise if our assumption is incorrect).

From the Province's perspective...

The Province continues to believe that the assets are appropriately stated in accordance with PSAB for the following reasons:

- The assets result from the excess of the contributions and asset returns over the projected benefit obligations. Given there have been no issues raised with respect to either the contributions or the asset returns, our analysis focuses on the impact of the projected benefit obligation.

- The project benefit obligation has been estimated using a discount rate based on the expected return on assets as permitted by PSAB (see paragraph .44 below). That method has been consistently applied by the Province since at least 2000.
- OTPP also used a discount rate based on the expected return on assets until 1999, at which point it changed its policy to use a rate based on high yield corporate bonds. We have attached the OTPP's year 2000 financial statements for ease of reference.



PS3250

.042 Actuarial assumptions should be based on the government's best estimates of expected long-term experience and short-term forecasts. [SEPT. 2001]

.043 One commonly used approach that meets this standard is the use of streamed rate assumptions. Under the streamed rate approach, the short-term forecast of fund asset earnings, for example, would reflect the rates of return that assets currently held in the fund will earn until their maturity. As those assets mature, assumptions about their expected earnings on reinvestment would move to the expected long-term rate. Similarly, there would be streamed rate assumptions for salary increases.

.020 The retirement benefits interest expense is the net of:

- (a) the interest cost on the accrued benefit obligation determined by applying the discount rate determined at the beginning of the period in accordance with paragraph PS 3250.044 to the average value of the accrued benefit obligation for the period; and
- (b) the expected return on plan assets for a defined benefit plan, determined by applying the assumed rate of return on plan assets to the average market-related value of assets for the period.

.044 The actuarial assumptions underlying the valuation of the retirement benefit liability and expense would be internally consistent. For example, **when a government determines its discount rates by reference to its plan asset earnings, the assumptions used to determine the short-term forecast incorporated in the discount rates would be consistent with the short-term forecast of rates of return on assets currently held in the fund.** When a government determines its discount rates by reference to its cost of borrowing, the assumptions used to determine the short-term forecast incorporated in the discount rates would be consistent with the specific rates of interest and the periods committed to by the government on the amounts borrowed.

- Though 3250.044 indicates one option is to use discount rates by reference to the cost of borrowing, based on our jurisdictional scan of the other provinces' financial statements, we have not found any jurisdictions that use the government borrowing rate to value their pension obligations for plans that are funded by plan assets.
- We have included our analysis for your reference.



OTTP

OTTP prepares its financial statements in accordance with Part IV of the CPA Handbook. Section 4600 in part IV provides guidance on accounting for investments and pension obligations. For all other items, a pension plan chooses to follow IFRS or ASPE. OTTP has chosen to follow IFRS.

For the recording of the pension obligation, the guidance in Section 4600 is as follows:

- 22 A pension plan shall measure the pension obligation required by paragraph 4600.12(g) in accordance with paragraph 4600.05(v). For this purpose, **a pension plan may measure the pension obligation at the defined benefit obligation amount determined by the plan's sponsor.**
- .23 Guidance on determining the defined benefit obligation can be found in EMPLOYEE FUTURE BENEFITS, Section 3462, in Part II of the Handbook, and in IAS 19 Employee Benefits in Part I of the Handbook.

4600.12(g) is the requirement to distinguish the pension obligation in the statement of financial position and 4600.05(v) is the definition of a pension obligation of a defined benefit pension plan, which states the following, "A pension obligation of a defined benefit pension plan is the actuarial present value of accrued pension benefits determined by applying best estimate assumptions and the projected benefit method prorated on services."

As noted, pension plans have a considerable amount of choice in determining how to account for their pension obligations – the amount as determined by the plan sponsor, using the guidance in ASPE, or using the guidance in IFRS.

OTTP has chosen to use the guidance in IFRS (IAS 19) and includes the following in its financial statements (December 2015 year end):

"The discount rate is based on market rates, as at the valuation date, of bonds issued by the Province of Ontario, which have characteristics similar to the Plan's liabilities. The discount rate was determined by applying a weighted average discount rate that reflects the estimated timing and amount of benefit payments. The inflation rate is the geometric difference between the yield on Government of Canada long-term nominal bonds and Government of Canada real-return bonds. The salary escalation rate incorporates the inflation rate assumption and long-term expectation of growth in real wages".

We have included the guidance in from IAS 19 below for comparison:

IAS 19

The rate used to discount post-employment benefit obligations (both funded and unfunded) shall be determined by reference to market yields at the end of the reporting period on high quality corporate bonds. For currencies for which there is no deep market in such high quality corporate bonds, the market yields (at the end of the reporting period) on government bonds denominated in that currency shall be used. The currency and term of the corporate bonds or government bonds shall be consistent with the currency and estimated term of the post-employment benefit obligations.

86 In some cases, there may be no deep market in bonds with a sufficiently long maturity to match the estimated maturity of all the benefit payments. In such cases, an entity uses current market rates of the appropriate term to discount shorter-term payments, and estimates the discount rate for longer maturities by extrapolating current market rates along the yield curve. The total present value of a defined benefit obligation is unlikely to be particularly sensitive to the discount rate applied to the portion of benefits that is payable beyond the final maturity of the available corporate or government bonds.

- OTTP is an outlier in using a discount rate based on the guidance in IAS 19 based on our review of the stand-alone financial statements of the provincially sponsored plans. We have attached our preliminary analysis (see above).
- With regards to any perception that the reported asset might be "fictitious", we point out that the funding valuations completed by OTTP and submitted to FSCO have also demonstrate that the plan is overfunded. Based on the guidance provided to the members of the plan on the OTTP's website, the surplus in the plan at March 31, 2016 (at 100%) is \$13.1 billion. The difference between the \$10 billion asset and the 50% of the \$13.1 billion, or \$6.5 billion is primarily based on the discount rate used. The preparation of the funding valuation is based on prescribed requirement and is not an accounting valuation. Nonetheless, it speaks to the fact that the plan, on a funding basis, has a surplus.

In summary, we don't believe that an adjustment is warranted to the reported pension asset on the CFS on the basis that:

- The discount rates used to value the projected benefit obligation are consistent with the requirements of PSAB.

- The AG has reviewed the discount rate each year and based on the understanding of those involved in the current year and historically, has never raised a concern with the rates used.
- The asset recorded on the pension's books is not fictitious and is supported by the OTPP's own calculations and public disclosures.

Please advise if you would like to discuss further.

Thanks.

Nadine

-- This email (including attachments) may contain confidential, personal, legally-privileged, copyrighted information, or information exempt from disclosure under The Auditor General Act, R.S.O. 1990, c. A.35. Contact me immediately if you are not the intended recipient and delete this email from your system and do not use, distribute (forward), copy, or disclose its contents.

MANAGEMENT'S RESPONSIBILITY FOR FINANCIAL REPORTING

The consolidated financial statements of the Ontario Teachers' Pension Plan have been prepared by management, which is responsible for the integrity and fairness of the data presented, including the many amounts which must, of necessity, be based on estimates and judgements. The accounting policies followed in the preparation of these consolidated financial statements conform with Canadian generally accepted accounting principles. Financial information presented throughout the annual report is consistent with the consolidated financial statements.

Systems of internal control and supporting procedures are maintained to provide assurance that transactions are authorized, assets are safeguarded and proper records maintained. These controls include quality standards in hiring and training of employees, a code of conduct, the establishment of an organizational structure that provides a well-defined division of responsibilities and accountability for performance, and the communication of policies and guidelines through the organization. Internal controls are reviewed and evaluated by internal audit programs which are subject to scrutiny by the external auditors.

Ultimate responsibility for the consolidated financial statements rests with the Board of Directors. The board is assisted in its responsibilities by the Audit and Actuarial Committee, consisting of five directors who are not officers or employees of the plan administrator. In addition, the committee reviews the recommendations of the internal and external auditors for improvements in internal control and the action of management to implement such recommendations. In carrying out its duties and responsibilities, the committee meets regularly with management and with both the external and internal auditors to review the scope and timing of their respective audits, to review their findings and to satisfy itself that their responsibilities have been properly discharged. This committee reviews the consolidated financial statements and recommends them for approval by the board.

The plan's external auditors, Deloitte & Touche LLP, have conducted an independent examination of the consolidated financial statements in accordance with Canadian generally accepted auditing standards, performing such tests and other procedures as they consider necessary to express the opinion in their Report to the Administrator. The external auditors have full and unrestricted access to the Audit and Actuarial Committee to discuss their audit and related findings as to the integrity of the plan's financial reporting and the adequacy of internal control systems.



CLAUDE LAMOUREUX

PRESIDENT AND CHIEF EXECUTIVE OFFICER



ANDREW JONES

VICE-PRESIDENT, FINANCE

FEBRUARY 14, 2001

AUDITORS' REPORT TO THE ADMINISTRATOR

We have audited the consolidated statement of net assets available for benefits and accrued pension benefits and surplus of the Ontario Teachers' Pension Plan as at December 31, 2000 and the consolidated statements of changes in net assets available for benefits, changes in accrued pension benefits and changes in surplus for the year then ended. These consolidated financial statements are the responsibility of the Plan's administrator. Our responsibility is to express an opinion on these consolidated financial statements based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these consolidated financial statements present fairly, in all material respects, the net assets available for benefits and accrued pension benefits and surplus of the Plan as at December 31, 2000 and the changes in its net assets available for benefits, changes in accrued pension benefits and changes in surplus for the year then ended in accordance with Canadian generally accepted accounting principles.



CHARTERED ACCOUNTANTS

TORONTO, CANADA

FEBRUARY 14, 2001

William M. Mercer Limited was retained by the Ontario Teachers' Pension Plan Board (the "Board") to perform an actuarial valuation of the assets and the going concern liabilities of the Ontario Teachers' Pension Plan (the "Plan") as at December 31, 2000, for inclusion in the Plan's consolidated financial statements. As part of the valuation, we examined the Plan's recent experience with respect to the non-economic assumptions and presented our findings to the Board.

The valuation of the Plan's actuarial liabilities was based on:

- membership data provided by the Ontario Teachers' Pension Plan Board as at December 31, 1999;
- methods prescribed by the Canadian Institute of Chartered Accountants for pension plan financial statements;
- real and nominal interest rates on long term Canada bonds at the end of 2000;
- assumptions about future events (for example, future rates of inflation and future retirement rates) which have been communicated to us as the Board's best estimate of these events;
- information obtained from the Ontario Ministry of Labour and published reports on negotiated wage settlements in the 1999/2000 and 2000/01 school years; and
- an estimate of the salary grid increase for the 2000/01 school year based on the information above, along with input from the Partners.

The objective of the consolidated financial statements is to fairly present the financial position of the Plan on December 31, 2000 as a going concern. This is different from the statutory valuation [the actuarial valuation required by the *Teachers' Pension Act* and the *Pension Benefits Act [Ontario]*], which uses actuarial methods prescribed by the *Teachers' Pension Act* and cautious assumptions about future events to establish a prudent level for future contributions.

While the actuarial assumptions used to estimate liabilities for the Plan's consolidated financial statements represent the Board's best estimate of future events and market conditions at the end of 2000, and while in our opinion these assumptions are reasonable, the Plan's future experience will inevitably differ, perhaps significantly, from the actuarial assumptions. Any differences between the actuarial assumptions and future experience will emerge as gains or losses in future valuations, and will affect the financial position of the Plan, and the contributions required to fund it, at that time.

We have tested the data for reasonableness and consistency, and we believe it to be sufficient and reliable for the purposes of the valuation. We also believe that the methods employed in the valuation and the assumptions are, in aggregate, appropriate for the purposes of the valuation. Our opinions have been given, and our valuation has been performed, in accordance with accepted actuarial practice.



LESTER J. WONG, F.C.I.A.



MALCOLM P. HAMILTON, F.C.I.A.

FEBRUARY 14, 2001

**CONSOLIDATED STATEMENT OF NET ASSETS AVAILABLE FOR BENEFITS
AND ACCRUED PENSION BENEFITS AND SURPLUS**

AS AT DECEMBER 31, 2000

(\$ Millions)	2000	1999
		restated (note 2)
NET ASSETS AVAILABLE FOR BENEFITS		
Assets		
Investments (note 3)	\$85,117	\$73,872
Receivable from the Province of Ontario (note 4)	1,251	1,252
Receivable from brokers	37	210
Cash	40	42
Fixed assets	8	8
	86,453	75,384
Liabilities		
Investment-related liabilities (note 3a)	13,074	6,780
Due to brokers	166	230
Accounts payable and accrued liabilities	92	71
	13,332	7,081
Net assets available for benefits	73,121	68,303
Actuarial asset value adjustment (note 1e)	(4,341)	(8,316)
Actuarial value of net assets available for benefits	\$68,780	\$59,987
ACCRUED PENSION BENEFITS AND SURPLUS		
Accrued pension benefits (note 5)	\$58,556	\$52,105
Surplus	10,224	7,882
Accrued pension benefits and surplus	\$68,780	\$59,987

ON BEHALF OF THE BOARD



CHAIR



BOARD MEMBER

CONSOLIDATED STATEMENT OF CHANGES IN NET ASSETS AVAILABLE FOR BENEFITS

FOR THE YEAR ENDED DECEMBER 31, 2000

<i>(\$ Millions)</i>	2000	1999
Net assets available for benefits, beginning of year	\$68,303	\$59,171
Investment operations		
Investment income (note 7)	6,211	10,121
Investment expenses (note 12a)	(100)	(91)
Net investment operations	6,111	10,030
Member service operations		
Contributions (note 10)	1,281	1,413
Benefits (note 11)	(2,541)	(2,278)
Member service expenses (note 12b)	(33)	(33)
Net member service operations	(1,293)	(898)
Increase in net assets	4,818	9,132
Net assets available for benefits, end of year	\$73,121	\$68,303

CONSOLIDATED STATEMENT OF CHANGES IN ACCRUED PENSION BENEFITS

FOR THE YEAR ENDED DECEMBER 31, 2000

<i>(\$ Millions)</i>	2000	1999
		restated (note 2)
Accrued pension benefits, beginning of year	\$52,105	\$49,626
Increase in accrued pension benefits		
Interest on accrued pension benefits	3,478	3,493
Benefits accrued	1,359	1,301
Changes in actuarial assumptions (note 5a)	3,893	766
	8,730	5,560
Decrease in accrued pension benefits		
Benefits paid (note 11)	2,541	2,278
Experience (losses) gains (note 5b)	(262)	803
	2,279	3,081
Net increase in accrued pension benefits	6,451	2,479
Accrued pension benefits, end of year	\$58,556	\$52,105

CONSOLIDATED STATEMENT OF CHANGES IN SURPLUS

FOR THE YEAR ENDED DECEMBER 31, 2000

<i>(\$ Millions)</i>	2000	1999
		restated (note 2)
Surplus, beginning of year	\$7,882	\$4,381
Increase in net assets available for benefits	4,818	9,132
Change in actuarial asset value adjustment (note 1e)	3,975	(3,152)
Increase in actuarial value of net assets available for benefits	8,793	5,980
Net increase in accrued pension benefits	(6,451)	(2,479)
Surplus, end of year	\$10,224	\$7,882

FOR THE YEAR ENDED DECEMBER 31, 2000

DESCRIPTION OF PLAN

The following description of the Ontario Teachers' Pension Plan (the Plan) is a summary only. For more complete information, reference should be made to the *Teachers' Pension Act* (the TPA) as amended.

(a) General The Plan is governed by the TPA. It is a contributory defined benefit pension plan co-sponsored by the Partners who are the Province of Ontario (the Province) and Plan members, represented by the Ontario Teachers' Federation (the OTF). The terms of the Plan are set out in the *Partners' Agreement*.

The Plan is registered with the Financial Services Commission of Ontario and with the *Income Tax Act (Canada)* (registration number 0345785) as a Registered Pension Plan not subject to income taxes.

The Plan is administered and the investments are managed by the Ontario Teachers' Pension Plan Board (the Board). Under the TPA, the Board is constituted as a corporation without share capital to which the *Corporations Act (Ontario)* does not apply.

(b) Funding Plan benefits are funded by contributions and investment earnings. Contributions are made by active members of the Plan and matched by the Province and designated private schools and organizations. The determination of the value of the benefits and required contributions is made on the basis of periodic actuarial valuations (note 9).

(c) Retirement pensions A retirement pension is available based on the number of years of credited service, the average of the best five annual salaries and the age of the member at retirement. A member is eligible for a reduced retirement pension from age 55. An unreduced retirement pension is available at age 65 or at any age if the member has 35 years' credit or if the sum of a member's age and qualifying service equals 90. An early retirement window covering the period between June 1, 1998 and December 31, 2002 is currently provided, during which time a member can retire with an unreduced pension if the sum of the member's age and qualifying service equals 85 rather than 90.

(d) Disability pensions A disability pension is available at any age to a disabled member with a minimum of 10 years of credited service. The type of disability pension is determined by the extent of the disability.

(e) Death benefits Death benefits are available on the death of an active member and may be available on the death of a retired member. The benefit may take the form of a survivor pension, lump sum payment or both.

(f) Escalation of benefits Pension benefits are adjusted annually for inflation at 100 percent of the Consumer Price Index, subject to a limit of 8 percent in any one year with any excess carried forward.

(g) Retirement Compensation Arrangement The Retirement Compensation Arrangement (RCA) has been created by agreement between the Partners as a supplementary plan to provide the members of the Plan with benefits that, due to limitations imposed by the *Income Tax Act (Canada)* and its regulations, cannot be provided under the Registered Pension Plan. Because the RCA is a separate trust, the net assets available for benefits and accrued benefits of the RCA are not included in these financial statements (note 13).

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(a) Basis of presentation

These financial statements present the financial position and the results of operations of the Plan and are prepared in accordance with Canadian generally accepted accounting principles.

The financial statements of wholly-owned subsidiary companies are consolidated as part of the Plan's financial statements.

Certain comparative figures have been reclassified to conform with the current year's presentation.

(b) Investments and investment-related assets and liabilities

Fair Value Investments and investment-related assets and liabilities are stated at fair value. Fair value is an estimate of the amount of consideration that would be agreed upon in an arm's length transaction between knowledgeable, willing parties who are under no compulsion to act.

Where ascertainable, fair values are based on public market prices or quotations from investment dealers. Where public market prices or quotations are not ascertainable, fair values are derived using methods such as discounted cash flows, earnings multiples, appraisals, prevailing market rates for instruments with similar characteristics and other pricing models, as appropriate.

Trade date reporting Purchases and sales of investments and derivative contracts are recorded as of the trade date (the date upon which the substantial risks and rewards have been transferred).

Investment income Dividend income is recognized based on ex-dividend date and interest income and real estate operating income is recognized on the accrual basis as earned. Investment income also includes realized and unrealized gains and losses.

(c) Foreign currency translation

Assets and liabilities denominated in foreign currencies are translated into Canadian dollars at the exchange rates prevailing on the year-end date. Income and expenses are translated into Canadian dollars at the exchange rates prevailing on the dates of the transactions. The realized and unrealized gains and losses arising from these translations are included in investment income.

(d) Accrued pension benefits

The value of accrued pension benefits and changes therein during the year are based on an actuarial valuation prepared by an independent firm of actuaries. The valuation is made as at the start of the year and then extrapolated to year-end. It uses the projected benefit method prorated on service and management's best estimate, as at valuation date, of various economic and non-economic assumptions (note 5).

(e) Actuarial asset value adjustment

The actuarial value of net assets available for benefits is determined by reference to market trends consistent with assumptions underlying the valuation of accrued pension benefits. The adjustment represents the difference between the actual and management's best estimate of return on the Plan's equity investments (including real estate and commodities) amortized over five years. Fixed income securities are valued at fair value on a basis consistent with the discount rate used to value the Plan's accrued pension benefits.

The year-over-year change in the actuarial asset value adjustment is reflected in the Consolidated Statement of Changes in Surplus.

(f) Use of estimates

In preparing these financial statements, management must make certain estimates and assumptions that primarily affect the reported values of assets and liabilities, related income and expenses and related disclosures.

2. CHANGES IN ACCOUNTING POLICY- ACCRUED PENSION BENEFITS

Consistent with a new Canadian Institute of Chartered Accountants standard on Employee Future Benefits, the Board changed its method of determining the best estimate assumptions used in valuing the accrued pension benefits. The Board now uses a market interest rate to discount the accrued pension benefits, in order to arrive at the fair value of the Plan's liabilities. In prior years, the Board used a rate which reflected management's best estimate of the expected long-term asset rate of return.

With this change to the determination of the discount rate, the method for calculating the actuarial asset value adjustment has also been modified. In prior years, the adjustment represented the difference between the actual and management's best estimate of return on all Plan assets, amortized over five years. The actuarial asset value now values fixed income securities at fair value, consistent with the measurement of the Plan's liabilities at fair value. For the Plan's equity investments, an actuarial asset value adjustment is calculated as the difference between the actual and management's best estimate of return on the Plan's equity assets, amortized over five years.

The changes in accounting policy referred to above have been applied retroactively in the financial statements and have the following impact on 1999 figures previously reported:

(\$ Millions)	1999 Reported	1999 Restated
Net assets available for benefits	\$68,303	\$68,303
Actuarial asset value adjustment	(7,264)	(8,316)
Actuarial value of net assets available for benefits	\$61,039	\$59,987
Accrued pension benefits – opening	\$48,636	\$49,626
Changes during the year	3,469	2,479
Accrued pension benefits – closing	52,105	52,105
Surplus, beginning of year	5,747	4,381
Increase in net assets available for benefits	9,132	9,132
Change in actuarial asset value adjustment (note 1e)	(2,476)	(3,152)
Increase in actuarial value of assets available for benefits	6,656	5,980
Net increase in accrued pension benefits	(3,469)	(2,479)
Surplus, end of year	8,934	7,882
Accrued benefits and surplus	\$61,039	\$59,987

3. INVESTMENTS

The Plan invests directly or through derivatives in fixed income, equities and inflation-sensitive investments in accordance with its policy of asset diversification. The purpose of such diversification is to minimize the likelihood of an overall reduction in surplus and maximize the opportunity for gains across the investment portfolio.

(a) Investments⁽¹⁾ before allocating the effect of derivative contracts and investment-related receivables and liabilities

The schedule below summarizes the Plan's investments, including net accrued interest and dividends of \$388 million (1999 – \$454 million), before allocating the effect of derivative contracts and investment-related receivables and liabilities, as at December 31:

(\$ Millions)	2000		1999	
	Fair Value	Cost	Fair Value	Cost
Fixed income				
Debentures	\$15,715	\$12,205	\$16,328	\$12,991
Bonds	13,218	12,696	13,303	13,198
Money market securities	4,273	4,238	2,153	2,153
Alternative investments ⁽²⁾	2,162	1,720	1,326	1,166
	35,368	30,859	33,110	29,508
Equities				
Publicly traded				
Canadian	13,487	9,618	17,125	11,195
United States	1,885	1,565	516	559
Non-North American	6,415	5,455	8,149	5,591
Non-Publicly traded				
Canadian	1,110	856	464	446
United States	769	671	699	510
Non-North American	1,196	1,188	984	852
	24,862	19,353	27,937	19,153
Inflation-sensitive investments				
Real estate (note 6)	10,393	9,711	3,508	3,220
Real rate products				
Canadian	5,822	5,054	4,656	4,349
United States	4,424	4,190	391	404
	20,639	18,955	8,555	7,973
	80,869	69,167	69,602	56,634
Investment-related receivables				
Securities purchased under agreements to resell	1,948	1,946	992	990
Derivative-related, net	2,300	493	3,278	409
Investments	85,117	71,606	73,872	58,033
Investment-related liabilities				
Securities sold under agreements to repurchase	(3,578)	(3,572)	(2,883)	(2,879)
Securities sold but not yet purchased	(1,592)	(1,606)	(973)	(992)
Real estate (note 6)	(4,192)	(4,002)	(693)	(710)
Derivative-related, net	(3,712)	(1,199)	(2,231)	(2,294)
Net investments (note 3c)	\$72,043	\$61,227	\$67,092	\$51,158

(1) For additional details, refer to the Schedule of Investments for our holdings over \$50 million on page 45.

(2) Comprised of hedge funds, managed futures accounts and fund of funds programs.

(b) Derivative contracts

Derivative contracts are financial contracts, the value of which is derived from the value of underlying assets, indices, interest rates or currency rates. Derivative contracts are transacted either in the over-the-counter market or on regulated exchanges. The Plan utilizes derivatives to manage its asset mix, as well as its exposure to interest rates, foreign currencies, and credit. Derivatives are also utilized for trading purposes in a manner consistent with the Plan's investment objectives.

Notional amounts of derivative contracts serve as the basis upon which the returns from, and the fair value of, the contracts are determined.

The following schedule summarizes the Plan's derivative contracts as at December 31:

(\$ Millions)	2000		1999	
	Notional	Fair Value	Notional	Fair Value
Asset conversion				
Interest rate swaps	\$6,353	\$(933)	\$ 6,091	\$(763)
Equity and commodity swaps	17,436	(215)	13,719	3,257
		(1,148)		2,494
Interest rate management				
Interest rate swaps	1,330	4	1,104	1
Futures	6,962	(1)	4,238	(1)
Exchange traded options				
Purchased	2,509	5	3,041	4
Written	2,644	(4)	3,771	(4)
Over-the-counter options				
Purchased	40	1	97	3
Written	100	(1)	169	(4)
		4		(1)
Foreign currency management				
Currency swaps	499	(10)	553	10
Forwards	13,347	24	13,567	343
Futures	708	1	—	—
		15		353
Trading				
Interest rate swaps	2,427	(7)	2,836	28
Volatility swaps	967	34	66	1
Futures	18,484	(17)	13,715	(161)
Forwards	5,899	175	3,791	53
Exchange traded options				
Purchased	454	14	313	22
Written	816	(5)	441	(32)
Over-the-counter options				
Purchased	1,964	38	2,062	43
Written	1,153	(22)	1,042	(19)
		210		(65)
		(919)		2,781
Less: Net cash collateral received under derivative contracts		(493)		(1,734)
Net fair value of derivative contracts		\$(1,412)		\$1,047

The net fair value of derivative contracts as at December 31 on page 33 are represented by:

(\$ Millions)	2000	1999
Derivative-related receivables	\$2,562	\$4,755
Cash collateral paid under derivative contracts	428	324
Derivative-related liabilities	(3,481)	(1,974)
Cash collateral received under derivative contracts	(921)	(2,058)
	\$(1,412)	\$1,047

Securities with a fair value of \$320 million (1999 – \$246 million) have been deposited with various financial institutions as margin to effect derivatives transactions.

The derivative contracts on page 33 mature within one year except for the following, which have a weighted average maturity (in years) of:

	2000		1999	
	Notional (\$ millions)	Maturity (years)	Notional (\$ millions)	Maturity (years)
Asset conversion				
Interest rate swaps	\$6,119	8.4	\$5,487	6.6
Equity and commodity swaps	2,468	1.4	5,155	1.6
Interest rate management				
Interest rate swaps	1,004	8.2	993	4.4
Over-the-counter options	140	1.9	—	—
Foreign currency management				
Currency swaps	493	5.7	553	7.1
Forwards	182	1.5	57	2.2
Trading				
Interest rate swaps	2,155	5.1	2,536	5.1
Volatility swaps	221	3.2	66	3.1
Over-the-counter options	83	1.6	102	2.1
Forwards	23	1.4	—	—

(c) Investment asset mix

The Plan has established a long-term asset-mix policy of approximately 60 percent equities, 18 percent fixed income and 22 percent inflation-sensitive investments.

The Plan's investments, after allocating the effect of derivative contracts and investment-related receivables and liabilities, as at December 31 are summarized below:

	2000		1999	
	Effective Net Investments at Fair Value (\$ millions)	Asset Mix %	Effective Net Investments at Fair Value (\$ millions)	Asset Mix %
Fixed income				
Bonds	\$10,771	15%	\$14,926	22%
Money market and equivalents	2,548	3	2,378	4
	13,319	18	17,304	26
Equities				
Canadian	17,739	25	19,885	30
United States	10,119	14	8,191	12
Non-North American	13,022	18	13,568	20
	40,880	57	41,644	62
Inflation-sensitive investments				
Commodities	2,098	3	1,090	2
Real estate (note 6)	6,201	9	2,815	4
Real rate products	9,545	13	4,239	6
	17,844	25	8,144	12
Total net investments	\$72,043	100%	\$67,092	100%

(d) Interest rate risk

The value of the Plan's assets is affected by short-term changes in nominal interest rates and equity markets. Pension liabilities are exposed to long-term market interest rates as well as expectations for salary escalation.

The Plan's primary exposure is to a decline in the long-term real rate of return which may result in higher contribution rates required to meet pension obligations. As at December 31, 2000, holding the inflation and salary escalation assumptions constant, a 1 percent decrease in the assumed real long-term rates of return would result in an increase in the pension liabilities of approximately 13 percent (1999 – 16 percent).

After giving effect to the derivative contracts and investment-related receivables and liabilities discussed in note 3b, a 1 percent increase in nominal interest rates would result in a decline in the value of the fixed income securities of 6.6 percent (1999 – 7.7 percent).

(e) Credit risk

At December 31, 2000, the Plan's most significant concentration of credit risk is with the Government of Canada and the Province of Ontario. This concentration relates primarily to the holding of \$14.5 billion of Government of Canada-issued securities and \$15.7 billion of non-marketable Province of Ontario Debentures, a receivable from the Province of \$1.3 billion and future provincial funding requirements of the Plan.

The Plan limits derivative contract credit risk by dealing principally with counterparties that have a credit rating of A or higher, and by utilizing an internal credit limit monitoring process, as well as through the use of credit mitigation techniques such as master netting arrangements and obtaining collateral where appropriate.

(f) Foreign currency risk

Foreign currency exposure arises from the Plan's holdings of foreign currency-denominated investments and related derivative contracts.

The Plan uses a currency overlay program to hedge a portion of its asset-mix policy allocation to U.S. and Non-North American equities. The Plan also takes trading positions in foreign currencies with the objective of adding incremental returns. The Plan's net foreign currency exposure in Canadian dollars after giving effect to the related policy hedge, as at December 31, is as follows:

(\$ Millions)	2000			1999
	Foreign Currency Exposure	Net Foreign Currency Hedge	Net Foreign Currency Exposure	Net Foreign Currency Exposure
United States Dollar	\$12,021	\$5,389	\$6,632	\$4,854
Euro	5,920	2,528	3,392	2,245
British Pound Sterling	3,370	1,405	1,965	1,537
Swiss Franc	1,561	483	1,078	252
Japanese Yen	2,489	1,774	715	1,280
Other	2,165	187	1,978	1,532
	\$27,526	\$11,766	\$15,760	\$11,700

(g) Securities lending

The Plan lends securities as a means of generating incremental income or supporting other investment strategies. As at December 31, 2000, the Plan's investments included loaned securities with a fair value of \$3,402 million (1999 – \$3,280 million). The fair value of collateral in respect of these loans was \$3,590 million (1999 – \$3,444 million).

4. RECEIVABLE FROM THE PROVINCE OF ONTARIO

The receivable from the Province consists of required matching contributions and interest thereon.

(\$ Millions)	2000	1999
Contributions receivable	\$1,194	\$1,194
Accrued interest receivable	57	58
	\$1,251	\$1,252

The receivable from the Province consists of \$636 million to be received in 2001 and \$615 million to be received in 2002.

5. ACCRUED PENSION BENEFITS

(a) Actuarial assumptions

The actuarial assumptions used in determining the value of accrued pension benefits of \$58.6 billion (1999 – \$52.1 billion), reflect management's best estimate of future economic events and involve both economic and non-economic assumptions. The non-economic assumptions include considerations such as mortality, withdrawal rates and retirement rates. The primary economic assumptions include the discount rate, salary escalation rate and the inflation rate. As discussed in note 2, the discount rate is now set at the market rate, as at the valuation date, of debt obligations with characteristics similar to the Plan's liabilities. The inflation rate is the difference between the yield on federal long-term nominal bonds and federal real return bonds. The salary escalation rate incorporates the inflation rate assumption and long-term expectation of growth in real wages. A summary of the primary economic assumptions, as at December 31, is as follows:

	2000	1999
Discount rate	6.25%	6.75%
Salary escalation rate	3.20%	3.25%
Inflation rate	2.20%	2.25%

The main economic assumptions were changed as a result of changes in capital markets during 2000. These changes resulted in a net increase in the value of accrued pension benefits of \$3,297 million. In addition, a change was made to the assumed post-retirement mortality rates to better reflect the Plan's experience. This change increased the value of accrued pension benefits by a further \$596 million. In 1999, changes to the actuarial assumptions resulted in a net increase in the value of accrued pension benefits of \$766 million.

(b) Experience gains and losses

An experience loss of \$262 million (1999 – gain of \$803 million), arising from differences between the actuarial method and assumptions and actual results, relates primarily to current experience for members' salary and inflation rates.

6. INVESTMENT IN REAL ESTATE

(a) Acquisition of Cadillac Fairview Corporation ("CFC")

On March 17, 2000, pursuant to a plan of arrangement, the Plan acquired the remaining 78.2 percent of the common shares that it did not previously own of CFC, a fully integrated commercial real estate operating company, and \$100 million of CFC convertible debentures for total consideration of \$2,355 million.

The fair value of CFC's net assets acquired is summarized below:

(\$ Millions)	
Real estate properties	\$5,730
Other assets	403
	6,133
Debt on real estate properties	(2,892)
Other liabilities	(324)
Net assets of CFC	2,917
Less: Investment in CFC previously held	(562)
Total consideration	\$2,355

(b) Investment in Real Estate

The Plan's investment in real estate, which is comprised of real estate-related investments that are either owned or managed on behalf of the Plan by The Cadillac Fairview Corporation Limited, as at December 31, is as follows:

(\$ Millions)	2000		1999	
	Fair Value	Cost	Fair Value	Cost
Assets				
Real estate properties	\$9,635	\$8,901	\$2,454	\$2,411
Investments	526	577	485	498
Other assets	232	233	7	7
Investment in CFC	—	—	562	304
Total assets	10,393	9,711	3,508	3,220
Liabilities				
Debt on real estate properties	3,833	3,694	693	710
Other liabilities	359	308	—	—
Total liabilities	4,192	4,002	693	710
Net investment in real estate	\$6,201	\$5,709	\$2,815	\$2,510

(c) Real Estate Income⁽¹⁾

The Plan's real estate income for the year ended December 31, is as follows:

(\$ Millions)	2000	1999
Revenue		
Rental	\$1,140	\$263
Investment	41	24
	1,181	287
Expenses		
Property operating	447	101
Interest	242	41
Management	42	7
Other	23	—
	754	149
Operating income	427	138
Realized gain (loss)	14	(16)
Unrealized gain	187	190
Net income	\$628	\$312

(1) Operating income, on a fair value basis, excludes a charge for depreciation and amortization.

7. INVESTMENT INCOME

(a) Investment income, before allocating the effect of derivative contracts

Investment income, before allocating the effect of derivative contracts and before allocating the realized and unrealized net gains/losses, for the year ended December 31, is as follows:

(\$ Millions)	2000	1999
Fixed income interest		
Debentures (net of interest incurred on swap contracts of \$1,039 million; 1999 – \$753 million)	\$386	\$762
Money market securities	197	104
Bonds	720	633
	1,303	1,499
Equity dividend income		
Canadian equity	222	271
United States equity	13	13
Non-North American equity	234	241
	469	525
Inflation-sensitive investments		
Real estate operating income (note 6c)	427	138
Real rate products interest income		
Canadian	189	152
United States	92	14
	708	304
	2,480	2,328
Net gain on investments⁽¹⁾	3,731	7,793
	\$6,211	\$10,121

(1) Includes net unrealized gains (losses) of \$(4,145) million (1999 – \$1,075 million).

(b) Investment income

Investment income by asset class, after allocating the effect of the derivative contracts and net gains, including foreign currency losses of \$71 million (1999 – \$1,106 million gain), for the year ended December 31, is as follows:

(\$ Millions)	2000	1999
Fixed income	\$1,689	\$(347)
Canadian equity	2,523	4,475
United States equity	316	1,559
Non-North American equity	(694)	3,697
Inflation-sensitive investments	2,377	737
	\$6,211	\$10,121

8. INVESTMENT RETURNS AND RELATED BENCHMARK RETURNS

Investment returns and related benchmark returns by investment asset class for the year ended December 31 are as follows:

	2000		1999	
	Investment Returns	Investment Benchmark Returns	Investment Returns	Investment Benchmark Returns
Fixed income	15.6%	13.7%	2.0%	2.8%
Canadian equity	13.5	7.4	30.4	32.0
United States equity	(4.1)	(5.5)	12.7	14.1
Non-North American equity	(8.5)	(13.5)	27.7	21.6
Inflation-sensitive investments	19.9	18.0	12.0	9.8
Total Plan	9.3%	5.3%	17.4%	17.6%

Investment returns have been calculated in accordance with the acceptable methods set forth by the Association for Investment Management and Research and the Pension Investment Association of Canada.

The Plan identifies benchmarks to evaluate the performance of the investment management process. The performance of each asset class is measured against a benchmark that simulates the results of the markets in which the managers invest, except that the inflation-sensitive investments composite benchmark includes real estate which is measured against an inflation-related benchmark.

The total return of the Plan is measured against a Canadian dollar denominated composite benchmark produced by aggregating Canadian dollar equivalent returns from each of the policy asset class benchmarks, using the Plan's asset mix policy weights. The total return incorporates the Plan's tactical asset allocation decisions.

9. FUNDING POLICY

Statutory actuarial valuations are prepared periodically in accordance with the *Teachers' Pension Act* to determine the funding requirements of the Plan. Active members are currently required to contribute 7.3 percent of the portion of their salaries covered by the Canada Pension Plan and 8.9 percent of salaries above this level. Aggregate member contributions are matched by the Province and other employers.

The actuarial assumptions and methods used to determine statutory pension liabilities are different than those used to calculate the amounts disclosed in these financial statements. The statutory valuations use a more conservative approach than the valuations used in these financial statements (note 5) and also take into account benefits to be earned and contributions to be made after the valuation date.

The initial statutory valuation of the Plan, prepared by William M. Mercer Limited as at January 1, 1990 disclosed an unfunded liability of \$7.8 billion which was the amount by which the Plan's liabilities exceeded its assets. This liability was the responsibility of the Province and was to be paid off with interest by a series of special payments over a 40 year period, which began January 1, 1990. Subsequent statutory valuations have treated the present value of the remaining special payments as an asset.

The statutory valuation as at January 1, 1998 disclosed the present value of special payments to be \$8.45 billion, with an actuarial gain of \$6.78 billion. Pursuant to the *Partners' Agreement* between the Ontario Teachers' Federation (OTF) and the Province, the Partners entered into negotiations to decide how to utilize the gain. Pursuant to the agreement reached on April 18, 1998, the Partners agreed to share the 1998 actuarial gain of \$6.78 billion and future gains in the following sequence:

- (i) \$2.24 billion would be spent on improving benefits;
- (ii) special payments on the pre-1990 unfunded liability would be eliminated at an estimated cost of \$8.45 billion; and
- (iii) a further \$8.45 billion less the \$2.24 billion would be spent on improved benefits or member contribution rate reductions, subject to the Province's consent prior to April 1, 2001; or held in a contingency reserve as determined by the OTE.

As a result, \$2.24 billion of the gain was used to improve benefits under the Plan, and the remaining \$4.54 billion of the gain was used to eliminate the obligation of the Province to make special payments after November 30, 2008. These changes consumed the actuarial gain. The present value of the remaining special payments after application of gains was \$3.91 billion as at January 1, 1998.

The statutory valuation as at January 1, 1999 disclosed the present value of the remaining special payments to be \$3.65 billion with an actuarial gain of \$3.52 billion. Pursuant to the 1998 agreement noted above, all of this gain was used to eliminate the obligation of the Province to make special payments after April 1999.

The statutory valuation as at January 1, 2001 disclosed an actuarial gain of \$6.78 billion (2000 – \$4.54 billion).

10. CONTRIBUTIONS

<i>(\$ Millions)</i>	2000	1999
Members		
Current service	\$604	\$612
Optional credit	11	8
	615	620
Province of Ontario		
Current service	601	592
Interest	42	43
Optional credit	5	11
Special payments (note 9)	—	128
	648	774
Other employers	9	9
Transfer from other pension plans	9	10
	18	19
	\$1,281	\$1,413

11. BENEFITS

<i>(\$ Millions)</i>	2000	1999
Retirement pensions	\$2,215	\$2,016
Disability pensions	31	30
Death benefits	102	93
Refunds	18	16
Commuted value transfers	164	108
Transfers to other plans	11	15
	\$2,541	\$2,278

12. ADMINISTRATIVE EXPENSES**(a) Investment expenses**

<i>(\$ Millions)</i>	2000	1999
Salaries and benefits	\$40.5	\$31.8
External investment management fees	34.3	34.8
Custodial fees	6.6	6.4
Premises and equipment	6.6	6.5
Professional consulting services	5.0	4.3
Information services	3.7	3.6
Communication and travel	2.1	1.8
Statutory audit fees	0.3	0.3
Other	1.0	1.1
	\$100.1	\$90.6

(b) Member service expenses

<i>(\$ Millions)</i>	2000	1999
Salaries and benefits	\$20.9	\$21.2
Premises and equipment	6.2	6.1
Professional and consulting services	2.4	2.2
Communication and travel	2.1	1.9
Board and committee remuneration	0.2	0.2
Statutory audit fees	0.2	0.2
Other	0.7	0.8
	\$32.7	\$32.6

(c) Executive compensation

The compensation table represents full disclosure of base salary, annual bonus, long-term incentives and other compensation earned in 1998, 1999 and 2000 by the Chief Executive Officer and the four other most highly compensated executives.

Name and Principal Position	Year	Base Salary	Annual Bonus ⁽¹⁾	Long-term Incentive Plan ⁽³⁾	Group Term Life Insurance	Other Compensation
Claude Lamoureux <i>President & CEO</i>	2000	\$389,169	\$504,500	\$790,100	\$1,119	\$9,600 ⁽⁴⁾
	1999	357,637	196,100	131,900	1,033	9,600
	1998	349,077	177,600	0	964	9,600
Robert Bertram <i>Executive V.P. Investments</i>	2000	\$302,800	\$404,000	\$627,000	\$ 870	\$13,962 ⁽⁵⁾
	1999	276,309	102,600	101,800	798	13,343
	1998	269,053	63,200	0	777	13,209
Neil Petroff <i>Sr. V.P. International Equity Indexes, Fixed Income & Foreign Exchange</i>	2000	\$196,130	\$338,500	\$451,900	\$ 561	\$ 0
	1999	175,444	202,800	51,400	507	0
	1998	170,606	124,700	0	490	0
Morgan McCague <i>Sr. V.P. Quantitative Investments</i>	2000	\$186,384	\$323,800	\$460,000	\$ 533	\$ 0 ⁽⁶⁾
	1999	164,863	188,000	53,200	476	3,218
	1998	155,037	162,900	0	448	3,009
Allan Reesor <i>Executive V.P., Member Services and C.I.O.</i>	2000	\$237,976	\$319,200 ⁽²⁾	\$280,100	\$ 682	\$ 4,808 ⁽⁶⁾
	1999	195,619	100,900	40,797	564	3,792
	1998	188,736	94,400	59,600	545	3,654

⁽¹⁾ Bonuses for investment professionals are based on a combination of total fund, asset class, and individual performance, measured in dollars of value added. Performance versus benchmark is measured over four annual performance periods.

Bonuses for other executive staff are based on achievement of annual corporate and divisional objectives.

⁽²⁾ Includes deferred annual incentive for 1999.

⁽³⁾ The investment long-term incentive program was restructured in 1999 following a review of competitive market practices. The new program continues to be based on four-year performance periods. Initial grants are adjusted by the four-year total fund rate of return and by a performance modifier, based on total fund dollar value-added over a composite benchmark.

⁽⁴⁾ Automobile allowance.

⁽⁵⁾ Includes an automobile allowance of \$8,000 per annum plus unused vacation cashout.

⁽⁶⁾ Unused vacation cashout.

13. RETIREMENT COMPENSATION ARRANGEMENT

The Retirement Compensation Arrangement (RCA) is established pursuant to an agreement between the Province of Ontario and the Ontario Teachers' Federation (the Partners), to provide to the members of the Plan certain benefits that would have been provided under the Registered Pension Plan, but for amendments made to the *Income Tax Act (Canada)* and its Regulations that restrict benefits that may be provided under a registered plan for periods of service after 1991 and for certain periods before 1992 that are credited after 1991.

The RCA is administered under a trust separate from the assets of the Registered Pension Plan. The Board has been appointed by the Partners to act as the trustee of the RCA.

Because the RCA is a separate trust, the net assets available for benefits and the value of accrued benefits and deficiency, referred to below, have not been included in the accompanying financial statements of the Registered Pension Plan on pages 26 to 28.

The RCA is funded on a pay-as-you-go basis from a portion of the contributions made to the Board by teachers, the Province of Ontario and designated private schools and organizations. The portion is based on a rate determined periodically by the Board's independent actuary in a manner that is expected to be sufficient to pay the benefits over the next 12 months. Due to the funding policy adopted by the Partners, the assets will continue to be substantially less than the liabilities.

In addition, since it is difficult to predict the benefits expected to be paid over the next 12 months, it is possible that the assets may be insufficient to pay the benefits. In such a case, the payment of benefits will be temporarily suspended and the contributions raised in order to fund the payments that are due under the RCA.

A summary of the balance sheet for the RCA as at December 31 is as follows:

<i>(\$ Thousands)</i>	2000	1999
Net assets available for benefits		
Assets	\$2,200	\$1,799
Liabilities	(408)	(655)
	\$1,792	\$1,144
Accrued benefits and deficiency		
Accrued benefits	\$305,900	\$238,768
Deficiency	(304,108)	(237,624)
	\$1,792	\$1,144

The actuarial assumptions used in determining the value of accrued benefits are consistent with the assumptions used in the Plan except that the assumed discount rate has been adjusted to reflect the impact of the 50 percent refundable tax under the RCA.

The estimate of the value of accrued benefits is highly sensitive to salary increases, both actual and assumed. Any changes to the salary assumptions will have a significant impact on the liabilities for future benefits. In addition, significant uncertainty exists in projecting the liabilities of the RCA due to changes in the number of future participants as well as changes to the income tax regulations relating to pensions.

14. COMMITMENTS

The Plan has committed to enter into investment transactions, which will be funded over the next several years in accordance with the terms and conditions agreed to. As at December 31, 2000, these commitments totalled \$2,824 million (1999 – \$1,634 million).

INVESTMENTS OVER \$50 MILLION

AS AT DECEMBER 31, 2000

FIXED INCOME

(\$ Millions)				
Type	Year of Maturity	Coupon (%)	Fair Value	Cost
Government of Canada bonds	2001–2029	4.50–13.00	\$9,516	\$9,467
Canadian corporate bonds	2001–2049	0.00–16.00	1,988	1,997
Canadian treasury bills	2001–2002	5.41–5.97	1,839	1,819
Commercial paper	2001	5.71–5.93	549	548
International corporate bonds	2003–2012	5.74–10.00	317	305
Provincial bonds	2002–2016	5.50–9.75	267	270
Foreign denominated Canadian bonds	2001–2085	4.40–13.00	213	220
Term deposits	2001	5.50–5.70	133	133
Discount instruments	2001	5.47–5.80	113	111
Securities purchased under agreements to resell	2001	2.00–6.30	1,948	1,946
Securities sold under agreements to repurchase	2001	5.75–6.45	(3,578)	(3,572)

PROVINCE OF ONTARIO DEBENTURES

(\$ Millions)			
Maturity Date	Coupon (%)	Fair Value	Cost
2001 to 2006	9.00–15.00	\$6,186	\$5,170
2007 to 2012	10.00–16.00	9,155	6,661
Total debentures net of accrued interest		15,341	11,831
Accrued interest		374	374
Total		\$15,715	\$12,205

INVESTMENTS OVER \$50 MILLION

AS AT DECEMBER 31, 2000

CORPORATE SHARES

(Millions)

Security Name	Shares	Fair Value \$
Nortel Networks Corporation	37.8	1,823.9
Nexen Inc.	21.4	791.4
Royal Bank of Canada	9.4	476.7
Toronto-Dominion Bank, The	8.4	366.4
Encal Energy Ltd.	31.1	331.6
Bank of Montreal	4.2	328.4
BCE Inc.	7.6	328.1
Bank of Nova Scotia, The	7.5	326.1
Manulife Financial Corporation	6.8	317.8
AT&T Canada Inc.	6.9	299.7
Maple Leaf Foods Inc.	37.9	299.2
Enron Corp.	2.2	279.1
Canadian Imperial Bank of Commerce	5.7	263.3
Sun Life Financial Services of Canada Inc.	6.2	248.7
Alcan Aluminium Limited	4.7	242.4
Canadian Pacific Limited	5.5	234.5
Petro-Canada	5.1	194.1
WestJet Airlines Ltd.	8.3	192.8
Alberta Energy Company Ltd.	2.6	184.9
Celestica Inc.	2.2	177.3
Talisman Energy Inc.	2.8	155.6
Bombardier Inc.	6.3	146.7
Barrick Gold Corporation	5.9	145.3
Thomson Corporation, The	2.5	144.8
Suncor Energy Inc.	3.6	136.1
Gulf Canada Resources Limited	17.8	135.9
Canadian National Railway Company	3.1	135.5
TELUS Corporation	2.9	117.9
TransCanada PipeLines Limited	6.6	112.9
HSBC Holdings	5.0	110.2
Total Fina SA	0.6	109.3
Ballard Power Systems Inc.	1.1	103.3
Canadian Natural Resources Limited	2.4	101.6
Enbridge Inc.	2.3	101.2
Shaw Communications Inc.	2.9	99.0
Potash Corporation of Saskatchewan Inc.	0.8	97.1
Abitibi-Consolidated Inc.	7.0	95.9
ENI SpA	9.7	93.2
United Dominion Industries Limited	5.1	91.0
Imperial Oil Limited	2.3	89.6
Power Corporation of Canada	2.4	89.1
Akzo Nobel NV	1.1	86.7
Inco Limited	3.2	86.4
ING Groep NV	0.7	86.4
Research In Motion Limited	0.7	85.5
BAE Systems PLC	9.9	84.8
NewPower Holdings, Inc. (Warrants)	5.7	83.2

CORPORATE SHARES

(Millions)

Security Name	Shares	Fair Value \$
XTRA Corporation	1.1	81.7
Veba AG	0.9	80.8
Placer Dome Inc.	5.5	79.2
Clarica Life Insurance Company	1.9	78.4
C-MAC Industries Inc.	1.2	77.4
Anderson Exploration Ltd.	2.3	77.4
BioChem Pharma Inc.	1.6	76.7
Hitachi Ltd.	5.6	75.2
Kirby Corporation	2.3	73.6
Bayer AG	0.9	73.5
Telefonos de Mexico SA	1.1	73.3
Westcoast Energy Inc.	2.0	73.2
Magna International Inc.	1.2	72.6
Loblaw Companies Limited	1.4	70.4
Seagram Company Ltd., The	0.9	70.3
Zurich Financial Services Group, The	0.1	69.8
National Bank of Canada	2.6	69.5
Power Financial Corporation	2.0	69.1
Telecom Italia SpA	5.8	68.4
Matsushita Electric Works, Ltd.	1.9	67.6
Telefonica, SA	1.5	65.5
NOVA Chemicals Corporation	2.3	65.0
Shell Transport & Trading Company	5.1	63.3
Novartis AG	0.02	61.9
Portugal Telecom SA	4.5	61.5
Unilever PLC	4.8	61.4
Aventis SA	0.5	59.4
TransAlta Corporation	2.7	59.3
Lindsay Manufacturing Co.	1.7	58.9
Nokia OYJ	0.9	58.1
Mackenzie Financial Corporation	2.1	57.3
George Weston Limited	0.7	56.2
Daiichi Pharmaceutical Co., Ltd.	1.2	55.7
Rogers Communications Inc.	2.2	55.2
Deutsche Bank AG	0.4	54.6
Australia & New Zealand Banking Group Limited	4.5	54.1
Trizec Hahn Corporation	2.3	53.4
Allied Irish Banks plc	3.1	53.3
Jardine Strategic Holdings PLC	12.2	53.2
Wolters Kluwer	1.3	52.4
Cheung Kong (Holding) Ltd.	2.7	52.3
Quebecor World Inc.	1.4	51.3
Shell Canada Limited	1.3	50.4
Royal Bank of Scotland Group	1.4	50.1
Alcatel	0.6	50.1

Note: For a complete list of companies, please see our website at www.otpp.com.

CONVERTIBLE AND EXCHANGEABLE DEBENTURES

(Millions)

Security Name	Par Value (\$)	Fair Value (\$)
Power Financial Corporation 8.0% Due April 30, 2014	85.5	529.8
PDFB Investments Inc. 3.25% Due March 12, 2018	89.1	254.6

INVESTMENTS OVER \$50 MILLION

AS AT DECEMBER 31, 2000

REAL ESTATE PORTFOLIO

Property	Total Square Footage	Effective % Ownership
<i>(in thousands)</i>		
Canadian Regional Shopping Centres		
Cataraqui Town Centre, Kingston	580	50%
Champlain Place, Dieppe	729	100%
Chinook Centre, Calgary	1,056	100%
Don Mills Shopping Centre, Toronto	420	100%
Eastgate Square, Hamilton	578	100%
Erin Mills Town Centre, Mississauga	759	50%
Fairview Mall, Toronto	883	50%
Fairview Park Mall, Kitchener	746	100%
Fairview Pointe Claire, Montreal	1,044	50%
Georgian Mall, Barrie	533	100%
Hillcrest Mall, Richmond Hill	558	100%
Intercity Shopping Centre, Thunder Bay	455	100%
Le Carrefour Laval, Montreal	1,183	100%
Les Galeries D'Anjou, Montreal	1,011	50%
Les Promenades St. Bruno, Montreal	1,036	100%
Lime Ridge Mall, Hamilton	827	100%
Market Mall, Calgary	754	50%
Markville Shopping Centre, Markham	954	100%
Masonville Place, London	684	100%
McAllister Place, St. John	471	100%
Midtown Plaza/Village, Saskatoon	687	100%
New Sudbury Centre, Sudbury	496	100%
Pacific Centre, Vancouver	1,348	50%*
Polo Park Mall, Winnipeg	1,197	100%
Regent Mall, Fredericton	446	100%
Richmond Centre, Vancouver	488	100%
Rideau Centre, Ottawa	692	31%
Sherway Gardens, Toronto	979	100%
Southland Mall, Regina	423	100%
The Promenade, Toronto	693	50%
Toronto Eaton Centre, Toronto	1,559	100%
Victoria Eaton Centre, Victoria	406	100%
Woodbine Centre, Toronto	682	60%

* Ownership increased to 100% subsequent to year end

Property	Total Square Footage	Effective % Ownership
<i>(in thousands)</i>		
Canadian Office Properties		
1 Queen Street East and 20 Richmond Street East, Toronto	503	50%
Granville Square, Vancouver	398	100%
Pacific Centre Office Complex, Vancouver	1,537	50%*
Shell Centre, Calgary	681	50%
Toronto Dominion Centre Office Complex, Toronto	4,437	50%*
Toronto Eaton Centre Office Complex, Toronto	1,899	100%
Waterfront Centre, Vancouver	395	100%
Yonge Corporate Centre, Toronto	661	50%
US Regional Shopping Centers		
Broward Mall, Fort Lauderdale, Florida	1,000	100%
Dover Mall, Dover, Delaware	834	100%
Galleria at White Plains, White Plains, New York	885	100%
Golden East Crossing, Rocky Mount, North Carolina	584	100%
Gwinnett Place, Duluth, Georgia	1,249	33%
Kitsap Mall, Silverdale, Washington	715	49%
Lakewood Center, Lakewood, California	2,044	49%
Los Cerritos Center, Cerritos, California	1,302	49%
Northpark Mall, Ridgeland, Mississippi	958	100%
Redmond Town Center, Redmond, Washington	1,119	49%
Stonewood Mall, Downey, California	929	49%
The Esplanade, Kenner, Louisiana	911	100%
Town Centre at Cobb, Kennesaw, Georgia	1,273	33%
Washington Square, Tigard, Oregon	1,239	49%

PRIVATE COMPANIES AND PARTNERSHIPS

Absolute Return Fund Ltd.
 Apaquogue Limited
 ARC Canadian Energy Venture Fund
 BC European Capital V
 BC European Capital VI
 BC European Capital VII
 CACF Limited
 DLJ Merchant Banking Partners II, L.P.
 Exxel Capital Partners V, L.P.
 Friedrich Grohe AG
 Hicks, Muse, Tate & Furst Latin America Fund, L.P.
 Magnatrax Corp.

Maple Leaf Sports & Entertainment
 Maple Partners Financial Group
 Morgan Stanley Real Estate Fund III International L.P.
 Newcastle Capital Management Inc.
 Providence Equity Partners Fund II, L.P.
 Providence Equity Partners Fund III, L.P.
 Schroder Asian Properties L.P.
 Shoppers Drug Mart Inc.
 The Macerich Company
 The Third Hermes UK Focus Fund
 Trimac Corporation

ELEVEN-YEAR REVIEW

FOR THE YEAR ENDED DECEMBER 31

(\$ Millions)	2000	1999	1998	1997	1996	1995	1994	1993	1992	1991	1990
CHANGE IN NET ASSETS											
Income											
Investment income	6,211	10,121	5,137	7,246	7,436	5,656	528	5,907	2,145	3,843	1,031
Contributions											
Members/transfers	624	630	612	591	620	636	732	689	711	651	559
Province of Ontario	657	655	653	649	673	669	704	712	740	663	587
– special payments	—	128	492	456	152	—	—	—	438	270	187
Total Income	7,492	11,534	6,894	8,942	8,881	6,961	1,964	7,308	4,034	5,427	2,364
Expenditures											
Benefits paid	2,541	2,278	2,103	1,802	1,520	1,261	1,130	1,001	921	829	760
Investment expenses	100	91	67	59	40	30	25	20	14	7	1
Member service expenses	33	33	32	31	29	27	26	24	23	18	19
Distribution of gain	—	—	—	—	—	—	—	325	—	—	—
Total Expenditures	2,674	2,402	2,202	1,892	1,589	1,318	1,181	1,370	958	854	780
INCREASE IN NET ASSETS	4,818	9,132	4,692	7,050	7,292	5,643	783	5,938	3,076	4,573	1,584
NET ASSETS											
Fixed income	13,319	17,304	11,476	10,276	10,622	12,509	11,409	17,569	19,007	19,199	18,129
Equities – Canadian	17,739	19,885	17,613	19,433	17,367	12,218	9,943	7,510	3,217	2,618	520
– Foreign	23,141	21,759	24,015	19,955	16,005	12,287	10,714	7,035	3,253	1,796	807
Inflation-sensitive investments											
– Commodities	2,098	1,090	401	126	—	—	—	—	—	—	—
– Real Estate	6,201	2,815	1,582	1,561	1,272	925	694	608	451	180	—
– Real Rate Products	9,545	4,239	3,019	1,597	1,066	1,064	653	548	457	16	—
Net Investments	72,043	67,092	58,106	52,948	46,332	39,003	33,413	33,270	26,385	23,809	19,456
Receivable from											
Province of Ontario	1,251	1,252	1,233	1,262	1,286	1,308	1,338	1,362	1,323	1,190	945
Other assets	13,159	7,040	5,391	8,537	3,293	1,586	622	36	72	10	—
Total assets	86,453	75,384	64,730	62,747	50,911	41,897	35,373	34,668	27,780	25,009	20,401
Liabilities	(13,332)	(7,081)	(5,559)	(8,268)	(3,482)	(1,760)	(879)	(957)	(7)	(312)	(277)
Net Assets	73,121	68,303	59,171	54,479	47,429	40,137	34,494	33,711	27,773	24,697	20,124
Smoothing reserve	(4,341)	(8,316)	(4,788)	(5,578)	(4,416)	(1,907)	(252)	(2,947)	(414)	(883)	709
Actuarial value of net assets	68,780	59,987	54,383	48,901	43,013	38,230	34,242	30,764	27,359	23,814	20,833
Accrued pension benefits	58,556	52,105	48,636	44,457	41,833	38,744	36,848	33,998	30,781	27,479	24,391
Surplus (Deficiency)	10,224	7,882	5,747	4,444	1,180	(514)	(2,606)	(3,234)	(3,422)	(3,665)	(3,558)
PERFORMANCE (%)											
Rate of return	9.3	17.4	9.9	15.6	19.0	16.9	1.7	21.7	8.9	19.6	5.6
Benchmark	5.3	17.6	11.9	15.6	18.1	17.2	(0.3)	20.5	8.0	15.4	(7.8)
Long-term goal	7.7	7.1	5.5	5.2	6.7	6.2	4.7	6.2	6.6	8.3	9.5

President & Chief Executive Officer

Claude Lamoureux

Investments

Robert Bertram, Executive Vice-President

Active Equities

Brian Gibson, Senior Vice-President

Relationship Investing

Roy Graydon, Vice-President

International Equity Indexes, Fixed Income & Foreign Exchange

Neil Petroff, Senior Vice-President

Fixed Income

Sean Rogister, Vice-President

International Equity Indexes

Barbara Trott, Vice-President

Quantitative Investments

Morgan McCague, Senior Vice-President

Canadian Core Portfolios

Marcus Dancer, Vice-President

Research & Economics

Leo de Bever, Senior Vice-President

New Business Development

Russ Bruch, Vice-President

Merchant Banking

Dean Metcalf, Vice-President

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Allan J. Reesor, Executive Vice-President & Chief Information Officer

Client Services

Rosemarie McClean, Vice-President

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Phil Nichols, Vice-President

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Andrew Jones, Vice-President

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John Brennan, Vice-President

Internal Audit

Peter Maher, Vice-President

Law

Roger Barton, Vice-President, General Counsel & Secretary

THE CADILLAC FAIRVIEW CORPORATION LIMITED**Real Estate Portfolio****President & Chief Executive Officer**

Peter Sharpe

Portfolio Operations

Brian Muzyk, Executive Vice-President & Chief Operating Officer

Eastern Canada Portfolio

Normand Blouin, Senior Vice-President

Greater Toronto Area Portfolio

Tony Grossi, Senior Vice-President

Ontario Portfolio

Linda Gray, Senior Vice-President

U.S. Portfolio

Alan Carlisle, Senior Vice-President

Western Portfolio

Ron Wratschko, Senior Vice-President

E-business

Ronald Peddicord, Executive Vice-President

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Scot Adams, Senior Vice-President and Technology Officer

Finance and Taxation

Ian MacKellar, Executive Vice-President and Chief Financial Officer

Law

Peter Barbetta, Executive Vice-President, General Counsel and Secretary

Office and Retail Development

Michael Kitt, Executive Vice-President

Architecture and Design

Rudy Adlaf, Senior Vice-President

Office Development

John Sullivan, Senior Vice-President

Project Management and Environmental Services

David Handley, Senior Vice-President

Investments

Andrea Stephen, Senior Vice-President

We welcome your comments and suggestions for this annual report, as well as other aspects of our communications program.

Please call Lee Fullerton, Communications Manager, at

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www.otpp.com

Alberta				Mar-15
Teacher's Pre-1992 Pension Plan	No individual F/S			3.90%
Teacher's Post-1992 Pension Plan	IFRS	7.25%	31-Aug-14	7.00% Rate of return on invested assets
Public Service Management (Closed membership) Pension Plan	No individual F/S		http://www.r	3.90%
Universities Academic Pension Plan	IFRS	6.25%	31-Dec-14	6.10% Rate of return on invested assets The discount rate is based on the average from a consistent modeled investment return, net of investment expenses, and an additive for diversification and rebalancing.
Local Authorities Pension Plan	IFRS	5.80%	31-Dec-14	5.80% The discount rate is based on the average from a consistent modeled investment return, net of investment expenses, and an additive for diversification and rebalancing.
Public Service Pension Plan	IFRS	6.20%	31-Dec-14	6.20% diversification and rebalancing.
Members of the Legislative Assembly Pension Plan	No individual F/S		https://apsc.g	3.90%
Management Employees Pension Plan	IFRS	6.40%	31-Dec-14	6.40% The discount rate is based on the average from a consistent modeled investment return, net of investment expenses, and an additive for diversification and rebalancing.
Provincial Judges and Master in Chambers Pension Plan	IFRS	5.80%	31-Mar-13	5.75% The discount rate is based on the average from a consistent modeled investment return, net of investment expenses, and an additive for diversification and rebalancing.
Supplementary Retirement Plan for Public Service Managers	IFRS	6.20%	31-Dec-14	6.20% The discount rate is based on the average from a consistent modeled investment return, net of investment expenses, and an additive for diversification and rebalancing.
Special Forces Pension Plan	IFRS	6.30%	31-Dec-14	6.30% The discount rate is based on the average from a consistent modeled investment return, net of investment expenses, and an additive for diversification and rebalancing.
Average for 11 plans				5.59%
Saskatchewan				Mar-15
Saskatchewan Healthcare Employees' Pension Plan (SHEPP)	IFRS	6.80%	31-Dec-14	6.80% Discount rate based upon the asset mix of the Fund.
Teacher's Superannuation Plan	ASPE	3.40%	30-Jun-14	2.50% In 2013, the discount rate methodology was changed to better reflect the Saskatchewan provincial bond yield curve to match the timing and amount of future expected benefit payments as well as the expected rate of return on assets assumption to 5% per annum up to 2030. The single discount rate was determined as a blend between the funded and unfunded portions of the Plan.
Public Service Superannuation Plan	IFRS	3.50%	31-Mar-14	2.40% The discount rate is based on the Saskatchewan provincial bond yields with cash flows that match the timing and amount of expected benefit payments.
Others: 1) Judges, 2) Saskatchewan Transportation Company Employees Superannuation Plan, 3) Anti-IB League Employees Superannuation Plan, 4) Saskatchewan Pension Annuity Fund				Not indicated - reviewed Saskatchewan Pension Annuity Fund
Average for 6 plans				3.09%
British Columbia				Mar-15
Public Service Pension Plan	ASPE	6.50%	31-Mar-14	6.5 Annual investment return
Municipal Pension Plan	ASPE	6.50%	31-Dec-14	6.5 Annual investment return
Teachers' Pension Plan	ASPE	6.50%	31-Dec-14	6.5 Annual investment return
College Pension Plan	ASPE	6.50%	31-Aug-14	6.5 Annual investment return
Average for 4 plans				6.50%
Quebec				Mar-15
Commission administrative des regimes de retraite et d'assurances (Plans administered by CARRA)	http://www.carra.gouv.qc.ca/pdf/rapport_annuel_2015.pdf	6.40%	31-Dec-14	6.50% investment yield net of inflation
Pension Plan of the Université du Québec (PPUQ)				6.30% investment yield net of inflation
Average for 2 plans				6.40%
Newfoundland				Mar-15
Public Service Pension Plan	No individual F/S			6%
Teachers' Pension Plan	No individual F/S			6.75%
Memorial University of Newfoundland Pension Plan	IFRS	6.30%	31-Mar-14	6.30% Fund's long term expected return
Uniformed Services Pension Plan	No individual F/S			6.75%
Members of the House of Assembly Pension Plan	No individual F/S			6.75%
Provincial Court Judges' Pension Plan	No individual F/S			6.50%
Average for 6 plans				6.51%

Nova Scotia

Nova Scotia Public Service Superannuation Plan (PSSP)

IFRS

6.35%

31-Dec-14

Mar-15

6.75% Total rate of return on assets

Nova Scotia Teachers' Pension Plan (TPP)

IFRS

6.40%

31-Dec-14

6.75% Not indicated

Average for 2 plans (2014 - 1 plan)

6.75%

Manitoba

Civil Service Superannuation Plan

ASPE

6.00%

31-Dec-14

Mar-15

6.00% Real rate of return plus an inflation component

Teachers Pension Plan

ASPE

6.25%

31-Dec-14

6.50% Real rate of return on plan assets

Average for 2 plans (2014 - 1 plan)

6.25%

New Brunswick

Provincial Court Act and Provincial Court Judges Pension Act (JUDGE)

No individual F/S

6.35%

Pension Plan for Management Employees of New Brunswick School Districts (Sch-Mgt)

No individual F/S

6.20%

Pension Plan for General Labour, Trades and Services Employees of New Brunswick School Districts (GLTS)

No individual F/S

6.20%

Pension Plan for Full-Time CUPE 2745 Employees of New Brunswick School Districts (CUPE 2745)

No individual F/S

6.20%

New Brunswick Teachers' Pension Plan Fund (NBTPP)

IFRS

Does not state

31-Dec-14

No pension obligation

Shared Risk Pension Plan for CUPE Employees of New Brunswick Hospitals

ASPE

Does not state

31-Dec-14

Rate of return on assets

Shared Risk Pension Plan for Certain Bargaining Employees of New Brunswick Hospitals

ASPE

Does not state

31-Dec-14

Rate of return on assets

Public Service Shared Risk Plan Trust (PSSRP)

IFRS

Does not state

31-Dec-14

No pension obligation

Average for 4 plans

6.24%

B4A - Pension Asset Ceiling_additional information for AG (Sept11).pdf

Further to our discussion on September 9, 2016 regarding the Province's reporting of the pension assets related to OTTP and OPSEUPP, we are sharing additional information and analysis that we believe should be considered in reaching a conclusion on whether the Province's accounting for the assets are consistent with PSAB standards.

In summary, our understanding of the OAG's position based on recent discussions is that:

1. The pension asset for TPP of \$10.1 billion should be written down to the Province's share of the surplus in the plan based on the funding valuation, provided that the Province can provide sufficient evidence that it has the ability to realize the benefit from the asset
2. The AG suggested that the Province obtain a legal opinion to provide evidence regarding the Province's ability to realize the benefit of the asset
3. If the stand-alone financial statements of OTTP had been prepared using an estimate of the projected benefit obligation based on the Province's economic assumptions (as permitted by CPA Canada, Part IV Section 4600), and those financial statements disclosed a surplus of at least \$20.2 Billion, there would not be a concern with the \$10.1 billion pension asset recorded by the Province
4. The impact of any write-down would have to be analyzed to determine the period of impact (e.g. a write-down would not necessarily have an in-year impact for fiscal 2015-16).
5. The AG has reviewed the additional disclosure to be added in the notes to the 2015-16 financial statements regarding the Province's ability to realize the benefit of the asset, and has requested it be expanded to include the nature by which the surplus will be used (e.g. reducing future contributions)

While our discussion focused exclusively on TPP, we have assumed the same view holds for OPSEU. (Please advise if our assumption is incorrect).

From the Province's perspective...

The Province continues to believe that the pension assets are appropriately stated in accordance with PSAS. The following addresses the points noted above.

1. PSAS is clear with respect to the determination of whether a valuation allowance is required. It does not reference the use of a funding valuation, which would have been a very simple method to use.

The guidance on determining whether a valuation allowance is required in PSAS is included 3250 in the following paragraphs:

.052 A government may benefit from an accrued benefit asset either by withdrawing surplus assets or by taking a contribution holiday or receiving a refund of contributions. The accrued benefit asset may become impaired when there is a plan surplus for accounting purposes that the government is not entitled to benefit from fully. For example, there may be a regulatory moratorium on pension surplus withdrawals or uncertainties as to a government's legal right to use a plan's accounting surplus.

.053 To determine the extent to which an accrued benefit asset may be impaired, the government first determines the adjusted benefit asset. The adjusted benefit asset is the accrued benefit asset less net unamortized actuarial losses (determined on a basis using market value of assets).

.054 The adjusted benefit asset is then compared to the expected future benefit. When the expected future benefit exceeds the adjusted benefit asset, the accrued benefit asset is not impaired and, accordingly, no valuation allowance is required. The chart included as Appendix A to this Section is intended to set out the relationship between the various defined terms.

.055 The objective of the standard in paragraph PS 3250.050 is to limit a government's accrued benefit asset to the amount it can realize in the future. The expected future benefit is a calculated amount representing the benefit a government expects to realize from a plan surplus. An expected future benefit includes any withdrawable surplus or reduction in future contributions.

.056 A government determines its expected future benefit as the sum of:

- a. the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- b. the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

.057 A government's expected future accruals for service for the current number of active employees are determined on a basis consistent with that used to determine its accrued benefit obligation. These expected future accruals for service, less required employee contributions and minimum contributions the government is required to make regardless of any surplus, are then discounted back to the current period to determine the present value. The interest rate used to calculate this present value is the expected rate of return on plan assets used to determine the benefit expense in the period.

.058 When administration expenses are paid by the plan and included in the normal cost calculation, a best estimate of the future administration expense is included in the expected future accruals for service. When administration expenses are paid by the plan and not included in the normal cost calculation, the rate of return on plan assets is adjusted to reflect the deduction of the administrative expenses.

.059 A key factor in determining a government's expected future benefit from a defined benefit plan with a plan surplus for accounting purposes is the ability of the government to withdraw assets from the plan. The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal. It excludes any withdrawable plan surplus a government is currently required, or intends, to allocate to employees. A government may not anticipate obtaining a legally enforceable right to withdraw a portion of a plan surplus to which it is not currently entitled, whether on the basis of precedent or otherwise. Accordingly, when withdrawal of plan surplus requires the approval of employees or an appropriate regulatory authority or a court of law, a government excludes any amount subject to this restriction from its expected future benefit until such approval has been obtained. A change in the allocation of surplus between a government and its employees is incorporated into the calculation of the expected future benefit only when it has been agreed to and, when required, approved by the appropriate regulatory authorities.

The guidance in paragraphs 53 through 59 provides very specific guidance on how to determine if a valuation allowance is required. The two key inputs to the calculation are the **adjusted benefit asset** and the **expected future benefit**. Both of these terms are defined in the standard:

- An **adjusted benefit asset** is an accrued benefit asset less the amount, if any, by which the aggregate of any unamortized actuarial losses exceeds the aggregate of any unamortized actuarial gains.
- The **expected future benefit** is a calculated amount representing the benefit a government expects to realize from a plan surplus. An expected future benefit includes any withdrawable surplus or reduction in future contributions. A government determines its expected future benefit as the sum of:

- a) the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; **and**
- b) the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

If the adjusted benefit asset exceeds the expected future benefit, a valuation allowance is required.

The funding valuation surplus is not an input to the calculations in either of these definitions. Taking into consideration the purpose of a funding valuation is useful in assessing why the accounting requirements do not require use of a funding valuation to determine the limit on a pension asset. The following excerpt from PS 3250 articulates the difference between an accounting valuation and a funding valuation:

.008 Determining whether a retirement benefit plan should be funded and the amount to be funded each period is a financial management matter. The funding objective is to determine an acceptable policy for financing the estimated ultimate cost of a benefit plan. An actuarial valuation for funding purposes is performed to calculate the contributions required to secure the benefits promised.

.009 The accounting objective is to measure and report the obligation for employee retirement benefits and to attribute the costs of those benefits to the periods in which the related services are rendered. To meet that objective, a method is needed to determine the amount of the obligation for retirement benefits outstanding, which represents the liability at the financial statement date, and the value of the benefits employees earned during the period, which represents the expense of that period. Accordingly, it is necessary to develop accounting estimates of liabilities for retirement benefits and expenses using an actuarial cost method and actuarial assumptions that ensure essential information required for fair presentation of financial condition and results of operations can be reported in government financial statements.

.010 **Because the objectives of determining the most appropriate funding policy are not necessarily the same as those of determining the most appropriate accounting method, the liability for accounting purposes may not be the same as the amount due but not yet funded at the financial statement date according to the funding plan.** In addition, the retirement benefit expense of the period for accounting purposes may not be the same as the contribution computed in the period for funding purposes.

While the funding analysis is informative, the surplus determined on the funding valuation basis is not prepared on the same basis or for the same purpose as accounting information and it is not part of the determination of whether a valuation allowance against a pension asset is required.

It is also important to note that the definition of expected future benefit is the summation of:

- a) the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; **and**
- b) the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

Based on the calculations completed for both OTTP and OPSEU, (a) alone is in excess of the adjusted benefit obligation. Therefore even if b) is NIL, there is no valuation allowance required, and the outcome of a determination of whether the surplus can be withdrawn will not change the outcome of

the analysis for either plan. In other words, the guidance in paragraph .59, which relates solely to the withdrawal of surplus from the plan has no impact on the analysis completed for the 2015-16 Public Accounts.

In summary, the surplus determined in the funding valuation is not an input to the determination of whether a valuation allowance is required. In addition, based on the calculations prepared for the current year, whether the Province does or does not have the ability to withdraw the surplus in either plan has no impact on the outcome of the determination of whether a valuation allowance is required. In both cases, if the amount in (b) in the definition of expected future benefit, related to component of the withdrawal of surplus from the plan is set to NIL, there is no valuation allowance required for either plan.

2. We agree with your suggestion and a legal opinion is being prepared. We have included a document that provides a history of how surpluses in the plan have been used over the last 26 years (back to 1990) which we believe is very important to consider in assessing the ability of the Province to access the benefit of the pension asset.
3. The stand-alone financial statements of OTTP are not relevant to the province's accounting. They are not prepared for the province, are not used for the funding valuation and as discussed, the method used by OTTP to value its pension obligation in its stand-alone financial statements is an outlier among the pension plans sponsored by provinces across Canada, as shown in the analysis previously provided to you on September 8.

OTTP could have chosen to value its benefit obligation on the same basis as the Province did (i.e. using a discount rate of the expected future return on assets). If it had done that, the obligation in the financial statements of OTTP would have been valued at approximately \$116.4 Billion (Province's valuation) vs. 173.2 Billion (Dec 31 2015 OTTP financial statements). That difference of \$56.8 Billion would have resulted in a surplus reported in the December 31, 2015 financial statements of OTTP of \$55 Billion (reported deficit of \$1.8 billion for 2015 financial statements less reduction in pension obligation of \$56.8 Billion). Taking 50% of that surplus, or \$27.5 Billion is far in excess of the pension asset reported on the financial statements of the Province (\$10.1 Billion.)

The difference between those results (deficit of \$1.8 Billion and surplus of \$55 Billion) is simply a choice in accounting policy under Section IV, Section 4600 of the CPA Canada Handbook. If OTTP had chosen to use the projected benefit obligation of the Province and had reported a surplus in the plan of \$55 Billion, that would not have impacted the Province's accounting. In other words, the Province could not have recorded a pension asset of \$27.5 Billion simply because of the policy OTTP had chosen to follow in its standalone financial statements. Likewise, because OTTP selected another method to calculate the projected benefit obligation in its standalone financial statements (e.g. a discount rate based on the corporate bond yield), that does not impact the Province's accounting.

The calculations used by OTTP in its financial statements are not used in the preparation of the Province's financial statements. A separate set of instructions is provided to the actuary that prepares the calculations for purposes of the Province's reporting.

In summary, the OTTP stand-alone financial statements are not relevant to the Province's accounting. If the OTTP had used a valuation method similar to that of the Province, like the vast majority of other provincial plans do, the Province would not have recorded a larger asset. Likewise, the Province does not reduce its asset because of the stand-alone financial statements of OTTP.

The Province's financial statements are prepared using the Province's assumptions and guidance found under the PS 3250. The financial statements are not to be prepared or influenced by Section 4600 calculations. In fact, the only link that exists between the two standards is in the other direction, which is the OTTP Board in preparing the OTTP financial statements may elect a policy to use the Province's accounting instead of asking for the preparation of a different set of actuarial valuation results. This choice was included by the Canadian Accounting Standards Board in the Section 4600 to allow pension plan administrator (such as OTTP Board) to make use of available information instead of asking for the preparation of another actuarial valuation. The objective was to allow a more efficient approach and avoid fees to be charged to the pension fund which reduces assets available in a plan to pay for benefits.

4. We don't believe there is an error to re-profile by year as the pension assets as currently reported on the Province's financial statements is measured in accordance with PSAS.
5. We will review the draft disclosure and provide additional clarity with respect to how the Province can benefit from the pension asset. As previously noted, we have included a document from OTTP that provides a history of the use of surpluses in the plan back to 1990. If you have any specific suggestions regarding the disclosure, please provide those to us.

B5B - Key Funding Decisions.pdf

Plan Funding

The Ontario Teachers' Federation (OTF) and the Ontario government, which jointly sponsor the Ontario Teachers' Pension Plan, must file a funding valuation with the provincial pension regulator at least every three years. A valuation must be filed with assets and liabilities (the cost of future pensions) in balance.

OTF and the Ontario government can file a valuation earlier than required to help manage the plan's funding status.

The following chart shows how OTF and the Ontario government have used surplus funds or resolved funding shortfalls for each valuation filed with the regulator since the inception of the Teachers' pension plan as an independent entity in 1990.

For more information on plan funding, visit the Corporate section of our website at www.otpp.com.

Funding decisions

Year	Valuation status and key decisions
1990	A preliminary unfunded liability of \$7.8 billion to be amortized over 40 years by special payments from the Ontario government; basic contribution rate increased to 8% from 7%.
1993	A preliminary \$1.5 billion surplus was distributed: \$1.2 billion used to reduce government's special payments; \$0.3 billion used to offset government cost reductions in the education sector (social contract days).
1996	A preliminary \$0.7 billion surplus was distributed: \$0.6 billion used to reduce early retirement penalty to 2.5% from 5% for each point short of 90 factor and lower the CPP reduction after age 65 (to 0.68% from 0.7%).
1998	A preliminary \$6.8 billion surplus was distributed: \$2.2 billion to pay for the 85 factor window from 1998 to 2002 and further lower the CPP reduction to 0.6%; \$4.6 billion to reduce the value of special payments owed by the Ontario government. OTF and the Ontario government agree future surplus would be used to eliminate the government's remaining special payments, and the next \$6.2 billion surplus would be available to OTF for benefit improvements.

Year	Valuation status and key decisions
1999	A preliminary \$3.5 billion surplus was distributed to eliminate government's remaining special payments.
2000	\$4.5 billion surplus; no changes to benefits or contribution levels.
2001	A preliminary \$6.8 billion surplus was distributed: \$6.2 billion to pay for benefit improvements, including a permanent 85 factor; 10-year pension guarantee; reduced pension as early as age 50; lower CPP reduction (to 0.45%); 5-year average Year's Maximum Pensionable Earnings (YMPE) to calculate CPP reduction; pension recalculation based on approximate best-5 salary years for older pensioners; and top-up waived for Long-Term Income Protection (LTIP) contributions. The remaining \$76 million was set aside in a contingency reserve to be used by OTF at a later date.
2002	\$1.9 billion surplus; no changes to benefits or contribution levels.
2003	\$1.5 billion surplus; no changes to benefits or contribution levels. Funding Management Policy adopted by plan sponsors.
2005	A preliminary \$6.1 billion shortfall was resolved, leaving plan with a \$0.1 billion surplus. Shortfall resolved with special contribution rate increases, totalling 3.1% of base earnings by 2009 for teachers, the Ontario government and other employers. OTF used the \$76 million contingency reserve set aside in 2001 to reduce contribution rate increases for members in 2008.
2008	A preliminary \$12.7 billion shortfall was resolved with the introduction of conditional inflation protection for pension benefits earned after 2009 and an increase in the basic contribution rate for members and the government to 9% from 8%. Employers agree to make special payments equal to any annual pension increases retirees forgo to a maximum of 50% missed inflation.
2009	A preliminary \$2.5 billion shortfall was resolved primarily by assuming a slightly higher long-term rate of return on investments: yield on real-return bonds plus 1.5%, versus real-return bonds plus 1.4%. Other minor changes made to assumptions to reflect recent plan experience.
2011	A preliminary \$17.2 billion shortfall was resolved with a 1.1% contribution rate increase (phased in over three years), slightly smaller annual cost-of-living increases for teachers who retired after 2009, and recognition of current contribution rate as the permanent base rate.

Year	Valuation status and key decisions
2012	\$9.6 billion preliminary shortfall adjusted to reflect changes in mortality assumptions and impact of two-year freeze on teachers' salaries. 2012 shortfall resolved by making inflation protection for pension credit earned after 2013 fully conditional on plan's funded status and providing slightly smaller pension increases, beginning in 2014, for members who retired after 2009. These changes enabled the plan to assume a slightly higher discount rate. The changes left the plan with a \$200 million surplus at Jan. 1, 2012.
2014	\$5.1 billion preliminary funding surplus used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided each year since they retired. The surplus funds were also used to raise conditional inflation protection to 60% of the increase in the cost of living for the portion of retirees' pensions earned after 2009. Both changes are effective with January 2015 pension payments.
2015	\$6.8 billion preliminary funding surplus used to boost pensions of members who retired after 2009 to the level they would have been at if full inflation protection had been provided each year since they retired. The surplus funds were also used to raise conditional inflation protection for pension credit earned after 2009 to 70% from 60% of the increase in the cost of living. Both changes go into effect in January 2016. In addition, some surplus funds were reserved to help facilitate stability in contribution and benefit levels should a future funding valuation show a decline in assets or increase in pension costs.

C1 - Summary of Auditor General Position on JDBP Accounting.docx

Summary of Auditor General Position on Joint Benefit Plan Pension Accounting

Prepared by Accounting Policy and Financial Reporting with reference to letters from the Auditor General to the Deputy Ministers of Ministry of Finance and Treasury Board Secretariat dated September 13/16 and September 26/ 16.

Key aspects of the Auditor General's position:

- whether the Province has a legally enforceable right to withdraw assets from a plan for other uses (see PS 3250.059).
- whether any of the Province's legal rights to surplus withdrawal are subject to restrictions in the form of approvals contemplated under PS 3250.059.
- whether the Province has a legally enforceable right to reduce its future "minimum contributions regardless of any surplus" (see PS 3250.056).
- whether the Province's legal rights to future reductions in minimum contribution are subject to restrictions in the form of approvals described under PS 3250.059.
- Whether the province as legal rights to take unilateral actions that would affect overall Plan funding immediately or into the future, especially in a surplus position.
- Whether legal rights exist for the co-sponsors to take unilateral actions that would affect overall Plan funding immediately or into the future, especially in a surplus position.

The Province did not have an enforceable right as at the balance sheet date to the future expected benefits associated with plan surpluses which is required by PS 3250.

The use of any surplus to the benefit of the Province in the plan is either entirely prohibited or subject to the approval of OTF or OPSEU. To report a pension asset, the Province would have to demonstrate that it has the consent of the relevant parties (in a legally enforceable way) as of the balance sheet date as to the manner in which a surplus can be utilized.

There must be no uncertainty related to future benefits in order to recognize a pension asset under PS3250. The concepts in PS3320 – Contingent Assets might be applicable. PS3320.03 notes that contingent assets arise from conditions or situations involving uncertainty. Even where a future event is likely, a contingent asset would not be recorded in the financial statements, but rather only disclosed in the notes.

Despite the fact that the Province does not expect to benefit from the surpluses through a withdrawal the AG believes that PS3250.59 does apply.

The access to the pension asset is not unilaterally controlled by the government. The public sector entity must control the economic resource and access to the future economic benefits and the transaction or event giving rise to the public sector entity's control must have already occurred. An entity that controls an economic resource has the ability to deny or regulate access to the future economic benefits by others. In the case of Ontario Teachers' Pension Plan, the economic resources are jointly controlled by the Government and the OTF and economic benefits are to flow to the beneficiaries. This reality can only change if specific agreements (in addition to the Partners' Agreement and the Funding Management Policy) enable government to access those economic resources.

The AG also considers the role of FSCO as relevant to assessing whether an asset can be reported. In particular, the AG notes that the approval from the Financial Services Commission of Ontario is needed for any PLAN impact/changes that could lead to the government obtaining an asset.

The AG considers the ceiling test results as reflecting a short term view which is inappropriate in measuring the asset. Any assumptions that contributions would cease immediately, in two years and in

eleven years are short term and not appropriate. When contributions extend to 50 years, the calculation of expected future benefit under PS3250.056(a) is reduced significantly.

The AG considers section PS3250.059 as relevant in assessing the government's control and access over the pension asset. Specifically, the ability the government to withdraw assets from the plan is considered by the AG to indicate whether the government has control. The expected future benefit would include amounts to which a government has a legally enforceable right of withdrawal. Accordingly, when withdrawal of plan surplus requires the approval of employees or an appropriate regulatory authority or a court of law, a government excludes any amount subject to this restriction from its expected future benefit until such approval has been obtained.

The Board of the Ontario Teachers' Pension Plan acts as trustee when it administers the trust on behalf of the beneficiaries specified in the agreement or statute. As trustee, it administers the assets of the pension, following the terms and conditions set out in the relevant agreements. The Board does not control the assets of the pension because it does not have access to the future economic benefits. Neither of the joint sponsors unilaterally control the assets or have legal access to the future economic benefits. Since benefits of the pension assets flow to the beneficiaries and a pension asset cannot be recognized by the government until there is a negotiated agreement between the joint sponsors. Furthermore, the approval of the Superintendent of the Financial Services Commission of Ontario is required for legal access and control of assets to be provided to the government.

The AG considers the "Share the Pain" element of the FMP as a start and stop payment that does not affect minimum contributions. She considers it immaterial to the discussion of the value of the Pension Asset on an accounting basis.

The AG references public expectations regarding access to the pension assets, noting that the amount of the asset that the Province can remove from the plan (i.e. 20%, 50%, 70%) is uncertain. She notes that there is no public expectation that the government can access existing assets of the Plan because all access has to be jointly negotiated with the OTF and approved by the Financial Services Commission of Ontario.

There is no existing law, by-law or policy in relation to OTPP that gives rise to Provincial control of an economic resource. Control does not exist until an underlying event occurs (e.g. the government and the OTF reach a specific agreement and it is agreed to by the Superintendent of the Financial Services Commission of Ontario. Until then, uncertainty continues to exist.

The AG references BC's accounting treatment, noting that BC's 2015 Summary Financial statements included the following disclosure: "The province has no claim on accrued asset amounts. If the individual pension boards decide to reduce or suspend employer contributions for a period of time, the province may record an asset. Therefore, the recorded value of the net assets is nil until such time such a decision is made."

The AG's overall position is that unless there is a specific agreement indicating a distribution of any surplus, in any form, a valuation allowance should be reported by the Province, bringing any reported asset value to zero or other appropriate value (e.g., if the Plan had net unamortized losses, which is not the case).

C2 - September 25 2016 DM Letter to AG.pdf

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Ms. Bonnie Lysyk
Auditor General of Ontario
Office of the Auditor General of Ontario
20 Dundas Street West, Suite 1530
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September 25, 2016


Dear Ms. Lysyk:

Re: Finalizing 2015-16 Public Accounts and Accounting for Jointly Sponsored Pension Plans

We would like to thank you for the meeting of September 15, 2016 with you and your staff, where we were able to finalize the audit work on the Public Accounts, save for the issue discussed below. We appreciate the work that you and your staff have done as part of this year's audit, and we value the effective working relationships between the Office of the Auditor General and staff in our two respective ministries.

We also appreciate receiving your letter of September 13, 2016 on accounting for the accrued benefit assets for the Ontario Teachers' Pension Plan ("OTPP") and Ontario Public Service Employees' Pension Plan ("OPSEUPP") in the Province's financial reports. As you know, following that meeting we have

asked our external accounting advisors, Deloitte, to prepare an accounting opinion in regard to this issue. We and our staff have also been in discussions with you and your staff since, including meetings on September 14 and 21 as well as numerous phone calls. As at the time of this letter, the Statement of Facts has not yet been confirmed by your Office so Deloitte's accounting opinion has not yet been finalized.

It is unfortunate that so far we have not been able to agree upon the interpretation of the application of PS 3250 to the accounting for the accrued benefit assets related to the OTPP and OPSEUPP in the Province's 2015-16 Public Accounts. As you are aware, the Province has applied consistent accounting treatment for these plans for the past 15 years and has consistently received unqualified audit opinions, without exception.

Based on our respective positions at this time, and taking the above into account, we believe that this particularly complex accounting matter would benefit from additional discussions, information and consideration. However, at this time we are proposing for your consideration approaches that would allow meeting the statutory deadline for tabling the Public Accounts with the Lieutenant-Governor-in-Council by September 27th.

We believe that the Deloitte accounting opinion will help us move closer to a mutually acceptable resolution of this issue. In that regard, we would appreciate it if you could expedite the sign-off on the Statement of Facts, which was shared by Deloitte with your Office on both September 19 and September 21. Once Deloitte has had an opportunity to consider any new facts you might provide, we understand that their accounting opinion can be finalized. In the meantime, we thought it would be prudent and helpful to share with you our position in the spirit of helping us move forward toward resolving this lone outstanding matter in the completion of the audit and tabling of the 2015-16 Public Accounts.

The Province continues to believe an asset exists, and despite measurement uncertainty, that the assets resulting from the application of PS 3250 to OTPP and OPSEUPP have value, reflecting management's future expectations.

PS 3250 provides the guidance on accounting for joint benefit pension plans and acknowledges that an asset can result from the application of PS 3250. Paragraphs .50 to .59 of PS 3250 provide guidance on assessing whether a pension asset is impaired, thereby explicitly acknowledging that an asset can result from the application of the standard.

In your correspondence of September 13, 2016, you noted that the Province does not have the unilateral legal right to use the pension assets because its ability to reduce future minimum contributions or withdraw any pension plan surplus is subject to agreement with the respective pension plans' joint sponsors. In addition, you have noted that as at March 31, 2016, there were no such agreements in place.

At this time, the Province does not agree with either of the interpretations of PS 3250 which seem to be inherent in your position that:

- a) a unilateral legal right to use the assets is required to recognize an asset or,
- b) in the absence of a unilateral legal right to use the assets, the Province must have an agreement with the joint sponsor to reduce future minimum contributions or withdraw any pension plan surplus.

For greater clarity, the Province has not asserted that any amount of the two assets is supported by the ability to withdraw pension plan surplus but has communicated that the valuation results previously undertaken and shared with your Office are based on an assumption that the value of the assets would be gained through future contribution reductions. Paragraph .59 speaks only to the withdrawal of surplus and while it does note that "The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal" as noted, the value of the asset reported by the Province does not reflect an intention to obtain benefits through surplus withdrawals but rather through reductions in future contributions. Management's view, which we expect to be fully and unequivocally supported in the Deloitte opinion, is that the guidance in paragraph .59 is specific to the withdrawal of funds from a plan and does not apply to the use of contribution reductions to support the pension assets.

With respect to the requirement to have an irrevocable agreement in place with the joint sponsor, it is the Province's view that this is not a requirement of the standard. The standard requires that management take into consideration "uncertainties as to a government's legal right to use a plan's accounting surplus" (3250.52). The standard does not require that there be no uncertainty in order to recognize an asset. This interpretation would not be consistent with the balance of the framework developed to account for defined benefit pension plans. Pension plans, by their nature, include significant estimates – whether they be related to the value of assets held by the plan that are not publicly traded (e.g. investments in private companies and real assets) or in the present value of the projected benefit obligation that is based on a series of economic assumptions related to inflation, salary escalation, mortality and the rate of return that the assets in the plan will earn over the period that benefit payments are paid to pensioners. Any change in these assumptions will have an impact on the accounting surplus, so to apply a test requiring no uncertainty to the recognition of an asset is inconsistent with the accounting for pension plans as a whole. Further, the term used to describe the cap in the asset ceiling test is "expected future benefit". Expected does not equate to certainty.

We acknowledge that the existence of a jointly sponsored plan is not explicitly contemplated in the paragraphs .50 to .59 that deal with the evaluation of whether a pension asset is impaired and believe that this intersection of the guidance should be further clarified in the project that PSAB has on its current agenda with respect to PS 3250 and PS 3255.

In the meantime, we continue to believe that we have appropriately interpreted PSAB that an asset exists and that the valuation of the asset is informed by management's best estimates which reflect expectations of the most likely outcome.

In connection with valuing the asset, we believe uncertainties should be evaluated taking into consideration the following (due to the magnitude of the OTPP-related asset, most of these considerations focus on that plan):

- The contractual agreements between the sponsors that provide for the sharing of risks and benefits.
- There is a contractual obligation under the Partners' Agreement that the Province and the Ontario Teachers Federation (OTF) negotiate and set both the benefits and the contributions every three years. A failure to agree might lead to mediation or arbitration, but not an assumption of the 'status quo'.
- The specific framework within the Funding Management Plan for OTPP that contemplates specific funding zones and when contribution reductions will be discussed by the sponsors.
- The historical actions of the parties, which reflect a history of working together to resolve both funding deficits and use of funding surpluses. As previously discussed, most recently in 2014, 2015 and 2016 with respect to OTPP, the sponsors agreed to restore indexation, which resulted in a decrease in the amount of future contributions that the Province would have otherwise had to pay to the plan in the amount of \$7.8 billion (\$4.3B for the 2016 change, \$1.9B for the 2015 change, and \$1.6B for the 2014 change).
- Other regulatory requirements, such as provisions in the Income Tax Act that limit the accumulation of surplus in a plan.

As previously provided to you in August, actuarial reports were completed to assess the requirement for a valuation allowance. The results of those reports are summarized here:

Plan	Asset recorded by Province (in billions)	Asset ceiling computed (in billions) and assumption re: years of contributions	Number of years contributions could be made without resulting in a valuation allowance
OTPP	\$ 10.1	\$ 29.3 (based on 11 years of contributions noted in the funding report as the period additional contributions are required)	33
OPSEUPP	\$ 0.5	\$ 2.8 (based on 17 years of contributions noted in the funding report as the period additional contributions are required)	35

The number of years that contributions are assumed in determining the asset ceiling are those minimum contributions that are required to be made "regardless of any surplus" (3250.56(a)). There is no guidance on the meaning of minimum contributions for purposes of this calculation in PS 3250. For purposes of the OTPP, 11 years has been used. However, it is worth noting that up to 33 years of contributions could be factored into this calculation before the calculation would result in a conclusion that the OTPP asset is impaired, and 35 years for the OPSEUPP asset.

An important consideration in performing these asset ceiling calculations is how long contributions will be required to be made. Under the Partners' Agreement, the parties are mandated to negotiate benefits and contributions every three years as a minimum and if agreement is not reached, it is reasonable to expect that a change in contributions might occur rather than the 'status quo' being retained. In addition to the above calculations, we have considered the impact of the provision in the Income Tax Act that limits the amount of surplus that can be held in a plan. Based on preliminary analysis, assuming no changes to management's assumptions, contribution levels and benefits provided to employees, we believe that the OTPP will be required to begin using its surplus through a reduction in contributions in between 10 and 15 years into the future. Taking this timing into account, the pension asset ceiling is in excess of the pension asset recognized (pension asset ceiling of between \$19.9 Billion and \$22.3 Billion); therefore indicating that no valuation allowance is required. We would be happy to share this analysis with you, in addition to the actuarial reports we have already provided.

We have also requested that additional modelling be prepared starting with an assumption that 50% of the surplus is used for benefit improvements and the balance is used for contribution reductions and will share that analysis and its impact on the valuation allowance once complete. We would be pleased to request other modelling based on different assumptions with your input and feedback to assess the sensitivity of the assumptions on the need for and/or quantum of a valuation allowance.

We acknowledge that the estimate of the valuation allowance, and in fact pension plan accounting as a whole, is subject to measurement uncertainty. As previously noted, accounting for pension plans involves significant estimates in all aspects of the accounting whether that be in valuation of non-traded assets, estimation of the economic assumptions used to value current service cost and the projected benefit obligation or the valuation allowance. One of the key assumptions impacting the measurement of the pension asset is the discount rate which reflects management's best estimate of rate of return. The rate used by the government is permissible under PSAB and consistent with rates followed by other senior Canadian governments. Historical results since the inception of the plans corroborate the reasonableness of the rates used by management and the continued appropriateness for purposes of determining pension expense and pension assets on the Province's books.

PS 2130 provides guidance on dealing with measurement uncertainty through additional disclosure in the financial statements, which we believe would be a useful addition to the current year financial statements.

PS 2130 also provides guidance on how to deal with measurement uncertainty and includes the following guidance:

.12 The estimation of the amount of an item to be accrued or disclosed in financial statements may be based on information that provides a range of amounts. When a particular amount within such a range appears to be a better estimate than any other, that amount would be used. When uncertainty exists, estimates used would attempt to ensure that assets, revenues and gains are not overstated and that liabilities, expenses and losses are not understated. Estimates of the financial effect are determined using professional judgment, supplemented by experience of similar transactions and, in some cases, reports from independent experts. Estimates include any additional evidence provided by subsequent events occurring after the financial statement date.

.13 As a result of the estimation process, a government would be able to determine a range of reasonably possible amounts in accordance with assumptions that are realistic, supportable, internally consistent, and consistent with planned courses of action. The range of reasonably possible amounts would exclude amounts at the outer edges of possibility since such amounts, while possible, are considered to be outside the best estimate range. Relevant information available to the government to develop a reasonable range includes past experience, precedents, and opportunities to reach alternative arrangements.

We believe this guidance needs to inform our conclusion on the appropriate valuation of the pension assets.

The actuarial reports prepared so far would support the Province's existing valuation of the assets, as opposed to a full write-down that you had previously suggested. They would also result in the Province reporting a \$1.5 billion increase in the value of this asset in 2015-16.

In order to expeditiously finalize the 2015-16 Public Accounts with a view toward obtaining an unqualified audit opinion from your Office, we would be prepared to consider:

- Any feedback with respect to what you would consider to be reasonable assumptions to value the asset, based on the guidance in the standards and any further actuarial modelling.
- Not increasing the value of the asset in 2015-16 by \$1.5 billion, and instead adding this amount to the annual deficit, if in your view this issue would benefit from further detailed review and assessment of the valuation assumptions. In connection with this, we would propose to engage an actuarial firm to provide an opinion on the valuation of the pension assets, and in connection with that we would propose to work with your office on the parameters of the request. We would be prepared to work with you on this through the remainder of the year so that we can come to an agreement for the 2016-17 Public Accounts and make any adjustments as necessary at that time.

In conclusion, based on external accounting, actuarial and legal advice, we believe that the OTPP and OPSEUPP-related pension assets should continue to be recorded on the books of the Province. We recognize that the estimation and judgement used in the assessment of whether a valuation allowance is required is significant. We have sought out actuarial modelling to assess the reasonable estimates of

when the surplus will result in contribution reductions. Based on the results of those models to date, no valuation allowance appears to be required. We continue to work through additional scenarios to assess the impact on the value of the asset.

We welcome the opportunity to have a conversation with you with respect to the reasonability of management's assumptions on intended future benefit of the asset (benefit improvements vs. contribution reductions) and associated modelling to undertake to value these assets. In light of the timing and complexity related to this issue, for purposes of the 2015-16 Public Accounts, we are amenable to considering alternatives which would enable a timely tabling of the Public Accounts while preserving the integrity of the Province's overall financial position and results and reflects an agreement to continue to collaborate with you on refining the government's pension benefit valuations on a prospective basis.



Scott Thompson
Deputy Minister
Ministry of Finance



Greg Orenszak
Deputy Minister, Treasury Board and Secretary to
Treasury Board/Management Board of Cabinet
Treasury Board Secretariat

- c. Cindy Veinot
Nadine Petsche
Susan Klein
Bill Pelow

D1 - OPCDISPPDDeloitte - Meeting Notes.pdf

**OPCD/Income Security and Pension Policy (ISPPD)/Deloitte
Centre for Public Sector Labour Relations and Compensation (CFPSLRCD)
Kickoff Meeting
Pension Asset Ceiling Test
August 4, 2016
MEETING NOTES**

Attendees

OPCD

Nadine Petsche
Bharat Patel
Pauline Fong
JD Fu

ISPPD

Alex Killoch
Ingrid Tsang

CFPSLRCD

Janette Jozefacki
Michael MacPherson

AON Hewitt

Allan Shapiro

OPTrust

Danny Goraichy

Deloitte LP

Trevor Gary
Martin Raymond
Matt Colley (absent)

Meeting notes:

Alex Killoch introduced the role of the Public Sector Pension Policy Branch as having responsibility for establishing management's best long term assumptions and communicating with pension plans. He introduced Allan Shapiro as the independent actuary engaged by his division to provide assessments to the government in matters related to the TPP. Danny Goraichy was introduced as the VP actuarial services and plan policy for OPTrust related matters. Alex explained that he sits on the Teacher's Partner Committee while Janette Jozefacki sits on the OP Trust sponsor board.

Alan Shapiro provided an overview of his work done to date on the TPP which focused on two main questions: access to benefits (economic value) which would be demonstrated by entitlements under TPP which is subject to 50/50 sharing. He described the Joint Sponsored Pension Plan as one in which both the costs and the risks are shared 50/50, including deficit contributions which he compared with PSAB's references which describes an alternative situation where the total cost is calculated first and then the employee contributions are netted. Alan observed that the analysis in his memo (circulated prior to the call) appeared to be consistent with the documentation provided by Deloitte which highlighted matters for consideration.

Martin Raymond from Deloitte commented on Alan Shapiro's analysis:

- Observed 'zones' referenced in the document where different methodologies might apply (suggested that these zones could be more clearly defined)

- Referenced process requirements that might need to be followed in order for the province to benefit from the surplus, but that they appear to be there (suggested a more detailed review of the appropriate policy documentation to confirm)
- Confirmed that the TPP is accounted for as a joint defined benefit plan, thus reflecting a 50% share (the ceiling would therefore be calculated based on a 50% share)
- Confirmed that the memo which reflects a \$44M benefit represents 50% of the current service cost based on an open group notion). Martin commented that this long-term view is likely appropriate, observing little evidence of challenges in similar cases
- Martin referred para 56 (3250.056) referring to 'future economic benefit' calculations and in particular referenced recent challenges to analysis where the government has to make minimum contributions regardless of a surplus (suggesting that an approach which ignores this possibility might be considered generous)
- Martin enquired about the indexing assumptions applied (100% vs. 60%). Mercer provided analysis based on 100% indexing which is consistent with the accounting requirements. Some question regarding inflation and how it was factored in conjunction with the 50% joint sponsorship).
- Some discussion regarding the calculation of the assets based on market values vs. market related values and the unamortized gain. Martin referred to recent challenges to use of market related values. Alan advised that \$7-8M would be added if the ½ portion of assets for the province were calculated using fair values.
- Martin acknowledged considerations under *Balanced Budget legislation* and the significant impact that could result if the asset ceiling triggers (on the statement of operations)
- He observed that the ceiling could be triggered by something that might take effect in future years, and commented that under IFRS the standards were structured to help manage the impact, but that PSAB offered no such relief).
- With regards to the Province's possible access to a surplus, he advised that any past ability to realize the economic value (i.e. precedent) may have been under different policy terms and conditions, and that it would be important to ensure facts were clearly identified to support accessibility.
- With regards to entitlements, Martin advised that some policies have been modified in recent years to allow for sponsors to have temporary access to benefits on a temporary basis (under zones) rather than wait until the surplus is large enough to benefit on a more permanent basis.
- Zones were introduced to help to take advantage of benefits before the surplus reached a large amount.
- Preliminary analysis indicates a \$20B surplus based on market related values and \$28B based on market values (actual surplus vs. assets reported on balance sheet) which equates to about 15-20 years of current service cost.
- From the perspective of the ability of both sides being able to reduce their contribution over time, the \$25B would equate to about a 6% permanent change in current service costs where 1% is about 4B in costs.
- There is more challenge in recent years where huge asset positions are being reported.

- The funding position is more stable (there is more margin in funding calculations)
- Mercers also provided calculations based on a 'closed group' basis and the surplus was still significant at \$18B—20B for existing employees.
- Martin also advised of actions taken by other jurisdictions (e.g. Quebec) to address balanced budget volatility and potential negative fiscal impacts (2007 changes to balanced budget definition)

Next Steps:

1. OPCD to advise the OAG that based on preliminary analysis and discussion, unlikely to have a fiscal impact for 2015-16 and that further documentation to follow.
2. Documentation for OPCD and OAG files to be prepared, covering analysis related to the current year's public accounts as well as considerations for future years (as input to upcoming fiscal planning process).

Documentation to build upon Alan Shapiro's analysis, expanded for additional areas identified by Deloitte (details on zones, facts as related to current policy supporting province's access to benefits, potential challenges and considerations related to para 56, relevant indexing assumptions, market values vs. market related values. Also, consider including reference to IFRS mechanisms which would alleviate impact but which are not available under PSAB.

In light of timing considerations for Public Accounts, Deloitte may contact Alan Shapiro directly to discuss approach and relative roles in completing documentation. Target date for draft documentation: August 12th.

3. OP Trust – similar analysis will have to be completed for the OPSEU pension plan. Deloitte to take the lead on preparing similar analysis for OPTrust as done for TPP. Deloitte to identify information required from Janette and or Danny to complete analysis. Target date for completion: August 16th

D1A - Pension Asset Valuation Test analysis.pdf

Plan	OTPP	(in \$B)	Informa
a)	Value of asset - market value used	85,7	From Excel File
b)	Value of accounting obligation	58,2	From Excel File
c)	Surplus (deficit)	27,5	a - b
d)	Unamortized (gains) losses - market value used	-16,2	From Excel File
e)	Adjustment for March 31, 2016	-0,9	From Excel File
f)	Asset (liability) position	10,4	c + d + e
g)	Specific Government adjustment	-0,3	From Excel File
h)	Final Asset (liability) position on balance sheet	10,1	f + g
i)	Adjusted benefit asset	10,1	$h - \max\{0; d\}$ as per PS3250.053
j)	Expected future benefit	29,3	Minimum EFB basis calculation illustrated (k - l + m)
k)	Perpetuity of employer service cost	44,6	r)
l)	Minimum funding requirement	15,3	s), assuming contribution to 2026 as per the report for special contribution, no excess return used for simplicity
m)	Surplus withdrawal	0,0	As per the plan funding policy, the employer would have some access to surplus withdrawal. For simplicity, we have used 0 in the test.
TEST : Valuation allowance = $\max\{0; i - j\}$		0,0	No valuation allowance required, no adjustment to the balance sheet asset position, PS3250.050 and PS3250.054

Expected Future Benefit Calculations

n)	Total plan service accrual accounting	2,9	From AON Memorandum (August 2, 2016) and OTPP Jan 26, 2016 documentation
o)	Employer service accrual share	50%	From AON Memorandum (August 2, 2016) and OTPP Jan 26, 2016 documentation
p)	Expected return on asset - accounting assumption	6,25%	From AON Memorandum (August 2, 2016) and OTPP Jan 26, 2016 documentation
q)	Salary increase - accounting assumption	3,00%	From AON Memorandum (August 2, 2016) and OTPP Jan 26, 2016 documentation
r)	Perpetuity of Employer service cost - accounting	44,6	$n * o / (p - q)$, present value of all future service cost to the employer (the 50% share)
s)	Minimum employer funding requirement as at March 31, 2016	15,3	Sum of the present value of future required contributions (table below), using the funding report and the period of additional contribution requirement (until 2026, funding report page 15)
t)	Expected Future Benefit	29,3	$r - s$, Perpetuity of employer service cost minus the minimum funding requirement as at March 31, 2016

Year	Estimated Contributions ¹	Present value of each contribution		% assumpt	\$B return
2016	1,3	1,2	Accounting return on asset	6,25%	5,4
2017	1,7	1,6	Funding return on asset	4,85%	4,2
2018	1,8	1,6	Excess return each year using best estimate		1,2
2019	1,8	1,5			
2020	1,9	1,5			
2021	2,0	1,4			
2022	2,0	1,4			
2023	2,1	1,3			
2024	2,1	1,3			
2025	2,2	1,3			
2026	2,3	1,2			

¹ Estimated contributions from funding report (p.16), increased based on salary increase accounting assumption

² Remaining contributions used as at March 31, 2016 (9 months for 2016)

Plan	OPSEU	(in \$M)	Information
a)	Value of asset - market value used	9 200	From Excel File
b)	Value of accounting obligation	7 778	From Excel File
c)	Surplus (deficit)	1 422	a - b
d)	Unamortized (gains) losses - market value used	-558	From Excel File
e)	Adjustment for March 31, 2016	-292	From Excel File
f)	Asset (liability) position	572	c + d + e
g)	Specific Government adjustment	-52	From Excel File
h)	Final Asset (liability) position on balance sheet	520	f + g
i)	Adjusted benefit asset	520	$h - \max(0; d)$ as per PS3250.053
j)	Expected future benefit	2 750	Minimum EFB basis calculation illustrated (k - l + m)
k)	- Perpetuity of employer service cost	6 262	r)
l)	- Minimum funding requirement	3 511	s), assuming contribution to 2026 as per the report for special contribution, no excess return used for simplicity
m)	- Surplus withdrawal	0	As per the plan funding policy and plan text, it is unclear whether the employer would have some access to surplus withdrawal. For simplicity, we have used 0 in the test.
TEST : Valuation allowance = $\max(0; i - j)$		0,0	No valuation allowance required, no adjustment to the balance sheet asset position, PS3250.050 and PS3250.054

Expected Future Benefit Calculations

n)	Total plan service accrual accounting	407	From OPSEU Jan 25, 2016 documentation
o)	Employer service accrual share	50%	From OPSEU Jan 25, 2016 documentation
p)	Expected return on asset - accounting assumption	6,25%	From OPSEU Jan 25, 2016 documentation
q)	Salary increase - accounting assumption	3,00%	From OPSEU Jan 25, 2016 documentation
r)	Perpetuity of Employer service cost - accounting	6 262	$n * o / (p - q)$, present value of all future service cost to the employer (the 50% share)
s)	Minimum employer funding requirement as at March 31, 2016	3 511	Sum of the present value of future required contributions (table below), using the funding report and the period of additional contribution requirement (until 2032)
t)	Expected Future Benefit	2 750	$r - s$, Perpetuity of employer service cost minus the minimum funding requirement as at March 31, 2016

Year	Estimated Contributions ¹	Present value of each contribution		% assumpt	\$M return
2016	204	199	Accounting return on asset	6,25%	575
2017	279	259	Funding return on asset	5,85%	538
2018	287	251	Excess return each year using best estimate		37
2019	296	243			
2020	305	236			
2021	314	228			
2022	323	221			
2023	333	215			
2024	343	208			
2025	353	202			
2026	364	196			
2027	375	190			
2028	386	184			
2029	398	178			
2030	410	173			
2031	422	167			
2032	435	162			

¹ Estimated contributions from funding report (p.12), increased based on salary increase accounting assumption

² Remaining contributions used as at March 31, 2016 (9 months for 2016)

Plan	OTPP	(in \$B)
a)	Value of asset - market value used	85,7
b)	Value of accounting obligation	58,2
c)	Surplus (deficit)	27,5
d)	Unamortized (gains) losses - market value used	-16,2
e)	Adjustment for March 31, 2016	-0,9
f)	Asset (liability) position	10,4
g)	Specific Government adjustment	-0,3
h)	Final Asset (liability) position on balance sheet	10,1
i)	Adjusted benefit asset	10,1
j)	Expected future benefit	10,2
k)	- Perpetuity of employer service cost	44,6
l)	- Minimum funding requirement	34,4
m)	- Surplus withdrawal	0,0
TEST : Valuation allowance = max (0 ; i - j)		0,0

Expected Future Benefit Calculations

n)	Total plan service accrual accounting	2,9
o)	Employer service accrual share	50%
p)	Expected return on asset - accounting assumption	6,25%
q)	Salary increase - accounting assumption	3,00%
r)	Perpetuity of Employer service cost - accounting	44,6
s)	Minimum employer funding requirement as at March 31, 2016	34,4
t)	Expected Future Benefit	10,2

Information
From Excel File
From Excel File
a - b
From Excel File
From Excel File
c + d + e
From Excel File
f + g
h - max (0 ; d) as per PS3250.053
Minimum EFB basis calculation illustrated (k - l + m)
r)
s), assuming contribution to 2026 as per the report for special contribution, no excess return used for simplicity
As per the plan funding policy, the employer would have some access to surplus withdrawal. For simplicity, we have used 0 in the test.
No valuation allowance required, no adjustment to the balance sheet asset position, PS3250.050 and PS3250.054

From AON Memorandum (August 2, 2016) and OTPP Jan 26, 2016 documentation
From AON Memorandum (August 2, 2016) and OTPP Jan 26, 2016 documentation
From AON Memorandum (August 2, 2016) and OTPP Jan 26, 2016 documentation
From AON Memorandum (August 2, 2016) and OTPP Jan 26, 2016 documentation
$n * o / (p - q)$, present value of all future service cost to the employer (the 50% share)
Sum of the present value of future required contributions (table below), using the funding report and assuming a 33 year period of additional contribution requirement (until 2048)
r - s, Perpetuity of employer service cost minus the minimum funding requirement as at March 31, 2016

Year	Estimated Contributions ¹	Present value of each contribution
2016	1,3	1,2
2017	1,7	1,6
2018	1,8	1,6
2019	1,8	1,5
2020	1,9	1,5
2021	2,0	1,4
2022	2,0	1,4
2023	2,1	1,3
2024	2,1	1,3
2025	2,2	1,3
2026	2,3	1,2
2047	4,2	0,6
2048	4,3	0,6

	% assumpt	\$B return
Accounting return on asset	6,25%	5,4
Funding return on asset	4,85%	4,2
Excess return each year using best estimate		1,2

¹ Estimated contributions from funding report (p.16), increased based on salary increase accounting assumption
² Remaining contributions used as at March 31, 2016 (9 months for 2016)

Plan	OPSEU	(in \$M)	Information
a)	Value of asset - market value used	9 200	From Excel File
b)	Value of accounting obligation	7 778	From Excel File
c)	Surplus (deficit)	1 422	a - b
d)	Unamortized (gains) losses - market value used	-558	From Excel File
e)	Adjustment for March 31, 2016	-292	From Excel File
f)	Asset (liability) position	572	c + d + e
g)	Specific Government adjustment	-52	From Excel File
h)	Final Asset (liability) position on balance sheet	520	f + g
i)	Adjusted benefit asset	520	h - max (0 ; d) as per PS3250.053
j)	Expected future benefit	547	Minimum EFB basis calculation illustrated (k - l + m)
k)	Perpetuity of employer service cost	6 262	r)
l)	Minimum funding requirement	5 714	s), assuming contribution to 2026 as per the report for special contribution, no excess return used for simplicity
m)	Surplus withdrawal	0	As per the plan funding policy and plan text, it is unclear whether the employer would have some access to surplus withdrawal. For simplicity, we have used 0 in the test.
TEST : Valuation allowance = max (0 ; i - j)		0,0	No valuation allowance required, no adjustment to the balance sheet asset position, PS3250.050 and PS3250.054

Expected Future Benefit Calculations

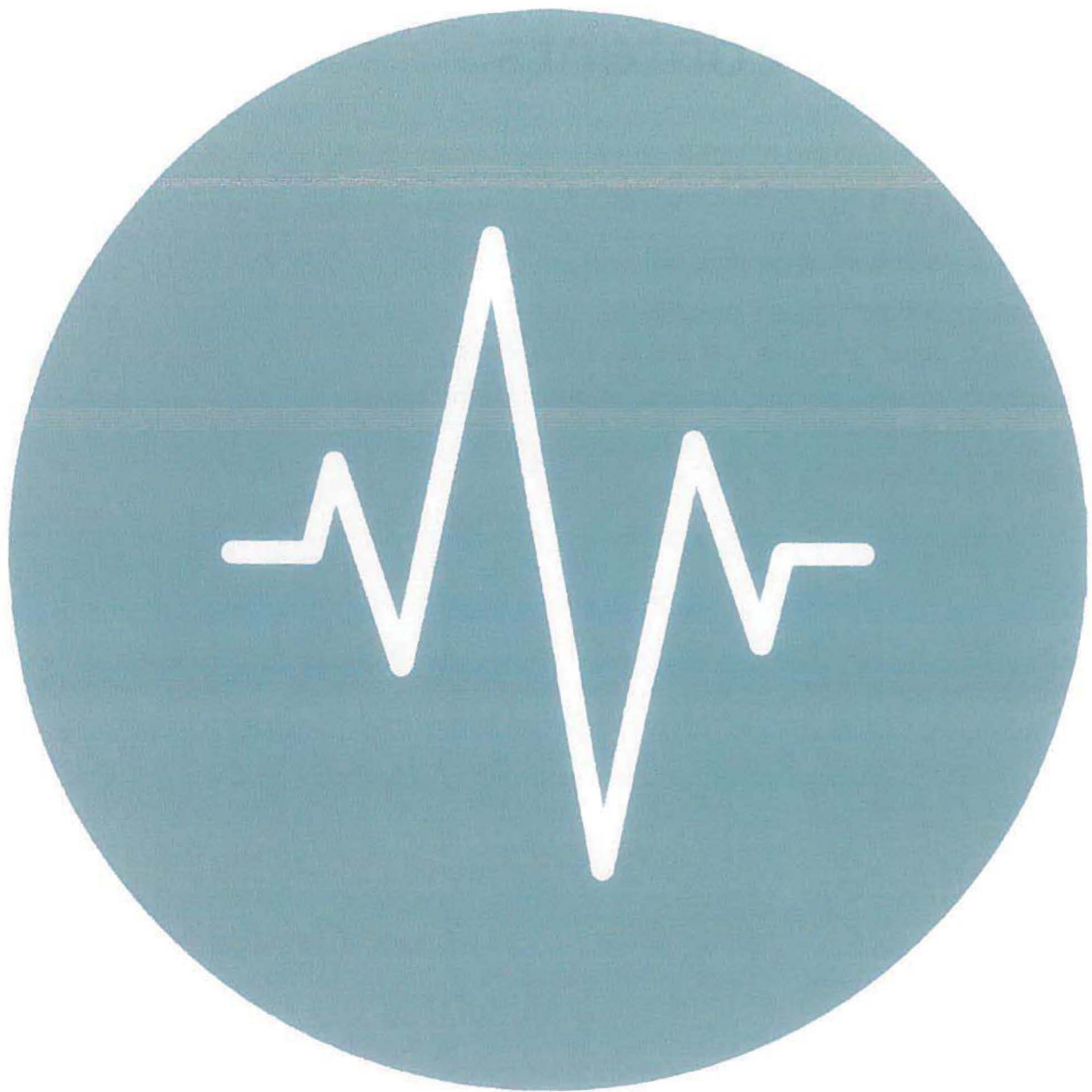
n)	Total plan service accrual accounting	407	From OPSEU Jan 25, 2016 documentation
o)	Employer service accrual share	50%	From OPSEU Jan 25, 2016 documentation
p)	Expected return on asset - accounting assumption	6,25%	From OPSEU Jan 25, 2016 documentation
q)	Salary increase - accounting assumption	3,00%	From OPSEU Jan 25, 2016 documentation
r)	Perpetuity of Employer service cost - accounting	6 262	$n * o / (p - q)$, present value of all future service cost to the employer (the 50% share)
s)	Minimum employer funding requirement as at March 31, 2016	5 714	Sum of the present value of future required contributions (table below), using the funding report and assuming a 35-year period of additional contribution requirement (until 2050)
t)	Expected Future Benefit	547	$r - s$, Perpetuity of employer service cost minus the minimum funding requirement as at March 31, 2016

Year	Estimated Contributions ¹	Present value of each contribution		% assumpt	\$M return
2016	204	199	Accounting return on asset	6,25%	575
2017	279	259	Funding return on asset	5,85%	538
2018	297	251	Excess return each year using best estimate		37
2019	296	243			
2020	305	236			
2021	314	228			
2022	323	221			
2023	333	215			
2024	343	208			
2025	353	202			
2026	364	196			
2027	375	190			
2028	386	184			
2029	398	178			
2030	410	173			
2031	422	167			
2032	435	162			
2049	718	96			
2050	740	93			

¹ Estimated contributions from funding report (p.12), increased based on salary increase accounting assumption

² Remaining contributions used as at March 31, 2016 (9 months for 2016)

D1B - Deloitte - Pension Asset Ceiling Analysis - OTTP - August 19 2016.pdf



**Analysis of Pension Asset Ceiling
Accounting Considerations for the Office of
the Provincial Controller Division re:
Ontario Teachers' Pension Plan (OTPP)**

August 19, 2016

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Section 1 – Summary of the situation	2
Section 2 – Relevant PS3250 paragraphs	4
Section 3 – Asset ceiling test and EFB calculation basis	6
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Introduction

In preparation of the Province of Ontario Financial statements, the Office of the Provincial Controller Division (OPCD) has retained Deloitte to provide support in analyzing issues around pension accounting. The present document is prepared in relation to the assessment of the application of public sector accounting standards as related to asset ceiling and valuation allowance to the Ontario Teachers' Pension Plan (OTPP).

The relevant accounting standard referenced in our analysis is public sector accounting standard PS3250 on retirement benefits.

The document will cover the following elements:

- Summary of the situation;
- Overview of the accounting paragraphs that apply to this and the explanation;
- Review of the considerations that go into the asset ceiling test and the Expected Future Benefit (EFB) calculation;
- Review of the employer access to future contribution reduction or surplus withdrawal;
- Summary of findings relating to observations made in discussing the applicability of the asset ceiling test for Ontario's 2015-16 Financial statements.

We are available to discuss the content of this document.



Martin Raymond
Partner, FSA, FCIA



Trevor Gary
Senior Consultant

Section 1 – Summary of the situation

The OPCD in preparation of the Ontario Financial statements for 2015-16 has requested support to assess potential asset ceiling risks in relation to the calculation for the OTPP reported on the Province's consolidated financial statements.

Here are a few facts obtained from discussion / documentation around the OTPP and its accounting:

- The plan is covered by its own legislation, the Teachers' Pension Act
- Most recent funding report was prepared at January 1, 2015 with contributions set for 2015, 2016 and 2017
- The OTPP is a Joint Sponsored Pension Plan (JSPP) as per the Ontario Pension Benefit Act (PBA)
- The plan is accounted for using Joint defined accounting provisions of the standards and the government portion of the plan is determined at 50% of the overall plan, this reflects the 50/50 sharing principle underlying the OTPP (per Teachers' Pension Act par. 5 (1.1) and 10 (1) and page 16 of the funding valuation report – extracts provided in Section 4)
- The total accounting service accrual (service cost) is about \$2.9B per year calculated in accordance with PSAB (per the Jan. 26, 2016 Mercer letter to OTPP)
- The recent accounting surplus measure (Dec 31, 2015) for the portion of the government (50% of the total plan) is around \$20B, using a market-related value of assets (smoothed assets). The surplus using fair value measure of assets is about \$28B (per the excel supporting file for accounting calculations received).

We note that the accounting actuarial values are prepared at Dec 31, 2015 and that an adjustment for March 31, 2016 is performed to obtain the year-end values. The balance sheet asset position for the OTPP can be illustrated as follows: (per the excel supporting file for accounting calculations received)

(all figures in \$B)	Total plan	50% Share of the plan
Market related value of assets	157.0	78.5
Value of obligation	116.4	58.2
Surplus (deficit)	40.6	20.3
Unamortized (gains) losses	(18.0)	(9.0)
Adjustment for March 31, 2016	(1.8)	(0.9)
Asset (liability) position	20.8	10.4
Specific Government adjustment		(0.3)
Final asset (liability) position on balance sheet		10.1

This document will cover the following key questions:

- What are the key considerations that go into the asset ceiling determination?
- What is the impact of an asset ceiling for 2015-16, if applicable?
- Is there an asset ceiling impact for OTPP as at March 31, 2016 (that would apply to the \$10.1B shown above) and if so how is it calculated?

Below is a list of documents and references used in our analysis.

List of documents

Funding management policy (FMP) of OTPP – agreement between the parties to the plan (provided by OPCD)

Asset ceiling documentation prepared by Allan Shapira (Aon) dated August 2, 2016 (provided by OPCD)

Actuarial valuation report of OTPP as at January 1, 2015 – funding purposes – prepared by Mercer (provided by OPCD)

Accounting standards PS3250 on post-employment benefits

Teachers' Pension Act (found on the internet)

Discussions with OPCD and Allan Shapira (incl. overview of some results used in this document) including a summary note prepared by Nadine Petsche, Director of Accounting Policy and Financial Reporting at OPCD (August 4, 2016)

Excel supporting file for accounting calculations (provided by OPCD)

Supporting document from OTPP to OPCD on accounting results, including the communication from Mercer on valuation results for different assumption basis – both documents dated Jan. 26, 2016 (provided by OPCD)

Section 2 – Relevant PS3250 paragraphs

Below are some extracts from the PS3250 which are relevant for calculating the limit on carrying amount of accrued benefit asset (the asset ceiling test) and the joint defined benefit which are relevant to the analysis and position taken for financial statement preparation. Note that the underlined are from us.

Limit on the carrying amount of an accrued benefit asset

.050 *An accrued benefit asset should be presented on a government's statement of financial position net of any valuation allowance. When a defined benefit plan gives rise to an accrued benefit asset, a government should recognize a valuation allowance for any excess of the adjusted benefit asset over the expected future benefit. A change in valuation allowance should be recognized in the statement of operations for the period in which the change occurs.* [SEPT. 2001]

.051 A government with a defined benefit plan may have an accrued benefit asset for accounting purposes. An accrued benefit asset arises when the government's total contributions to the plan, including interest earned thereon, are greater than the retirement benefit expense recognized since the start of the plan. Contributions reflect the funding objectives of the plan. The benefit expense reflects the accounting objectives and may differ for a number of reasons, including the fact that actuarial gains and losses are deferred and amortized in future periods.

.052 A government may benefit from an accrued benefit asset either by withdrawing surplus assets or by taking a contribution holiday or receiving a refund of contributions. The accrued benefit asset may become impaired when there is a plan surplus for accounting purposes that the government is not entitled to benefit from fully. For example, there may be a regulatory moratorium on pension surplus withdrawals or uncertainties as to a government's legal right to use a plan's accounting surplus.

.053 To determine the extent to which an accrued benefit asset may be impaired, the government first determines the adjusted benefit asset. The adjusted benefit asset is the accrued benefit asset less net unamortized actuarial losses (determined on a basis using market value of assets).

.054 The adjusted benefit asset is then compared to the expected future benefit. When the expected future benefit exceeds the adjusted benefit asset, the accrued benefit asset is not impaired and, accordingly, no valuation allowance is required. The chart included as Appendix A to this Section is intended to set out the relationship between the various defined terms.

.055 The objective of the standard in paragraph PS 3250.050 is to limit a government's accrued benefit asset to the amount it can realize in the future. The expected future benefit is a calculated amount representing the benefit a government expects to realize from a plan surplus. An expected future benefit includes any withdrawable surplus or reduction in future contributions.

.056 A government determines its expected future benefit as the sum of:

- the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

.057 A government's expected future accruals for service for the current number of active employees are determined on a basis consistent with that used to determine its accrued benefit obligation. These expected future accruals for service, less required employee contributions and minimum contributions the government is required to make regardless of any surplus, are then discounted back to the current period to determine the present value. The interest rate used to calculate this present value is the expected rate of return on plan assets used to determine the benefit expense in the period.

.058 When administration expenses are paid by the plan and included in the normal cost calculation, a best estimate of the future administration expense is included in the expected future accruals for service. When administration expenses are paid by the plan and not included in the normal cost calculation, the rate of return on plan assets is adjusted to reflect the deduction of the administrative expenses.

.059 A key factor in determining a government's expected future benefit from a defined benefit plan with a plan surplus for accounting purposes is the ability of the government to withdraw assets from the plan. The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal. It excludes any withdrawable plan surplus a government is currently required, or intends, to allocate to employees. A government may not anticipate obtaining a legally enforceable right to withdraw a portion of a plan surplus to which it is not currently entitled, whether on the basis of precedent or otherwise. Accordingly, when withdrawal of plan surplus requires the approval of employees or an appropriate regulatory authority or a court of law, a government excludes any amount subject to this restriction from its expected future benefit until such approval has been obtained. A change in the allocation of surplus between a government and its employees is incorporated into the calculation of the expected future benefit only when it has been agreed to and, when required, approved by the appropriate regulatory authorities.

Joint defined benefit plans

.079 Governments may participate jointly in defined benefit plans where the government shares the risks and rewards jointly with plan participants, represented by a sponsor or sponsors. Joint defined benefit plans are governed by a formal agreement between the sponsors, which establishes that the sponsors have shared control over the plan. A governing board is generally appointed by the joint sponsors with equal representation and a mutually agreed-upon chair.

.080 A government would consider the characteristics of the plan to determine whether it meets the definition of a joint defined benefit plan. In a joint defined benefit plan, funding contributions are shared mutually between the government and the plan members. The sponsors have control over decisions related to the administration of the plan and the level of benefits and contributions on an ongoing basis based on the terms of the contractual agreement. The sponsors share, on an equitable basis, the significant risks associated with the benefit plan. Risk would not be considered to be equitably shared in an arrangement where the government and the joint sponsors fund the plan equally but where the government retains the full risk of the accrued benefit obligation. If the government retains the residual risks it is unlikely that the plan meets the definition of a joint defined benefit plan.

.081 When a government participates in a joint defined benefit plan, the government's risk is limited to its portion of the plan. The government should account for its portion of the plan in accordance with the standards for defined benefit plans. [SEPT. 2001]

.082 A government may convert an existing defined benefit plan for which it is the sole sponsor to a joint defined benefit plan where the risks and benefits are shared. When converting to a joint plan, a government would consider whether there are any special accounting issues that arise, including whether the predecessor plan has been settled or partially settled and/or curtailed or partially curtailed. In assessing such issues a government would have regard to its specific circumstances and the terms of the joint defined benefit plan.

Section 3 – Asset ceiling test and EFB calculation basis

PS3250.053 refers to the adjusted benefit asset. This is the amount on which the asset ceiling test applies (PS3250.054) by comparing it to the Expected future benefit (EFB). In many cases, we are seeing unamortized losses, and the adjusted benefit asset effectively equals the accounting surplus. However, for the OTPP, as shown in the Section 1, it is unamortized gains which exist rather than losses.

In this situation, if we take the OTPP case, we would have:

- Adjusted benefit asset = accrued benefit asset less unamort. losses = \$10.1B - \$0.0B = \$10.1B
- So the amount to test against EFB would be \$10.1B

Further, PS3250.053 refers to market value of assets rather than market-related value of assets that allows for some smoothing of assets gains and losses (which is used under OTPP). Considering that the market value of assets (total plan) is \$171.4B at Dec 31, 2015 as per the excel file for accounting calculation and applying the 50% share, we do get \$85.7B for the Government share. The difference represents gains on assets not yet reflected in the market-related value of assets and therefore, the unamortized (gains) losses are adjusted accordingly for the test. Making the adjustment for market value measures, we would therefore obtain the following:

(all figures in \$B)	50% Share of the plan-market related value	50% Share of the plan market value
Value of assets	78.5	85.7
Value of obligation	58.2	58.2
Surplus (deficit)	20.3	27.5
Unamortized (gains) losses	(9.0)	(16.2)
Adjustment for March 31, 2016	(0.9)	(0.9)
Asset (liability) position	10.4	10.4
Specific Government adjustment	(0.3)	(0.3)
Final Asset (liability) position on balance sheet	10.1	10.1

We note that the end result for the test is still \$10.1B adjusted benefit asset on either market-related value or market value. This occurs because the test is showing unamortized gains in both basis. If unamortized losses were present instead, the results of the test would differ.

The above are basic considerations of the asset ceiling test and mostly straight-forward in application. The most challenging part of the asset ceiling test is identifying the basis to value the EFB under PS3250.056. There are various elements to be considered in this calculation that will determine the amount to use. The definition of EFB incorporates key components that need some analysis. The present section deals with these components.

Definition of EFB

.056 A government determines its expected future benefit as the sum of:

- a. the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- b. the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

Key components of the definition are:

- present value calculation
- future service accruals
- current number of active employees
- required employee contributions
- minimum contributions the government is required to make regardless of any surplus
- amount of surplus that can be withdrawn

Current number of employees – Open group notion

Under the definition of the EFB, it is indicated that the present value of future accruals for service is to be based on the current number of active employees. The application of this particular element of the calculation has generally been seen in practice as assuming that the plan would have a perpetuity of future accruals since active employees terminating or retiring would be replaced by new active employees, keeping the number equal to the current population. Unless there is signal or expectation of reduction in population (e.g. if the plan was closed to new entrants or if the employer is going through downsizing), this open group notion has been observed in practice.

Future service accruals - Projection of salary

Under the definition of the EFB, we are performing a present value calculation and therefore this assumes that the underlying components of the calculation are projected into the future (future accruals and contributions). In performing such projection, an increase in salary based on the accounting assumption for salary increase would be applicable.

Present value – discounting effect

Calculation of a present value requires the determination of an interest rate to use. Under PS3250.057, the interest rate used is determined in reference to the expected rate of return on plan assets used to determine the benefit expense.

Future service accruals and required employee contributions - Joint Defined Benefit accounting

Since the OTPP is accounted for based on joint defined benefit provisions of the accounting standards, the asset ceiling test needs to be performed based on the government's portion of the plan (par. PS3250.081). Looking at the EFB definition, it means that the calculation of PS3250.056 a) needs to be adjusted to only reflect the employer share (50% of the total accruals) and to remove any employee contributions that were considered in the calculation (since this relates to the employee portion of the plan).

Observations on PS3250 EFB calculation (in practice)

Deloitte has shared with management that historically there has been in practice a very liberal application of the PS3250 asset ceiling calculation. The EFB has generally been determined as the present value of all future employer service accruals (perpetuity) considering the increase of salary factored into the calculation. This approach is based on View 1 described in the minimum employer contribution required discussion below. One simple way of obtaining that value is based on the following calculation:

- Determine the total accrual for service for one year
- Determine the accrual for service for the employer for one year (i.e. total accrual net of the employee portion)
- Calculate the perpetuity of increasing service cost as follows : accrual of service for employer / (expected return on plan assets – salary increase)
- To illustrate this for OTTP, we did get the following information
 - Total service accrual = \$2.9B
 - Employer service accrual (assuming 50% share) = $\$2.9B / 2 = \$1.45B$
 - Expected return on plan assets = 6.25% (per the Jan 26, 2016 document and the observed values used in the excel file for accounting calculation)
 - Salary increase = 3% (excluding merit/promotional scale for simplicity - per the Jan 26, 2016 document and the observed values used in the excel file for accounting calculation)
 - Perpetuity = $\$1.45B / (6.25\% - 3\%) = \$44.6B$

Minimum employer contributions required regardless of any surplus – Views for determination in EFB calculation

There has been in recent years more questions around the meaning of the EFB definition and mostly around what the last part of PS3250.056 a) means. The terminology used of “minimum employer contribution required regardless of any surplus” has been discussed and there have been different views on what this represents.

One view (View 1) focus on whether there is a minimum employer contribution under the plan / legislation that is required even if a surplus would be present. For instance, a plan contribution could be defined as always being at least of 5% of salaries. In such circumstances, there would be a contribution requirement to a minimum level for every year even when surplus is present. If no such minimum exists and there is a possibility to get to 0% contribution, for instance in surplus position, then there would be no minimum contribution required “regardless of any surplus”. This view leads to no reduction in the EFB calculation in cases where no minimum % contribution exists in the plan provisions. In the example above, the perpetuity of \$44.6B is not reduced and therefore EFB remains at \$44.6B.

Another view (View 2) is that minimum required contribution must at least consider the effect of the most recent funding valuation report. This report determines what contribution requirement applies to the current period of the valuation report and until a new report is completed. For instance, if the employer needs to contribute for the next 3 years a certain amount of contribution (service cost and special contribution for deficit), then this represents the minimum required employer contribution regardless of any surplus. As an example, under the most recent funding report of the OTTP (Jan 1, 2015) this amount is about \$1.7B per year for 2015, 2016 and 2017 which includes service cost and also special contributions. Contributions from 2018 will be determined based on a new valuation report and therefore are unknown as of now (no minimum required contribution on the valuation date for years beyond 2017). In the example above, the perpetuity of \$44.6B is reduced by 2 years of \$1.7B (excluding interest for simplicity) for an EFB of \$41.2B.

Finally, a more extreme view (View 3) could be to actually prepare detailed future projections of funding valuation results on either a deterministic calculation with identification of the actual year(s) when funding surplus would be present or a stochastic calculation to identify what is the probability of occurrence of funding surplus in future years and the outcome in those cases for contribution reduction/surplus withdrawal. Such an approach would need the inclusion of some many complex assumptions and the preparation of a high volume of calculations. In the example above, the perpetuity of \$44.6B would be reduced more than View 1 or View 2 because of possible future years in the projection that lead to required contribution payments.

We have never seen in practice the use of View 3 under PS3250, while View 1 has been largely used historically. On the other hand, we note that View 2 has been recently observed as a possible emerging interpretation of the paragraph 3250.056.

Amount of surplus that can be withdrawn and contribution reduction availability – OTPP plan characteristics

One element of importance (PS3250.052 and PS3250.059) is to identify whether the employer does have access to the surplus based on legislation and plan characteristics. Is there really some way the government can either withdraw surplus from the plan or reduce future contributions through contribution holiday. The OTPP does have its own Legislation (Teachers' Pension Act) and a Funding policy (Funding Management Policy – FMP) agreed between employer / employees to determine whether and how surplus can be used under the plan. The FMP provides insight on this significant element and is dealt with in the next section.

Section 4 – Sharing principle, contribution reduction and surplus withdrawal

Extracts from the Teachers' Pension Act

The following paragraphs of the Teachers' Pension Act are supporting elements for the use of the 50 / 50 sharing of contributions - paragraph 5. (1.1) - and also support the use of the Funding Management Policy agreed between the parties for treatment of the surpluses and deficits – paragraph 10. (1) 3.

Contributions by the Crown

5. (1) The Minister of Finance shall pay from the Consolidated Revenue Fund an amount equal to contributions under the pension plan payable by the Minister of Education. R.S.O. 1990, c. T.1, s. 5 (1); 1993, c. 39, s. 3 (1); 2005, c. 31, Sched. 21, s. 2 (1).

Matching contributions

(1.1) The total amount of the contributions payable by the Minister of Education and the employers who contribute under the pension plan in respect of any year shall not exceed the amount of contributions payable by or on behalf of active plan members in respect of credited service for that year. 1991, c. 52, s. 3; 1993, c. 39, s. 3 (1); 2005, c. 31, Sched. 21, s. 2 (2).

Joint management

10. (1) The Minister of Education and the executive of The Ontario Teachers' Federation may enter into an agreement that provides for the following matters:

1. The joint management of the pension plan by the Minister and the executive of the Federation.
2. The composition of the Board, the appointment of the members of the Board and the delineation of the powers and duties of the Board.
3. The sharing of entitlement to gains or surplus under the plan and of liability for deficiencies in the pension fund by the Minister, the employers who contribute under the plan and the active plan members.
4. The amendment of the plan, including the amendment of Schedule 1, by agreement between the Minister and the executive of the Federation.
5. The resolution of disputes between the Minister and the executive of the Federation with respect to amendments to the plan.
6. Any other matter to which the Minister and the executive of the Federation agree. 1991, c. 52, s. 6; 1993, c. 39, s. 5; 2005, c. 31, Sched. 21, s. 4 (1).

Extracts from the most recent funding valuation report (Jan. 1, 2015 – page 16)

The extracts show that Government contributions are matching employees, besides a small portion for LT disability cases and also that there might be an additional contribution for what is referred as foregone inflation. These are supporting the assessment of the 50 / 50 sharing nature of the plan.

- The Province or Designated Employers, as the case may be, should generally match active teacher contributions. However, in the case of teachers on LTIP, they should pay 12.0% (6.9% for Designated Employers if disability occurred before January 1, 1991) of the member's pensionable earnings, indexed to inflation in accordance with the Teachers' Pension Act.
- In addition to the above matching contributions, the Province and Designated Employers are also required to make special contributions for any year in which the cumulative cost-of-living adjustment to pensions in respect of service after 2009 is less than 100% of CPI increases (but only to the first 50% of any inflation foregone) since the members' retirement. The amount of such special contributions is equal to the amount by which the pensions or other entitlements received by members for the year are less than the pension amounts they would have received for that year if 100% CPI indexing had been provided for post-2009 service.

Funding Management Policy (FMP)

The FMP is a document agreed between employer / employees that identifies how the plan is to be funded and specifically how it will deal with deficit and surplus situations. We are particularly interested to identify whether in surplus position the government has access to surplus withdrawal or contribution reduction.

The idea of the plan is that the employer contribution will match the employees' contribution. The use of Joint Defined benefit accounting under PS3250 reflects that general principle underlying the nature of the plan by applying a 50/50 share.

The plan also has provisions that make post-retirement indexing for some service period (post-2009) conditional on the plan financial situation. Should the indexing not be provided fully (100% CPI), some portion (or all) of the indexing amount not provided to the retirees (called foregone inflation) will lead to additional employer contribution in that year. This also reflects the 50 / 50 principle of the plan in that on the employee side, a benefit is not fully provided (less than 100% indexing for retirees) and on the employer side an additional contribution is paid. In similar way, if and when benefits would be increased to the employees, the employer would also get a similar benefit in value (contribution reduction and/or surplus withdrawal).

The FMP will have first use of surplus to reduce contributions to the "basic contribution level" which is the 2012 value (10.4% of salary below YMPE and 12.0% above YMPE) and / or increase benefit to restore any foregone inflation. The Partners need to agree on the actions that will be taken. We also note that for the employer, should the contribution rate already be at the basic rate and a surplus is present, surplus withdrawal and / or further contribution reduction is also possible action to be taken.

In discussing with Allan Shapira (Aon), we understand that the FMP has five funding zones:

- The middle zone is the Fully Funded zone under which base benefits and contributions are maintained. In this zone, the plan is adequately funded to provide base benefits (including indexation at 100% of CPI) supported by the base contributions. Given the volatility of market factors and the numerous assumptions in the funding valuation, "fully funded" is considered a range.
- There are two zones below the Fully Funded zone that address the treatment of deficits (through additional contributions and / or reduction of benefits).
- There are two zones above the Fully Funded zone that address the treatment of surpluses. The first zone is the Temporary Plan Improvement zone where contributions can be temporarily reduced, a surplus distribution can be made on a temporary basis and/or benefits can be temporarily improved (as long as it does not create a long term cost). If the surplus reaches a

specified level, the next zone, the Permanent Plan Improvement zone, provides for permanent changes to contribution rates and/or benefits.

We also note that surplus distribution is a possible approach to deal with surplus in the FMP as per paragraphs 1.06 and 4.04.

Under the FMP, a surplus distribution or a benefit improvement can only be made if the Partners have entered into a written agreement governing the manner in which employer contributions will be adjusted to offset any surplus distribution or changes in benefits that are reflected in the obligation value through benefit changes.

As illustrated in the latter zones above, the FMP considers that surplus situations and actions taken can be of permanent nature but also temporary nature. We understand that the inclusion of temporary use of the surplus has the effect of having more likelihood of years of surplus usage than if only permanent approach was possible.

Based on the information received, we note that the accounting obligation calculated for the financial statements, and the accounting surplus resulting from that obligation value, is already including an assumption that 100% CPI is provided. Therefore, the accounting surplus is already based on fully restored benefits and full indexing. Any remaining surplus would therefore be available from the employer side to reduce the contribution level or withdraw surplus.

We also note that the accounting valuation is based on best estimate assumptions and that the surplus amount determined by that calculation represents what is the most likely outcome, considering that assumptions are realized in the future. As such, the amount for the employer portion does represent a realistic potential value to the government in contribution reduction and / or surplus withdrawal. We do not know when the actual event would take place and whether it would be through contribution reduction or surplus withdrawal, but we know that this represents a realistic economic benefit.

Section 3.06 of the FMP does identify the steps of restoration of indexing and also identifies under 3.06 e) the contribution reduction action that can apply. We note again that the accounting obligation measure already includes the 100% CPI indexing and therefore covers the escalated adjustments defined in 3.06.

Section 3.06

Application of Restoration Basis Excess: For purposes of clarity, excesses identified pursuant to Section 3.05 shall be applied in the following order, provided that the partners reserve the right to reconsider such application having regard to the contribution rate and benefits then in effect, prevailing economic circumstances and other relevant factors:

- (a) Bring Escalated Adjustments to 50% for Post-2013 Service: to provide escalated adjustments up to 50% of the CPI adjustment in respect of service accrued after 2013 for the period covered by the valuation, and assumed thereafter at the same rate;
- (b) Bring Escalated Adjustments to 100%: to provide escalated adjustments up to 100% of the CPI adjustment for the period covered by the valuation, and assumed thereafter at the same rate;
- (c) Restore Escalated Adjustments for Post-2013 Years: to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2013, to the current accumulated adjustment ratio for the period from 2010 to 2013, beginning with the first year in which current escalated adjustments were less than 50% of the run-rate escalated adjustments;

- (d) Restore Escalated Adjustments for Post-2009 Years to provide escalated adjustments to increase, to the extent possible, the current accumulated adjustment ratio for each year after 2009 to the run-rate accumulated adjustment ratio, beginning with the first year in which current escalated adjustments were less than run-rate escalated adjustments.
- (e) Provide Benefit Increases or Contribution Rate Reductions to provide the following:
 - (i) an increase in benefits, where the present value of current benefits is less than the present value of run-rate benefits,
 - (ii) a reduction in contribution rates, where the present value of current contributions exceeds the present value of basic contributions, or
 - (iii) a combination of (i) and (ii).

(Last amended May 27, 2015 – Effective March 6, 2015)

Section 5 – Asset ceiling for OTPP

The factors illustrated in the Section 4 coming from the analysis of the FMP and surplus application are considerations to determine the Government access to the surplus. We have discussed the plan mechanics with OPCD and here are the key factors of the FMP and OTPP plan characteristics that would be considered in support of the Government Expected future benefit coming from surplus withdrawal and contribution reduction:

- The plan nature is defined to be a 50 / 50 share between employees and employer
- Looking at the FMP, this principle applies to bad news and good news, hence for deficit and surplus situations
- The employer can benefit from surplus withdrawal and contribution reduction
- The surplus situations could be dealt with permanent and temporary changes, increasing the likelihood of surplus application
- The accounting valuation currently includes a 100% CPI indexing, hence the resulting accounting surplus to the employer portion has already fully restored benefits considered
- Accounting valuation uses best estimate assumptions and therefore the resulting surplus is considered a realistic value

Based on the Government view on the OTPP and our discussions with OPCD, we understand that the position is that the asset position should not be reduced by any valuation allowance. This position is based on the nature of the sharing principle of the OTPP which allows for the Government to have access to the surplus and hence the Economic benefit. It is unknown when the benefit will materialize and what form it will take but it is of realistic economic value.

That being said, a very important consideration is that the amount determined represents what the accounting defines as the best estimate. The selection of assumptions to prepare the accounting valuation is therefore significant to ensure that the surplus calculated is realistic. Considering the accounting standards requirement to use best estimate assumptions, it is reasonable to consider that those assumptions are selected by the Government as best estimates and therefore the surplus determined is a realistic value of what benefit the Government may realize in the future through surplus withdrawal/contribution reduction.

Should the characteristics of the plan or the FMP parameters change in the future, or if the Government has a different view on the application of the OTPP provisions and the FMP for surpluses, this may affect the Government access to surplus and hence the Government view on asset ceiling test.

Based on the facts coming from the FMP, the plan nature and based on discussions with OPCD, it has been determined that the current view is that any surplus identified to the Government portion would be used to its own benefit and that the Government is not obligated to using any surplus towards increasing benefits to the members (either through historic practice or internal policy). The above analysis provides evidence to support OPCD's position that no valuation allowance is required to the OTPP asset amount reported under PSAB.



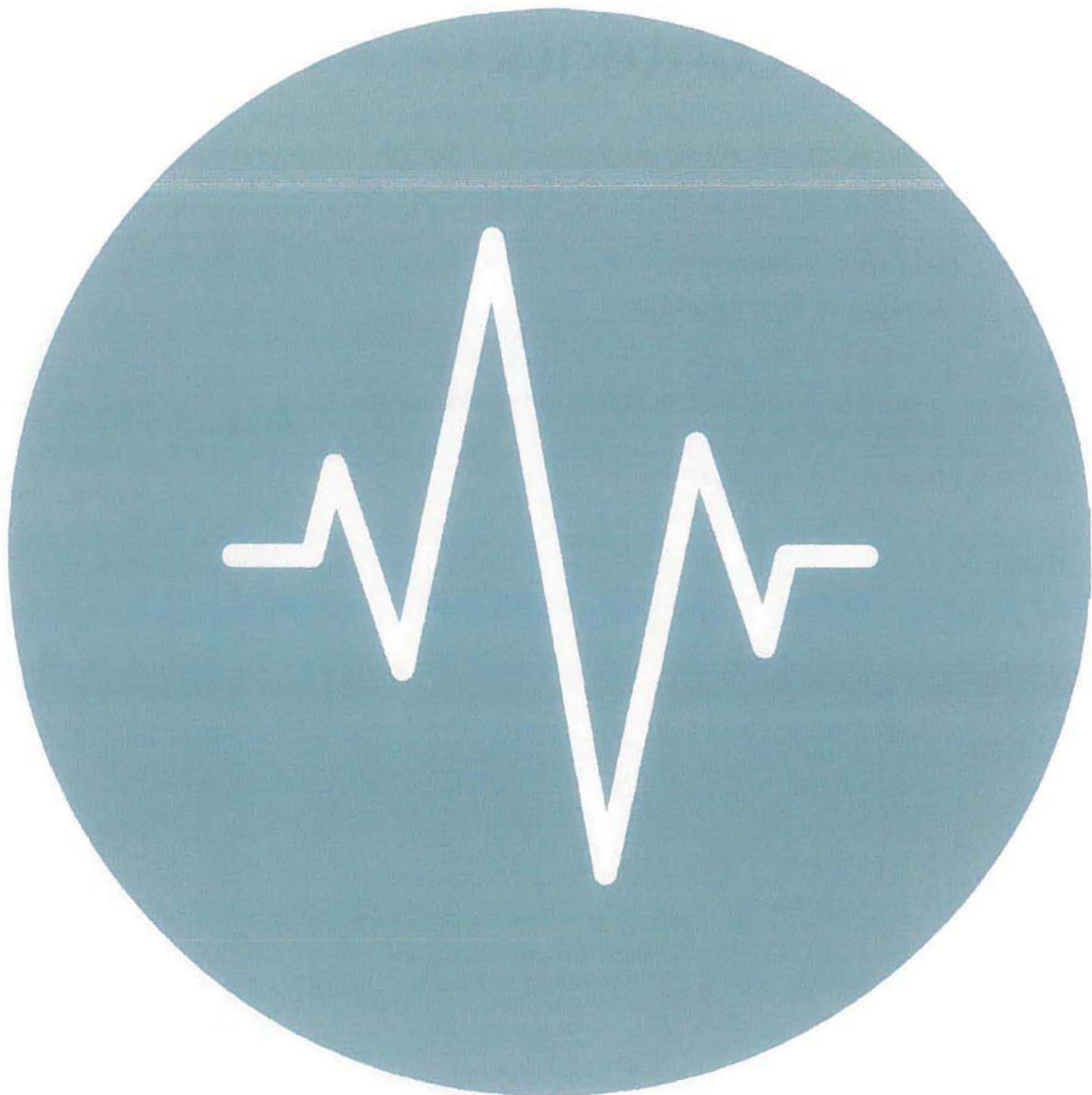
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**Analysis of Pension Asset Ceiling
Accounting Considerations for the
Office of the Provincial Controller
Division re: Ontario Public
Service Employees Union Pension
Plan (OPSEU PP)**

August 19, 2016

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Introduction

In preparation of the Province of Ontario Financial statements, the Office of the Provincial Controller Division (OPCD) has retained Deloitte to provide support in analyzing issues around pension accounting. The present document is prepared in relation to the assessment of the application of public sector accounting standards as related to asset ceiling and valuation allowance to the Ontario Public Service Employees Union Pension Plan (OPSEU PP).

The relevant accounting standard referenced in our analysis is public sector accounting standard PS3250 on retirement benefits.

The document will cover the following elements:

- Summary of the situation;
- Overview of the accounting paragraphs that apply to this and the explanation;
- Review of the considerations that go into the asset ceiling test and the Expected Future Benefit (EFB) calculation;
- Review of the employer access to future contribution reduction or surplus withdrawal;
- Summary of findings relating to observations made in discussing the applicability of the asset ceiling test for Ontario's 2015-16 Financial statements.

We are available to discuss the content of this document.



Martin Raymond
Partner, FSA, FCIA



Trevor Gary
Senior Consultant

Section 1 – Summary of the situation

The OPCD in preparation of the Ontario Financial statements for 2015-16 has requested support to assess potential asset ceiling risks in relation to the calculation for the OPSEU PP reported on the Province's consolidated financial statements.

Here are a few facts obtained from discussion / documentation around the OPSEU PP and its accounting:

- The plan is covered by its own legislation, the s' Pension Act
- Most recent funding report was prepared at December 31, 2014 with contributions set for 2015, 2016 and 2017
- The OPSEU PP is a Joint Sponsored Pension Plan (JSPP) as per the Ontario Pension Benefit Act (PBA)
- The plan is accounted for using Joint defined accounting provisions of the standards and the government portion of the plan is determined at 50% of the overall plan, this reflects the 50/50 sharing principle underlying the OPSEU PP (per the Pension Plan text paragraphs 4.6 and 6.3 and page 12 of the funding valuation report – extracts provided in Section 4)
- The total accounting service accrual (service cost) is about \$407M per year calculated in accordance with PSAB (per the Jan. 25, 2016 letter from OPSEU PP)
- The recent accounting surplus measure (Dec 31, 2015) for the portion of the government (50% of the total plan) is around \$912M, using a market-related value of assets (smoothed assets). The surplus using fair value measure of assets is about \$1,422M (per the excel supporting file for accounting calculations received).

We note that the accounting actuarial values are prepared at Dec 31, 2015 and that an adjustment for March 31, 2016 is performed to obtain the year-end values. The balance sheet asset position for the OPSEU PP can be illustrated as follows: (per the excel supporting file for accounting calculations received)

(all figures in \$M)	Total plan	50% Share of the plan
Market related value of assets	17,380	8,690
Value of obligation	15,557	7,778
Surplus (deficit)	1,823	912
Unamortized (gains) losses	(96)	(48)
Adjustment for March 31, 2016	(583)	(292)
Asset (liability) position	1,144	572
Specific Government adjustment		(52)
Final Asset (liability) position on balance sheet		520

This document will cover the following key questions:

- What are the key considerations that go into the asset ceiling determination?
- What is the impact of an asset ceiling for 2015-16, if applicable?
- Is there an asset ceiling impact for OPSEU PP as at March 31, 2016 (that would apply to the \$520M shown above) and if so how is it calculated?

Below is a list of documents and references used in our analysis.

List of documents

Funding policy (FP) of OPSEU PP - agreement between the parties to the plan (provided by OPCD)

Actuarial valuation report of OPSEU PP as at December 31, 2014 – funding purposes - prepared by Towers Watson (provided by OPCD)

Accounting standards PS3250 on post-employment benefits

OPSEU PP Plan text and plan amendments (provided by OPCD)

Discussions with OPCD and OP Trust (incl. overview of some results used in this document) including a summary note prepared by Nadine Petsche, Director of Accounting Policy and Financial Reporting at OPCD (August 4, 2016)

Excel supporting file for accounting calculations (provided by OPCD)

Supporting document from OPSEU PP to OPCD on accounting results, including results prepared by Willis Towers Watson on valuation results for different assumption basis –document dated Jan. 25, 2016 (provided by OPCD)

Section 2 – Relevant PS3250 paragraphs

Below are some extracts from the PS3250 which are relevant for calculating the limit on carrying amount of accrued benefit asset (the asset ceiling test) and the joint defined benefit which are relevant to the analysis and position taken for financial statement preparation.

Limit on the carrying amount of an accrued benefit asset

.050 *An accrued benefit asset should be presented on a government's statement of financial position net of any valuation allowance. When a defined benefit plan gives rise to an accrued benefit asset, a government should recognize a valuation allowance for any excess of the adjusted benefit asset over the expected future benefit. A change in valuation allowance should be recognized in the statement of operations for the period in which the change occurs.* [SEPT. 2001]

.051 A government with a defined benefit plan may have an accrued benefit asset for accounting purposes. An accrued benefit asset arises when the government's total contributions to the plan, including interest earned thereon, are greater than the retirement benefit expense recognized since the start of the plan. Contributions reflect the funding objectives of the plan. The benefit expense reflects the accounting objectives and may differ for a number of reasons, including the fact that actuarial gains and losses are deferred and amortized in future periods.

.052 A government may benefit from an accrued benefit asset either by withdrawing surplus assets or by taking a contribution holiday or receiving a refund of contributions. The accrued benefit asset may become impaired when there is a plan surplus for accounting purposes that the government is not entitled to benefit from fully. For example, there may be a regulatory moratorium on pension surplus withdrawals or uncertainties as to a government's legal right to use a plan's accounting surplus.

.053 To determine the extent to which an accrued benefit asset may be impaired, the government first determines the adjusted benefit asset. The adjusted benefit asset is the accrued benefit asset less net unamortized actuarial losses (determined on a basis using market value of assets).

.054 The adjusted benefit asset is then compared to the expected future benefit. When the expected future benefit exceeds the adjusted benefit asset, the accrued benefit asset is not impaired and, accordingly, no valuation allowance is required. The chart included as Appendix A to this Section is intended to set out the relationship between the various defined terms.

.055 The objective of the standard in paragraph PS 3250.050 is to limit a government's accrued benefit asset to the amount it can realize in the future. The expected future benefit is a calculated amount representing the benefit a government expects to realize from a plan surplus. An expected future benefit includes any withdrawable surplus or reduction in future contributions.

.056 A government determines its expected future benefit as the sum of:

- a. the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- b. the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

.057 A government's expected future accruals for service for the current number of active employees are determined on a basis consistent with that used to determine its accrued benefit obligation. These expected future accruals for service, less required employee contributions and minimum contributions the government is required to make regardless of any surplus, are then discounted back to the current period to determine the present value. The interest rate used to calculate this present value is the expected rate of return on plan assets used to determine the benefit expense in the period.

.058 When administration expenses are paid by the plan and included in the normal cost calculation, a best estimate of the future administration expense is included in the expected future accruals for service. When administration expenses are paid by the plan and not included in the normal cost calculation, the rate of return on plan assets is adjusted to reflect the deduction of the administrative expenses.

.059 A key factor in determining a government's expected future benefit from a defined benefit plan with a plan surplus for accounting purposes is the ability of the government to withdraw assets from the plan. The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal. It excludes any withdrawable plan surplus a government is currently required, or intends, to allocate to employees. A government may not anticipate obtaining a legally enforceable right to withdraw a portion of a plan surplus to which it is not currently entitled, whether on the basis of precedent or otherwise. Accordingly, when withdrawal of plan surplus requires the approval of employees or an appropriate regulatory authority or a court of law, a government excludes any amount subject to this restriction from its expected future benefit until such approval has been obtained. A change in the allocation of surplus between a government and its employees is incorporated into the calculation of the expected future benefit only when it has been agreed to and, when required, approved by the appropriate regulatory authorities.

Joint defined benefit plans

.079 Governments may participate jointly in defined benefit plans where the government shares the risks and rewards jointly with plan participants, represented by a sponsor or sponsors. Joint defined benefit plans are governed by a formal agreement between the sponsors, which establishes that the sponsors have shared control over the plan. A governing board is generally appointed by the joint sponsors with equal representation and a mutually agreed-upon chair.

.080 A government would consider the characteristics of the plan to determine whether it meets the definition of a joint defined benefit plan. In a joint defined benefit plan, funding contributions are shared mutually between the government and the plan members. The sponsors have control over decisions related to the administration of the plan and the level of benefits and contributions on an ongoing basis based on the terms of the contractual agreement. The sponsors share, on an equitable basis, the significant risks associated with the benefit plan. Risk would not be considered to be equitably shared in an arrangement where the government and the joint sponsors fund the plan equally but where the government retains the full risk of the accrued benefit obligation. If the government retains the residual risks it is unlikely that the plan meets the definition of a joint defined benefit plan.

.081 When a government participates in a joint defined benefit plan, the government's risk is limited to its portion of the plan. The government should account for its portion of the plan in accordance with the standards for defined benefit plans. [SEPT. 2001]

.082 A government may convert an existing defined benefit plan for which it is the sole sponsor to a joint defined benefit plan where the risks and benefits are shared. When converting to a joint plan, a government would consider whether there are any special accounting issues that arise, including whether the predecessor plan has been settled or partially settled and/or curtailed or partially curtailed. In assessing such issues a government would have regard to its specific circumstances and the terms of the joint defined benefit plan.

Section 3 – Asset ceiling test and EFB calculation basis

PS3250.053 refers to the adjusted benefit asset. This is the amount on which the asset ceiling test applies (PS3250.054) by comparing it to the Expected future benefit (EFB). In many cases, we are seeing unamortized losses, and the adjusted benefit asset effectively equals the accounting surplus. However, for the OPSEU PP, as shown in the Section 1, it is unamortized gains which exist rather than losses.

In this situation, if we take the OPSEU PP case, we would have:

- Adjusted benefit asset = accrued benefit asset less unamort. losses = \$520M - \$0M = \$520M
- So the amount to test against the EFB would be \$520M

Further, PS3250.053 refers to market value of assets rather than market-related value of assets that allows for some smoothing of assets gains and losses (which is used under OPSEU PP). Considering that the market value of assets (total plan) is \$18,399M at Dec 31, 2015 as per the excel file for accounting calculation and applying the 50% share, we do get \$9,200M for the Government share. The difference represents gains on assets not yet reflected in the market-related value of assets and therefore, the unamortized (gains) losses are adjusted accordingly for the test. Making the adjustment for market value measures, we would therefore obtain the following:

(all figures in \$M)	50% Share of the plan-market related value	50% Share of the plan market value
Value of assets	8,690	9,200
Value of obligation	7,778	7,778
Surplus (deficit)	912	1,422
Unamortized (gains) losses	(48)	(558)
Adjustment for March 31, 2016	(292)	(292)
Asset (liability) position	572	572
Specific Government adjustment	(52)	(52)
Final asset (liability) position on balance sheet	520	520

We note that the end result for the test is still \$520M adjusted benefit asset on either market-related value or market value. This occurs because the test is showing unamortized gains in both basis. If unamortized losses were present instead, the results of the test would differ.

The above are basic considerations of the asset ceiling test and mostly straight-forward in application. The most challenging part of the asset ceiling test is identifying the basis to value the EFB under PS3250.056. There are various elements to be considered in this calculation that will determine the amount to use. The definition of EFB incorporates key components that need some analysis. The present section deals with these components.

Definition of EFB

.056 A government determines its expected future benefit as the sum of:

- a. the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus, and
- b. the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

Key components of the definition are:

- present value calculation
- future service accruals
- current number of active employees
- required employee contributions
- minimum contributions the government is required to make regardless of any surplus
- amount of surplus that can be withdrawn

Current number of employees – Open group notion

Under the definition of the EFB, it is indicated that the present value of future accruals for service is to be based on the current number of active employees. The application of this particular element of the calculation has generally been seen in practice as assuming that the plan would have a perpetuity of future accruals since active employees terminating or retiring would be replaced by new active employees, keeping the number equal to the current population. Unless there is signal or expectation of reduction in population (e.g. if the plan was closed to new entrants or if the employer is going through downsizing), this open group notion has been observed in practice.

Future service accruals – Projection of salary

Under the definition of the EFB, we are performing a present value calculation and therefore this assumes that the underlying components of the calculation are projected into the future (future accruals and contributions). In performing such projection, an increase in salary based on the accounting assumption for salary increase would be applicable.

Present value – discounting effect

Calculation of a present value requires the determination of an interest rate to use. Under PS3250.057, the interest rate used is determined in reference to the expected rate of return on plan assets used to determine the benefit expense.

Future service accruals and required employee contributions – Joint Defined Benefit accounting

Since the OPSEU PP is accounted for based on joint defined benefit provisions of the accounting standards, the asset ceiling test needs to be performed based on the government's portion of the plan (par. PS3250.081). Looking at the EFB definition, it means that the calculation of PS3250.056 a) needs to be adjusted to only reflect the employer share (50% of the total accruals) and to remove any employee contributions that were considered in the calculation (since this relates to the employee portion of the plan).

Observations on PS3250 EFB calculation (in practice)

Deloitte has shared with management that historically there has been in practice a very liberal application of the PS3250 asset ceiling calculation. The EFB has generally been determined as the present value of all future employer service accruals (perpetuity) considering the increase of salary factored into the calculation. This approach is based on View 1 described in the minimum employer contribution required discussion below. One simple way of obtaining that value is based on the following calculation:

- Determine the total accrual for service for one year
- Determine the accrual for service for the employer for one year (i.e. total accrual net of the employee portion)
- Calculate the perpetuity of increasing service cost as follows : accrual of service for employer / (expected return on plan assets – salary increase)
- To illustrate this for OPSEU PP, we did get the following information
 - Total service accrual = \$407M
 - Employer service accrual (assuming 50% share) = $\$407\text{M} / 2 = \203.5M
 - Expected return on plan assets = 6.25% (per the Jan 25, 2016 document and the observed values used in the excel file for accounting calculation)
 - Salary increase = 3% (excluding merit/promotional scale for simplicity - per the Jan 25, 2016 document and the observed values used in the excel file for accounting calculation)
 - Perpetuity = $\$203.5\text{M} / (6.25\% - 3\%) = \$6,262\text{M}$

Minimum employer contributions required regardless of any surplus - Views for determination in EFB calculation

There has been in recent years more questions around the meaning of the EFB definition and mostly around what the last part of PS3250.056 a) means. The terminology used of “minimum employer contribution required regardless of any surplus” has been discussed and there have been different views on what this represents.

One view (View 1) focus on whether there is a minimum employer contribution under the plan / legislation that is required even if a surplus would be present. For instance, a plan contribution could be defined as always being at least of 5% of salaries. In such circumstances, there would be a contribution requirement to a minimum level for every year even when surplus is present. If no such minimum exists and there is a possibility to get to 0% contribution, for instance in surplus position, then there would be no minimum contribution required “regardless of any surplus”. This view leads to no reduction in the EFB calculation in cases where no minimum % contribution exists in the plan provisions. In the example above, the perpetuity of \$6,262M is not reduced and therefore EFB remains at \$6,262M.

Another view (View 2) is that minimum required contribution must at least consider the effect of the most recent funding valuation report. This report determines what contribution requirement applies to the current period of the valuation report and until a new report is completed. For instance, if the employer needs to contribute for the next 3 years a certain amount of contribution (service cost and special contribution for deficit), then this represents the minimum required employer contribution regardless of any surplus. As an example, under the most recent funding report of the OPSEU PP (Dec 31, 2014) this amount is about \$270M per year for 2015, 2016 and 2017 which includes service cost and also special contributions. Contributions from 2018 will be determined based on a new valuation report and therefore are unknown as of now (no minimum required contribution on the valuation date for years beyond 2017). In the example above, the perpetuity of \$6,262M is reduced by 2 years of \$270M (excluding interest for simplicity) for an EFB of \$5,722M.

Finally, a more extreme view (View 3) could be to actually prepare detailed future projections of funding valuation results on either a deterministic calculation with identification of the actual year(s) when funding surplus would be present or a stochastic calculation to identify what is the probability of occurrence of funding surplus in future years and the outcome in those cases for contribution reduction/surplus withdrawal. Such an approach would need the inclusion of some many complex assumptions and the preparation of a high volume of calculations. In the example above, the perpetuity of \$6,262M would be reduced more than View 1 or View 2 because of possible future years in the projection that lead to required contribution payments.

We have never seen in practice the use of View 3 under PS3250, while View 1 has been largely used historically. On the other hand, we note that View 2 has been recently observed as a possible emerging interpretation of the paragraph 3250.056.

Amount of surplus that can be withdrawn and contribution reduction availability – OPSEU PP plan characteristics

One element of importance (PS3250.052 and PS3250.059) is to identify whether the employer does have access to the surplus based on legislation and plan characteristics. Is there really some way the government can either withdraw surplus from the plan or reduce future contributions through contribution holiday. The OPSEU PP does have a Funding policy (FP) agreed between employer / employees to determine whether and how surplus can be used under the plan. The FP provides insight on this significant element and is dealt with in the next section.

Section 4 – Sharing principle, contribution reduction and surplus withdrawal

Extracts from the Pension Plan Text

The following paragraphs of the Plan text are supporting elements for the use of the 50 / 50 sharing of contributions - paragraph 4.6 - and also support the use of the Funding Policy agreed between the parties for treatment of the surpluses and deficits – paragraphs 6.3 (3) (c) and 6.3 (5).

- 4.6 Contributions by Employer - Subject to section 4.7, section 4.8 and Article 6, on each payment date, the employer shall pay into the Fund an amount equal to the aggregate amount of all contributions deducted from the members under section 4.2, or that would have been deducted under section 4.2 but for the application of section 4.3, in the month ended next before the month in which the payment date occurs, or made by or on
- 6.3 (3) (c) actuarial gains - thereafter, the remaining gains shall be used equally for the benefit of employers and OPSEU subject to the following: (i) 50% of the gain or such other amount as may be collectively bargained shall be used for the benefit of employers, to be applied against any special payments required to be made by any employers and thereafter to reduce employers' normal costs; and (ii) 50% of the gain or such other amount as may be collectively bargained shall be used for the benefit of Plan members.
- 6.3 (5) actuarial losses - In the event of any actuarial loss or solvency deficiency, contributions by members and employers shall be increased in equal amounts to liquidate the actuarial loss or solvency deficiency in accordance with the *Pension Benefits Act*. The contribution increase will be automatic, and effective as of the first day of January of the year after the actuarial valuation is filed, or such earlier date as may be required by the *Pension Benefits Act*; provided that no contribution increase will be provided for any actuarial loss or solvency deficiency prior to April 1, 1997, and provided further that the members and employers may provide for their payments in respect of such actuarial loss or solvency deficiency from their rate stabilization funds, at their option

Extracts from the most recent funding valuation report (Dec 31, 2014 – page 12 and page 40)

The extracts show that Government is matching employee contributions and equally sharing gains and losses. These are supporting the assessment of the 50 / 50 sharing nature of the plan.

- In accordance with the Sponsorship Agreement between OPSEU and the Government of Ontario, emerging actuarial gains and losses are to be shared equally between the employer and member sponsors. Each sponsor decides how its share of any surplus or deficit generated as a result of actuarial gains (losses) is to be used or settled.
- Effective January 1, 2012, member contribution formula is 9.4% of salary up to the YMPE and 11.0% of salary in excess of the YMPE. In addition, any payments required to liquidate unfunded

liabilities, solvency deficiencies and actuarial losses will be made in accordance with the terms of the Sponsorship Agreement.

- Matching contributions are made by the Employer. In addition, any payments required to liquidate unfunded liabilities, solvency deficiencies and actuarial losses will be made in accordance with the terms of the Sponsorship Agreement.

Funding Policy (FP)

The FP is a document agreed between employer / employees that identifies how the plan is to be funded and specifically how it will deal with deficit and surplus situations. We are particularly interested to identify whether in surplus position the government has access to surplus withdrawal or contribution reduction.

The idea of the plan is that the employer contribution will match the employees' contribution. The use of Joint Defined benefit accounting under PS3250 reflects that general principle underlying the nature of the plan by applying a 50/50 share.

We also note that the accounting valuation is based on best estimate assumptions and that the surplus amount determined by that calculation represents what is the most likely outcome, considering that assumptions are realized in the future. As such, the amount for the employer portion does represent a realistic potential value to the government in contribution reduction and / or surplus withdrawal. We do not know when the actual event would take place and whether it would be through contribution reduction or surplus withdrawal, but we know that this represents a realistic economic benefit. The FP does include elements relating to reducing the Government contributions but there does not appear to be any specific provision related to surplus withdrawal. It does not appear to be identified whether above reducing the Government contribution to \$0, a surplus refund could also apply. The EFB analysis is therefore focused more on the contribution reduction benefit to the Government (which is the main element of EFB).

(Section 2.1 of the Funding policy)

The Province of Ontario and Plan members are jointly responsible for their respective portions of plan deficit. They are reliant on the sufficiency of investment returns to maintain existing contribution levels and to have funds available to meet the benefit commitment to the members. Providing all benefits promised under the terms of the Plan is of primary importance to both Sponsors.

Although wind-up and solvency valuations are prepared with each filed valuation, OPTrust's primary interest is the going-concern valuation. The Plan, along with other JSPPs, has been exempt from solvency funding under the PBA [PBA Reg 909, s. 1.3.1(3)]. The wind-up valuation is also of less significance since the enabling legislation generally prevents the Plan from being wound up [Act, s. 11(3), PBA Reg 909, s. 47.3]. Solvency and wind-up valuations are designed to ensure short-term funding security, which is of secondary importance to the Plan. The going concern valuation focuses on the long-term security of benefits provided under the Plan, and the results of this valuation are the primary consideration of the Funding Policy.

Contribution rates are set out in the Plan text and are currently 9.4% of member salaries up to the Yearly Maximum Pensionable Earnings (YMPE) and 11% thereafter. The YMPE and maximum earnings are prescribed under the *Canada Pension Plan Act* (Canada).

(Section 2.2 of the Funding policy)

Since neither outcome is desirable, the Plan created a contribution rate stabilization reserve (also referred to as an RSF). This reserve is the sum of past unspent surpluses that were evenly allocated to each Sponsor. The RSF is meant to allow OPTrust to draw on reserves prior to the resorting to benefit reductions or contribution rate increases.

The level of funds to be set aside for stabilization purposes, and the choice of whether to use stabilization funds or increase member and employer contributions, is the decision of the Sponsors. However, OPTrust will provide actuarial information to the Sponsors to assist in understanding the impact of various levels of stabilization funds and the associated risk of increased contributions and reduced prospective benefits.

Should the Sponsors decide not to use their respective stabilization funds to meet the additional contribution requirement, or if the Sponsors cannot agree to prospective benefit reductions, OPTrust shall increase contributions sufficiently to pay for the deficit

(Section 9.2 of Funding policy)

In the event of any actuarial loss or solvency deficiency, contributions by the members and their employer shall be increased in equal amounts to liquidate the actuarial loss or solvency deficiency in accordance with the PBA [**PBA, Reg 909, s. 5(1)(e)**]. However, in no event shall the members be required to pay more into the Plan than the employer. This is a requirement under the PBA's provisions for jointly-sponsored pension plans. [**PBA, Reg 909, s. 3.1(1)**]

Gains are shared equally by the employer and OPSEU, subject to the following:

- (i) 50% of the gain or such other amount as may be collectively bargained shall be used for the benefit of employers, to be applied against any special payments required to be made by any employers and thereafter to reduce employers' normal costs [**SA, s. 56 (c) (i)**]; and
- (ii) 50% of the gain or such other amount as may be collectively bargained shall be used for the benefit of Plan members [**SA, s. 56 (c) (ii)**].

Section 5 – Asset ceiling for OPSEU PP

The factors illustrated in the Section 4 coming from the analysis of the FP and surplus application are considerations to determine the Government access to the surplus. We have discussed the plan mechanics with OPCD and here are the key factors of the FP and OPSEU PP characteristics that would be considered in support of the Government Expected future benefit coming from contribution reduction:

- The plan nature is defined to be a 50 / 50 share between employees and employer
- Looking at the FP, this principle applies to bad news and good news, hence for deficit and surplus situations
- The employer can benefit at least from contribution reduction (which is a significant part of the EFB)
- The surplus situations could be dealt with permanent and temporary changes, increasing the likelihood of surplus application
- Accounting valuation uses best estimate assumptions and therefore the resulting surplus is considered a realistic value

Based on the Government view on the OPSEU PP and our discussions with OPCD, we understand that the position is that the asset position should not be reduced by any valuation allowance. This position is based on the nature of the sharing principle of the OPSEU PP which allows for the Government to have access to the surplus and hence the Economic benefit. It is unknown when the benefit will materialize and what form it will take but it is of realistic economic value.

That being said, a very important consideration is that the amount determined represents what the accounting defines as the best estimate. The selection of assumptions to prepare the accounting valuation is therefore significant to ensure that the surplus calculated is realistic. Considering the accounting standards requirement to use best estimate assumptions, it is reasonable to consider that those assumptions are selected by the Government as best estimates and therefore the surplus determined is a realistic value of what benefit the Government may realize in the future through contribution reduction.

Should the characteristics of the plan or the FP parameters change in the future, or if the Government has a different view on the application of the OPSEU PP provisions and the FP for surpluses, this may affect the Government access to surplus and hence the Government view on asset ceiling test.

Based on the facts coming from the FP, the plan nature and the current view that any surplus identified to the Government portion would be used to its own benefit and that the Government is not obligated to use any surplus towards increasing benefits to the members (either through historic practice or internal policy). The above analysis provides evidence to support OPCD's position that no valuation allowance is required to the OPSEU PP asset amount reported under PSAB.



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OTPP and OPSEU PP asset ceiling discussion

Separate analysis documents have been prepared to support the OTPP and OPSEU PP asset situation presented on the Province Financial statements. Following the review of the documents, the Ontario AG has submitted 2 questions. The purpose of this document is to provide answers to the questions.

Before moving into the supporting explanation, it is important to highlight the main conclusions of the Province analysis presented in the initial reports and the rationale behind it.

For the OTPP, the main conclusion, based on the facts and circumstances is that the Government is entitled to have access to the surplus related to the share of the plan that it is responsible for. Here are some elements of facts and circumstances that support the Government analysis:

- The plan is a joint sponsored pension plan under the pension legislation
- The contribution requirement of the plan is based on matching employer contributions, hence a 50 / 50 sharing
- There is an agreement that has been reached between employees and Government that defines how surpluses and deficits are to be treated. The document is called the Funding Management Policy (FMP)
- The FMP identifies that the Government can benefit from a surplus position through contribution reduction but also with possible surplus withdrawal. Sections 4.05, 4.06 and 5.05 of the FMP are particularly referring to this
- The idea of the plan is that when good or bad news occur and the employees benefit or are negatively affected by this, the Government also gets a similar impact. In particular, in surplus position, the employees could benefit from improvement to the plan provisions while the Government could benefit from reduction in contribution
- The conclusion of the analysis is therefore that any surplus position to the Government, based on best estimate assumptions as per the accounting standards would represent an economic benefit in the future as per the FMP sharing notion that has been agreed by the parties
- The Partners at OTPP do need to review and confirm on the uses of surplus, but this does not raise the question of the access of the Government that is based on the agreed FMP.

For the OPSEU PP, the main conclusion, based on the facts and circumstances is also that the Government is entitled to have access to the surplus related to the share of the plan that it is responsible for. Here are some elements of facts and circumstances that support the Government analysis:

- The plan is a joint sponsored pension plan under the pension legislation
- The contribution requirement of the plan is based on matching employer contributions, hence a 50 / 50 sharing
- There is an agreement that has been reached between employees and Government that defines how surpluses and deficits are to be treated. The document is called the Funding Policy (FP)
- The FP identifies that the Government can benefit from a surplus position through contribution reduction.
- There is a rate stabilization reserve that is set up for each sponsor, the employees and the Government. This reserve represents the value of unspent past surpluses. The Government does have its own reserve for its share of the plan from which it can

OTPP and OPSEU PP asset ceiling discussion

draw to reduce contribution requirements. Gains and losses are affecting the reserve amount. As an illustration, the Government has about \$104M of reserve as at December 31, 2014 valuation report (page 4 of the report).

- The FP under 3.3 indicates that the reserve accounts are controlled by the sponsors as per their allocated amounts.
- The idea of the plan is that when good or bad news occur and the employees benefit or are negatively affected by this, the Government also gets a similar impact. In particular, in surplus position, the employees could benefit from improvement to the plan provisions while the Government could benefit from reduction in contribution
- The conclusion of the analysis is therefore that any surplus position to the Government, based on best estimate assumptions as per the accounting standard would represent an economic benefit in the future as per the FP sharing notion that has been agreed by the parties
- Under 5.1 of the FP, it is indicated that the OPTrust recognizes that the decisions on the use of surplus are reserved to the Sponsors (employees and Government). OPTrust has provided principles to help decisions on the use of surplus, but it is still a decision of the employees and the Government on how to use their reserve account
- Under the FP, section 5.1 refers to some options of using surplus. The item 5 of Section 5.1 indicates that it is suggested to consider temporary reduction of contribution as the most predictable way of reducing the surplus. Reduction of contribution is identified as the most predictable way, but likely not the only possible way. Since the idea of the plan is to share 50 / 50 the gains and specifically through reserves identified separately for each sponsor, surplus withdrawals may be expected as *one other way of dealing with surplus*.

So based on all the facts above, the Province concluded that the accounting surplus measured as the best estimate of the plan situation represents an economic benefit through future contribution reduction or surplus withdrawal. The answers provided to the Ontario AG questions would therefore normally follow be limited to these explanations above. In order to still support the discussion on expected future benefit (especially for the question 2 raised on calculations), we did look at how calculations might be prepared under PS3250 by entities sponsoring plans where the employer would not have such a clear access to surplus, which is not the current situation.

The key elements of the Ontario AG queries are:

1. Could the plan sponsor access a surplus for the purposes of withdrawing some amount of asset in line with PS 3250.059?
2. Provide illustrations of the expected future benefit (EFB) to determine if the adjusted benefit asset should be impaired by a valuation allowance?

The EFB calculation is a sum of 2 parts. One is based on future current service reduction and the other is based on surplus withdrawal. We note that in the calculations for question 2, we have only considered the part of current service reduction and not assumed any value for surplus withdrawal. Although we have indicated that the Government would have some access to it through the policies agreed with the employees, we have excluded the calculation of it since the part of EFB coming from current service cost reduction is sufficient to support the asset position as is illustrated by the calculations.

OTPP and OPSEU PP asset ceiling discussion

For the calculation of the EFB of an adjusted benefit asset under PS 3250.050, we have identified 4 levels of calculation to determine the EFB (one additional to the 3 Views of initial report prepared):

- Level 1: A more Liberal/Historical calculation based on a perpetuity of service cost – basically no employer minimum required contribution regardless of any surplus (View 1 in the initial report);
- Level 2: A recent approach seen in some situations used for calculation – employer *minimum contribution based on the current funding report period ex 1 to 3 years* (View 2 in the initial report);
- Level 3 (a new approach): Another recent approach which we are seeing used – employer minimum contribution based on the current funding report but for the period of contribution requirement (usually more around 10-15 years) and not just the period of the current funding report;
- Level 4: A highly complex approach for calculating EFB which requires stochastic projections of plan situation over significant number of years and large number of generated scenarios (the previous View 3 of the initial report).

The Ontario AG as indicated in question 2 that some calculations along the lines of view 3 (now Level 4) was expected. As indicated in the initial document, we have never seen stochastic approaches used to prepare PS3250 asset ceiling. This would be highly time-consuming and require large number of assumption inputs that are not needed in usual accounting for pension plans. This would require a full stochastic projection which includes identifying the funding policy triggers each year for multiple plan situations. This would require a powerful model and would likely come at a very large cost to the plan which would need to be approved by employees or subsidized by the Government. It also includes significant uncertainty as to how you do project so many valuation results for so many years. The further you get into projections, which is the case in this sort of stochastic modelling, the more the long term results may be questionable. In our situation, the asset ceiling test presumes the plan is maintained permanently, hence a perpetuity calculation. As such, we do not see the real value of this and this is not seen in practice. However, in order to illustrate what the calculations may look like for an approach "along the line" of View 3 questioned by the Ontario AG we have prepared results based on the Level 3 defined above. This would represent what is seen in practice under PS3250 that is the closest to the View 3 spirit for an entity that would not have such a clear access to surplus in an agreement like we have here.

We have therefore performed a calculation in line with Level 3 using the future contributions as per the funding report. For OTTP, we have used the period to 2026 (11 year horizon) referred to on page 15 of the funding report for the special contribution requirement. For the OPSEU PP, we have used a period of 16 years indicated on page 8 of the funding report. We believe this to be a comprehensive calculation to determine the EFB.

Based on the introduction we made on the facts and circumstances linked to the conclusion found in the initial reports, we believe that this calculation is what may represent the very minimum EFB calculation. There are other elements that would generate other EFB such as surplus withdrawal and also the consideration of the excess return coming from the accounting best estimate (6.25%) compared to the funding valuation basis (for instance 4.85% under the OTTP). This would likely have an incidence in reducing the number of years of required employer contribution (11 years and 16 years used in our calculation).

OTPP and OPSEU PP asset ceiling discussion

Please find below our responses to the Ontario AG questions.

1. The report makes reference to the earlier section of paragraph 59 of PS 3250 but it's not clear to us how the section highlighted in PS 3250.059 has been addressed in the analysis. Were any amounts excluded that were subject to the restrictions identified? Have the approvals been obtained if they were not excluded?

.059 A key factor in determining a government's expected future benefit from a defined benefit plan with a plan surplus for accounting purposes is the ability of the government to withdraw assets from the plan. The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal. It excludes any withdrawable plan surplus a government is currently required, or intends, to allocate to employees. A government may not anticipate obtaining a legally enforceable right to withdraw a portion of a plan surplus to which it is not currently entitled, whether on the basis of precedent or otherwise. Accordingly, when withdrawal of plan surplus requires the approval of employees or an appropriate regulatory authority or a court of law, a government excludes any amount subject to this restriction from its expected future benefit until such approval has been obtained. A change in the allocation of surplus between a government and its employees is incorporated into the calculation of the expected future benefit only when it has been agreed to and, when required, approved by the appropriate regulatory authorities.

OTPP

In our quantitative analysis in section 3 of the report (and the more detailed one provided below to question 2), the EFB from future service accrual is enough to cover the entire plan asset position and thus no amount for surplus withdrawal was considered in the EFB due to the nil impact it would have in regards to the asset ceiling test. However, we note in section 4 of the report the elements that would go into considering a temporary surplus distribution. A few key points is that the plan would need to enter 1 of the top 2 funding zones and also considering Funding management policy (FMP) provisions that refer to access to surplus. This is based on the FMP and the actual event would be triggered by the agreement amongst the partner group (which consists of the Ministry of Education and OTF). The FMP does have protective rights for the Government to ensure access to the surplus and not just to the employees. This supports that surplus distribution has a realistic economic value to the employer and could also be a part of the EFB if needed to support the asset ceiling calculation. We do see an entitlement to the government through the documents that the parties have set up (and agreed) and therefore we identify that the government has a right to surplus as a possible benefit.

OPSEU PP

OTPP and OPSEU PP asset ceiling discussion

In our quantitative analysis in section 3 of the report (and the more detailed one provided below to question 2), the EFB from future service accrual is enough to cover the entire plan asset position and thus no amount for surplus withdrawal was considered in the EFB due to the nil impact it would have in regards to the asset ceiling test. However, we note in section 4 of the report the elements that would go into considering a temporary surplus distribution. The Regulations and the Funding Policy (FP) focus on the Sponsors ability to access unused surplus (held in the reserve) to address minimum funding contributions including normal cost. Under the FP, section 5.1 refers to some options of using surplus. The item 5 of *Section 5.1 indicates that it is suggested to consider temporary reduction of contribution as the most predictable way of reducing the surplus.* Reduction of contribution is identified as the most predictable way, but likely not the only possible way. Since the idea of the plan is to share 50 / 50 the gains and specifically through reserves identified separately for each sponsor, surplus withdrawals may be expected as one other way of dealing with surplus. The idea is that when gains occur, they are shared and used by each sponsor. The contribution reduction is identified as one "predictable way" of using the surplus. Similar to the OTTP, the calculations for OPSEU PP assume no surplus withdrawal value under EFB as non required to support the asset position.

2. We are requesting an EFB calculation that would be along the lines of "View 3" as part of the analysis. We were expecting this type of calculation given the magnitude and complexity of these pension plans. Could you let us know please when we can expect this by as we would like to review the results of this calculation.

We have performed the following calculations in line with the Level 3 described previously.

It does include reference to the plans respective funding valuations. For both plans, the funding reports identify horizon for contributions (11 for OTTP and 16 for OPSEU PP) that we have used in calculation. For service accruals, based on the landscape of the plan being assumed to continue indefinitely, we have taken service cost amounts in perpetuity. This is what we see in practice for an open plan that still accepts new employees. As noted, no distinct surplus withdrawal amount is defined as it is non necessary to support the asset position. Also, we note, that based on the best estimate assumption for asset return, there is also a significant improvement expected in the plan situation for funding that may further reduce the horizon for required contributions, again no specific amount included in the EFB but this would only increase it (just as an illustration, based on the difference between accounting expected return on asset and the funding discount rate used in the determination of the contribution amounts, we obtain about \$1.2B annual excess return for OTTP and \$37M annual excess return for OPSEU PP).

The various inputs to the calculations are detailed and the source of information identified.

The conclusion for both plans is that even without any surplus withdrawal factored in the EFB or effect of excess return, there is plenty of room to support the asset position. It reflects practice observed recently for few cases along the lines of View 3 shown in the initial report. This is therefore what we believe to be a minimal EFB approach under PS3250 for an entity that would not have such clear access to use the surplus. Other sources of EFB may be supported by the plans facts and circumstances of the OTTP and OPSEU PP, but they are not needed as the conclusion would be unaffected.

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public sector accounting standards

concepts & principles

Sections PS 1000 — PS 1300

SECTION PS 1000

financial statement concepts



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PURPOSE AND SCOPE

.01 This Section describes the concepts underlying the development and use of accounting principles in government financial statements. Such financial statements are designed to meet the common information needs of external users of financial information about a government.

.02 "Financial statements" refers to the summary financial statements published by a government that report on the financial position and changes in financial position of the government reporting entity. Financial statements include the notes and schedules supporting the statements. "Government" refers to the elected and appointed policy-makers and administrators who together perform the executive function and are the preparers of financial statements.

.03 This Section is to be used by preparers and auditors of financial statements in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing.

.04 This Section does not establish standards for particular measurement or disclosure issues. Nothing in the Section overrides any specific standard in another Section of the CPA Canada Public Sector Accounting Handbook. The Public Sector Accounting Board (the Board) will review any inconsistency between this Section and another Section when that other Section is re-examined.

.05 Financial reporting and accounting standards are evolutionary and are revised to reflect changes in conditions. Standards are the concepts, conventions and postulates that provide principles to measure, recognize, present and disclose the financial information considered necessary for accountability and useful for decision making. In government standards, the unique characteristics of government (see Appendix A to FINANCIAL STATEMENT OBJECTIVES, Section PS 1100) are a primary consideration in setting the parameters of the government reporting model.

.06 Standards generally do not prescribe format, ordering of financial statements or financial statement elements, or terminology except as required to meet the measurement and presentation requirements of the standards. Standards do, however, specify what measure(s) must be reported on a statement, and the calculation of those measures may demand a certain ordering of the financial statement elements reported. In all other aspects, preparers of government financial statements use professional judgment to design financial statements tailored to their users' needs.

CONTEXT OF GOVERNMENT FINANCIAL STATEMENTS

.07 *A government financial report should present information that is useful in evaluating the government's financial condition at the end of the accounting period and its financial performance during the accounting period. Government financial statements are a fundamental component of a government financial report.* [APRIL 2005]

.08 The financial position of a government as measured in the financial statements is only one factor in determining the financial condition of a government. Financial condition is a broad, complex concept with both short- and long-term implications that describes a government's financial health in the context of the overall economic and financial environment. Nevertheless, financial statements provide information that is critical to evaluating the financial condition of the government, and they form the cornerstone of a government financial report.

.09 The changes in the government's financial position presented in the financial statements are essential factors in assessing the financial performance of the government in the accounting period. They are, however, not the sole measures of government financial performance in the period. Additional financial performance information that draws on information external to the financial statements supplements and adds further depth to the picture of financial performance illustrated in the financial statements.

.10 The complex nature of government, its myriad of objectives and its public accountability requires multi-faceted reporting. Accordingly, total government reporting envisions a multidimensional accountability report comprising: a financial report that includes government financial statements; other information about a government's financial condition, and supplementary financial performance information; as well as non-financial information.

.11 All governments in Canada publish financial statements that display their financial position and the changes in financial position in the period. These financial statements are general purpose statements that serve, to the extent possible, the needs of a variety of users. Such statements are commonly required by law, audited and issued annually and, while most often addressed to legislatures or councils, are available to all interested parties.

.12 Financial statements cannot be expected to fulfill all of the users' needs served by a government's financial reporting system. Governments produce many kinds of financial reports in addition to financial statements. For example, there are reports prepared by individual entities to comply with legislation; there are reports to measure and report on the performance of individual funds, programs and activities; and there are special purpose reports designed to meet particular needs of specific users. In addition, governments set out their fiscal plan in budgets and estimates of expenses or expenditures. Some information, such as related performance information and narrative explanations, can only be provided in other financial reports or as supplementary information to the financial statements themselves. Thus, certain information is better provided, or can only be provided, by financial reports other than financial statements.

.13 Nevertheless, financial statements are a central feature of government financial reporting. They serve as a means by which a government provides an accounting of its administration of public financial affairs and resources. These financial statements are a principal means of communicating financial information to those not involved in the government's financial administration and present aggregated information capable of integration with other financial statements, schedules and reports provided by the government. Because of this key role, the objectives of government financial statements (see FINANCIAL STATEMENT OBJECTIVES, Section PS 1100) are a significant factor in the selection of accounting policies used in government financial reporting and in the determination of information required from the accounting system.

USERS AND USER INFORMATION NEEDS

.14 Government financial statements serve the interests of a variety of users: the public, legislators, councillors, investors, analysts and other governments.

.15 Legislatures, councils and governments are accountable to the public, who provide the revenues and resources necessary for government operations, who receive government services and who are the beneficial owners of the public money and property for which legislatures, councils and governments are responsible. The public is comprised of groups with a variety of interests and views.

.16 As elected representatives of the public, legislators and councillors are primary users of government financial statements. They grant authority to the government to administer public resources and financial affairs, and hold the government accountable for its financial administration.

.17 Investors in government securities and enterprises provide financial resources. Government has an interest in providing information useful to them in evaluating its ability to finance its activities and to meet its liabilities and contractual obligations. Economic and financial analysts serve legislators and councillors, investors and other interested parties. They use financial statements and other information to analyze and evaluate financial issues.

.18 Users are interested in the state of a government's finances, its financial viability both in the short and long term, its revenues and financing sources, the allocation and use of its economic resources, the nature and extent of its economic activities and the quality of its financial management. In particular, government financial statements need to report the information required by users to help them make assessments and judgments concerning government financial operations and management.

.19 More specifically, users look to financial statements to provide information about:

- (a) the sources and types of government revenues;
- (b) the allocation and use of economic resources;
- (c) the cost of goods and services provided in the accounting period;
- (d) the extent to which the costs of the period were met by the revenues of the period;
- (e) the government's financial position;
- (f) the stock, allocation and use of non-financial resources;
- (g) the extent to which revenues were sufficient to meet expenditures;
- (h) how the government financed its activities and how it met its cash requirements;
- (i) actual results of activities of the period in comparison with those originally planned and those of past periods; and
- (j) whether public economic resources were managed in accordance with legislative authorities.

.20 Information in financial statements may be used for a number of diverse purposes depending on the interests of the users. For example, information presented in the financial statements, when used with other information, is useful in gaining an understanding of and assessing:

- (a) a government's ability to meet its financial obligations, both short- and long-term;
- (b) a government's ability to maintain the level and quality of its services and to finance new programs;
- (c) future tax and other revenue requirements;
- (d) government spending priorities;
- (e) the impact of government economic activities on the economy; and
- (f) the performance of government in managing the economic resources for which it is responsible.

FINANCIAL STATEMENT OBJECTIVES

.21 The information needed to aid understanding and assessments of government financial operations and to promote accountability extends beyond reporting surpluses and deficits. A government's financial statements must provide information that describes liabilities and financial assets, its non-financial assets that are available for use in providing future services, the cost of using its economic resources in the delivery of services, as well as information about investing and financing activities and potential assets and liabilities. Further, this information needs to highlight measures (for example, net debt and net economic resources) that help users assess whether the government's financial position has improved or deteriorated and explain the changes in financial position. The information reported in financial statements must also reflect the full nature and extent of the government's resources, obligations and financial affairs. The objectives of government financial statements are outlined in FINANCIAL STATEMENT OBJECTIVES, Section PS 1100, and are consistent with the financial statement concepts of this Section.

BENEFIT VERSUS COST CONSTRAINT

.22 The benefits expected to arise from providing information in financial statements should exceed the cost of doing so. This constraint also applies to the development of accounting standards by the Board. It is also a consideration when preparing financial statements in accordance with those standards (for example, in considering disclosure of information beyond that required by the standards). The Board recognizes that the benefits and costs may accrue to different parties and that the evaluation of the nature and amount of benefits and costs is substantially a judgmental process.

QUALITATIVE CHARACTERISTICS

.23 The function of financial statements is the communication of information to users. To fulfill this function effectively, the information must be relevant and reliable, and communicated in a manner that best facilitates its use.

.24 *Financial statements should communicate information that is relevant to the needs of those for whom the statements are prepared, reliable, comparable, understandable and clearly presented in a manner that maximizes its usefulness.* [APRIL 2005]

.25 Financial statements provide evidence of accountability and report information required by users to help them make assessments and judgments concerning government financial operations and management. To adequately serve these needs in a manner that maximizes its usefulness, information in financial statements must possess certain basic qualities. These qualities are essential to the utility of government financial statements. The information required to meet the objectives of government financial statements needs to embody these essential characteristics.

Relevance

.26 For the information provided in financial statements to be useful, it must be relevant to the decisions made by users and for assessing accountability. Information is relevant by its nature when it can influence the decisions of users by helping them evaluate the financial impact or potential financial impact of past, present or future transactions and events or confirm, or correct, previous evaluations. For the information in government financial statements to be relevant to the needs of users, it must also be of a nature, and presented in a manner, that helps users assess the accountability of the government for its administration of public resources and financial affairs.

.27 Financial statements are not intended to provide all of the information necessary to users for decision making or for assessing government accountability. Nevertheless, they provide a fundamental component of the information needed for such purposes.

.28 Relevance is achieved through information that has predictive, feedback and accountability value, and is timely.

(a) **Predictive value and feedback value**

Information that helps users to predict a government's future financial results and cash flows has predictive value. Although the data provided in financial statements will not normally be a prediction in itself, it may be useful in making predictions. The predictive value of the statement of operations, for example, is enhanced if abnormal items are separately disclosed. Information that confirms or corrects previous predictions has feedback value. Information often has both predictive value and feedback value.

(b) **Accountability value**

Information that helps users assess a government's stewardship of the resources entrusted to it, including how resources have been applied and consumed in providing services, has accountability value. Information in government financial statements must be presented in a manner that assists in discharging this accountability. To provide accountability value, financial statements should reflect the nature and dimensions of financial position and performance that are characteristic of and appropriate to the unique nature of government. Accountability value is enhanced when financial statements identify the financial objectives and targets normally established by formal process and measure actual achievements against those financial objectives and targets. The accountability value of the information in the financial statements is also enhanced when the financial and non-financial performance information disclosed elsewhere in the Public Accounts, annual report or other report of the government can be related to the information in financial statements.

(c) **Timeliness**

Information should be timely. Financial statements issued long after the end of the fiscal period are of historical interest only. For information to be useful for decision making and accountability, the decision maker or stakeholder must receive it before it loses its capacity to influence decisions. The usefulness of information for decision making and assessing accountability declines as time elapses.

Reliability

.29 Information should be reliable. Inaccurate, inappropriate or incomplete information, or information that is biased or does not faithfully represent what it purports to represent, will inhibit rather than enhance understanding, evaluation and decision making by users and adversely affect the accountability provided by the financial statements to stakeholders. Reliable information has the following characteristics.

(a) **Representational faithfulness**

Representational faithfulness is achieved when transactions and events affecting the entity are presented in financial statements in a manner that is in agreement with the actual underlying transactions and events. Thus, transactions and events are accounted for and presented in a manner that conveys their substance rather than necessarily their legal or other form. The substance of transactions and events may not always be consistent with that apparent from their legal or other form. To determine the substance of a transaction or event, it may be necessary to consider a group of related knowledgeable and independent observers would concur that it is in agreement with the actual underlying transaction or event with a reasonable degree of precision.

(b) **Completeness**

Information is complete when none of the data necessary to achieve representational faithfulness is lacking. Completeness of disclosure means providing sufficient information about transactions, circumstances or events of such size, nature or incidence that their disclosure is necessary to understand the government's finances. In assessing the degree of completeness of the information provided in financial statements, the benefit / cost constraint in paragraph PS 1000.22 and the qualitative characteristics trade-off described in paragraph PS 1000.32 would be considered. Reliability implies completeness of information, at least within the bounds of what is material and feasible, considering the cost. An omission can rob information of its claim to neutrality if the omission is material and is intended to induce or inhibit some particular mode of behaviour.

(c) **Neutrality**

Information is neutral when it is free from bias that would lead users towards making decisions that are influenced by the way the information is measured or presented. Bias in measurement occurs when a measure tends to consistently overstate or understate the items being measured. In the selection of accounting principles, bias may occur when the selection is made with the interests of particular users or with particular economic or political objectives in mind. Financial statements that do not include everything necessary for faithful

representation of transactions and events affecting the entity would be incomplete and, therefore, potentially biased.

Neutrality does not mean "without purpose", nor does it mean that accounting should be without influence on human behaviour. Accounting information cannot avoid affecting behaviour, nor should it. It is, above all, the predetermination of a desired result, and the consequential selection of information to induce that result, that negates neutrality in accounting. To be neutral, accounting information must report economic activity as faithfully as possible, without colouring the image it communicates for the purpose of influencing behaviour in some particular direction.

(d) Conservatism

The application of conservatism in making judgments under conditions of uncertainty affects the neutrality of financial statements in an acceptable manner. When uncertainty exists, estimates of a conservative nature attempt to ensure that assets, revenues and gains are not overstated and, conversely, that liabilities, expenses and losses are not understated. Conservatism does not, however, encompass the deliberate understatement of assets and revenues or the deliberate overstatement of liabilities and expenses.

(e) Verifiability

The financial statement representation of a transaction or event is verifiable if knowledgeable and independent observers would concur that it is in agreement with the actual underlying transaction or event with a reasonable degree of precision. Verifiability focuses on the correct application of a basis of measurement rather than its appropriateness.

Comparability

.30 Comparability is a characteristic of the relationship between two pieces of information rather than of a particular piece of information by itself. It enables users to identify similarities in and differences between the information provided by two sets of financial statements. Uniformity in application of principles is important when comparing the financial statements of two different entities. Consistency in application is important when comparing the financial statements of the same entity over two periods or at two different points in time. Consistency helps prevent misconceptions that might result from the application of different accounting policies in different periods. When a change in accounting policy is deemed to be appropriate, disclosure of the effects of the change is necessary to maintain comparability.

Understandability and clear presentation

.31 Information should be understandable and clearly presented. Excessive detail, vague or overly technical descriptions, and complex presentation formats result in confusion and misinterpretation. Users need information presented clearly and simply. For the information provided in financial statements to be useful, it must be capable of being understood by users. Users are assumed to have a reasonable understanding of economic activities and accounting, together with a willingness to study the information with reasonable diligence.

Qualitative characteristics trade-off

.32 In practice, a trade-off between qualitative characteristics is often necessary, particularly between relevance and reliability. For example, there is often a trade-off between the timeliness of producing financial statements and the reliability of the information reported in the statements. There may also be a trade-off between the accountability value of information and the level of detail appropriate to the financial statements, as well as the cost of providing it. As described in paragraph PS 1000.12, some information may be better provided by other reports in the government's reporting system. Generally, the aim is to achieve an appropriate balance among the characteristics in order to meet the objectives of financial statements. The relative importance of the characteristics in different cases is a matter of professional judgment.

ELEMENTS OF FINANCIAL STATEMENTS

.33 Elements of financial statements are the basic categories of items portrayed therein in order to meet the objectives of financial statements. There are two types of elements: those that describe the economic (financial and non-financial) resources, obligations and accumulated surplus or deficit of a government at a point in time, and those that describe changes in economic resources, obligations and accumulated surplus or deficit over a period of time. Notes to financial statements, which are useful for the purpose of clarification or further explanation of the items in financial statements, while an integral part of financial statements, are not considered to be an element.

.34 The elements of government financial statements include: assets (both financial and non-financial), liabilities, revenues, and expenses. Revenues and expenses and, therefore, operating results for an accounting period, result only from changes in assets and liabilities. Operating results, when taken together with amounts reported in the statement of remeasurement gains and losses, account for the change in net economic resources for an entity for a period and, except in specific circumstances, articulate that change (economic, financial and non-financial resources are defined in FINANCIAL STATEMENT OBJECTIVES, Section PS 1100). Specific circumstances affecting net economic resources that are excluded from operations are identified in individual Sections of the PSA Handbook, for example ACCOUNTING CHANGES, Section PS 2120. Definitions of the elements that together comprise operating results, revenues and expenses, are derived from the definitions of assets and liabilities. [Former paragraph PS 1000.34 retained in Archived Pronouncements.]

.35 **Assets** are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

.36 Assets have three essential characteristics:

- (a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;
- (b) the public sector entity can control the economic resource and access to the future economic benefits; and
- (c) the transaction or event giving rise to the public sector entity's control has already occurred. [Former paragraph PS 1000.36 retained in Archived Pronouncements.]

.37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

- (a) no future economic benefit;
- (b) future economic benefit, but the government cannot obtain it; or
- (c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred.

(paragraph PS 1000.38 deleted) [Former paragraph PS 1000.38 retained in Archived Pronouncements.]

.39 **Financial assets** are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- (a) cash;
- (b) a realizable asset that is convertible to cash;
- (c) a contractual right to receive cash or another financial asset from another party;
- (d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;
- (e) an equity instrument of another entity;
- (f) an investment in a government business enterprise or government business partnership;
- (g) a financial claim on an outside organization or individual; or
- (h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055. [Former paragraph PS 1000.40 retained in Archived Pronouncements.]

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 **Non-financial assets** are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- (a) are normally employed to deliver government services;
- (b) may be consumed in the normal course of operations; and
- (c) are not for sale in the normal course of operations.

.43 **Tangible capital assets** are non-financial assets 1 having physical substance that:

- (a) are held for use in the production or supply of goods and services, for rental to others, for administrative purposes or for the development, construction, maintenance or repair of other tangible capital assets;
- (b) have useful economic lives extending beyond an accounting period;
- (c) are to be used on a continuing basis; and
- (d) are not for sale in the ordinary course of operations.

.44 **Liabilities** are present obligations of a government to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits.

.45 Liabilities have three essential characteristics:

- (a) they embody a duty or responsibility to others, leaving a government little or no discretion to avoid settlement of the obligation;
- (b) the duty or responsibility to others entails settlement by future transfer or use of assets, provision of goods or services, or other form of economic settlement at a specified or determinable date, on occurrence of a specified event, or on demand; and
- (c) the transactions or events obligating the government have already occurred.

.46 **Revenues**, including gains, are increases in economic resources, either by way of increases of assets or decreases of liabilities, resulting from the operations, transactions and events of the accounting period.

.47 Revenues, other than gains, can arise from: taxation; the sale of goods; the rendering of services; the use by others of government economic resources yielding rent, interest, royalties or dividends; or receiving contributions such as

grants, donations and bequests. Revenues do not include borrowings, such as proceeds from debt issues or transfers from other governmental units in the government reporting entity or amounts collected on behalf of others.

.48 Gains can arise from peripheral or incidental transactions and events affecting a government. Such transactions and events include the disposition of assets purchased for use and not for resale, and the liquidation or refinancing of debt.

.49 **Expenses**, including losses, are decreases in economic resources, either by way of decreases in assets or increases in liabilities, resulting from the operations, transactions and events of the accounting period.

.50 Expenses include the cost of economic resources consumed in and identifiable with the operations of the accounting period. For example, the cost of tangible capital assets is amortized to expenses as the assets are used in delivering government programs (see TANGIBLE CAPITAL ASSETS, Section PS 3150). Expenses do not include debt repayments or transfers to other governmental units in the government reporting entity.

.51 Losses can arise from peripheral or incidental transactions and events affecting a government. Such transactions and events include the disposition of assets purchased for use and not for resale, and the liquidation or refinancing of debt.

RECOGNITION

.52 Recognition is the process of including an item in the financial statements of an entity. Recognition consists of the addition of the amount involved into item totals on a financial statement together with a narrative description of the item (for example, receivables, user fees, grants) in a statement. Similar items may be grouped together in the financial statements for the purpose of presentation.

.53 Recognition means inclusion of an item within one or more individual statements and does not mean disclosure in the notes to the financial statements. Notes either provide further details about items recognized in the financial statements, or provide information about items that do not meet the criteria for recognition and thus are not recognized in the financial statements.

.54 The recognition criteria below provide general guidance on when an item is recognized in the financial statements. Whether a particular item is recognized or not will require the application of professional judgment in considering whether the specific circumstances meet the recognition criteria.

.55 The recognition criteria are as follows:

- (a) the item has an appropriate basis of measurement, and a reasonable estimate can be made of the amount involved; and
- (b) for an item that involves obtaining or giving up future economic benefits, it is expected that such benefits will be obtained or given up.

.56 It is possible that an item will meet the definition of an element but still not be recognized in the financial statements because it is not expected that future economic benefits will be obtained or given up or because a reasonable estimate cannot be made of the amount involved. It may be appropriate to provide information about items that do not meet the recognition criteria in notes to the financial statements. "Expected" is used with its usual general meaning and refers to that which can reasonably be anticipated, contemplated or believed on the basis of available evidence or logic but is neither certain nor proved. The use of the word in the recognition criteria is intended to acknowledge that economic activities occur in an environment characterized by uncertainty. It is not intended to accommodate the recognition of items that do not meet the definition of one of the elements of financial statements. By implication, recognition would, therefore, not be appropriate without the occurrence of a past transaction or economic event that gives rise to an asset, liability, revenue or expense as defined in this Section.

.57 Purchased natural resources and Crown lands are recognized in government financial statements. However, when natural resources and Crown lands have been inherited by the government in right of the Crown and have not been purchased, they are not given accounting recognition as assets in government financial statements. These items are not recognized as assets because the costs, benefits and economic value of such items cannot be reasonably and verifiably quantified using existing methods. Similarly, art and historic treasures are also not recognized as assets.

.58 In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

.59 Items recognized in government financial statements are accounted for in accordance with the accrual basis of accounting. The accrual basis of accounting recognizes the effect of transactions and events in the period in which the transactions and events occur, regardless of whether there has been a receipt or payment of cash or its equivalent. Accrual accounting recognizes a liability until the obligation or condition(s) underlying the liability is partly or wholly satisfied. Accrual accounting recognizes an asset until the future economic benefit underlying the asset is partly or wholly used or lost.

MEASUREMENT

.60 Measurement is the process of determining the amount at which an item is recognized in the financial statements. There are a number of bases on which an amount can be measured. Government financial statements are, however, prepared primarily using the historical cost basis of measurement, whereby transactions and events are recognized in financial statements at the amount of cash or cash equivalents paid or received or the fair value ascribed to them when they took place. Other bases of measurement are also used, but only in limited circumstances.

(a) Replacement cost is the amount that would be needed currently to acquire an equivalent asset. This may be used, for example, when inventories are valued at the lower of historical cost and replacement cost.

(b) Realizable value is the amount that would be received by selling an asset. This may be used, for example, to value portfolio investments. Market value may be used to estimate realizable value when a market for an asset exists.

.61 Present value is the discounted amount of future cash flows expected to be received from an asset or required to settle a liability. Present value is not a basis of measurement, but a valuation technique that may be used within historical cost-based or current-value models. This technique is used in the government reporting model, for example, to estimate the cost of retirement benefits, when determining the estimated total expenditure for closure and post-closure care of a solid waste landfill site, and when determining the "grant portion" of concessionary loans and portfolio investments.

.62 Government financial statements are prepared on the basis that recognized economic resources used up are measured in financial terms with no adjustments made for the effect of a change in the general purchasing power of the currency during the period. Although a government's performance in the management of its service potential 2 is generally a focus more appropriate to the nature and objectives of government, it cannot entirely be measured in financial terms.

.63 Financial statements are prepared on the assumption that the government is a going concern, meaning it will continue in operation, and will be able to realize assets and discharge liabilities and meet its statutory obligations in the normal course of operations for the foreseeable future.

Footnotes

1. Tangible capital assets are defined to include computer software.
2. Service potential embodies both the quality of service provided and the efficiency with which it is provided.

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SECTION PS 1150

generally accepted accounting principles

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PURPOSE AND SCOPE	
.01 This Section:	
(a) establishes standards for financial reporting in accordance with generally accepted accounting principles;	
(b) describes what constitutes generally accepted accounting principles, and their sources; and	
(c) provides guidance on sources to consult when selecting accounting policies and determining appropriate disclosures, when a matter is not dealt with explicitly in the primary sources of generally accepted accounting principles.	
.02 This Section applies to all governments. It also applies to those organizations that consider the CPA Canada Public Sector Accounting Handbook (CPA Canada PSA Handbook) to be the most appropriate to their objectives and circumstances. An entity applying this Section is referred to as a "public sector reporting entity".	
DEFINITIONS	
.03 The following definitions have been adopted for the purposes of this Section:	
(a) Accounting policies encompass the specific principles, and the methods used in their application, that are selected by a public sector reporting entity in preparing financial statements.	
(b) Generally accepted accounting principles (GAAP) encompass broad principles and conventions of general application, as well as rules and procedures that determine accepted accounting practices at a particular time.	
(c) Primary sources of GAAP are, in descending order of authority:	
(i) standards in Sections PS 1201-PS 3510;	
(ii) Public Sector Guidelines; and	
(iii) appendices and illustrative material of those pronouncements described in (i)-(ii) above.	
SOURCES OF GAAP	
.04 A public sector reporting entity should apply every primary source of GAAP that deals with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity. [APRIL 2005]	
.05 When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:	
(a) the primary sources of GAAP; and	
(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000. [APRIL 2005 *]	
.06 The primary sources of GAAP provide the financial statement accounting and reporting requirements, as well as explanations and guidance for most transactions and events encountered by a public sector reporting entity. Management is required to be knowledgeable about the primary sources of GAAP. As well, management is required to be aware of changes to the primary sources, because what constitutes GAAP at a particular time changes and adapts to reflect economic and social conditions.	

.07 No rule of general application can be phrased to suit all circumstances or combinations of circumstances that may arise. As a result, matters may arise that are not specifically addressed in the primary sources of GAAP. It is necessary to refer to other sources when the primary sources do not deal with the accounting and reporting in financial statements of transactions or events that a public sector reporting entity encounters, or when additional guidance is needed to apply a primary source to specific circumstances.

.08 A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS 1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

- (a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.
- (b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.
- (c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.
- (d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline.

.09 The selection of appropriate accounting policies and disclosures requires the exercise of professional judgment. In exercising professional judgment, a public sector reporting entity takes into account the primary sources of GAAP, as well as the concepts described in paragraph PS 1150.05(b). The public sector reporting entity would not analogize to a primary source of GAAP if the source used states that it applies only to the particular circumstances described therein.

.10 A public sector reporting entity considers all sources of GAAP that it consults in the context of the concepts described in paragraph PS 1150.05(b), which describes the concepts underlying the development and use of accounting principles in financial statements. A public sector reporting entity adopts accounting policies that are consistent with these concepts. The Public Sector Accounting Board (the Board) considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the qualitative characteristics of financial information, the elements of financial statements, and the recognition and measurement criteria in paragraph PS 1150.05(b).

.11 In selecting appropriate accounting policies and disclosures, interpretations of a source do not constitute evidence that the criteria in paragraph PS 1150.05 have been met if it is likely that most parties, exercising professional judgment, would reject them as not resulting in a fair presentation in accordance with GAAP.

.12 When the concepts described in paragraph PS 1150.05(b) conflict with a primary source of GAAP, the requirements of the primary source of GAAP prevail. The Board is guided by the concepts described in paragraph PS 1150.05(b) in the development of future pronouncements and in its review of existing pronouncements. Therefore, the number of cases of conflicts between the concepts described in paragraph PS 1150.05(b) and primary sources of GAAP will diminish over time.

.13 A public sector reporting entity may be required to prepare financial statements in accordance with regulatory, legislative or contractual requirements. When these requirements are within the range of acceptable choices allowed by this Section, the basis of accounting can be described as being in accordance with GAAP. At times, conflict between GAAP and regulatory, legislative or contractual requirements may exist. In such cases, users of financial statements need to know that the statements are not prepared in accordance with GAAP. Therefore, if the basis of accounting used to prepare such financial statements conflicts with the requirements of this Section, that basis cannot be described as being in accordance with GAAP.

Primary sources of GAAP

.14 In CPA Canada PSA Handbook Sections, italicized and non-italicized paragraphs have equal authority. Italicized paragraphs generally state the main principles, while non-italicized paragraphs generally explain the principles or their application to a particular situation. In addition, non-italicized paragraphs may include guidance for practices that are encouraged or desirable, but not required. To be in accordance with GAAP, a public sector reporting entity needs to comply with the non-italicized paragraphs as well as the principles. When there appear to be different ways of interpreting the non-italicized paragraphs, the public sector reporting entity selects the treatment that is most consistent with the principles.

.15 Public Sector Guidelines set out the Board's interpretations of existing Handbook Sections, or its opinions on other issues of concern with respect to matters of financial accounting policies and disclosures for which the process of issuing exposure drafts and eventual Handbook Sections does not apply or cannot be undertaken on a timely basis.

.16 Appendices are an integral part of the primary sources of GAAP. Illustrative material included in Appendices indicates how the accounting policies and disclosures specified in a document might be applied in particular situations or summarizes aspects of the underlying document. Illustrative material includes an introductory statement specifying that it is illustrative only.

.17 The Board issues Statements of Recommended Practice (SORPs) with respect to matters of reporting in the public sector. The objective of SORPs is to enhance decision making and accountability by improving the understandability of reports issued in the public sector. SORPs do not form part of generally accepted accounting principles.

Other sources

.18 Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

.19 Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

.20 When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

.21 In exercising professional judgment, a public sector reporting entity might wish to consult exposure drafts and other documents approved by the Board for public comment when no primary source of GAAP applies to the particular situation. The requirements of any existing accounting pronouncement that would be affected by the proposals in draft material remain in force until the effective date of the superseding material. Since the proposals in draft material are subject to revision, public sector reporting entities need to consider the consequences of any changes that may be made to the proposals as they are finalized. A document at a more advanced stage of the consultation process supersedes earlier versions.

.22 CPA Canada research reports and studies may also be consulted to the extent that they comply with paragraph PS 1150.05. In addition, organizations other than the Board may issue guidance indicating how primary sources of GAAP may be applied in particular circumstances. Since the guidance in these sources has not received Board approval, the views of the Board may differ. Therefore, caution needs to be exercised in using these sources.

.23 Accounting textbooks, journals, studies and articles that take the Canadian public sector environment into account are consulted in preference to those that do not.

.24 Sometimes, a practice has been established that does not result from written material. The relevance of such a practice is demonstrated by its compliance with paragraph PS 1150.05 and not by its general use.

TRANSITIONAL PROVISIONS

.25 This Section applies to fiscal years beginning on or after April 1, 2005.

.26 For local governments that are currently required by legislation or regulation to prepare their financial statements in accordance with a basis of accounting other than GAAP, this Section applies to fiscal years beginning on or after April 1, 2006.

Footnotes

* Editorial change — February 2007.

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E3 - PS2120 - Accounting Changes.pdf

SECTION PS 2120

accounting changes

.01 This Section establishes standards on how to account for and disclose:

- (a) a change in an accounting policy;
- (b) a change in an accounting estimate; and
- (c) a correction of an error relating to prior period financial statements.

CHANGE IN AN ACCOUNTING POLICY

.02 Accounting policies encompass the specific principles and the methods used in their application that are selected by a government in preparing financial statements. There is a general presumption that the accounting policies followed by a government are consistent within each accounting period and from one period to the next. However, a change in an accounting policy may be made: to conform to new Public Sector Accounting Standards; to adopt Public Sector Accounting Standards for the first time; or, if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government.

.03 Generally, changes in accounting policy affect, or have a potential effect on, either the operating results or the accumulated surplus / deficit, but may also affect other items. Changes in accounting policy would include, for example, a change in the method of determining the costs applicable to items in inventory held for resale when such change is not the result of changed circumstances, experience or new information.

.04 Neither (a), the initial adoption or alteration of an accounting policy necessitated by events or transactions that are clearly different in substance from those previously occurring, nor (b), the initial adoption of an accounting policy in recognition of events or transactions occurring for the first time or that previously were immaterial in their effect, is considered to be a change in an accounting policy.

.05 The classification of an item in the financial statements of the current period may be different from that in the financial statements of prior periods as a result of a change in the allocation or grouping of items within or among relevant categories. Such a change in classification is a matter of presentation and is not, in itself, a change in an accounting policy. However, to enhance comparability with the financial statements of the current period, the item is reclassified in the financial statements of the prior periods to conform with the new basis. 1

.06 Various treatments have been advocated to deal with a change in an accounting policy, including the following:

- (a) Prospective application. The new accounting policy is applied only to events and transactions occurring after the date of the change and to any outstanding related balances existing at the date of the change. No cumulative catch-up adjustment is made to such balances.
- (b) Retroactive application with no restatement of prior periods. The new accounting policy is applied to events and transactions from the date of origin of such items and a cumulative adjustment representing the effect of the change in an accounting policy on prior periods is made in the period in which the change is made. Two different treatments of the cumulative adjustment have been followed: an item reflected in the operating results or an adjustment of the opening balance of the accumulated surplus / deficit.
- (c) Retroactive application with restatement of prior periods. The new accounting policy is applied to events and transactions from the date of origin of such items. The financial statements for each prior period presented for comparative purposes are restated to reflect the new policy. The balance of the accumulated surplus / deficit at the beginning of the earliest period presented is restated to reflect the cumulative effect of the change on periods prior to that date.

.07 Proponents of prospective application argue that a restatement of previously reported figures dilutes public confidence in financial statements and has an unsettling effect on parties that have made decisions on the basis of the financial statements as originally issued. Since prospective application does not result in a restatement of prior period financial statements, however, the current and subsequent periods would not be fully comparable with periods prior to the change.

.08 Retroactive application with no restatement of prior periods would result in uniform accounting policies being applied to similar items in periods subsequent to the change. This approach would avoid dilution of confidence in the financial statements that may result from restatement of prior periods. Although periods subsequent to the change may not be fully comparable with periods prior to the change, proponents of this approach argue that inter-period comparability may be achieved by disclosing pro forma data to show what the effect would have been if the new policy had been followed in prior periods.

.09 Retroactive application with restatement of all prior periods that are presented provides consistency in accounting policies from one period to another. It assists in interpreting trends in a government's performance and other analytical data that are based on comparisons.

.10 In certain circumstances, it may be extremely difficult to obtain the necessary financial data to enable a change in an accounting policy to be applied retroactively. In such circumstances, the new accounting policy would be applied prospectively.

.11 The standards in this Section do not override any specific provisions as to prospective or retroactive application contained in other Public Sector Accounting Standards.

.12 A distinction can be made between the two primary reasons for a change in accounting policy: a government may change an accounting policy in order to comply with new Public Sector Accounting Standards, or to adopt Public Sector Accounting Standards for the first time; or, a change in accounting policy may be made when there is a choice from among two or more appropriate principles, or methods used in their application, and a government chooses to change the policy applied because it believes that the change would result in a more appropriate presentation of events or transactions in its financial statements.

.13 When a change in an accounting policy is made to conform to new Public Sector Accounting Standards or to adopt Public Sector Accounting Standards for the first time, the new standards may be applied retroactively or prospectively.

.14 *When there is a choice from among two or more appropriate principles or methods used in their application and a change is made, the new accounting policy should be applied retroactively, unless the necessary financial data are not reasonably determinable.* [SEPT. 1997]

.15 In some circumstances, while the total cumulative effect of a change in an accounting policy on prior periods can be determined, the effect with respect to specific prior periods may not be reasonably determinable. In such cases, the retroactive effect of the change in the accounting policy is accounted for as a cumulative adjustment of the opening balance of the accumulated surplus / deficit of the period in which the change is made.

.16 When there has been a change in an accounting policy, a description of the nature of the change as well as its effect on the current and prior periods assists in understanding the significance of the change and its impact on the financial statements. Depending on the nature of the change, it may be appropriate to disclose its effect on significant items such as operating results.

.17 *When a change in an accounting policy is applied retroactively, the financial statements of all prior periods presented for comparative purposes should be restated to give effect to the new accounting policy, except in those circumstances when the effect of the new accounting policy is not reasonably determinable for individual prior periods. In such circumstances, an adjustment should be made to the opening balance of the accumulated surplus / deficit of the current period, or such earlier period as is appropriate, to reflect the cumulative effect of the change on prior periods.* [SEPT. 1997]

.18 For each change in an accounting policy in the current period, the following information should be disclosed:

- (a) a description of the change;
- (b) the effect of the change on the financial statements of the current period; and
- (c) the reason for the change. [SEPT. 1997]

.19 *When a change in an accounting policy has been applied retroactively and prior periods have been restated, the fact that the financial statements of prior periods that are presented have been restated and the effect of the change on those prior periods should be disclosed.* [SEPT. 1997]

.20 *When a change in an accounting policy has been applied retroactively but prior periods have not been restated, the fact that the financial statements of prior periods that are presented have not been restated should be disclosed. The cumulative adjustment to the opening balance of the accumulated surplus / deficit of the current period should also be disclosed.* [SEPT. 1997]

.21 *When a change in an accounting policy has not been applied retroactively, this fact should be disclosed.* [SEPT. 1997]

.22 *The disclosure of particulars, including dollar amounts, applies to each change in an accounting policy; it is not appropriate to net items when considering materiality.* [SEPT. 1997]

.23 *A change in an accounting policy that does not have a material effect in the current period but is likely to have a material effect in future periods should be disclosed.* [SEPT. 1997]

.24 Some governments include in their financial statements, public accounts or other reports, historical summaries of their financial results for a series of accounting periods, some for as many as ten years. Such summaries are often used for trend analysis. In order for such summaries and the resulting analyses to provide meaningful information to readers, the accounting principles used would be comparable from year to year. Therefore, when a government reports an historical summary of its financial results, it is desirable practice that the amounts included in the summary from prior years be adjusted to reflect the accounting policies applied in calculating the results for the current year, regardless of whether the government has accounted for changes in accounting policy retroactively in its financial statements.

CHANGE IN AN ACCOUNTING ESTIMATE

.25 Changes in estimates used in accounting are the necessary consequences of the periodic preparation of financial statements. Estimating, of course, requires the exercise of judgment and reappraisal as new events occur, as more experience is acquired, or as additional information is obtained. Examples of items for which estimates are necessary include doubtful accounts and loans receivable and inventory obsolescence.

.26 It is sometimes difficult to distinguish between a change in an accounting policy and a change in an accounting estimate. For example, a government may change from deferring and amortizing certain costs to expensing them as incurred because, as a result of new information, the future benefits of the costs have become doubtful. Changes of this type are often related to the continuing process of obtaining additional information and revising estimates. In cases where it is difficult to draw a clear distinction, it is usual for such a change to be treated as a change in an estimate, not as a change in an accounting policy.

.27 A change in an estimate may affect the financial results of future periods, as well as those of the current period. One point of view would argue that, in such cases, a cumulative adjustment should be made in the current period representing the retroactive effect of the revision on prior periods so that the financial results of future periods would be on the new basis. The preferred accounting treatment, however, is that a change in an estimate not be given retroactive effect since it arises from new information or developments. The effect of a change in an estimate ought to be allocated to the period of revision and applicable future periods if it affects both.

.28 *The effect of a change in an accounting estimate should be accounted for in:*

- (a) *the period of change, if the change affects the financial results of that period only; or*
- (b) *the period of change and applicable future periods, if the change affects the financial results of both current and future periods. [SEPT. 1997]*

Disclosure of the nature and effect on the current period may be desirable for a change in an accounting estimate that is rare or unusual and that may affect the financial results of both current and future periods. On the other hand, disclosure is usually not necessary for a change in an estimate made each period in the course of accounting for normal operating activities, such as allowances for doubtful accounts.

CORRECTION OF AN ERROR IN PRIOR PERIOD FINANCIAL STATEMENTS

.29 On rare occasions, an unintentional error is so material that the financial statements of prior periods can no longer be considered to have been fairly presented at the date of their issue. Such errors may occur from a mistake in computation affecting the financial statements, from a misinterpretation or misrepresentation of information, from an oversight of information available at the time the financial statements were prepared that ought to have been taken into account, or from a misappropriation of assets.

.30 *The amount of the correction of an error that impairs the fairness of financial statements of prior periods should be reported retroactively. Comparative information should be restated, unless it is impracticable to do so. [SEPT. 1997]*

.31 An issue raised with a government by its auditor in one period but not corrected by the government until a subsequent period is not an error, for purposes of this Section; the issue would be accounted for in the period in which the correction is made.

.32 A correction of an error needs to be distinguished from a change in an accounting estimate. An estimate made as part of the normal process of accounting, which is proved by subsequent events to be inaccurate, is not considered to be an error. A change in an accounting estimate results from new information, more experience or subsequent developments.

.33 The financial statements, including the comparative information for prior periods, are presented as if the error had been corrected in the period in which it was made. Therefore, the amount of the correction that relates to each period presented is included in the restated results for that period. The amount of the correction relating to periods prior to those included in the comparative information in the financial statements is adjusted retroactively. Any other information reported with respect to prior periods, such as historical summaries of financial data, is also restated.

.34 *When there has been a correction in the current period of an error in prior period financial statements, the following information should be disclosed:*

- (a) *a description of the error;*
- (b) *the effect of the correction of the error on the financial statements of the current and prior periods; and*
- (c) *the fact that the financial statements of prior periods that are presented have been restated. [SEPT. 1997]*

Depending on the nature of the error, it may be appropriate to disclose the effect of its correction on significant items such as the change in net debt.

PRIOR PERIOD ADJUSTMENTS

.35 *Financial statements of prior periods should be adjusted only for a change in an accounting policy or for a correction of an error in prior period financial statements, in accordance with this Section. [SEPT. 1997]*

Footnotes

1. FINANCIAL STATEMENT CONCEPTS, paragraphs PS 1000.24 and .30, provides reasons, such as consistency and comparability, to support the disclosure of reclassifications of financial statement items.
2. That is, when moving from a non-GAAP basis of accounting or in circumstances other than those described in paragraph PS 2120.04.

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E4 - PS2130 - Measurement Uncertainty.pdf

SECTION PS 2130

measurement uncertainty

PURPOSE AND SCOPE

.01 This Section establishes disclosure standards for measurement uncertainty arising from items recognized or disclosed in financial statements. The disclosure standards in this Section supplement the standards in other Sections.

DEFINITIONS

.02 The following definitions have been adopted for the purposes of this Section:

- (a) **Near term** is a period of time not to exceed one year from the date of the financial statements.
- (b) **Measurement uncertainty** is uncertainty in the determination of the amount at which an item is recognized or disclosed in financial statements. Such uncertainty exists when there is a variance between the recognized or disclosed amount and another reasonably possible amount.

.03 Part of the measurement process includes the review of amounts of financial statement items to assess the need for a revision of an amount. Measurement uncertainty may exist even if an amount is not revised. Many items are measured using management's best estimates based on assumptions that reflect the most probable set of economic conditions and planned courses of action.

.04 The effect of using alternative accounting policies or methods that are disclosed in accordance with DISCLOSURE OF ACCOUNTING POLICIES, Section PS 2100, is not considered a measurement uncertainty.

DISCLOSURE

.05 When a material change in an amount that is recognized or disclosed is reasonably possible in the near term, the notes to the financial statements would provide information about the nature and extent of uncertainty.

.06 *The nature of measurement uncertainty that is material should be disclosed.* [APRIL 2005]

.07 *The extent of measurement uncertainty that is material should be disclosed when it is reasonably possible that the amount could change by a material amount in the near term.* [APRIL 2005]

.08 *When disclosure has been made in accordance with paragraph PS 2130.06 or PS 2130.07, the amount of the item subject to measurement uncertainty should be disclosed, except when disclosure of the amount would have a significant adverse effect on the entity. When the amount is not disclosed, the notes should indicate the reason(s) for non-disclosure.* [APRIL 2005]

.09 The materiality of the effect of the measurement uncertainty on the financial statements is the sole criterion for determining whether disclosure of measurement uncertainty in accordance with paragraphs PS 2130.06-.07 would be made. Materiality is the term used to describe significance of financial statement information to decision makers. An item of information, or an aggregate of items, is material if it is probable that its omission or misstatement would influence or change a decision. Materiality is a matter of professional judgment in the particular circumstances.

.10 There is a degree of uncertainty associated with the measurement of many amounts recognized or disclosed in the financial statements. In many cases, however, such uncertainty is not material. A decision about whether measurement uncertainty has a material effect on the financial statements is a matter of professional judgment. Management would consider information such as the range of reasonably possible amounts; whether the amount could change by a material amount; the impact of other reasonably possible amounts on the government's economic resources, obligations and net assets; and the possible timing of the impact. A judgment about materiality of measurement uncertainty would be made considering the effect that a different reasonably possible amount would have on the financial statements.

.11 Disclosure of the nature of the measurement uncertainty would include a description of the circumstances giving rise to the uncertainty and relevant information about the anticipated resolution of the uncertainty.

.12 The estimation of the amount of an item to be accrued or disclosed in financial statements may be based on information that provides a range of amounts. When a particular amount within such a range appears to be a better estimate than any other, that amount would be used. When uncertainty exists, estimates used would attempt to ensure that assets, revenues and gains are not overstated and that liabilities, expenses and losses are not understated. Estimates of the financial effect are determined using professional judgment, supplemented by experience of similar transactions and, in some cases, reports from independent experts. Estimates include any additional evidence provided by subsequent events occurring after the financial statement date.

.13 As a result of the estimation process, a government would be able to determine a range of reasonably possible amounts in accordance with assumptions that are realistic, supportable, internally consistent, and consistent with planned courses of action. The range of reasonably possible amounts would exclude amounts at the outer edges of possibility since such amounts, while possible, are considered to be outside the best estimate range. Relevant

information available to the government to develop a reasonable range includes past experience, precedents, and opportunities to reach alternative arrangements.

.14 Disclosure of the extent and/or range of reasonably possible amounts or the effect of a change in the underlying assumptions used to estimate the amount would be provided unless it would have a significant adverse effect on the outcome.

.15 Consideration would also be given to disclosing other relevant information to describe the measurement uncertainty, such as:

- (a) a description of the key assumptions used in estimating the amounts and whether the assumptions are susceptible to change;
- (b) an explanation of the changes made to past assumptions, if the uncertainty remains unresolved; and
- (c) when a range of reasonably possible amounts is disclosed:
 - (i) the sensitivity of the range to changes in the assumptions used to determine the range; and
 - (ii) the reason for the sensitivity.

TRANSITIONAL PROVISIONS

.16 This Section applies for fiscal years beginning on or after April 1, 2005. Earlier adoption is encouraged.

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SECTION PS 3060

government partnerships



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PURPOSE AND SCOPE

.01 This Section defines a government partnership and establishes standards on how to account for and report a government's interest in government partnerships in government financial statements, 1 regardless of the structures and forms under which the government partnership activities take place. This Section does not deal with accounting by the government partnership itself.

.02 The standards are intended to apply to governments.

.03 This Section applies in situations where economic activities meet the definitions and criteria outlined in paragraph PS 3060.06 and paragraphs PS 3060.11-.28, even though such activities may not be referred to as government partnerships. However, this Section does not apply in situations where economic activities do not meet the definitions and criteria set out in those paragraphs even though they may sometimes be referred to as government partnerships. Accounting for such activities should be governed by their substance.

.04 For the purposes of this Section, an economic activity is not restricted to activities that generate a financial return, but extends to activities for the production and delivery of non-market goods and services that provide benefits to the community, such as law and order. That is, the partners may be motivated by factors other than the generation of financial return, such as the improvement of the welfare of their citizens.

.05 This Section does not apply to arrangements that are in and of themselves:

- (a) Executory contracts such as leases and sale-leaseback transactions.
- (b) Purchase / sale transactions such as outsourcing of services, management contracts and privatization. For guidance on how to account for revenues and expenses related to purchase / sale transactions, refer to FINANCIAL STATEMENT PRESENTATION, Section PS 1201.
- (c) Transfers such as shared-cost arrangements and government programs. For guidance on how to account for government transfers, refer to GOVERNMENT TRANSFERS, Section PS 3410.
- (d) Loans. For guidance on how to account for loans, refer to LOANS RECEIVABLE, Section PS 3050.
- (e) Loan guarantees. For guidance on how to account for loan guarantees, refer to LOAN GUARANTEES, Section PS 3310.

DEFINITIONS

.06 The following definitions have been adopted for the purposes of this Section:

A **government partnership** is not a government organization but is a contractual arrangement 2 between the government and a party or parties outside of the government reporting entity 3 that has all of the following characteristics:

- (a) the partners co-operate toward achieving significant clearly defined common goals;
- (b) the partners make a financial investment in the government partnership;
- (c) the partners share control of decisions related to the financial and operating policies of the government partnership on an ongoing basis; and
- (d) the partners share, on an equitable basis, the significant risks and benefits associated with the operations of the government partnership.

The contractual arrangement establishes that the parties have shared control over the government partnership, regardless of the difference in their ownership interest. Nevertheless, overall, there must be an equitable relationship between the financial investment of the government in the government partnership, the extent of control it is able to exercise over the activities of the government partnership, and the risks and benefits that accrue to the government from the government partnership. Government partnerships may be structured as operations under shared control, assets under shared control or organizations under shared control. [Former paragraph PS 3060.06 retained in Archived Pronouncements.]

.07 A **government business partnership** is a government partnership that has all of the following characteristics:

- (a) it is a separate legal entity with the power to contract in its own name and that can sue and be sued;
- (b) it has been delegated the financial and operational authority to carry on a business;
- (c) it sells goods and services to individuals and organizations other than the partners as its principal activity; and
- (d) it can, in the normal course of its operations, maintain its operations and meet its liabilities from revenues received from sources other than the partners.

.08 A **partner** is a party to a government partnership.

.09 **Proportionate consolidation** 4 is a basis of accounting for a government's interest in government partnerships, other than government business partnerships, whereby a government's pro rata share of each of the assets, liabilities, revenues and expenses that are subject to shared control, is combined on a line-by-line basis with similar items in the government's financial statements. ADDITIONAL AREAS OF CONSOLIDATION, paragraph PS 2510.06, provides details for applying the proportionate consolidation method.

.10 **Modified equity** is a basis of accounting for a government's interest in government business partnerships whereby the equity method of accounting is modified only to the extent that the government business partnership's accounting principles are not adjusted to conform with those of the government.

ELEMENTS THAT DEFINE A GOVERNMENT PARTNERSHIP

Contractual arrangement

.11 A distinctive characteristic common to all government partnerships is that two or more partners are bound by a contractual arrangement which establishes that the partners have shared control over the government partnership. This characteristic of shared control distinguishes a government's interest in a government partnership from investments in other activities in which the government may exercise control (see GOVERNMENT REPORTING ENTITY, Section PS 1300, BASIC PRINCIPLES OF CONSOLIDATION, Section PS 2500, ADDITIONAL AREAS OF CONSOLIDATION, Section PS 2510, and PORTFOLIO INVESTMENTS, Section PS 3041).

.12 Activities conducted with no formal contractual arrangement, but which meet the definition of a government partnership set out in paragraph PS 3060.06, are in substance government partnerships for the purposes of this Section.

.13 The contractual arrangement establishes shared control over the government partnership. Such a requirement ensures that no single partner is in a position to control the activities of the government partnership unilaterally. The arrangement identifies those decisions in areas essential to the goals of the government partnership that require the consent of all the partners and those decisions which may require the consent of a specified majority of partners.

.14 The contractual arrangement may be evidenced in a number of ways, for example, by a contract between the partners or minutes of discussions between the partners. In some cases, the arrangement is incorporated in the enabling legislation, articles or other by-laws of the government partnership. Whatever its form, the contractual arrangement is usually in writing and deals with such matters as:

- (a) the activity, duration and reporting obligations of the government partnership;
- (b) the appointment of the board of directors or equivalent governing body of the government partnership and the voting rights of the partners;
- (c) the financial investments by the partners; and
- (d) the sharing by the partners of the output, revenues, expenses or surpluses or deficits of the government partnership.

.15 In some cases, the contractual arrangement may designate a partner, or an outside party or parties, as the manager or operator of the government partnership. The manager does not control the government partnership, nor does the manager exercise shared control with the partners solely by virtue of his or her management role. Rather, the manager acts within the financial and operating policies that the partners have prescribed.

.16 A government may incorporate regulations in any contractual arrangement it enters into (e.g., level of service, level of maintenance of an asset that may be returned to it at the end of a set term). Governments regulate a variety of activities with which they have no ongoing operational involvement. As such, regulations in and of themselves do not constitute shared control.

Significant clearly defined common goals

.17 Common goals are those that all partners share. For example, a number of communities may join together to build and operate a landfill site or a recreational facility. The significant common goals of the communities involve service provision and sharing the costs and revenues associated with the operations of the facility, and so, the arrangement would qualify as a government partnership.

.18 On the other hand, a community may hire an individual or organization to operate a recreational facility for a fee. The significant goals of the government are to provide a service and cost savings, while the significant goal of the management organization is to earn revenues from the contract to manage the facility. While the significant goals of each party are mutually beneficial, they are not common to both parties to the contract, and so, the arrangement does not qualify as a government partnership.

Financial investment

.19 A financial investment may be in the form of assets and/or assuming responsibility for ongoing operating costs. The investment of financial assets and tangible capital assets in the government partnership would be accounted for in accordance with paragraphs PS 3060.41-.54. The value assigned to the responsibility for ongoing operating costs would be that determined in the contractual arrangement for the government partnership.

Shared control

.20 Shared control of a government partnership means that the partners make decisions related to the financial and operating activities of the government partnership on an ongoing basis based on the terms of the contractual arrangement; none of the partners is in a position to exercise unilateral control over the government partnership. When there is shared control, partners have an active ongoing interest or relationship in the arrangement other than as passive investors or as parties to a purchase / sale transaction. Shared control would exist, for example, when a joint board is established to oversee the provision of police or fire protection services for a number of local governments.

Shared risks and benefits

.21 In a government partnership, each partner is exposed to a share of the combined risks and shares in the benefits related to the common goals of the government partnership. In a government partnership, there must be an equitable sharing among the partners of the significant risks and benefits. For example, the government partners may operate a landfill site to provide a service to their constituents on a shared cost basis. The partners would generally share the operating and environmental risks, as well as the revenues associated with operating the landfill site.

.22 Risks and benefits would not be considered to be equitably shared in an arrangement where the government retains the full risk of owning an asset while allowing another party to receive the benefit of earning revenue from user fees derived from that asset. Risks and benefits would not be equitably shared when, for example, a government owned a highway that it allowed a private sector organization to operate and earn revenues from, based on the agreement and any necessary legislation.

FORMS AND STRUCTURES OF GOVERNMENT PARTNERSHIPS

Operations under shared control

.23 The operations of some government partnerships may involve the use of the assets and other resources of the partners, rather than the establishment of an organization or a financial structure that is separate from the partners themselves. In these circumstances, each partner may use its own assets for the purposes of the activities of the government partnership. The assets remain under the ownership and control of each partner. Each partner also incurs its own expenses and liabilities and raises its own financing, which represent its own obligations. The arrangement may provide a means by which the revenue from the sale of goods or services by the government partnership and any expenses incurred in common are shared among the partners.

.24 An example of operations under shared control is when two or more partners combine their resources and expertise for use in the operation of a landfill site. One partner may provide the land, others the equipment and others cash.

.25 In other cases, the activities of the government partnership may be carried out by the employees of one of the partners alongside the partner's similar activities. For example, provision of social services through a government partnership may involve one of the government partners being responsible for the staffing and administration of the program while all partners contribute ongoing funding.

Assets under shared control

.26 Some government partnerships involve the shared control, and often the shared ownership, by the partners of one or more assets invested in, or acquired for and dedicated to the purposes of, the government partnership. Assets under shared control are used to obtain benefits for the partners. Such a government partnership does not involve the establishment of a corporation or other organization, or a financial entity that is separate from the partners themselves. For example, several local governments may form a government partnership to acquire fire protection equipment to provide service to their constituents.

Organizations under shared control

.27 An organization under shared control is a type of government partnership which involves the establishment of a separate organization (e.g., a corporation) in which each partner has an interest. The organization operates similarly to other organizations, except that a contractual arrangement between the partners establishes shared control over the economic activities of the organization.

.28 In an organization under shared control, each partner usually contributes cash or other resources to the government partnership. The organization owns the assets of the government partnership and incurs liabilities and expenses. It may enter into contracts in its own name and raise financing for the purposes of the activities of the government partnership. For example, several local governments may operate a transit organization to provide transit services to their constituents.

ACCOUNTING FOR THE GOVERNMENT'S INTEREST

Government partnerships other than government business partnerships

.29 *Government financial statements should recognize the government's interest in government partnerships, except for government business partnerships, using the proportionate consolidation method.* [OCT. 1999]

.30 Governments may enter into government partnerships that are similar to governmental units 5 except for the extent of government control — the government shares control of the government partnership with its partners, while it controls the governmental unit. Governmental units are government organizations that carry out government activities that are integral to a government's operations in directly performing its executive function and are consolidated in the government's financial statements under GOVERNMENT REPORTING ENTITY, Section PS 1300. Government partnerships that carry out similar activities to governmental units would be accounted for using proportionate consolidation.

.31 Proportionate consolidation of such government partnerships provides financial statement users with the same sort of information about the financial position and results of operations of the government as would be available if the government managed the resources and operations through a governmental unit. Proportionate consolidation also reflects the level of activities (e.g., costs and revenues) on the government's statement of operations, the financial resources available, and the risks to which the government is exposed for such activities.

Government business partnerships

.32 *Government business partnerships should be accounted for by the modified equity method applied using the government's share of the government business partnership.* [OCT. 1999]

.33 Governments may enter into government business partnerships that are similar to government business enterprises 6 except for the extent of government control. Such government partnerships may also carry out similar activities to government business enterprises. A government business partnership differs from other government partnerships in its relationship to the government, and its objectives and operations. A government business partnership represents a financial asset of the government and given its autonomy, business-oriented objectives, and financial self-sufficiency, 7 equity accounting is appropriate. Consistent with GOVERNMENT REPORTING ENTITY, Section PS 1300, for government business enterprises, the modified equity method is the most suitable form of equity accounting for government business partnerships.

.34 Accounting for government business partnerships by the modified equity method avoids commingling the budget and actual results of government business partnerships on a line-by-line basis with those of government activities having different objectives. It also avoids including the government's share of the gross debt of government business partnerships with the gross debt of other government organizations, as the government business partnerships are expected to repay that debt from their own revenues.

.35 The modified equity method supplemented with disclosure of condensed financial information gives financial statement users an informative accounting of the full nature and extent of the financial affairs and resources of those government business partnerships. It provides a measure of the impact that government business partnerships may have on a government's ability to discharge its liabilities or to provide financial resources for future operations.

Change in circumstances

.36 A change in circumstances over the life of a government partnership could affect either the valuation of the government's interest in the government partnership or in some cases, whether the arrangement would continue to be treated as a government partnership.

.37 In some cases, impairments in value of an asset invested in a government partnership or recognition of a contingent liability would require a write-down in the value of the government's reported interest in the government partnership.

.38 In other cases, the sharing of control, risks and benefits may change to such an extent as to cause an arrangement to no longer meet the definition of a government partnership. In such cases, the government's interest would be accounted for in accordance with GOVERNMENT REPORTING ENTITY, Section PS 1300, or other relevant Public Sector Accounting Standards or Guidelines. 8

.39 The circumstances affecting a government business partnership may also change so that it no longer meets the definition of a government business partnership. Failure to meet any of the four elements of the government business partnership definition in paragraph PS 3060.07, would require such a change in status of the government business partnership.

.40 The alteration of an accounting treatment necessitated by events or transactions that reflect a difference in substance from those previously occurring is not considered to be a change in accounting policy or change in classification as described in ACCOUNTING CHANGES, Section PS 2120. Therefore, the change in accounting treatment would not be applied retroactively. Nevertheless, the change in accounting treatment, the underlying reasons for the change and the financial effect of the change would be disclosed.

ACCOUNTING FOR INVESTMENTS OF ASSETS

.41 *When a government invests assets in a government partnership and receives in exchange an interest in the government partnership, any loss 9 that occurs should be recognized at the time of the initial investment in the statement of operations. [OCT. 1999]*

.42 The existence of such a loss would usually provide evidence of a decline that is other than temporary, in the carrying value of the relevant assets retained by the government. It is also necessary for the government investing the assets to recognize the decline in value of the portion of the assets retained.

.43 *When a government invests assets in a government partnership and receives in exchange an interest in the government partnership, any gain 10 that occurs should be reported in the financial statements of the government as a deferred gain at the time of the initial investment only to the extent of the interests of the other non-related partners. [OCT. 1999]*

.44 The amount of the deferred gain is equal to the other partners' proportionate share of the difference between the fair value and net carrying amount of the asset.

.45 *When a government partnership other than a government business partnership is dissolved, any deferred gain related to the assets invested by the government should be recognized as revenue. [OCT. 1999]*

.46 For government partnerships other than government business partnerships, the deferred gain would not be amortized. It would only be realized at the time the government partnership is dissolved and the assets are distributed to the partners.

.47 *For government business partnerships, any deferred gain related to the assets invested by the government should be amortized to net operating results in a rational and systematic manner over the life of the invested assets. If the invested assets are non-depreciable, the deferred gain should be amortized to net operating results on a basis appropriate to the expected revenue or service to be obtained from their use by the government business partnership. When the invested assets are disposed of by the government business partnership to an independent third party, any unamortized portion of the deferred gain should be recognized as revenue. [OCT. 1999]*

.48 When the government invests assets in a government business partnership, the deferred gain would be amortized. As an asset is consumed over time by a government business partnership using it to generate cash inflows, deferred gains arising from the government's investment of assets in the government business partnership would become realized. Realization would occur because, by definition, government business partnerships are self-sustaining from revenues received from outside of the government business partnership. Deferred gains related to government business

partnerships would also become realized when a government business partnership sells an asset invested by the government to an independent third party or when the government business partnership is dissolved.

Reporting tangible capital assets

.49 When tangible capital assets are invested in a government partnership other than a government business partnership, the government should report those assets as follows:

- (a) the other non-related partners' share of assets invested by the government would be treated as disposals by the government; and
- (b) the government's share of assets invested by the other non-related partners would be treated as purchases by the government in accordance with the relevant standards in *FINANCIAL STATEMENT PRESENTATION*, Section PS 1201, and *TANGIBLE CAPITAL ASSETS*, Section PS 3150. [OCT. 1999 *]

.50 Under *FINANCIAL STATEMENT PRESENTATION*, Section PS 1201, a government reports tangible capital assets as assets on the statement of financial position. *TANGIBLE CAPITAL ASSETS*, Section PS 3150, describes the accounting for the tangible capital assets of a government.

.51 The tangible capital assets of a government business partnership would be reflected in the government's financial statements in its one-line investment account (the "equity pickup"). The financial statements of a government business partnership would be prepared on the same basis as a private sector business. Under the modified equity method, the accounting policies of the government business partnership are not modified before determining the amount of the government's interest in the government business partnership. As a result, the government would not report the tangible capital assets of a government business partnership as described in paragraph PS 3060.49 and paragraphs PS 3060.53-.54.

(paragraph PS 3060.52 deleted)

Investments of tangible capital assets by the reporting government

.53 When a government invests an asset in a government partnership other than a government business partnership, the government would report the other non-related partners' proportionate share of an asset invested by the government as a disposal. In particular:

- (a) Governments would account for the other partners' share of the net carrying amount of the asset as a disposal.
- (b) Governments would recognize the net carrying amount in the statement of financial position, and would calculate deferred gains and losses based on the fair value less the net carrying amount of the assets.

Investments of tangible capital assets by the other partners

.54 When a non-related partner invests a tangible capital asset in a government partnership other than a government business partnership, the government would report its proportionate share of that tangible capital asset as a purchase. In particular, governments would treat that amount as an increase in the tangible capital assets reported in the statement of financial position.

PRESENTATION AND DISCLOSURE

.55 Government financial statements should disclose, in notes or schedules:

- (a) a description of the nature and purpose of government partnerships;
- (b) a listing of government partnerships, including the government's share, separately identifying those that are accounted for using the proportionate consolidation method and those that are accounted for by the modified equity method; and
- (c) condensed supplementary financial information relative to government partnerships. Such financial information should be provided separately for those government partnerships accounted for using proportionate consolidation and those accounted for using modified equity, on:
 - (i) the financial position and results of operations, including:
 - total assets and liabilities segregated by main classification;
 - net assets or liabilities, separately displaying accumulated other comprehensive income;
 - total revenues and expenses; and
 - net operating results for the period, separately displaying other comprehensive income;
 - (ii) the nature and amount of any adjustments to net assets or net operating results, as shown in the financial statements of the government partnerships, to arrive at the amount included in the government's statement of financial position or statement of operations; and
 - (iii) transactions and balances with organizations included in the government reporting entity. [OCT. 2006]

.56 *The government should disclose its share of any contingencies and contractual obligations of government partnerships and those contingencies that exist when the government is contingently liable for the liabilities of other parties to those government partnerships. [OCT. 1999 *]*

.57 *Deferred gains arising from the government's investment of assets in the government partnership should be reported with liabilities in the government's statement of financial position. [OCT. 1999]*

.58 Users of government financial statements need an appreciation of the magnitude of financial activities conducted by government partnerships and the effect of their operations on the government. This information would usually be presented on a combined basis.

.59 Separate disclosure of the government's share of any contingencies and contractual obligations of government partnerships would include, as appropriate:

- (a) the government's share of any contingencies and contractual obligations of the government partnership;
and
- (b) the government's responsibility, if any, for the other partners' share of the contingencies of the government partnership.

If the government guarantees more than its proportionate share of a government partnership's liabilities, such a guarantee would be disclosed.

.60 The level of detail disclosed by governments should reflect the highly aggregated nature of financial statements. In deciding the level of detail to disclose, governments should consider the usefulness of the information to the reader in assessing the nature of, and the costs associated with, government partnerships.

APPENDIX A



Footnotes

1. The term "financial statements" refers to the summary financial statements published by a government that report on the financial position and changes in financial position of the government reporting entity.
 2. A chart showing the various types of government contractual arrangements, including government partnerships, is included as Appendix A.
 3. In arrangements where government employees jointly manage an employee benefit program (e.g., a pension plan) with the government, the employees are not considered to be parties outside of the financial reporting entity for the purposes of applying the definition of a government partnership.
 4. Detailed guidance on the application of proportionate consolidation is set out in ADDITIONAL AREAS OF CONSOLIDATION, Section PS 2510.
 5. Governmental units are defined in BASIC PRINCIPLES OF CONSOLIDATION, Section PS 2500.
 6. GOVERNMENT REPORTING ENTITY, paragraph PS 1300.28, defines a government business enterprise.
 7. GOVERNMENT REPORTING ENTITY, paragraph PS 1300.31, identifies factors for determining the financial self-sufficiency of a government business enterprise. Those factors would be considered when assessing the financial self-sufficiency of a government business partnership.
 8. BASIC PRINCIPLES OF CONSOLIDATION, Section PS 2500, ADDITIONAL AREAS OF CONSOLIDATION, Section PS 2510, PORTFOLIO INVESTMENTS, Section PS 3041, and FINANCIAL INSTRUMENTS, Section PS 3450, may also provide relevant guidance in some cases where the arrangement no longer meets the definition of a government partnership.
 9. A loss occurs when the fair value of the asset invested is less than its net carrying amount in the government's financial statements.
 10. A gain occurs when the fair value of the asset invested is greater than its net carrying amount in the government's financial statements.
- * Editorial change — January 2003, February 2007 and June 2011.
- * Editorial change — September 2004.



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SECTION PS 3210

assets



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PURPOSE AND SCOPE

- .01 This Section:
- (a) provides guidance for applying the definition of assets set out in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, and establishes general disclosure standards for assets; but
 - (b) does not include standards for recognition and disclosure of specific types of assets, which are dealt with in other Handbook Sections.
- .02 It may be useful to read this Section in conjunction with CONTINGENT ASSETS, Section PS 3320, and CONTRACTUAL RIGHTS, Section PS 3380.

ASSETS

- .03 **Assets** are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained.
- .04 Assets have three essential characteristics:
- (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.
 - (b) The public sector entity can control the economic resource and access to the future economic benefits.
 - (c) The transaction or event giving rise to the public sector entity's control has already occurred.
- .05 Economic resources are not assets unless they meet the three characteristics of assets.

Economic resources

- .06 Economic resources embody value because they enable an entity to meet its objectives, such as the provision of public goods and services, redistribution of wealth, generation of cash inflows or reduction of cash outflows.
- .07 To embody value as an economic resource, there must also be some restriction on its availability. For example, the air we breathe generally cannot be an economic resource unless access to it is restricted.
- .08 Economic resources can arise from, but are not limited to, the following:
- (a) contracts or agreements (for example, accounts receivable and leases);
 - (b) another government's legislation (for example, transfers receivable);
 - (c) government's own legislation (for example, taxes, fines and penalties);
 - (d) voluntary contributions (for example, donations); or
 - (e) construction and development (for example, roads).
- .09 Economic resources can be:
- (a) financial in nature (for example, cash, accounts receivable and investments); or

(b) non-financial in nature (for example, tangible capital property, prepaid items and inventories of supplies).

.10 Without an economic resource, future economic benefits cannot be obtained. For example, a fire truck (the economic resource) needs to exist before it can provide fire suppression services (the future economic benefits).

Future economic benefits

.11 The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows.

.12 Often the public is the beneficiary of the goods and services provided by a public sector entity. For example, assets such as fire trucks are used to provide fire suppression services to the public. Hospital buildings and medical equipment are used to provide health care services. Parks, schools and libraries provide recreational, educational and research opportunities to the public. Water treatment plants provide goods, such as potable water. Such assets benefit public sector entities as they assist in achieving the entity's primary objective of providing public goods and services. This benefit is different from the benefit that the public receives.

.13 The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

.14 The future economic benefits may also take the form of a capacity to reduce cash outflows. For example, this may be the case when betterment of a tangible capital asset reduces the cost of providing goods and services.

.15 There is a close association between incurring a cost and the generation of an asset. However, not all costs result in a future economic benefit. For example, costs incurred to maintain the current service capacity of an asset do not provide a future economic benefit. Also, a public sector entity may obtain an asset without incurring costs. For example, items that have been donated to the public sector entity may provide that entity with future economic benefits and, hence, satisfy the definition of assets.

Control

.16 A public sector entity controls the economic resource and access to the future economic benefits when it:

- (a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;
- (b) can deny or regulate access to those benefits by others; and
- (c) is exposed to the risks associated with the economic resource.

.17 An entity that controls an economic resource has the ability to benefit from the economic resource. For example, a recipient of a transfer benefits from the transfer as it can use the transfer to provide goods or services.

.18 An entity that controls an economic resource has the ability to deny or regulate access to the future economic benefits associated with the economic resource by others. For example, an entity controlling a bus has the ability to deny or regulate access to the related transportation services.

.19 An entity that controls an economic resource is exposed to the risks associated with the economic resource. For example, the entity may hold an investment, the value of which may decline and result in a loss.

.20 Some economic resources are subject to certain external restrictions that specify the purpose(s) for which resources are to be used. For example, there may be external restrictions imposed on the public sector entity's own assets, as is the case with some sinking fund investments. Such restrictions on the use of an economic resource do not negate the public sector entity's control of the economic resource.

.21 Although control may be seen as applying to an asset as a whole, the concept can also be applied to individual rights related to the asset. For example, a single leased asset embodies different economic benefits. It may give the lessee the right to use the property and the lessor the right to receive rents and any residual value. Thus, both parties may have assets corresponding to their respective rights.

.22 Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not. For example, a public sector entity may control the economic resource and access to the future economic benefits through a capital lease arrangement yet not own the economic resource.

.23 A public sector entity's ability to regulate an economic resource does not, in and of itself, constitute control of an asset. A public sector entity may establish the regulatory environment in an industry or sector within which organizations operate and impose conditions or sanctions on their operations. For example, a pollution control authority may have the ability to close down the operations of entities that are not complying with environmental regulations. However, this power does not constitute control because the pollution control authority's interest extends only to the regulatory use of the economic resources and does not include the ability to control access to the future economic benefits.

.24 A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries.

Past transactions and events

.25 It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future.

.26 The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.

.27 Meeting the eligibility criteria under an authorized transfer often determines the past transaction or event giving rise to control of an economic resource in non-exchange contracts or agreements. Shared cost agreements (reimbursement arrangements) are an example where the control of an economic resource arises when the recipient incurs eligible expenditures.

.28 The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.

.29 The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

DISCLOSURE

.30 An economic resource may meet the definition of an asset. However;

- (a) it is not capable of being recognized in the financial statements because an appropriate basis of measurement and a reasonable estimate of the amount involved cannot be made; or
- (b) other Handbook Sections prohibit its recognition.

.31 For unrecognized assets, disclosing the major categories of assets provides information about the economic resources available to the public sector entity. The major categories of assets would be determined by type of asset, such as Crown land.

.32 *Information about the major categories of assets that are not recognized should be disclosed in the notes. When an asset is not recognized because a reasonable estimate of the amount involved cannot be made, the reason(s) for this should be disclosed. [APRIL 2017]*

TRANSITIONAL PROVISIONS

.33 This Section applies to fiscal years beginning on or after April 1, 2017. Earlier adoption is permitted.

APPENDIX A

DECISION TREE — ECONOMIC RESOURCES

The following decision tree has been prepared to illustrate the accounting treatment specified in this Section. The decision tree is illustrative only and matters of principle relating to particular situations should be decided in the context of the Section.



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SECTION PS 3250

retirement benefits



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PURPOSE AND SCOPE

.001 This Section establishes standards on how to account for and report obligations for employee retirement benefits in government financial statements. Other employee future benefits are specifically dealt with in POST-EMPLOYMENT BENEFITS, COMPENSATED ABSENCES AND TERMINATION BENEFITS, Section PS 3255.

.002 In this Section, terms that appear in **bold type** are defined in the glossary of terms.

.003 Obligations for **retirement benefits** result from a promise by a government to provide these benefits to employees because of retirement in return for their services. Pensions and other retirement benefits, such as extended health care and life insurance benefits, are a form of compensation offered for services rendered and accrue over the years employees render those services. The fundamental accounting task is to determine the amount of the obligation for retirement benefits to attribute to each period of employee service. Determining such amounts involves not only accounting for past transactions and events; it also requires forecasts of future events, such as inflation, investment returns, medical costs and employee turnover and mortality.

.004 If employees and/or retirees are covered by more than one **retirement benefit plan**, then a government needs to determine its obligation separately for each plan.

.005 The standards in this Section are based on the accounting framework recommended in FINANCIAL STATEMENT OBJECTIVES, Section PS 1100, and FINANCIAL STATEMENT PRESENTATION, Section PS 1201. That framework emphasizes the need to account for all liabilities incurred by a government to help legislators, taxpayers, investors and other users of **financial statements** assess: a government's future cash requirements from taxes and other revenues; its ability to meet financial obligations, both short-term and long-term; and its ability to maintain current services and finance new programs. Such assessments are essential when making financial decisions in government and when evaluating those decisions.

.006 Accounting for all of the retirement benefits incurred by governments is particularly important because many of those governments have accumulated significant liabilities. Many governments have chosen not to set aside funds to meet retirement benefit payments when they become due. Where those liabilities have not been recorded, financial statements do not adequately provide all of the information needed by users to help them assess a government's financial position and results of operations. It is important that financial statements account for a government's liabilities for all retirement benefits to show clearly the extent to which these obligations are to be paid from cash to be raised from future tax and other revenue sources.

.007 The basis for determining obligations for retirement benefits set out in this Section is also appropriate for determining a government's contractual obligations arising from guarantees or commitments to employee retirement benefit plans of other public sector organizations that are not part of the government reporting entity. Such obligations exist, for example, when a provincial government agrees to guarantee defined retirement benefits for employees of local school boards, agrees to guarantee a minimum rate of return on retirement benefit fund assets, or agrees to provide a significant portion of the funds required by a plan sponsor. A careful reading and evaluation of such agreements is necessary to determine the substance of the obligation and whether a **liability, contractual obligation or contingency** exists that would be reported in a government's financial statements.

The objectives of funding and accounting

.008 Determining whether a retirement benefit plan should be funded and the amount to be funded each period is a financial management matter. The funding objective is to determine an acceptable policy for financing the estimated ultimate cost of a benefit plan. An **actuarial valuation for funding purposes** is performed to calculate the contributions required to secure the benefits promised.

.009 The accounting objective is to measure and report the obligation for employee retirement benefits and to attribute the costs of those benefits to the periods in which the related services are rendered. To meet that objective, a method is needed to determine the amount of the obligation for retirement benefits outstanding, which represents the liability at the financial statement date, and the value of the benefits employees earned during the period, which represents the expense of that period. Accordingly, it is necessary to develop accounting estimates of liabilities for retirement benefits and expenses using an **actuarial cost method** and **actuarial assumptions** that ensure essential information required for fair presentation of financial condition and results of operations can be reported in government financial statements.

.010 Because the objectives of determining the most appropriate funding policy are not necessarily the same as those of determining the most appropriate accounting method, the liability for accounting purposes may not be the same as the amount due but not yet funded at the financial statement date according to the funding plan. In addition, the retirement benefit expense of the period for accounting purposes may not be the same as the contribution computed in the period for funding purposes.

Defined benefit and defined contribution plans

.011 Two types of benefit plans are addressed in this Section — **defined benefit plans** and **defined contribution plans**. A defined benefit plan is one that specifies either the benefits to be received by employees after retirement or the method for determining those benefits. Generally, the amount and value of the benefits to be paid depend on a number of factors and events. These include how long the employee and any survivors live, how many years of service the employee renders, and the employee's compensation and retirement age. When a government provides benefits under a defined benefit plan, it is at risk with respect to the amount of the benefit that each employee will receive (actuarial risk) and with respect to the investment returns on any assets set aside to pay for the cost of these benefits (investment risk).

.012 When a government provides benefits under a defined contribution plan, it does not assume the actuarial and investment risks inherent in a defined benefit plan. A defined contribution plan (or money purchase plan) is one in which a government's contributions in respect of services rendered by employees are specified. The government is required by the plan to make a specific fixed contribution each period. If that contribution is made, no additional government contributions are required now or in the future for the related service. The employees are at risk. This is generally because the amount of the benefit that will be payable to an employee is dependent upon the funds accumulated for each employee's account and the investment earnings on the accumulated funds.

.013 Because benefit plans are often complex, careful analysis and professional judgment are needed to determine whether the substance of a particular plan makes it a defined benefit or a defined contribution plan.

.014 In some circumstances, a benefit plan may include both defined benefit and defined contribution promises. The plan, for example, may guarantee a basic defined retirement benefit and state that additional benefits, such as inflation protection, will be provided on a defined contribution basis. In such circumstances, a government would determine its obligation for the defined benefit component of the plan as a defined benefit plan and the defined contribution component of the plan as a defined contribution plan. Once the type(s) of promise is identified, the accounting and reporting principles in this Section would be followed accordingly.

DEFINED BENEFIT PENSION PLANS

Liability and expense

.015 Obligations for retirement benefits result from a promise by a government to provide retirement benefits to employees because of retirement in return for their services. The obligations arise as employees render services. Therefore, as employees render services, the value of the retirement benefits attributed to those services would be recorded as a liability and expense as are other forms of current compensation.

.016 *The statement of financial position should report the retirement benefit liability and the statement of operations should report the expenses for retirement benefits on the basis of the value of the benefits attributed to employee service to the financial statement date.* [SEPT. 2001]

.017 The components of the **retirement benefit liability** are:

- (a) **accrued benefit obligation** including the effects of plan amendments, settlements and curtailments;
- (b) **plan assets**, if any; and
- (c) unamortized **actuarial gains and losses**.

.018 The cost of retirement benefits promised during the period is comprised of the **retirement benefits expense**, and the **retirement benefits interest expense**.

.019 The components of the retirement benefits expense are:

- (a) **current period benefit cost**;
- (b) cost of plan amendments incurred during the period;
- (c) net actuarial gains or losses recognized in the determination of the cost of a plan amendment in accordance with paragraphs PS 3250.068 and PS 3250.071;
- (d) gains and losses arising from plan settlements and curtailments incurred during the period;
- (e) amortization of actuarial gains and losses;
- (f) the amount recognized as a result of a temporary deviation from the plan, determined in accordance with paragraph PS 3250.073;
- (g) the change in a valuation allowance against the carrying amount of an **accrued benefit asset**, determined in accordance with paragraph PS 3250.050; less
- (h) employee contributions made during the period.

.020 The retirement benefits interest expense is the net of:

- (a) the interest cost on the accrued benefit obligation determined by applying the discount rate determined at the beginning of the period in accordance with paragraph PS 3250.044 to the average value of the accrued benefit obligation for the period; and
- (b) the expected return on plan assets for a defined benefit plan, determined by applying the assumed rate of return on plan assets to the average market-related value of assets for the period.

.021 The retirement benefits expense and the retirement benefits interest expense would be disclosed separately in the notes to the financial statements. A separate disclosure is needed to ensure that the amount reported as the retirement benefit expense is not affected by the purely financial decision of a government to fund or not fund the plan.

Actuarial cost methods

.022 Accounting for retirement benefits on the basis of employee services reflects the fact that there is no obligation for an employee when hired and that an obligation for retirement benefits exists as the employee renders service. The accounting task is to determine how to attribute the cost of the total retirement benefits promised to each period of employee service.

.023 For defined benefit plans, there are two main groups of actuarial cost methods. They are **level cost methods** and **accrued benefit methods**. Under the level cost methods, retirement benefit expenses are computed in such a manner as to produce a total current period benefit cost that remains constant, either in absolute dollars or as a percentage of salary, throughout an employee's service life. However, level cost methods are not recommended for accounting purposes because they do not reflect the cost of benefits earned by employees to the financial statement date.

.024 Under the accrued benefit methods, a distinct unit of retirement benefit is associated with each year of employee service rendered to the financial statement date. The actuarial present value of that unit of benefit is computed separately for the period during which it accrued. These methods are recommended because they reflect more directly the cost of retirement benefits earned by employees to the financial statement date.

.025 *An accrued benefit method should be used to attribute the cost of retirement benefits to the periods of employee service.* [SEPT. 2001]

.026 For certain **flat benefit retirement plans**, benefits vary only with periods of service rendered. For those plans, future salary and wage changes do not enter into the determination of the cost of retirement benefits earned to the financial statement date. For other defined benefit plans, such as **final pay retirement plans**, future salary and wage changes need to be incorporated into the cost of retirement benefits earned to the financial statement date because the benefit promise is based on future salary and wage levels. To estimate those levels, forecasts are needed of future inflation rates and of future salary increases. Similarly, for retirement medical plans, forecasts are needed of medical inflation rates.

.027 Accounting for the effect of future salary and wage changes ensures consistency when determining the present value of the cost of the retirement benefits earned to the financial statement date, i.e., the accrued benefit obligation. Because the discount rate used to determine that obligation includes an inflation component, for consistency the amount of the retirement benefits to be discounted must also include an inflation component. If only the discount rate used to determine the obligation includes an inflation component, then the accrued benefit obligation and expense would be understated significantly.

.028 One accrued benefit method that incorporates the effect of future salary and wage changes and attributes the value of retirement benefits to the years of employee service is the **projected benefit method prorated on services**. Under this method, generally an equal portion of the total estimated benefit, with salary projection for final pay plans and projection of medical inflation for retirement medical plans, is attributed to each year of service. The actuarial present value of the accrued retirement benefits is derived after the benefits are attributed to the years of service up to the financial statement date.

.029 *The projected benefit method prorated on services should be used to attribute the cost of retirement benefits to the periods of employee service.* [SEPT. 2001]

.030 When a retirement plan provides benefits that accrue in a non-uniform manner, the projected benefit method prorated on services may need to be adjusted to reflect the manner in which retirement benefits are earned by employees. For example, a pension plan formula may state that the pension benefit accrues at one percent of salary for the first 15 years and at two percent of salary for the final 20 years. In this circumstance, the prorating of the total estimated benefit to each accounting period would be adjusted to reflect the rates at which pension benefits are earned in that 35-year period.

.031 In some retirement plans, benefits promised in a contractual agreement or in legislation include inflation protection for current and future retirees and for former employees who have **vested** retirement benefits. For those plans, it is necessary to incorporate the impact of inflation protection in the determination of the cost of retirement benefits earned to the financial statement date.

.032 In other retirement plans, regular benefit increases for inflation protection may be provided even when such protection is not promised in a contractual agreement or in legislation. For those plans, careful analysis and professional judgment are needed to determine the substance of a government's obligation. If a regular pattern of benefit increases can be established over a reasonable period, it may be appropriate to incorporate the cost of such inflation protection in the cost of retirement benefits earned to the financial statement date and reported as an accrued benefit obligation.

Asset valuation

.033 The periodic valuation of plan assets is important because, to determine its retirement benefit liability and expense, a government needs to value the assets set aside for the purpose of meeting benefit payments.

.034 Most government plans require contributions from the employees as well as from the sponsoring government. Some governments place those contributions in a separate fund, which invests them in marketable assets. Those contributions and earnings are used to meet benefit payments to current and future retirees.

.035 When determining a government's retirement benefit liability and expense, plan assets would be valued at market-related values. Under this method, plan assets are recorded at market value or they are adjusted to market value over a period not to exceed five years. Values adjusted to market closely approximate current economic value in a manner that can minimize short-term fluctuations. Market-related values would be used because they are objective and verifiable. Once a basis of valuation is chosen it would be applied consistently.

.036 For some assets, such as real estate investments or non-marketable securities, market values are not readily available. For such assets, a method that approximates market can be used. For example, independent appraisals could be obtained, market values of similar properties could be reviewed, or future expected cash flows discounted at a market rate could be determined.

.037 *For a defined benefit plan, plan assets should be valued at market-related values.* [SEPT. 2001]

.038 In some cases governments issue non-marketable securities to their benefit funds on the condition that those securities are held in the fund to maturity. Market-related values for these assets may not be readily determinable. In such cases, non-marketable securities can be valued at cost.

Measurement date

.039 For a defined benefit plan, the plan assets and the accrued benefit obligation would usually be measured at the date of the financial statements. As a practical matter, an earlier date may be used provided the government adopts this practice consistently from year to year and as long as no significant change relevant to the valuation of the plan occurs between the valuation date and the financial statement date.

Actuarial assumptions

.040 Accounting for retirement benefit obligations of defined benefit plans requires forecasts of future events, such as inflation rates, investment returns, interest rates, wage and salary increases, medical inflation and employee turnover and mortality. Such forecasts form the basis of actuarial assumptions.

.041 Each key actuarial assumption would be based on the government's best estimate of those future events that have an effect on the accrued benefit obligation. The assumptions would take into account the expected long-term experience of the plan and the short-term forecast. Such an approach ensures that the reported accrued benefit obligation and expense recognize the long-term nature of retirement benefit promises as well as the experience of the plan expected in the short term. Assumptions about the long-term future, however, are not to be unduly influenced by the experience expected in the short term. At each actuarial valuation, assumptions need to be reassessed; they would be revised if expectations about the future change. All assumptions are based on the presumption that the plan will continue in effect in the absence of evidence to the contrary.

.042 *Actuarial assumptions should be based on the government's best estimates of expected long-term experience and short-term forecasts.* [SEPT. 2001]

.043 One commonly used approach that meets this standard is the use of streamed rate assumptions. Under the streamed rate approach, the short-term forecast of fund asset earnings, for example, would reflect the rates of return that assets currently held in the fund will earn until their maturity. As those assets mature, assumptions about their expected earnings on reinvestment would move to the expected long-term rate. Similarly, there would be streamed rate assumptions for salary increases.

.044 The actuarial assumptions underlying the valuation of the retirement benefit liability and expense would be internally consistent. For example, when a government determines its discount rates by reference to its plan asset earnings, the assumptions used to determine the short-term forecast incorporated in the discount rates would be consistent with the short-term forecast of rates of return on assets currently held in the fund. When a government determines its discount rates by reference to its cost of borrowing, the assumptions used to determine the short-term forecast incorporated in the discount rates would be consistent with the specific rates of interest and the periods committed to by the government on the amounts borrowed.

.045 *Actuarial assumptions should be internally consistent.* [SEPT. 2001]

.046 Internally consistent assumptions about future inflation rates are particularly important because of the significant impact those rates have on the reported accrued benefit obligation and related expenses. The same assumptions about future inflation need to be used when forecasting future rates of return on fund assets, future costs of borrowing and future salary and wage increases, and when determining the appropriate discount rates. In addition, methods of developing actuarial assumptions need to be consistent over time.

.047 Measurement of the cost of future medical benefits requires assumptions about the level and frequency of future claims and the cost of meeting those claims. The level and frequency of claims are particularly sensitive to the age of employees (and their beneficiaries) and may be sensitive to other factors, such as gender and geographical location. A government estimates future medical costs on the basis of historical data about its own experience, supplemented when necessary by historical data from other entities, insurance enterprises, medical providers or other sources. Historical data is adjusted to reflect any differences in demographic mix of the population or when there is reliable evidence that historical trends will not continue.

.048 Certain medical claims may be covered by governmental programs under existing law or by other providers of health care benefits. Benefit coverage by governmental programs is assumed to continue as provided by the present law and by other providers pursuant to their present plans.

.049 When making assumptions about future events, a government would obtain expert assistance from internal or external sources. One source of expert assistance is the **actuary** carrying out the actuarial computations. Periodic assessments are needed to ensure that the assumptions continue to be relevant.

Limit on the carrying amount of an accrued benefit asset

.050 *An accrued benefit asset should be presented on a government's statement of financial position net of any valuation allowance. When a defined benefit plan gives rise to an accrued benefit asset, a government should recognize a valuation allowance for any excess of the adjusted benefit asset over the expected future benefit. A change in valuation allowance should be recognized in the statement of operations for the period in which the change occurs.* [SEPT. 2001]

.051 A government with a defined benefit plan may have an accrued benefit asset for accounting purposes. An accrued benefit asset arises when the government's total contributions to the plan, including interest earned thereon, are greater than the retirement benefit expense recognized since the start of the plan. Contributions reflect the funding objectives of the plan. The benefit expense reflects the accounting objectives and may differ for a number of reasons, including the fact that actuarial gains and losses are deferred and amortized in future periods.

.052 A government may benefit from an accrued benefit asset either by withdrawing surplus assets or by taking a contribution holiday or receiving a refund of contributions. The accrued benefit asset may become impaired when there is a plan surplus for accounting purposes that the government is not entitled to benefit from fully. For example, there may be a regulatory moratorium on pension surplus withdrawals or uncertainties as to a government's legal right to use a plan's accounting surplus.

.053 To determine the extent to which an accrued benefit asset may be impaired, the government first determines the **adjusted benefit asset**. The adjusted benefit asset is the accrued benefit asset less net unamortized actuarial losses (determined on a basis using market value of assets).

.054 The adjusted benefit asset is then compared to the **expected future benefit**. When the expected future benefit exceeds the adjusted benefit asset, the accrued benefit asset is not impaired and, accordingly, no valuation allowance is required. The chart included as Appendix A to this Section is intended to set out the relationship between the various defined terms.

.055 The objective of the standard in paragraph PS 3250.050 is to limit a government's accrued benefit asset to the amount it can realize in the future. The expected future benefit is a calculated amount representing the benefit a government expects to realize from a plan surplus. An expected future benefit includes any withdrawable surplus or reduction in future contributions.

.056 A government determines its expected future benefit as the sum of:

- (a) the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- (b) the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

.057 A government's expected future accruals for service for the current number of active employees are determined on a basis consistent with that used to determine its accrued benefit obligation. These expected future accruals for service, less required employee contributions and minimum contributions the government is required to make regardless of any surplus, are then discounted back to the current period to determine the present value. The interest rate used to calculate this present value is the expected rate of return on plan assets used to determine the benefit expense in the period.

.058 When administration expenses are paid by the plan and included in the normal cost calculation, a best estimate of the future administration expense is included in the expected future accruals for service. When administration expenses are paid by the plan and not included in the normal cost calculation, the rate of return on plan assets is adjusted to reflect the deduction of the administrative expenses.

.059 A key factor in determining a government's expected future benefit from a defined benefit plan with a plan surplus for accounting purposes is the ability of the government to withdraw assets from the plan. The expected future benefit includes amounts to which a government has a legally enforceable right of withdrawal. It excludes any withdrawable plan surplus a government is currently required, or intends, to allocate to employees. A government may not anticipate obtaining a legally enforceable right to withdraw a portion of a plan surplus to which it is not currently entitled, whether on the basis of precedent or otherwise. Accordingly, when withdrawal of plan surplus requires the approval of employees or an appropriate regulatory authority or a court of law, a government excludes any amount subject to this restriction from its expected future benefit until such approval has been obtained. A change in the allocation of surplus between a government and its employees is incorporated into the calculation of the expected future benefit only when it has been agreed to and, when required, approved by the appropriate regulatory authorities.

Actuarial gains and losses

.060 The periodic actuarial valuation of a government's obligation for retirement benefits will usually determine that adjustments are required due to experience different from that assumed or to changes in actuarial assumptions. Adjustments are needed when the actual experience of the benefit plan is different than that expected. Adjustments due to changes in actuarial assumptions are needed when a government believes revised assumptions are necessary to reflect a relatively permanent change in expected experience or to reflect new information. Adjustments are inevitable because the actuarial valuation requires ongoing forecasts of uncertain future events.

.061 Actuarial gains and losses would be amortized over a reasonable future period because of their tentative nature and because further adjustments will likely be required in the future. A reasonable future period is the **expected average remaining service life of the related employee group**. Amortization may commence in the period following the determination of the adjustment. Actuarial gains and losses would be determined on a market value basis or a basis adjusted to market value, consistent with paragraph PS 3250.035.

.062 *Except in the circumstances in paragraph PS 3250.068, PS 3250.071 and PS 3250.078, actuarial gains and losses should be amortized to the liability or asset and the related expense in a systematic and rational manner over the expected average remaining service life of the related employee group. [SEPT. 2001]*

Prior period service costs arising from plan amendments

.063 A plan amendment occurs when a benefit plan is changed or initiated. In such circumstances, retroactive credit may be given to employees for services rendered previously and, as a result, **prior period service costs** are incurred. For example, if the benefit formula is changed from one percent to two percent of final pay per year of service, the extra one percent may be credited to employees for years of service prior to the change.

.064 Plan amendments include the inception of a new plan that grants retroactive credit for past service, an increase in benefits related to past service for active employees, or an increase in benefits for former employees already retired.

.065 The cost of plan amendments related to prior period employee services would be accounted for as an expense in the period of the plan amendment. This method is recommended because it ensures that, when a government provides retroactive credit to employees for past services, legislators, taxpayers and investors are provided a full accounting of the cost of that decision in the period the decision is made. Such an accounting ensures that the effect of that decision, as it relates to the cost of prior period services, is recognized as an expense in the period a liability is incurred. It also provides information needed to

assess the extent to which future revenues are required by a government to pay for past transactions because all retirement benefit liabilities are accounted for in the financial statements.

.066 *The cost of plan amendments related to prior period employee services should be accounted for in the period of the plan amendment.* [SEPT. 2001]

.067 While all plan amendments related to prior period employee services are accounted for in the period of the plan amendment, the existence of the plan amendment may affect the recognition of actuarial gains, as described in paragraph PS 3250.068.

.068 *In the period of a plan amendment related to prior period employee services that results in an increase in the accrued benefit obligation, if net unamortized actuarial gains exist, these should be recognized immediately, to a maximum of the prior period service cost, and offset against the prior period service cost in the statement of operations, with separate disclosure in the notes.* [SEPT. 2001]

.069 When a government makes a plan amendment related to prior period employee services and has net unamortized actuarial gains, it would recognize these net unamortized actuarial gains immediately in the statement of operations, to a maximum of the prior period service cost. Recognition would be applied first to the oldest net unamortized actuarial gains within a plan. These actuarial gains would be deducted from the prior period service cost in the statement of operations. The notes to the financial statements would disclose this information.

.070 A plan amendment may decrease, rather than increase, a government's accrued benefit obligation. A decrease in the accrued benefit obligation would be accounted for immediately in the period of the plan amendment. The existence of the plan amendment may affect the recognition of actuarial losses as described in paragraph PS 3250.071.

.071 *In the period of a plan amendment related to prior period employee services that results in a decrease in the accrued benefit obligation, if net unamortized actuarial losses exist, these should be recognized immediately, to a maximum of the decrease in the accrued benefit obligation. The net amount would be recognized in the statement of operations, with separate disclosure in the notes.* [SEPT. 2001]

.072 In the period of a plan amendment that decreases the accrued benefit obligation any net unamortized actuarial losses would be recognized immediately to a maximum of the decrease in the accrued benefit obligation. Recognition would be applied first to the oldest unamortized net actuarial losses within a plan.

Temporary deviation from the benefit plan

.073 A government may decide to deviate temporarily from the provisions of a benefit plan to increase or decrease the government's share of the benefit costs incurred in the current period or past periods. For example, a government may grant an employee contribution holiday as a temporary deviation from the normal terms of the benefit plan. A government would look to the substance of the temporary deviation to determine the most appropriate accounting.

Plan settlements and curtailments

.074 A **plan settlement** and a partial plan settlement consist of the discharge, in whole or in part, of a government's obligation existing under a retirement benefit plan. They are irrevocable events by which a government or a plan is relieved of the primary obligation to pay all or some of the benefits promised and is relieved of significant risks in relation to the obligation or the assets used to make settlement. When a full plan settlement occurs, a future actuarial valuation is not required because the government no longer has an obligation related to that plan. Because the cost of discharging the obligation may differ from the related liability recognized previously, a gain or loss may arise.

.075 A **plan curtailment** is an event that reduces significantly the expected years of future service of present employees or eliminates, for a significant number of employees, the accrual of defined benefits for some or all of their future services. Plan curtailments include termination of a significant number of employees earlier than expected which may involve eliminating a government organization or program; they also include suspension of a plan so that a significant number of employees do not earn additional defined benefits for future services. When a plan curtailment occurs, future actuarial valuations are required because, even though the government's future obligations have been reduced, the government continues to have an obligation related to that plan.

.076 Generally, the act of settling or curtailing a retirement plan will result in a gain or loss because the actual cost of the settlement or curtailment will differ from the obligation recorded previously. Gains and losses determined upon a plan settlement or curtailment would be accounted for in the statement of operations in the period of the settlement or curtailment. This approach is recommended for plan settlements because the amount of the liability is known, it relates to services previously provided and it has been settled. Similarly, if a government settles only a part of a retirement plan obligation, the related gains and losses would be recognized immediately. This approach is also recommended for plan curtailments because the retirement benefit obligation is known with greater certainty, it relates to past employee services and the employees might no longer work for the government. For plan curtailments, the portion of the total gains and losses that would be accounted for would relate to the employees affected by the curtailment.

.077 In some circumstances, there will be unamortized actuarial gains and losses incurred prior to the plan settlement or curtailment. The net unamortized balances related to the obligation settled or to the employees affected by the curtailment would be recognized in the period of settlement or curtailment, and is included as part of the gain or loss arising on settlement or curtailment.

.078 *Gains and losses determined upon a plan settlement or curtailment should be accounted for in the period of the settlement or curtailment.* [SEPT. 2001]

Joint defined benefit plans

.079 Governments may participate jointly in defined benefit plans where the government shares the risks and rewards jointly with plan participants, represented by a sponsor or sponsors. **Joint defined benefit plans** are governed by a formal agreement between the sponsors, which establishes that the sponsors have shared control over the plan. A governing board is generally appointed by the joint sponsors with equal representation and a mutually agreed-upon chair.

.080 A government would consider the characteristics of the plan to determine whether it meets the definition of a joint defined benefit plan. In a joint defined benefit plan, funding contributions are shared mutually between the government and the plan members. The sponsors have control over decisions related to the administration of the plan and the level of benefits and contributions on an ongoing basis based on the terms of the contractual agreement. The sponsors share, on an equitable basis, the significant risks associated with the benefit plan. Risk would not be considered to be equitably shared in an arrangement where the government and the joint sponsors fund the plan equally but where the government retains the full risk of the accrued benefit obligation. If the government retains the residual risks it is unlikely that the plan meets the definition of a joint defined benefit plan.

.081 *When a government participates in a joint defined benefit plan, the government's risk is limited to its portion of the plan. The government should account for its portion of the plan in accordance with the standards for defined benefit plans.* [SEPT. 2001]

.082 A government may convert an existing defined benefit plan for which it is the sole sponsor to a joint defined benefit plan where the risks and benefits are shared. When converting to a joint plan, a government would consider whether there are any special accounting issues that arise, including whether the predecessor plan has been settled or partially settled and/or curtailed or partially curtailed. In assessing such issues a government would have regard to its specific circumstances and the terms of the joint defined benefit plan.

Disclosure

.083 The notes and schedules integral to the financial statements would disclose the methods and judgments applied in accounting for accrued benefit obligations and expenses. Full disclosure is particularly important for retirement obligations because the measurements depend heavily upon judgments rather than objective evidence.

.084 *Financial statements should disclose:*

- (a) *a general description of retirement benefit plans, benefit formulae and funding policy, including a description of significant changes to retirement benefit plans during the period;*
- (b) *the accrued benefit obligation at the end of the period, as determined by the actuarial valuation;*
- (c) *the market value of plan assets at the beginning and the end of the period and, if different, the market-related value of plan assets at the beginning and the end of the period;*
- (d) *the amount of retirement benefit liability or accrued benefit asset at the end of the period, indicating separately the amount of any valuation allowance determined in accordance with paragraph PS 3250.050.*
- (e) *unamortized actuarial gains and losses and the periods of amortization;*
- (f) *current period benefit cost;*
- (g) *cost of plan amendments incurred during the period;*
- (h) *net actuarial gains or losses recognized in the determination of the cost of plan amendments in accordance with paragraphs PS 3250.068 and PS 3250.071;*
- (i) *other gains and losses on accrued benefit obligations arising during the period;*
- (j) *other gains and losses on plan assets arising during the period;*
- (k) *gains and losses arising from plan settlements and curtailments incurred during the period;*
- (l) *amortization of actuarial gains and losses reflected in the current year expense;*
- (m) *the amount recognized as a result of a temporary deviation from the plan, determined in accordance with paragraph PS 3250.073;*
- (n) *the change in a valuation allowance determined in accordance with paragraph PS 3250.050;*
- (o) *the amount of contributions by employees during the period;*
- (p) *the components of the retirement benefits interest expense for the period;*
- (q) *the amount of contributions by the government during the period;*
- (r) *the amount of benefits paid during the period;*
- (s) *the expected return and actual return on plan assets during the period;*
- (t) *assumptions about long-term inflation rates, expected rate of return on plan assets, assumed health care cost trends, rate of compensation increase (for pay-related plans) and discount rate; and*
- (u) *the date of the most recent actuarial valuation performed for accounting purposes.* [SEPT. 2001]

.085 Some of this disclosure information may be presented in reconciliations of the beginning and ending balances of the accrued benefit obligation and plan assets for the period, taking into account any unamortized actuarial gains or losses existing at the financial statement date.

.086 A reconciliation of the beginning and ending balances of the accrued benefit obligation would include the items disclosed in accordance with paragraph PS 3250.084(b), (i), (k) and (o)-(r). A reconciliation of the beginning and ending balance of plan assets for the period would include the items disclosed in accordance with paragraph PS 3250.084(c), (f)-(g), (j)-(k), (m), (o)-(p) and (r).

.087 *A government should provide these disclosures separately for plans that provide pension benefits and plans that provide retirement benefits other than pensions.* [SEPT. 2001]

.088 *A government that has aggregated disclosures for its defined benefit pension plans, or for its other defined benefit retirement plans, should provide the disclosures separately for the aggregate of plans with accrued benefit obligations in excess of plan assets.* [SEPT. 2001]

.089 The level of detail disclosed by governments would reflect the highly aggregated nature of financial statements. In deciding the level of detail to disclose, governments would consider the usefulness of the information to the reader in assessing the nature of, and the costs associated with, a government's retirement benefit plans. The level of disclosure would also consider the sensitivity of the information in relation to the government's financial position.

.090 The description of the significant benefit plans and benefit formulae might include the plan surplus or deficit at the end of the period, demographic information about the participants and whether the benefit obligation includes the cost of inflation protection. The description of the funding policy might include the major types of plan assets and the basis of their valuation. The extent to which the fund holds securities of the sponsoring government would normally be disclosed.

.091 Governments are encouraged to provide additional disclosures about the significant actuarial assumptions underlying the reported amount of a government's accrued benefit obligation when the disclosures will enhance the financial statement users' understanding of that amount.

.092 A government may also choose to disclose a forecast of the cash required to pay its retirement benefit obligations in the short term, the medium term and the long term. If provided, such a forecast would include the amounts required in the next five years, and thereafter.

.093 *For joint defined benefit plans, in addition to the disclosures required in paragraphs PS 3250.084 government financial statements should disclose:*

- (a) *the significant accounting policies for joint plans;*
- (b) *a description of the unique nature and terms of any joint plans;*
- (c) *the government's share of the risks and benefits under the plans; and*
- (d) *the total financial status of any joint plans.* [SEPT. 2001]

.094 Users of government financial statements need an appreciation of the magnitude of the retirement benefit plans that governments jointly sponsor and the government's responsibility under the terms of any joint plans.

DEFINED CONTRIBUTION PLANS

.095 When a government establishes a defined contribution plan, it does not assume the actuarial and investment risks inherent in a defined benefit plan. The government typically agrees to contribute a certain amount in each period for services rendered by the employees and has no responsibility to make any further contributions. It is the employees who are at risk. This is generally because the amount of the benefit that will be payable to them is entirely dependent upon the amount of funds accumulated for each employee's account and the economic conditions prevailing at the retirement date (see paragraphs PS 3250.011-.014 for a further discussion of defined contribution plans).

Liability and expense

.096 For the most part, defined contribution plans do not present particular accounting problems. If the formula calls for government contributions on a regular predetermined basis and if those contributions have been made, then the expense recorded in the statement of operations is simply the required contribution of the accounting period. If the contributions have not been made as required, the retirement benefit expenses would include interest accrued during the period on any outstanding amounts payable to the fund. The liability for retirement benefits recorded in the statement of financial position would be the difference between the amount the government was required to contribute and the amount that was contributed to the financial statement date, including accumulated interest on any outstanding amounts payable to the fund at the financial statement date.

.097 *For defined contribution plans:*

- (a) *the liability for retirement benefits should be the difference between the amount a government was required to contribute and the amount that was contributed by the financial statement date including accumulated interest on any outstanding amounts payable to the fund at the financial statement date;*
- (b) *the retirement benefit liability should be accounted for in the statement of financial position;*
- (c) *the expense for retirement benefits should be the amount of required contributions provided for employees' services rendered in the period. Interest accrued during the period on any outstanding amounts payable to the fund should be accounted for as a retirement benefit interest expense; and*

(d) *the retirement benefit expense and the retirement benefit interest expense should be accounted for in the statement of operations.* [SEPT. 2001]

.108 When a defined contribution plan is amended, a government may agree to make contributions in respect of past service. The cost of current and expected future years' contributions related to a past service plan amendment is recognized immediately in the period the decision is made to amend the plan.

.109 *For a defined contribution plan, the cost of current and expected future years' contributions related to a past service plan amendment should be accounted for in the period of the plan amendment.* [SEPT. 2001]

Disclosure

.100 *For defined contribution plans, financial statements should disclose:*

- (a) *a general description of benefit plans, contribution formulae and funding policy;*
- (b) *the expense recognized for the period; and*
- (c) *a description of significant changes to benefit plans during the period.* [SEPT. 2001]

.101 The description of the significant retirement benefit plans and contribution formulae might include demographic information about the participants.

.102 The description of the funding policy might also include: the employee and government contributions during the accounting period; the major types of plan assets, the total amounts and the basis of their valuation; and the extent to which the fund holds securities of the sponsoring government.

.103 The description of significant changes to the plan or to the financing of the plan might also include which employee group(s) is affected and a description of the impact of such changes on current and future retirement benefit liabilities and related expenses.

.104 The level of detail disclosed by governments would reflect the highly aggregated nature of financial statements. In deciding the level of detail to disclose, governments would consider the usefulness of the information to the reader in assessing the nature of, and the costs associated with, a government's retirement benefit plans. The level of disclosure would also consider the sensitivity of the information in relation to the government's financial position.

MULTIEMPLOYER AND MULTIPLE-EMPLOYER BENEFIT PLANS

Multiemployer plans

.105 A **multiemployer plan** is a defined benefit plan to which two or more governments or government organizations contribute, usually pursuant to legislation or one or more collective bargaining agreements. The main distinguishing characteristic of a multiemployer plan is that the contributions by one participating entity are not segregated in a separate account or restricted to provide benefits only to employees of the entity and thus may be used to provide benefits to employees of all participating entities.

.106 The federal and most provincial governments sponsor defined benefit plans in which many public sector organizations participate. Many local governments participate in such multiemployer plans. When benefits are provided to employees through a multiemployer plan, the amount for which an individual government is obligated under the plan may not be quantified. Generally, a contribution rate is established for each period to ensure that the plan assets are adequate to cover the plan's future benefit payments.

.107 When a government sponsors a defined benefit multiemployer retirement benefit plan, it has the responsibility to ensure that the defined benefits promised to employees are met. In that circumstance the sponsoring government is at risk for future experience gains or losses and would account for its related obligation for the entire multiemployer plan as a defined benefit plan.

.108 *When a government sponsors a defined benefit multiemployer retirement plan, the government should follow the standards for defined benefit plans in accounting for its obligation for the plan.* [SEPT. 2001]

.109 Although a multiemployer plan may have the characteristics of a defined benefit plan, sufficient information to follow the standards for defined benefit plans is normally not available for each participating employer other than the sponsoring government. For this reason, a multiemployer plan is accounted for by each participating government following the standards for defined contribution plans.

.110 *When benefits are provided to employees through a multiemployer retirement benefit plan, each entity participating in the plan, other than the sponsoring government, should follow the standards for defined contribution plans.* [SEPT. 2001]

.111 *The government should disclose any available information about any surplus or deficit in a multiemployer plan, the basis used to determine the surplus or deficit and the implications, if any, for the government.* [SEPT. 2001]

Multiple-employer plans

.112 A **multiple-employer plan** is a defined benefit plan maintained by more than one entity that is not a multiemployer plan. In contrast to multiemployer plans, a multiple-employer plan maintains separate accounts for each entity so that contributions provide benefits only for employees of the contributing entity. In addition, multiple-employer plans are intended to allow participating entities, commonly in the same industry, to pool their plan assets for investment purposes and to reduce the cost of plan administration. Multiple-employer plans may have features that allow participating entities to have different benefit formulae, with the entity's contributions to the plan based on the benefit formula selected by the entity.

.113 When benefits are provided to employees through a defined benefit multiple-employer plan, each government in the plan follows the standards on defined benefit plans and bases its accounting for plan assets on its proportionate interest in the assets of the multiple-employer plan.

.114 *When benefits are provided to employees through a defined benefit multiple-employer retirement plan, each entity in the plan should follow the standards for defined benefit plans.* [SEPT. 2001]

TRANSITIONAL PROVISIONS

.115 When implementing this Section, governments may have an initial unrecorded liability.

.116 The initial unrecorded liability would be accounted for as a change in accounting policy applied retroactively. This method is recommended because it ensures that all liabilities incurred to the financial statement date are accounted for in the statement of financial position. Such an accounting is needed to help users of financial statements assess the impact those liabilities may have on:

- (a) a government's future cash requirements from revenues and other sources;
- (b) a government's ability to meet its financial obligations, both short-term and long-term; and
- (c) a government's ability to maintain the level and quality of its services and to finance new programs.

.117 *This Section should be accounted for as a change in accounting policy applied retroactively.* [SEPT. 2001]

TIMING OF ACTUARIAL VALUATIONS

.118 Most governments do not have full actuarial valuations performed annually because of the magnitude of the information gathering and processing required. **Actuarial valuations for accounting purposes** would generally be done once every three years because of the financial importance of retirement benefit obligations. They would be done as close to the related financial statement date as is practical. In the years between valuations, an extrapolation would be used to compute the expected accrued benefit obligation and related expenses. Each year the government reviews matters such as changes to the plan, the actuarial assumptions, occurrence of settlements and curtailments, changes to the employee group and the rate of return on plan assets, and determines whether such matters necessitate any adjustments to the extrapolations. When the effect of any change is significant, a new valuation may be necessary.

.119 In the period a government implements this Section, it would need to assess whether a new actuarial valuation of its retirement benefit obligations is needed. A new valuation would be needed, for example, if the prior one is not current or is not prepared in accordance with this Section.

GLOSSARY

An **accrued benefit asset** is the amount of any asset recognized on a government's statement of financial position in respect of employee retirement benefits before deducting any valuation allowance that may be required. It is the sum of the government's accumulated cash contributions less the sum of the current and prior years' benefit expenses (before any change in the valuation allowance).

An **accrued benefit obligation** is the value of retirement benefits attributed to services rendered by employees and former employees to the financial statement date.

Actuarial assumptions are made as to the occurrence of a future event that will affect retirement benefit costs and obligations. They include assumptions about such matters as mortality, withdrawal, disability and retirement and about changes in compensation, interest on obligations and investment earnings.

Actuarial cost methods are used to determine the cost of providing retirement benefits and to allocate that cost to specific time periods. The two main families of actuarial valuation methods are:

Accrued benefit methods (also known as unit credit or single premium actuarial cost methods) — Under these methods a distinct unit of retirement benefit is associated with each year of credited service and the actuarial present value of that unit of benefit is separately computed for the period during which it is presumed to have accrued. Salary projection, when appropriate, is required.

Projected benefit method prorated on services — Under this accrued benefit method, generally an equal portion of the total estimated benefit (i.e., with salary projection, when appropriate) is attributed to each year of service. The actuarial present value of the accrued retirement benefits is derived after the benefits are attributed to the years of service up to the date of determination.

Level cost methods — Under these methods the retirement benefit cost assigned to any period is either the same dollar amount or the same percentage of compensation as any other period, and is a portion of the cost of the total prospective benefits of an employee group, either in absolute dollars or as a percentage of salary. (Entry age, attained age and aggregate actuarial cost methods are included in this family of methods.)

Actuarial gains and losses are changes in the value of the accrued benefit obligation and the plan assets resulting from:

- (a) experience different from that assumed; or
- (b) changes in an actuarial assumption.

An **actuarial valuation for accounting purposes** is an assessment of the financial status of a benefit plan. It consists of the valuation of assets held by the plan and calculation of the actuarial present value of benefits to be paid under the plan. The

valuation provides the information needed to determine the retirement benefit liability and related expenses in accordance with this Section.

An **actuarial valuation for funding purposes** is an assessment of the financial status of a benefit plan. It consists of the valuation of assets held to discharge the benefit liability and calculation of the actuarial present value of benefits to be paid under the plan. The valuation results in a calculation of the required future contributions and a determination of any gains or losses since the last valuation.

An **actuary** is a Fellow of the Canadian Institute of Actuaries.

An **adjusted benefit asset** is an accrued benefit asset less the amount, if any, by which the aggregate of any unamortized actuarial losses exceeds the aggregate of any unamortized actuarial gains.

A **contingency** is the result of an existing condition or situation involving uncertainty that will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm the acquisition of an asset or the reduction of a liability or the loss or impairment of an asset or the incurrence of a liability.

Contractual obligations are obligations of a government to others that will become liabilities when the terms of those contracts or agreements are met.

The **current period benefit cost** is the actuarial present value of benefits attributed to services rendered by employees in the period.

A **defined benefit plan** specifies either the benefits to be received by employees after retirement or the method for determining those benefits. The most commonly used defined benefit plans are:

Final pay plan — Bases benefits on an employee's length of service and compensation over a specified number of years (usually the years of an employee's highest earnings).

Flat benefit plan — Provides a specified benefit for each year of service rendered; the benefit earned in each period is usually fixed and determinable under the terms of the plan and the amount of benefits to be received varies only with the years of service rendered.

A **defined contribution plan** is one in which the employer's contributions are fixed, usually as a percentage of compensation, and allocated to specific individuals. The retirement benefit for each employee is the amount that can be provided at retirement based on the accumulated contributions made on that individual's behalf and investment earnings on those contributions.

The **expected average remaining service life (EARS�) of the related employee group** is the total number of years of future services expected to be rendered by that group divided by the number of employees in the group. The calculation of expected future services considers population decrements based on the actuarial assumptions but is not weighted by benefits or compensation.

The **expected future benefit** is a calculated amount representing the benefit a government expects to realize from a plan surplus. An expected future benefit includes any withdrawable surplus or reduction in future contributions. A government determines its expected future benefit as the sum of:

- (a) the present value of its expected future accruals for service for the current number of active employees, less the present value of required employee contributions and minimum contributions the government is required to make regardless of any surplus; and
- (b) the amount of the plan surplus that can be withdrawn in accordance with the existing plan and any applicable laws and regulations.

Financial statements are summary financial statements published by a government that report on the financial position and changes in financial position of the government reporting entity. Such statements present aggregated information and serve as a means by which a government demonstrates its accountability for the financial affairs and resources entrusted to it.

A **joint defined benefit plan** is a contractual arrangement between the government and another sponsor or sponsors representing plan participants that has all of the following characteristics:

- (a) the sponsors co-operate toward achieving the significant clearly defined common goal of providing retirement benefits in exchange for services rendered by the employees;
- (b) funding contributions are shared mutually between the government and the plan members, represented by the non-government sponsor;
- (c) the sponsors share control of decisions related to the administration of the retirement benefit plan and to the level of benefits and contributions on an ongoing basis; and
- (d) the significant risks associated with the retirement benefit plan are shared on an equitable basis between the government and the plan members, represented by the non-government sponsor.

The contractual arrangement establishes that the sponsors have shared control over the retirement benefit plan, and ensures that neither party is in a position to control the plan unilaterally. Nevertheless, overall, there must be an equitable relationship between the funding by the government of the retirement benefit plan, the extent of control it is able to exercise over the plan and the risks and benefits that accrue to the government from the plan.

Liabilities are present obligations of a government to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits.

A **multiemployer plan** is a defined benefit plan to which two or more governments or government organizations contribute, usually pursuant to legislation or one or more collective bargaining agreements. The main distinguishing characteristic of a multiemployer plan is that the contributions by one participating entity are not segregated in a separate account or restricted to provide benefits only to employees of the entity and, thus may be used to provide benefits to employees of all participating entities.

A **multiple-employer plan** is a defined benefit plan maintained by more than one entity that is not a multiemployer plan. In contrast to multiemployer plans, a multiple-employer plan maintains separate accounts for each entity so that contributions provide benefits only for employees of the contributing entity. In addition, multiple-employer plans are intended to allow participating entities, commonly in the same industry, to pool their plan assets for investment purposes and to reduce the cost of plan administration. Multiple-employer plans may have features that allow participating entities to have different benefit formulae, with the entity's contributions to the plan based on the benefit formula selected by the entity.

A **plan asset** is an asset segregated and restricted in a trust or other legal entity separate from the reporting government to provide for retirement benefits under the following conditions:

- (a) the assets in the separate entity are to be used only to settle the related accrued benefit obligation, are not available to the government's own creditors, and either cannot be returned to the government or can be returned to the government only if the remaining assets of the trust are sufficient to meet the plan's obligations; and
- (b) to the extent that sufficient assets are in the separate entity, the government will have no obligation to pay the related retirement benefits directly.

For purposes of this Section, plan assets do not include amounts held by the government and not yet paid into the trust or other legal entity.

A **plan curtailment** occurs when the expected years of future service to be rendered by the existing employee group are reduced significantly or when benefits will not be earned by employees for some or all future periods.

A **plan settlement** occurs when an employer legally discharges the obligation for accrued retirement benefits either by transferring assets directly to plan participants in exchange for their rights to retirement benefits or by purchasing annuity contracts in which a third party unconditionally undertakes to pay all accrued retirement benefits.

A **prior period service cost** is the increase in the accrued benefit obligation associated with past service benefit improvements.

The **retirement benefit expense** is the cost of the retirement benefits promised during the period in exchange for services rendered during the period.

The **retirement benefit interest expense** is the cost of financing an unfunded retirement benefit obligation during the period.

The **retirement benefit liability** is the amount of any liability recognized on a government's statement of financial position in respect of retirement benefits. It is the sum of the current and prior years' benefits expenses less the government's accumulated cash contributions.

A **retirement benefit plan** is any arrangement (contractual or otherwise) by which a program is established to provide retirement income and other benefits to employees and/or retirees.

Retirement benefits are benefits expected to be provided after retirement to employees and their beneficiaries. These benefits include pension income, health care benefits, life insurance, and other miscellaneous benefits provided to employees after retirement.

Vesting is the recognition of the employees' rights to receive retirement benefits that are no longer conditional on the employees remaining in the service of the employer.

APPENDIX A

Limit on accrued benefit asset



The carrying amount on the statement of financial position would be the accrued benefit asset of \$30 less the valuation allowance of \$7 for an amount of \$23.

APPENDIX B

ILLUSTRATIVE EXAMPLES

The following examples have been prepared by CPA Canada staff to illustrate how the standards in Section PS 3250 might be implemented.

The examples are illustrative only and matters of principle relating to particular situations should be decided in the context of the Section. They are not intended to indicate preferred formats nor to prescribe standardized note disclosure, as variations in format and wording will be necessary to meet the requirements of differing circumstances.

For ease of presentation, selections are made from accounting alternatives permitted by the Section.

Example 1 — Defined benefit pension plan, assuming a separate pension fund is maintained

Example 2 — Defined benefit plan for retirement benefits other than pensions, assuming a separate fund is not maintained

Example 1 — Defined benefit pension plan, assuming a separate pension fund is maintained

The government sponsors contributory defined benefit pension plans for substantially all of its employees and for members of its Legislature. There are three main plans — the Public Service Plan, the Provincial Judges' Plan and the Elected Representatives' Plan. The Public Service and the Provincial Judges' plans provide for pensions equal to 1.5 percent of the average of the five highest years' salary for each year of service to a maximum of 35 years. The Elected Representatives' Plan provides for pensions equal to four percent of the average of five years' session indemnities for each year of service to a maximum of 15 years. The plans do not provide inflation protection. The average age of the 45,000 active employees is 42. There are 5,000 former employees who are entitled to deferred pension benefits and 11,000 retirees now receiving benefits.

Each year employees contribute seven percent of their salary to a separate pension fund and the government contributes an equal amount. While the government and employees are required to contribute equal amounts into the pension fund, the government retains the full risk of the accrued benefit obligation. The pension fund invests monies from the contributions in securities of organizations external to the government reporting entity as well as investing in some non-marketable bonds of the government.

At the beginning of fiscal year 20X1, an actuarial valuation of the government's employee pension obligations was done for accounting purposes using the projected benefit method prorated on services. The liability for pensions recorded in the statement of financial position was \$400 million. For purposes of this example it is assumed that there were no unamortized actuarial gains or losses at that time.

Key actuarial assumptions used in the valuation were based on the government's best estimates. Those assumptions involve forecasts of expected future inflation rates, investment returns, wage and salary increases, and employee turnover and mortality. A second actuarial valuation for accounting purposes was performed at the end of fiscal year 20X3. During the second valuation, the actuarial assumptions included in the first one were reviewed and no changes were considered necessary.

During fiscal 20X4, a plan amendment was made to the Public Service Plan increasing the benefits from 1.5 percent to two percent of the average of the five highest years' salary for each year of service to a maximum of 35 years. The plan amendment was effective March 31, 20X4 and relates to both future and past services. The government is responsible for funding the pension liability of \$25 million related to past services over the next 12 years. The increase in current period benefit costs due to rendering of service for fiscal 20X5 was \$1.5 million.

	<u>April 1, 20X0</u>	<u>March 31, 20X3</u>
Accrued benefit obligation	\$1.5 billion	\$2.2 billion
Pension fund asset	<u>\$1.1 billion</u>	\$1.8 billion
Pension liability recorded in the statement of financial position	\$.4 billion	\$.4 billion
	=====	=====
Expected average remaining service life of related employee groups (EARSL)		12 years
Plan amendment March 31, 20X4		\$25,000
Expected current period benefit cost:		
20X1	\$200 million	
20X2	\$220 million	
20X3	\$240 million	
20X4		\$240 million
20X5		\$250 million
20X5 related to plan amendment		\$1.5 million
20X6		\$260 million

Expected rates of return	8%
Expected salary escalations	5%
Expected inflation rates	3%

The following amounts related to other pension experience incurred throughout the period:

(\$ millions)	<u>20X1</u>	<u>20X2</u>	<u>20X3</u>	<u>20X4</u>
Employee funding contributions	110	115	120	126
Government funding contributions:				
— related to current service	110	115	120	126
Benefit payments to retirees	105	109	115	119

Exhibit I — Interest during the year on the average pension liability outstanding during the year

(\$ thousands)	<u>20X1</u>	<u>20X2</u>	<u>20X3</u>	<u>20X4</u>
Interest on expected average accrued benefit obligation:				
Accrued benefit obligation — opening balance (a)	1,500,000	1,718,800	1,971,744	2,200,000
Add: Current period benefit cost (b)	100,000	110,000	120,000	120,000
Deduct: Benefit payments (b)	<u>(52,500)</u>	<u>(54,500)</u>	<u>(57,500)</u>	<u>(59,500)</u>
Average accrued benefit obligation	1,547,500	1,774,300	2,034,244	2,260,500
	=====	=====	=====	=====
Interest at 8% on average accrued benefit obligation	123,800	141,944	162,740	180,840

Expected earnings on average pension fund assets:

Pension fund assets — opening balance (a)	1,100,000	1,417,600	1,598,048	1,800,000
Add: Employee and government funding contributions (b)	110,000	115,000	120,000	126,000
Deduct: Benefit payments (b)	<u>(52,500)</u>	<u>(54,500)</u>	<u>(57,500)</u>	<u>(59,500)</u>
Average pension fund assets	1,157,500	1,478,100	1,660,548	1,866,500
	=====	=====	=====	=====
Expected earnings on average pension fund assets at 8%	92,600	118,248	132,844	149,320
Total interest during the period on the average pension liability outstanding during the period (c)	31,200	23,696	29,896	31,520

(a) In the period of an actuarial valuation, the opening balance of the accrued benefit obligation is the actuarially determined amounts (opening balances 20X1 and 20X4). In the periods between valuations (20X2 and 20X3), the opening balance is equal to the expected closing balance for the previous year as determined in Exhibit II. The opening balance of pension fund assets is the actual amount reported in the financial records of the fund.

(b) Accrued, or assumed to take place, evenly throughout the year, therefore interest is accrued on one-half of the total.

(c) Interest during the year on average pension liability outstanding during the year = 8% of [(average accrued benefit obligation) – (average pension fund assets)].

Exhibit II — Expected closing balance of accrued benefit obligation

(\$ thousands)	<u>20X1</u>	<u>20X2</u>	<u>20X3</u>	<u>20X4</u>
Accrued benefit obligation — opening balance	1,500,000	1,718,800	1,971,744	2,200,000
Add: Current period benefit cost	200,000	220,000	240,000	240,000
Increase due to plan amendment	—	—	—	25,000
Interest accrued (Exhibit I)	123,800	141,944	162,740	180,840
Deduct: Benefit payments	<u>(105,000)</u>	<u>(109,000)</u>	<u>(115,000)</u>	<u>(119,000)</u>
Expected closing balance	1,718,800	1,971,744	2,259,484	2,526,840
	=====	=====	=====	=====

Exhibit III — Expected closing balance of pension fund assets

(\$ thousands)	<u>20X1</u>	<u>20X2</u>	<u>20X3</u>	<u>20X4</u>
Pension fund assets — opening balance (actual)	1,100,000	1,417,600	1,598,048	1,800,000
Add: Employee and government funding and contributions	220,000	230,000	240,000	252,000
Expected earnings (Exhibit I)	92,600	118,248	132,844	149,320
Deduct: Benefit payments	<u>(105,000)</u>	<u>(109,000)</u>	<u>(115,000)</u>	<u>(119,000)</u>
Expected closing balance	1,307,600	1,656,848	1,855,892	2,082,320
	=====	=====	=====	=====

Exhibit IV — Amortization of actuarial gains / losses on accrued benefit obligation (a)

(\$ thousands)	<u>20X1</u>	<u>20X2</u>	<u>20X3</u>	<u>20X4</u>
Expected closing balance of accrued benefit obligation at March 31 (Exhibit II)	N/A	N/A	2,259,484	N/A
Actual accrued benefit obligation (per the March 31, 20X3 actuarial valuation)			<u>2,200,000</u>	
Actuarial gain			<u>59,484</u>	
EARSL			12 years	
Annual amortization over EARSL			4,957	

(a) A straight-line method is used to amortize actuarial gains and losses over the expected average remaining service life of the related employee groups. Amortization commences in the year following the effective date of the related actuarial valuation.

Exhibit V — Amortization of actuarial gains / losses on pension fund asset earnings

(\$ thousands)	<u>20X1</u>	<u>20X2</u>	<u>20X3</u>	<u>20X4</u>
Expected closing balance of pension fund assets at March 31 (Exhibit III)	1,307,600	1,656,848	1,855,892	2,082,320
Actual pension fund assets	<u>1,417,600</u>	<u>1,598,048</u>	<u>1,800,000</u>	<u>2,142,320</u>
Actuarial gain (loss)	110,000	(58,800)	(55,892)	60,000
	=====	=====	=====	=====
EARSL	12 years	12 years	12 years	12 years
Annual amortization over EARSL	9,167	(4,900)	(4,658)	5,000

Exhibit VI — Unamortized actuarial gains and losses

(\$ thousands)	<u>20X1</u>	<u>20X2</u>	<u>20X3</u>	<u>20X4</u>
Unamortized actuarial gains and losses — opening balance	—	110,000	42,033	41,358
Actuarial gains (losses) due to:				
— accrued benefit obligation (Exhibit IV)	—	—	59,484	—
— earnings on pension fund assets (Exhibit V)	110,000	(58,800)	(55,892)	60,000
Amortization recorded during the year:				
— accrued benefit obligation (Exhibit IV)	—	—	—	(4,957)
— earnings on pension fund assets (Exhibit V)	—	(9,167)	(4,267)	391
— recognition of net unamortized actuarial gains as an offset to prior period service cost (a)	<u>—</u>	<u>—</u>	<u>—</u>	<u>(25,000)</u>
Unamortized actuarial gains and losses — closing balance	110,000	42,033	41,358	71,792
	=====	=====	=====	=====

(a) When the cost of a plan amendment that improves a benefit related to prior service is offset against net actuarial gains, the cost is offset first against the oldest gains. Additionally, it is only offset against gains in the Public Service Plan.

Exhibit VII — Liability recorded in the statement of financial position

(\$ thousands)	<u>20X1</u>	<u>20X2</u>	<u>20X3</u>	<u>20X4</u>
Accrued benefit obligation — closing balance (a) (Exhibit II)	1,718,800	1,971,744	2,200,000	2,526,840
Deduct: Pension fund assets — closing balance (Exhibit III)	(1,417,600)	(1,598,048)	(1,800,000)	(2,142,320)
Unamortized actuarial gains / losses (Exhibit VI)	<u>110,000</u>	<u>42,033</u>	<u>41,358</u>	<u>71,792</u>
Pension liability	411,200	415,729	441,358	456,312
	=====	=====	=====	=====

(a) In the period of an actuarial valuation, this is the actuarially determined amount (closing balance 20X3). In the periods between valuations, this is an expected closing balance.

Exhibit VIII — Expenses recorded in the statement of operations

(\$ thousands)	<u>20X1</u>	<u>20X2</u>	<u>20X3</u>	<u>20X4</u>
Pension expense:				
Current period benefit cost	200,000	220,000	240,000	240,000
Prior period cost of plan amendment incurred during the year	—	—	—	25,000
Recognition of unamortized net actuarial gains	—	—	—	(25,000)
Amortization of actuarial gains / losses (Exhibit VI)	<u>—</u>	<u>(9,167)</u>	<u>(4,267)</u>	<u>(4,566)</u>
	200,000	210,833	235,733	235,434
Less: Employee contributions	<u>(110,000)</u>	<u>(115,000)</u>	<u>(120,000)</u>	<u>(126,000)</u>
Pension expense	<u>90,000</u>	<u>95,833</u>	<u>115,733</u>	<u>109,434</u>

Pension interest expense:

Interest during year on the average pension liability outstanding during the year (Exhibit I)	<u>31,200</u>	<u>23,696</u>	<u>29,896</u>	<u>31,520</u>
Total pension-related expenses	121,200	119,529	145,629	140,954
	=====	=====	=====	=====

Exhibit IX — Non-cash items recorded in the statement of cash flow

(\$ thousands)	<u>20X1</u>	<u>20X2</u>	<u>20X3</u>	<u>20X4</u>
Pension liability:				
— beginning of year (Exhibit VII)	400,000	411,200	415,729	441,358
— end of year (Exhibit VII)	<u>411,200</u>	<u>415,729</u>	<u>441,358</u>	<u>456,312</u>
Increase in pension liability	11,200	4,529	25,629	14,954
	=====	=====	=====	=====

Financial statement disclosure**Illustrative Note to the Financial Statements**

The government sponsors contributory defined benefit pension plans for substantially all of its employees and for members of its Legislature. There are three main plans — the Public Service Plan, the Provincial Judges' Plan and the Elected Representatives' Plan. The plans provide pensions based on length of service and final average earnings. They do not provide for inflation protection. The average age of the 45,000 active employees covered by the plans is 42. There are 5,000 former employees who are entitled to deferred pension benefits. At present, the plans provide benefits for 11,000 retirees; benefit payments were \$119 million in 20X4 and \$115 million in 20X3.

Employees make contributions equal to seven percent of their salary and the government contributes an equal amount. In 20X4, total contributions for current year's service were \$252 million (20X3 — \$240 million). Total benefit payments to retirees during the year were \$119 million (20X3 — \$115 million). A separate pension fund is maintained. Pension fund assets are invested primarily in marketable investments of organizations external to the government reporting entity, with some invested in non-marketable bonds of the government. The pension liability at March 31 includes the following components:

(\$ thousands)	<u>20X4</u>	<u>20X3</u>
Accrued benefit obligation	2,526,840	2,200,000
Pension fund assets:		
Marketable securities	(1,942,320)	(1,610,000)
Government bonds	<u>(200,000)</u>	<u>(190,000)</u>
	384,520	400,000
Unamortized actuarial gains / losses	<u>71,792</u>	<u>41,358</u>
Pension liability	456,312	441,358
	=====	=====

Actuarial valuations for accounting purposes are performed triennially using the projected benefit method prorated on services. The most recent actuarial report was prepared at March 31, 20X3. The accrued benefit obligation shown for 20X4 is based on an extrapolation of that 20X3 valuation. There is a net unamortized actuarial gain to be amortized on a straight-line basis over the expected average remaining service life of the related employee groups (12 years).

The actuarial valuation was based on a number of assumptions about future events, such as inflation rates, interest rates, wage and salary increases and employee turnover and mortality. The assumptions used reflect the government's best estimates. The expected inflation rate is three percent. The discount rate used to determine the accrued benefit obligation is eight percent.

Pension fund assets are valued at market values. The expected rate of return on plan assets is eight percent. The actual return on plan assets was 8.6 percent. Plan assets include government bonds valued at an estimated market value of \$200 million (20X3 — \$190 million).

The total expenses related to pensions include the following components:

(\$ thousands)	<u>20X4</u>	<u>20X3</u>
Current period benefit cost	240,000	240,000
Prior period cost of plan amendment	25,000	—
Recognition of net unamortized actuarial gains	(25,000)	—
Amortization of actuarial gains / losses	<u>(4,566)</u>	<u>(4,267)</u>
	235,434	235,733
Less: Employee contributions	<u>(126,000)</u>	<u>(120,000)</u>
Pension expense	<u>109,434</u>	<u>115,733</u>
Interest cost on the average accrued benefit obligation	180,840	162,740
Expected return on average pension plan assets	<u>(149,320)</u>	<u>(132,844)</u>
Pension interest expense	<u>31,520</u>	<u>29,896</u>
Total expenses related to pensions	140,954	145,629
	=====	=====

The pension expense is included in the statement of operations as a component of program expenses. The pension interest expense is included in the public debt interest expense.

On March 31, 20X4, a plan amendment was made to the Public Service Plan increasing the rate at which pension benefits accrue. The amendment relates to both future and past service. The benefit accrual of \$25 million is based on an actuarial valuation of the increase in the accrued benefit obligation due to past service. The government intends to fund this amount over a 12-year period (\$1 million in 20X4).

Statement of Financial Position (excerpts)

As at March 31 (\$ thousands)	<u>20X4</u>	<u>20X3</u>
Liabilities		
Accounts payable	x	x
Accrued liabilities	x	x
Borrowings		
Treasury bills	x	x
From other governments	x	x
Bonds payable to pension fund (note)	200,000	190,000
Other	x	x
Pension liability (note)	<u>456,312</u>	<u>441,358</u>
Total liabilities	<u>x</u>	<u>x</u>
Excess of liabilities over financial assets	x	x
	=====	=====

Statement of Operations (excerpts)

For the year ended March 31 (\$ thousands)	<u>20X4</u>	<u>20X3</u>
Expenses		
Health (includes pension expense)	x	x
Education ...etc.	x	x

Public debt interest (includes pension interest expense)

 X
X
=====

 X
X
=====

Example 2 — Other retirement benefits plan

The government provides certain retiree health and life insurance benefits to its employees. The plan is unfunded and requires no contribution from employees.

In 20X3 the government adopted accrual accounting for the benefit plan. Prior to that date the government recognized benefit expenses equal to its payments for the actual costs incurred by the retirees and no liability for retirement benefits other than pensions was recorded in the statement of financial position.

At the beginning of fiscal year 20X3, an actuarial valuation of the government's obligations for retirement benefits other than pensions was done for accounting purposes using the projected benefit method prorated on services. Key actuarial assumptions used in the valuation were based on the government's best estimates. Those assumptions involve forecasts of expected future inflation rates, cost of long-term debt, employee mortality and medical costs. A second actuarial valuation for accounting purposes was performed at the end of fiscal year 20X5. During the second valuation, the actuarial assumptions included in the first one were reviewed and no changes were considered necessary.

(\$ thousands)

April 1, 20X2

March 31, 20X5

Accrued benefit obligation

100,000

150,000

Expected average remaining service life of related employee groups (EARS�)

12 years

Plan amendment September 30, 20X5

10,000

Expected current period benefit cost:

20X3

3,500

20X4

3,800

20X5

4,000

20X6

4,000

20X6 related to plan amendment

500

20X7

5,200

20X8

5,400

Expected cost of long-term debt

8%

Expected salary escalations

5.5%

Expected medical inflation rates

10%

Expected inflation rates

5.5%

Benefit payments to retirees

20X3

2,500

20X4	2,800
20X5	2,900
20X6	3,100

Exhibit I — Interest during the year on the average liability for retirement benefits other than pensions outstanding during the year

(\$ thousands)	<u>20X3</u>	<u>20X4</u>	<u>20X5</u>	<u>20X6</u>
Interest on expected average accrued benefit obligation:				
Accrued benefit obligation — opening balance (a)	100,000	109,040	118,803	150,000
Add: Current period benefit cost (b)	1,750	1,900	2,000	2,125
Increase in accrued benefit obligation due to plan amendment (c)	—	—	—	5,000
Deduct: Benefit payments (b)	<u>(1,250)</u>	<u>(1,400)</u>	<u>(1,450)</u>	<u>(1,550)</u>
Average accrued benefit obligation	100,500	109,540	119,353	155,575
	=====	=====	=====	=====
Interest at 8% on average accrued benefit obligation (d)	8,040	8,763	9,548	12,446

(a) In the period of an actuarial valuation, the opening balance of the accrued benefit obligation is the actuarially determined amounts (opening balances 20X3 and 20X6). In the periods between valuations (20X4 and 20X5), the opening balance is equal to the expected closing balance for the previous year.

(b) Accrued, or assumed to take place, evenly throughout the year, therefore interest is accrued on one-half of the total.

(c) Since the plan amendment was effective mid-year, interest is earned for one-half of the year on the increase in accrued benefit obligation due to past service = $\frac{1}{2}$ (10,000). Similarly, interest is earned on the increase in the current period benefit cost following the plan amendment. The average current period benefit cost in 20X6 is, therefore, = $\frac{1}{2}$ (4,000) + $\frac{1}{4}$ (500).

(d) Interest during the year on average liability outstanding during the year = 8% of average accrued benefit obligation.

Exhibit II — Expected closing balance of accrued benefit obligation

(\$ thousands)	<u>20X3</u>	<u>20X4</u>	<u>20X5</u>	<u>20X6</u>
Accrued benefit obligation — opening balance	100,000	109,040	118,803	150,000
Add: Current period benefit cost	3,500	3,800	4,000	4,500
Increase due to plan amendment	—	—	—	10,000
Interest accrued (Exhibit I)	8,040	8,763	9,548	12,446
Deduct: Benefit payments	<u>(2,500)</u>	<u>(2,800)</u>	<u>(2,900)</u>	<u>(3,100)</u>
Expected closing balance	109,040	118,803	129,451	173,846
	=====	=====	=====	=====

Exhibit III — Amortization of actuarial gains / losses on accrued benefit obligation (a)

(\$ thousands)	<u>20X3</u>	<u>20X4</u>	<u>20X5</u>	<u>20X6</u>
Expected closing balance of accrued benefit obligation at March 31 (Exhibit II)	N/A	N/A	129,451	N/A
Actual accrued benefit obligation (per the March 31, 20X5 actuarial valuation)			<u>150,000</u>	
Actuarial gain (loss)			(20,549)	

EARSL

12 years

Annual amortization over EARSL

(1,712)

(a) A straight-line method is used to amortize actuarial gains and losses over the expected average remaining service life of the related employee groups. Amortization commences in the year following the effective date of the related actuarial valuation.

Exhibit IV — Unamortized actuarial gains and losses

(\$ thousands)	<u>20X3</u>	<u>20X4</u>	<u>20X5</u>	<u>20X6</u>
Unamortized actuarial gains and losses — opening balance	N/A	N/A	—	(20,549)
Actuarial gains (losses) due to:				
— accrued benefit obligation (Exhibit III)			(20,549)	—
Amortization recorded during the year:				
— accrued benefit obligation (Exhibit III)			—	1,712
— recognition of net unamortized actuarial gains as an offset to prior period service cost			—	—
			(20,549)	(18,837)

Exhibit V — Liability for retirement benefits recorded in the statement of financial position

(\$ thousands)	<u>20X3</u>	<u>20X4</u>	<u>20X5</u>	<u>20X6</u>
Accrued benefit obligation — closing balance (a) (Exhibit II)	109,040	118,803	150,000	173,846
Unamortized actuarial gains / losses (Exhibit IV)	—	—	(20,549)	(18,837)
Liability for retirement benefits	109,040	118,803	129,451	155,009

(a) In the period of an actuarial valuation, this is the actuarially determined amount (closing balance 20X5). In the periods between valuations, this is an expected closing balance.

Exhibit VI — Expenses recorded in the statement of operations

(\$ thousands)	<u>20X3</u>	<u>20X4</u>	<u>20X5</u>	<u>20X6</u>
Retirement benefit expense:				
Current period benefit cost	3,500	3,800	4,000	4,500
Prior period cost of plan amendment incurred during the year	—	—	—	10,000
Recognition of unamortized net actuarial gains	—	—	—	—
Amortization of actuarial gains / losses (Exhibit III)	x	x	x	1,712
Retirement benefit expense	3,500	3,800	4,000	16,212
Retirement benefit interest expense (Exhibit I)	<u>8,040</u>	<u>8,763</u>	<u>9,548</u>	<u>12,446</u>
Total expenses related to retirement benefits	11,540	12,563	13,548	28,658

Financial statement disclosure

Illustrative Note to the Financial Statements

The government sponsors a defined benefit plan for retirement benefits other than pensions for substantially all of its employees. The plan provides extended health and dental as well as life insurance to employees.

Total benefit payments to retirees during the year were \$3.1 million (20X5 — \$2.9 million). The plan is unfunded and requires no contribution from employees. The retirement benefit liability at March 31 includes the following components:

(\$ thousands)	<u>20X6</u>	<u>20X5</u>
Accrued benefit obligation	173,846	150,000
Unamortized actuarial gains / losses	<u>(18,837)</u>	<u>(20,459)</u>
Retirement benefit liability	155,009	129,451
	=====	=====

Actuarial valuations for accounting purposes are performed triennially using the projected benefit method prorated on services. The most recent actuarial report was prepared at March 31, 20X5. The accrued benefit obligation shown for 20X6 is based on an extrapolation of that 20X5 valuation. There is a net unamortized actuarial loss to be amortized on a straight-line basis over the expected average remaining service life of the related employee groups (12 years).

The actuarial valuation was based on a number of assumptions about future events, such as inflation rates, interest rates, medical inflation rates, wage and salary increases, and employee turnover and mortality. The assumptions used reflect the government's best estimates. The expected inflation rate is 5.5 percent. The discount rate used to determine the accrued benefit obligation is eight percent.

The total expenses related to retirement benefits other than pensions include the following components:

(\$ thousands)	<u>20X6</u>	<u>20X5</u>
Current period benefit cost	4,500	4,000
Prior period cost of plan amendment	10,000	—
Amortization of actuarial gains / losses	<u>1,712</u>	<u>—</u>
Retirement benefit expense	16,212	4,000
Retirement benefit interest expense	<u>12,446</u>	<u>9,548</u>
Total expenses related to retirement benefits	28,658	13,548
	=====	=====

The retirement benefit expense is included in the statement of operations as a component of program expenses. The retirement benefit interest expense is included in the public debt interest expense.

On September 30, 20X5, a plan amendment was made to the plan increasing the rate at which retirement benefits accrue. The amendment relates to both future and past service. The benefit accrual of \$10 million is based on an actuarial valuation of the increase in the accrued benefit obligation due to past service.

Statement of Financial Position (excerpts)

As at March 31 (\$ thousands)	<u>20X6</u>	<u>20X5</u>
Liabilities		
Accounts payable	x	x
Accrued liabilities	x	x
Borrowings		
Treasury bills	x	x
From other governments	x	x
Other	x	x
Retirement benefit liability (note)	<u>155,009</u>	<u>129,451</u>
Total liabilities	<u>x</u>	<u>x</u>
Excess of liabilities over financial assets (a)	x	x

(a) The opening balance of the excess of liabilities over financial assets in 20X3 has been restated to reflect a change in accounting policy for employee retirement benefit obligations applied retroactively. The effect of this restatement is as follows:

(\$ thousands)	
Excess of liabilities over financial assets — beginning of year:	
As previously reported	x
Adjustments due to change in accounting policy applied retroactively	<u>100,000</u>
As restated	x
Excess of expenses over revenues during the year	<u>x</u>
Excess of liabilities over financial assets — end of year	x
	=====

Statement of Operations (excerpts)

For the year ended March 31 (\$ thousands)	<u>20X6</u>	<u>20X5</u>
Expenses		
Health (includes retirement benefit expense)	x	x
Education ...etc.	x	x
Public debt interest (includes retirement benefit interest expense)	<u>x</u>	<u>x</u>
	x	x
	=====	=====

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SECTION PS 3320

contingent assets



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PURPOSE AND SCOPE

.01 This Section:

- (a) defines and establishes disclosure standards on contingent assets; but
- (b) does not include disclosure standards for specific types of contingent assets.

.02 It may be useful to read this Section in conjunction with ASSETS, Section PS 3210, and CONTRACTUAL RIGHTS, Section PS 3380.

DEFINITION

.03 **Contingent assets** are possible assets arising from existing conditions or situations involving uncertainty. That uncertainty will ultimately be resolved when one or more future events not wholly within the public sector entity's control occurs or fails to occur. Resolution of the uncertainty will confirm the existence or non-existence of an asset.

CHARACTERISTICS OF CONTINGENT ASSETS

.04 Contingent assets are distinct from assets because they are characterized by the uncertainty related to the existence of an asset at the financial statement date.

.05 Contingent assets usually arise from unplanned or unexpected events that lead to an existing condition or situation the outcome of which is uncertain. The outcome or resolution of the condition or situation after the financial statement date will confirm whether an asset exists.

.06 Contingent assets have two basic characteristics:

- (a) An existing condition or situation that is unresolved at the financial statement date.
- (b) An expected future event that will resolve the uncertainty as to whether an asset exists.

.07 The mere fact that an estimate of an amount is involved (measurement uncertainty) does not, in and of itself, constitute the type of uncertainty that characterizes a contingent asset. For example, even though there may be measurement uncertainty related to income tax receivable, there is nothing uncertain about the fact that this asset exists. Any uncertainty is related solely to the amount thereof.

Existing condition or situation

.08 For a contingent asset to be present, there usually is an unplanned or unexpected event leading to an existing condition or situation where the evidence indicates that a public sector entity may have an asset. For example, a public sector entity may have incurred an unexpected loss and there is sufficient evidence for potential recovery. The potential for recovery constitutes the existing condition or situation giving rise to a possible asset. It is a possible asset because of the uncertainty around recovery and it is only a future event that will confirm whether an asset exists.

.09 Passing legislation that has retroactive application after the financial statement date cannot create an existing condition or situation at the financial statement date. Further, elected or public sector entity officials may announce public sector entity intentions in a period following the financial statement date but before the completion of the

financial statements. If a condition or situation did not exist at the date of the financial statements, there is no contingent asset. However, there may be a subsequent event.

Confirming future event

.10 For a contingent asset to exist, there must also be an expected confirming future event that will resolve the uncertainty. The expected confirming future event provides additional information as to whether a public sector entity had an asset at the financial statement date. The confirming future event does not create an asset – it only proves or disproves its existence at the financial statement date.

.11 The future confirming event cannot be wholly within the control of the public sector entity. For example, when a public sector entity is involved in a lawsuit, the future confirming event (the resolution of the lawsuit) is not within the control of that public sector entity.

EXISTENCE OF UNCERTAINTY

.12 The determination of whether an asset exists at the financial statement date depends on an assessment of the probability of a future event occurring, or not occurring, confirming that an asset existed at the financial statement date. This probability can be expressed by the following:

- (a) likely — the probability of the occurrence (or non-occurrence) of the future event(s) is high;
- (b) unlikely — the probability of the occurrence (or non-occurrence) of the future event(s) is slight; and
- (c) not determinable — the probability of the occurrence (or non-occurrence) of the future event(s) cannot be determined.

.13 Assessing the likelihood of the future confirming event occurring and estimating its financial effects are matters for judgment by those responsible for preparing the financial statements. In identifying contingent assets and determining their amount, consideration would be given to all information available prior to completion of the financial statements, supplemented by experience in similar transactions and, in some cases, reports from independent experts.

DISCLOSURE

.14 In assessing the public sector entity's financial position and results, it is important to understand its contingent assets. As a minimum, knowledge of the existence, nature and extent of contingent assets is warranted because they indicate the economic resources that may be available to the public sector entity. The relevance of such information to the decision-making process arguably outweighs the inherent uncertainty.

.15 Disclosure of the nature of contingent assets includes a description of the circumstances giving rise to the uncertainty and information about the anticipated resolution of the uncertainty.

.16 When a reasonable estimate can be made, disclosure of the extent of a contingent asset includes the public sector entity's best estimate and a range of possible amounts, unless it would have an adverse effect on the outcome. A financial statement user may not find disclosure of a broad range of amounts, which may extend from the minimum possible amount to the maximum possible amount, as useful as a narrower range that comprises what is reasonable.

.17 When an estimate of the amount has been made, the basis for that estimate would be disclosed. It may also be useful to disclose the significant assumptions underlying the contingent asset that are subject to change and the impact that a change would have on the estimate. Disclosure of the extent could also be accomplished by disclosing the minimum likely amount of the contingent asset, accompanied by an explanation of the significant factors that could affect the resolution of the contingent asset and the prospects that any contingent asset will be more than the minimum likely amount.

.18 The level of disclosure also considers the sensitivity of the information.

.19 *The existence of a contingent asset at the date of the financial statements should be disclosed in notes to the financial statements when the occurrence of the confirming future event is likely. [APRIL 2017]*

.20 *The following information should be disclosed in notes or schedules relative to a contingent asset:*

- (a) *the nature;*
- (b) *the extent, except in those cases where the extent cannot be measured or disclosure of the extent would have an adverse effect on the outcome;*
- (c) *the reason(s) for any non-disclosure of the extent; and*
- (d) *when an estimate of the amount has been made, the basis for that estimate. [APRIL 2017]*

TRANSITIONAL PROVISIONS

.21 This Section applies to fiscal years beginning on or after April 1, 2017. Earlier adoption is permitted.

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SECTION 4600

pension plans

Background Information and Basis for Conclusions

Benefit Plans and Fair Value Disclosures by Pension Plans – Amendments to Section 4600 (October 2012)

Fair Value Measurement by Pension Plans — Amendments to Section 4600 (November 2011)

Pension Plans, Section 4600 (June 2010)

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PURPOSE AND SCOPE

.01 These standards apply to all pension plans, including defined benefit plans and defined contribution plans. They establish requirements for measurement and presentation of information in general purpose financial statements of pension plans, as well as financial statement disclosures. Such financial statements provide information about the pension plan including net assets available for benefits and pension obligations.

.02 A pension plan is a reporting entity separate from a sponsor and the plan participants. These standards apply to pension plan financial statements prepared for participants as a group and for other interested parties. They do not deal with reporting to individual participants about their individual pension benefits.

.03 One of the uses of general purpose financial statements of pension plans is to assess the ability of the pension plan to meet future benefit payments. Such financial statements cannot provide all the information that is needed to fully assess benefit security. In addition to pension plan financial statements prepared in accordance with these standards, participants may also need to review, amongst other things, actuarial reports, and to take into account the financial health of the sponsor. Such additional information is beyond the scope of these standards.

.04 Some benefit plans have characteristics similar to pension plans and provide benefits other than pensions (for example, retiree health care and life insurance benefit plans, health and welfare plans providing benefits during active service, and long-term disability plans). These standards also apply to general purpose financial statements of such plans. However, certain adaptations may be necessary to take into account the specific nature of such plans.

DEFINITIONS

.05 The following terms are used in these standards with the meanings specified.

(a) **Accrued benefit methods**

Also known as unit credit or single premium actuarial cost methods. Under these methods of actuarial valuation a distinct unit of retirement benefit is associated with each year of credited service and the actuarial present value of the unit of benefit is separately computed for the period during which it is presumed to have accrued.

(b) **Accrued benefit obligation**

An accrued benefit obligation is the amount determined by the plan sponsor to be the actuarial present value of benefits attributed to employee services rendered to a particular date.

(c) **Accrued pension benefits**

Accrued pension benefits are the benefits attributed to services rendered up to a particular date.

(d) **Actuarial asset value**

Actuarial asset value of a pension plan's investment portfolio is the value the pension plan uses for funding purposes. In most cases, this value is different from fair value. An example is an adjusted market value method that recognizes changes in the fair value of a pension plan's investment portfolio over a period of five years.

(e) **Actuarial present value**

Actuarial present value is the discounted value of an amount or series of amounts payable or receivable at various times, determined as of a particular date by the application of a particular set of actuarial assumptions.

(f) **Actuarial valuation**

An actuarial valuation is an assessment of the financial status of a pension plan. It consists of the valuation of the pension plan's investment portfolio and the calculation of the actuarial present value of benefits to be paid under the terms of the plan.

(g) **Benefit plan**

A benefit plan is any arrangement whereby an entity undertakes to provide employees with benefits during and/or after active service in exchange for their services.

(h) **Best estimate assumptions**

For the purposes of determining the pension obligation of a defined benefit pension plan, best estimate assumptions are a set of actuarial assumptions each of which reflects the judgment of the administrator (the person or group of persons responsible for the content and issuance of a pension plan's financial statements) about the most likely set of conditions affecting future events.

(i) **Defined benefit pension plan**

A defined benefit pension plan is a pension plan that is not a defined contribution pension plan.

(j) **Defined contribution pension plan**

A defined contribution pension plan is a pension plan that specifies how an entity's contributions to the plan are determined rather than the benefits to be received by an employee or the method of determining those benefits.

(k) **Derivative**

A derivative is a financial instrument or other contract with all three of the following characteristics:

- (i) its value changes in response to the change in a specified interest rate, financial instrument price, commodity price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, provided in the case of a non-financial variable that the variable is not specific to a party to the contract (sometimes called the "underlying");
- (ii) it requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have a similar response to changes in market factors; and
- (iii) it is settled at a future date.

(l) (deleted)

(m) **Financial asset**

A financial asset is any asset that is:

- (i) cash;
- (ii) an equity instrument of another entity; or
- (iii) a contractual right:
 - to receive cash or another financial asset from another entity; or
 - to exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the pension plan.

(n) **Financial instrument**

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity.

(o) **Financial liability**

A financial liability is any liability that is a contractual obligation:

- (i) to deliver cash or another financial asset to another entity; or
- (ii) to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the pension plan.

(p) **Funding valuation**

A funding valuation is an actuarial valuation that provides the plan sponsor with a funding schedule to enable accumulation of sufficient funds over employees' working careers for the plan to be in a position to pay pension benefits as they become due.

(q) **Investment portfolio**

An investment portfolio consists of investment assets and investment liabilities defined as follows:

- (i) **Investment assets** are assets that are acquired by the pension plan to earn investment income, for value appreciation, or both. Examples include equity and debt instruments, loans, real estate, infrastructure, royalty agreements, private equity, hedges and other derivatives in an asset position, an interest in a master trust, and insurance contracts related to the plan's pension obligation of which the plan is the beneficiary. Investment assets do not include other assets relating to the administration of the pension plan (for example, prepaid rent for offices or office equipment).
- (ii) **Investment liabilities** are liabilities that are incurred by the pension plan in investment-related activities. Examples include hedges and other derivatives in a liability position, real estate mortgages, repurchase agreements, financial instruments sold but not yet purchased, and cash collateral received from counterparties. Investment liabilities do not include other liabilities relating to the administration of the pension plan (for example, employee salaries or rent for offices).

(r) **Master trust**

A master trust is a pool of assets into which contributions from pension plans of an employer or a group of employers are deposited for investment. Each plan has an undivided interest in the assets held in the trust and ownership is represented by the proportionate dollar interest or by units of participation.

(s) **Multiemployer pension plan**

A multiemployer pension plan is a pension plan to which two or more unrelated employers contribute, usually pursuant to one or more collective bargaining agreements.

(t) **Net assets available for benefits**

Net assets available for benefits is the difference between a plan's assets and its liabilities. For the purposes of this definition, a plan's liabilities do not include accrued pension benefits.

(u) **Participant**

A participant is any employee or former employee, or any member or former member of a trade or other association, or the beneficiaries of those individuals, for whom there are accrued pension benefits in the pension plan.

(v) **Pension obligation of a defined benefit pension plan**

A pension obligation of a defined benefit pension plan is the actuarial present value of accrued pension benefits determined by applying best estimate assumptions and the projected benefit method prorated on services.

(w) **Pension plan**

A pension plan is any arrangement (contractual or otherwise) whereby a program is established to provide retirement income to employees.

(x) **Projected benefit method prorated on services**

This is a commonly used accrued benefit method. Under this method an equal portion of the total estimated benefit (i.e., with salary projection, when appropriate) is attributed to each year of service. The actuarial present value of accrued pension benefits is derived after the benefits are attributed to the years of service up to the date of determination.

(y) **Related parties**

Related parties exist when one party has the ability to exercise, directly or indirectly, control, joint control or significant influence over the other. Two or more parties are related when they are subject to common control, joint control or common significant influence. Related parties also include management and immediate family members.

(z) **Related party transaction**

A related party transaction is a transfer of economic resources or obligations between related parties, or the provision of services by one party to a related party, regardless of whether any consideration is exchanged. The parties to the transaction are related prior to the transaction. When the relationship arises as a result of the transaction, the transaction is not one between related parties.

(aa) **Sponsor**

In the case of a single employer pension plan, the sponsor is the employer. In the case of a multiemployer pension plan, the sponsor is the association, committee, board of trustees, or other group representatives of the employees and employers or other parties who have established the pension plan.

BASIS OF ACCOUNTING

.06 *A pension plan shall follow the requirements set out in these standards for the measurement, presentation and disclosure of its investment portfolio and pension obligations.*

.07 *In selecting or changing accounting policies that do not relate to its investment portfolio or pension obligations, a pension plan shall comply on a consistent basis with either International Financial Reporting Standards in Part I of the Handbook, or accounting standards for private enterprises in Part II of the Handbook, to the extent that those standards do not conflict with the requirements of this Section.*

.08 *A pension plan shall also apply the general financial statement presentation requirements of the basis of accounting chosen in accordance with paragraph 4600.07 with respect to:*

- (a) *fair presentation;*
- (b) *comparative information; and*
- (c) *materiality.*

.09 *Pension plan financial statements shall be prepared using the accrual basis of accounting.*

PENSION PLAN FINANCIAL STATEMENTS

.10 *Pension plan financial statements shall consist of:*

- (a) *a statement of financial position;*
- (b) *a statement of changes in net assets available for benefits; and*
- (c) *a statement of changes in pension obligations.*

.11 *Information about the net assets available for benefits, combined with information about the pension obligations, assists users of the financial statements to assess the plan's present and future ability to pay benefits when due.*

Statement of financial position

Presentation

.12 *The statement of financial position shall distinguish at least the following:*

- (a) *investment assets;*
- (b) *investment liabilities;*
- (c) *participants' contributions receivable;*
- (d) *sponsor's contributions receivable;*
- (e) *other assets and liabilities;*
- (f) *net assets available for benefits (total of items (a)-(e));*
- (g) *pension obligations; and*
- (h) *the resulting surplus or deficit (item (f) less item (g)).*

.13 *Details of investment assets and investment liabilities shall be presented either on the face of the statement or in the notes to the financial statements.*

.14 *Investment assets and investment liabilities are distinguished by type because that information is useful to users in understanding the risks associated with a pension plan's investments. Types of investment assets and investment liabilities include, but are not limited to, those identified in paragraph 4600.05(q).*

.15 *Investment assets are presented on a non-consolidated basis even when the investment is in an entity over which the pension plan has control or can exercise significant influence.*

.16 *A pension plan may also have other assets and liabilities such as assets relating to the administration of the pension plan (for example, prepaid rent for offices or office equipment) and liabilities relating to the administration of the pension plan (for example, employee salaries or rent for offices).*

.17 *A pension plan may present an unclassified statement of financial position.*

Recognition

.18 *All financial assets and financial liabilities shall be recognized and derecognized in accordance with the recognition and derecognition requirements in either Part I of the Handbook, or Part II of the Handbook, consistent with the basis of accounting chosen in accordance with paragraph 4600.07.*

Measurement

.19 *All investment assets and investment liabilities shall be measured at fair value at the date of the statement of financial position. In determining fair value, a pension plan shall refer to the guidance on fair value measurement in Part I of the Handbook.*

.20 Transaction costs are not included in the fair value of investment assets and investment liabilities either on initial recognition or on subsequent remeasurement. Transaction costs are included in the statement of changes in net assets available for benefits as part of expenses incurred in the period.

.21 Assets held primarily for use in plan operations (for example, land and buildings, equipment, furniture, and leasehold improvements) are measured at cost less accumulated depreciation or amortization and any impairment loss.

.22 *A pension plan shall measure the pension obligation required by paragraph 4600.12(g) in accordance with paragraph 4600.05(v). For this purpose, a pension plan may measure the pension obligation at the defined benefit obligation amount determined by the plan's sponsor.*

.23 Guidance on determining the defined benefit obligation can be found in EMPLOYEE FUTURE BENEFITS, Section 3462, in Part II of the Handbook, and in IAS 19 *Employee Benefits* in Part I of the Handbook.

.24 For a multiemployer defined benefit pension plan, the funding valuation is generally the only actuarial valuation available, and it provides the relevant pension obligation information for the purposes of these standards.

Statement of changes in net assets available for benefits

.25 *The statement of changes in net assets available for benefits shall distinguish at least the following:*

- (a) *investment income, excluding changes in fair values of investment assets and investment liabilities;*
- (b) *changes during the period in the fair values of investment assets and investment liabilities;*
- (c) *contributions from the sponsor;*
- (d) *contributions from participants;*
- (e) *administrative expenses;*
- (f) *benefit payments;*
- (g) *refunds and transfers; and*
- (h) *net assets available for benefits at the beginning and the end of the period.*

.25A *Details of investment income by type shall be presented either on the face of the statement or in the notes to the financial statements.*

.25B Investment income is distinguished by type on a basis consistent with that used for investment assets and investment liabilities (see paragraph 4600.14).

.26 Changes in fair value include both realized and unrealized gains and losses.

.27 *The statement of changes in net assets available for benefits shall present the following, either on the face of the statement, or in the notes to the financial statements:*

- (a) *details of contributions showing separately voluntary and required contributions from participants, past service contributions from participants, past service contributions from the sponsor, current service contributions from the sponsor, and special contributions;*
- (b) *details of administrative expenses showing separately actuarial fees, audit fees, trustee and custodial fees, investment management fees, and any other significant administrative expenses;*
- (c) *details of benefit payments showing separately retirement benefit payments, disability benefit payments, termination benefit payments and death benefit payments.*

Statement of changes in pension obligations

.28 *Changes in pension obligations may affect the adequacy of plan assets to pay benefits when due and shall be provided to portray the consequences of transactions and events affecting the pension plan. The statement of changes in pension obligations of a defined benefit plan shall present separately on the face of the statement the effects of the following:*

- (a) *amendments to the plan;*
- (b) *changes in the nature of the plan (e.g., a merger with another plan);*
- (c) *changes in actuarial assumptions;*
- (d) *interest accrued on benefits;*
- (e) *experience gains and losses;*
- (f) *benefits accrued; and*
- (g) *benefits paid.*

DISCLOSURE

General

.29 *A pension plan shall disclose the following information:*

- (a) a summary description of the plan;
- (b) the significant accounting policies used in preparing the financial statements (i.e., those that are relevant to an understanding of the financial statements);
- (c) the funding policy and any changes in funding policy during the period;
- (d) the amounts and types of investments in the plan sponsor or in related parties of the plan sponsor; and
- (e) transactions between the pension plan and the plan sponsor, and any other related party transactions of the pension plan. Additional investments by the plan in existing investees, dividends and interest paid to the plan by investees, and similar transactions are not required to be disclosed for purposes of this subparagraph.

.30 A summary description of the plan provides information concerning matters such as the type of plan and a description of major terms and benefits (for example, pension formula, retirement age, death benefits, vesting provisions, survivor benefits, and withdrawal provisions).

.31 A pension plan that prepares its financial statements in accordance with Canadian accounting standards for pension plans shall state this basis of presentation prominently in the notes to its financial statements.

Investment portfolio

.32 A pension plan shall provide the following information about its investment portfolio:

- (a) for those investments that are financial instruments:
 - (i) the disclosures required by IFRS 7 Financial Instruments: Disclosures in Part I of the Handbook; and
 - (ii) the fair value disclosures required by the Appendix to this Section; and
- (b) for all other investments, a description of how fair values have been determined.

.33 In some defined contribution plans, members direct the investment decisions for the assets in their accounts. In these circumstances, a pension plan does not provide the quantitative sensitivity analysis disclosures for market risk (see paragraphs 40-42 of IFRS 7 Financial Instruments: Disclosures in Part I of the Handbook).

.34 A defined benefit pension plan may measure its investment portfolio on an actuarial asset value basis for funding and internal management purposes. When a plan chooses to disclose the actuarial asset value, it discloses the amount of any difference between the actuarial asset value and the asset value determined in accordance with paragraph 4600.19, together with an explanation of that difference. That difference, commonly referred to as an actuarial asset value adjustment, shall not be included in the amount presented in the statement of financial position as net assets available for benefits (see paragraph 4600.12(f)), or for the resulting surplus or deficit (see paragraph 4600.12(h)).

Pension obligation of a defined benefit pension plan

.35 A defined benefit pension plan shall disclose the following information:

- (a) the effective date of the actuarial valuation used to determine the pension obligation;
- (b) the effective date of the next required actuarial valuation;
- (c) the name of the actuarial firm that performed the valuation; and
- (d) the significant assumptions used in determining the pension obligation including the rate of compensation increase and the discount rate.

Pension obligation of a defined contribution pension plan

.36 For a defined contribution pension plan, pension benefits are determined by the sponsor's and employees' contributions and the performance of the plan. Actuarial valuations are normally not required as the pension obligation equals the net assets available for benefits. Where amounts allocated to participants are less than the net assets available for benefits, it is appropriate to disclose the basis of allocation and the amount of unallocated assets.

Capital

.37 A pension plan shall disclose information that enables users of its financial statements to evaluate the pension plan's objectives, policies and processes for managing capital in accordance with the requirements in paragraphs 135-136 of IAS 1 Presentation of Financial Statements in Part I of the Handbook.

EFFECTIVE DATE AND TRANSITION

.38 A pension plan shall apply these standards for annual periods beginning on or after January 1, 2011, except as specified in paragraphs 4600.40-.41. Earlier application is permitted.

.39 A pension plan shall apply these standards retrospectively to all prior periods presented.

.40 In satisfying the fair value measurement requirements in paragraph 4600.19, a pension plan applies IFRS 13 Fair Value Measurement in Part I of the Handbook to annual periods beginning on or after January 1, 2013. Earlier application of IFRS 13 is permitted provided that the pension plan discloses that fact and the measurement requirements are applied to the fair value of all investment assets and investment liabilities. IFRS 13 is applied prospectively as of the beginning of the annual period in which it is initially applied. A pension plan that has adopted IFRS 13 is not required to provide the disclosures included in that IFRS.

.41 Prior to adopting IFRS 13 *Fair Value Measurement* in Part I of the Handbook, a pension plan refers to the guidance on fair value measurement in IAS 39 *Financial Instruments: Recognition and Measurement* in Part I of the Handbook.

APPENDIX

FAIR VALUE DISCLOSURES

This Appendix is an integral part of this Section.

The fair value disclosures formerly in paragraphs 27-27B of IFRS 7 *Financial Instruments: Disclosures* in Part I of the Handbook were deleted as a consequence of incorporating IFRS 13 *Fair Value Measurement* into the Handbook. Paragraph 4600.32(a)(ii) requires the fair value disclosures in this Appendix, which are the same as those deleted from IFRS 7. The required disclosures are:

27 An entity shall disclose for each class of financial instruments the methods and, when a valuation technique is used, the assumptions applied in determining fair values of each class of financial assets or financial liabilities. For example, if applicable, an entity discloses information about the assumptions relating to prepayment rates, rates of estimated credit losses, and interest rates or discount rates. If there has been a change in valuation technique, the entity shall disclose that change and the reasons for making it.

27A To make the disclosures required by paragraph 27B an entity shall classify fair value measurements using a fair value hierarchy that reflects the significance of the inputs used in making the measurements. The fair value hierarchy shall have the following levels:

- (a) quoted prices (unadjusted) in active markets for identical assets or liabilities (Level 1);
- (b) inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly (ie as prices) or indirectly (ie derived from prices) (Level 2); and
- (c) inputs for the asset or liability that are not based on observable market data (unobservable inputs) (Level 3).

The level in the fair value hierarchy within which the fair value measurement is categorised in its entirety shall be determined on the basis of the lowest level input that is significant to the fair value measurement in its entirety. For this purpose, the significance of an input is assessed against the fair value measurement in its entirety. If a fair value measurement uses observable inputs that require significant adjustment based on unobservable inputs, that measurement is a Level 3 measurement. Assessing the significance of a particular input to the fair value measurement in its entirety requires judgement, considering factors specific to the asset or liability.

27B For fair value measurements recognised in the statement of financial position an entity shall disclose for each class of financial instruments:

- (a) the level in the fair value hierarchy into which the fair value measurements are categorised in their entirety, segregating fair value measurements in accordance with the levels defined in paragraph 27A.
- (b) any significant transfers between Level 1 and Level 2 of the fair value hierarchy and the reasons for those transfers. Transfers into each level shall be disclosed and discussed separately from transfers out of each level. For this purpose, significance shall be judged with respect to profit or loss, and total assets or total liabilities.
- (c) for fair value measurements in Level 3 of the fair value hierarchy, a reconciliation from the beginning balances to the ending balances, disclosing separately changes during the period attributable to the following:
 - (i) total gains or losses for the period recognised in profit or loss, and a description of where they are presented in the statement of comprehensive income or the separate income statement (if presented);
 - (ii) total gains or losses recognised in other comprehensive income;
 - (iii) purchases, sales, issues and settlements (each type of movement disclosed separately); and
 - (iv) transfers into or out of Level 3 (eg transfers attributable to changes in the observability of market data) and the reasons for those transfers. For significant transfers, transfers into Level 3 shall be disclosed and discussed separately from transfers out of Level 3.
- (d) the amount of total gains or losses for the period in (c)(i) above included in profit or loss that are attributable to gains or losses relating to those assets and liabilities held at the end of the reporting period and a description of where those gains or losses are presented in the statement of comprehensive income or the separate income statement (if presented).
- (e) for fair value measurements in Level 3, if changing one or more of the inputs to reasonably possible alternative assumptions would change fair value significantly, the entity shall state that fact and disclose the effect of those changes. The entity shall disclose how the effect of a change to a reasonably possible alternative assumption was calculated. For this purpose, significance shall be judged with respect to profit or loss, and total assets or total liabilities, or, when changes in fair value are recognised in other comprehensive income, total equity.

An entity shall present the quantitative disclosures required by this paragraph in tabular format unless another format is more appropriate.

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Pension Benefits Act

R.S.O. 1990, CHAPTER P.8

Consolidation Period: From October 31, 2016 to the [e-Laws currency date](#).

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Interpretation

Definitions

1. (1) In this Act,

“additional voluntary contribution” means a contribution to the pension fund by a member of the pension plan beyond any amount that the member is required to contribute, but does not include a contribution in relation to which the employer is required to make a concurrent additional contribution to the pension fund; (“cotisation facultative supplémentaire”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “additional voluntary contribution” is repealed and the following substituted:

“additional voluntary contribution” means a contribution to the pension fund by a member of the pension plan beyond any amount that the member is required to contribute, but does not include,

(a) an optional contribution, or

(b) a contribution in relation to which the employer is required to make a concurrent additional contribution to the pension fund; (“cotisation facultative supplémentaire”)

See: 2010, c. 24, ss. 1 (1), 49 (4).

“administrator” means the person or persons that administer the pension plan; (“administrateur”)

“assets”, in relation to an employer, means assets that in the ordinary course of business would be entered in books of account, whether or not a particular asset is entered in the books of account of the employer; (“actif”)

“bridging benefit” means a periodic payment provided under a pension plan to a retired member of the pension plan for a temporary period of time for the purpose of supplementing his or her pension benefit until he or she is eligible to receive benefits under the *Old Age Security Act* (Canada) or is either eligible for or begins to receive retirement benefits under the *Canada Pension Plan* or the *Quebec Pension Plan*; (“prestation de raccordement”)

“certified copy” means a copy certified to be a true copy; (“copie certifiée conforme”)

“collective agreement” has the same meaning as in the *Labour Relations Act, 1995*; (“convention collective”)

“Commission” means the Financial Services Commission of Ontario established under the *Financial Services Commission of Ontario Act, 1997*; (“Commission”)

“commuted value” means the value calculated in the prescribed manner and as of a fixed date of a pension, a deferred pension, a pension benefit or an ancillary benefit; (“valeur de rachat”)

“continuous”, in relation to employment, membership or service, means without regard to periods of temporary suspension of the employment, membership or service and without regard to periods of lay-off from employment; (“continu”)

“contributory benefit” means a pension benefit or part of a pension benefit to which a member is required to make contributions under the terms of the pension plan; (“prestation contributive”)

“deferred pension” means a pension benefit, payment of which is deferred until the person entitled to the pension benefit reaches the normal retirement date under the pension plan; (“pension différée”)

“defined benefit” means a pension benefit other than a defined contribution benefit; (“prestation déterminée”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “defined benefit” is repealed and the following substituted:

“defined benefit” means a pension benefit other than a defined contribution benefit or a target benefit; (“prestation déterminée”)

See: 2010, c. 24, ss. 1 (2), 49 (4).

“defined contribution benefit” means a pension benefit determined with reference to and provided by contributions, and the interest on the contributions, paid by or for the credit of a member and determined on an individual account basis; (“prestation à cotisation déterminée”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “defined contribution benefit” is repealed and the following substituted:

“defined contribution benefit” means a pension benefit determined with reference to and provided by contributions paid by or for the credit of a member, and the interest on the contributions, and determined on an individual account basis, but does not include an optional benefit; (“prestation à cotisation déterminée”)

See: 2010, c. 24, ss. 1 (3), 49 (4).

“designated jurisdiction” means any jurisdiction in Canada, including Canada itself, that is prescribed as a jurisdiction in which there is in force legislation substantially similar to this Act; (“autorité législative désignée”)

“designated multi-jurisdictional pension plan” means a pension plan to which this Act applies and to which the pension benefits legislation of one or more designated jurisdictions also applies; (“régime de retraite à lois d’application multiples désigné”)

“domestic contract” means a domestic contract as defined in Part IV of the *Family Law Act*; (“contrat familial”)

“employee” means a natural person who is employed by an employer; (“employé”)

“employer” means, in relation to a member, former member or retired member of a pension plan, the person or persons from whom or the organization from which the member, former member or retired member receives or received remuneration to which the pension plan is related, and “employed” and “employment” have a corresponding meaning; (“employeur”, “employé”, “emploi”)

“family arbitration award” means a family arbitration award made under the *Arbitration Act, 1991*; (“sentence d’arbitrage familial”)

“file” means file with the Superintendent; (“déposer”)

“former member” means an individual who satisfies the criteria set out in section 1.1 to be a former member; (“ancien participant”)

“going concern unfunded liability” means, with respect to a pension plan, a going concern unfunded liability as determined in accordance with the prescribed requirements; (“passif à long terme non capitalisé”)

“Guarantee Fund” means the Pension Benefits Guarantee Fund continued by this Act; (“Fonds de garantie”)

“insurance company” means a corporation authorized to undertake life insurance in Canada; (“compagnie d’assurance”)

“joint and survivor pension” means a pension payable during the joint lives of the person entitled to the pension and his or her spouse and thereafter during the life of the survivor of them; (“pension réversible”)

“jointly sponsored pension plan” means a pension plan described in subsection (2) and includes such other pension plans as may be prescribed; (“régime de retraite conjoint”)

“member” means a member of the pension plan; (“participant”)

“Minister” means the member of the Executive Council designated by the Lieutenant Governor in Council for the purposes of this Act; (“ministre”)

“multi-employer pension plan” means a pension plan described in subsection (3); (“régime de retraite interentreprises”)

“normal cost” means, with respect to a pension plan, the normal cost as determined in accordance with the regulations; (“coût normal”)

“normal retirement date” means the date or age specified in the pension plan as the normal retirement date of members; (“date normale de retraite”)

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following definitions:

“optional benefit” means a benefit that is prescribed for the purposes of subsection 40.1 (1) as an optional benefit; (“prestation optionnelle”)

“optional contribution” means a contribution to the pension fund that is made to obtain an optional benefit under the pension plan and that is made by a member of the pension plan beyond any amount that the member is required to make; (“cotisation optionnelle”)

See: 2010, c. 24, ss. 1 (5), 49 (4).

“partial wind up” means the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan; (“liquidation partielle”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “partial wind up” is repealed. See: 2010, c. 9, ss. 1 (4), 80 (2).

“participating employer”, in relation to a jointly sponsored pension plan or a multi-employer pension plan, means an employer required to make contributions to the pension fund; (“employeur participant”)

“pension” means a pension benefit that is in payment; (“pension”)

“pension benefit” means the aggregate monthly, annual or other periodic amounts payable to a member, former member or retired member during his or her lifetime to which he or she will become entitled under the pension plan or to which, upon his or her death, any other person will become entitled; (“prestation de retraite”)

“pension committee” means a committee that is the administrator of a pension plan; (“comité de retraite”)

“pension fund” means the fund maintained to provide benefits under or related to the pension plan; (“caisse de retraite”)

“pension plan” means a plan organized and administered to provide pensions for employees, but does not include,

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “pension plan” in subsection 1 (1) of the Act is amended by adding the following clause: (See: 2016, c. 17, s. 96)

(0.a) the Ontario Retirement Pension Plan,

- (a) an employees’ profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada),

Note: On November 8, 2016, the day named by proclamation of the Lieutenant Governor, the definition of “pension plan” in subsection 1 (1) of the Act is amended by adding the following clause: (See: 2015, c. 9, s. 31 (1))

(a.1) a pooled registered pension plan registered under the *Pooled Registered Pension Plans Act, 2015*,

- (b) a plan to provide a retiring allowance as defined in subsection 248 (1) of the *Income Tax Act* (Canada),
- (c) a plan under which all pension benefits are provided by contributions made by members, or
- (d) any other prescribed type of plan; (“régime de retraite”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“public sector pension plan” means a pension plan described in subsection (5) and includes such other pension plans as may be prescribed; (“régime de retraite du secteur public”)

“qualification date” means,

- (a) in respect of Ontario, January 1, 1965, and
- (b) in respect of a designated jurisdiction, the date on which, under the pension benefits legislation of that jurisdiction, a pension plan must be registered by the proper authority in that jurisdiction; (“date d’habilitation”)

“reciprocal transfer agreement” means an agreement related to two or more pension plans that provides for the transfer of money or credits for employment or both in respect of individual members; (“accord réciproque de transfert”)

“registered retirement savings arrangement” means a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada) or a registered retirement income fund established in accordance with that Act; (“arrangement enregistré d’épargne-retraite”)

“registration” means registration under this Act; (“enregistrement”)

“regulations” means regulations made under this Act; (“règlements”)

“retired member” means an individual who satisfies the criteria set out in section 1.1 to be a retired member; (“participant retraité”)

“solvency deficiency” means, with respect to a pension plan, a solvency deficiency as determined in accordance with the prescribed requirements; (“déficit de solvabilité”)

“solvency liabilities” means, with respect to a pension plan, solvency liabilities as determined in accordance with the regulations; (“passif de solvabilité”)

“spouse” means, except where otherwise indicated in this Act, either of two persons who,

- (a) are married to each other, or
- (b) are not married to each other and are living together in a conjugal relationship,
 - (i) continuously for a period of not less than three years, or
 - (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act*; (“conjoint”)

“Superintendent” means the Superintendent of Financial Services appointed under the *Financial Services Commission of Ontario Act, 1997*; (“surintendant”)

“surplus” means the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan, both calculated in the prescribed manner; (“excédent”)

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following definition:

“target benefit” means a pension benefit that is a target benefit as determined under section 39.2; (“prestation cible”)

See: 2010, c. 24, ss. 1 (8), 49 (4).

“termination”, in relation to employment, includes retirement and death; (“cessation”)

“trade union” has the same meaning as in the *Labour Relations Act, 1995*; (“syndicat”)

“Tribunal” means the Financial Services Tribunal established under the *Financial Services Commission of Ontario Act, 1997*; (“Tribunal”)

“wind up” means the termination of a pension plan and the distribution of the assets of the pension fund; (“liquidation”)

“Year’s Maximum Pensionable Earnings” has the same meaning as in the *Canada Pension Plan*. (“maximum des gains annuels ouvrant droit à pension”) R.S.O. 1990, c. P.8, s. 1; 1997, c. 28, s. 190; 1999, c. 6, s. 53 (1, 2); 2004, c. 31, Sched. 31, s. 1; 2005, c. 5, s. 56 (1-6); 2005, c. 31, Sched. 18, s. 1 (1); 2007, c. 7, Sched. 31, s. 1 (1); 2009, c. 11, s. 41; 2010, c. 1, Sched. 23, s. 1; 2010, c. 9, s. 1 (1-3, 5-7); 2010, c. 24, s. 1 (4, 6, 7); 2012, c. 8, Sched. 44, s. 1; 2014, c. 7, Sched. 26, s. 1 (1).

Jointly sponsored pension plans

(2) For the purposes of this Act, a pension plan is a jointly sponsored pension plan if it has the following characteristics:

1. It provides defined benefits.
2. The defined benefits are contributory benefits.
3. Members of the pension plan are required, by virtue of the documents that create and support the plan, to make contributions in respect of any going concern unfunded liability and solvency deficiency of the plan.
4. The plan satisfies such additional criteria as may be prescribed. 2005, c. 31, Sched. 18, s. 1 (2).

Same, reduced funding obligations

(2.1) A pension plan that is a jointly sponsored pension plan on August 24, 2010 continues to be a jointly sponsored pension plan after that date even if the documents that create and support the plan are amended so that its members are not required to make contributions in respect of any solvency deficiency of the plan. 2010, c. 24, s. 1 (9).

Multi-employer pension plans

(3) For the purposes of this Act, a pension plan is a multi-employer pension plan if it is established and maintained for employees of two or more employers who contribute, or on whose behalf contributions are made, to a pension fund by reason of agreement, statute or municipal by-law to provide a pension benefit that is determined by service with one or more of the employers. 2007, c. 7, Sched. 31, s. 1 (2).

Exceptions

- (4) Despite subsection (3), a pension plan is not a multi-employer pension plan for the purposes of this Act,
 - (a) if all of the employers who contribute, or on whose behalf contributions are made, to the pension fund are affiliates within the meaning of the *Business Corporations Act*; or

Note: On the day subsection 3 (3) of the *Not-for-Profit Corporations Act, 2010* comes into force, clause (a) is amended by adding “or the *Not-for-Profit Corporations Act, 2010*” after “*Business Corporations Act*”. See: 2010, c. 24, ss. 1 (10), 49 (2).

(b) if the regulations specify that the pension plan is not a multi-employer pension plan. 2007, c. 7, Sched. 31, s. 1 (2).

Public sector pension plans

(5) For the purposes of this Act, a pension plan is a public sector pension plan if it is provided in respect of any of the following employers:

1. The Crown in right of Ontario.
2. A Crown agency or a corporation, with or without share capital, that is not a Crown agency but is owned, operated or controlled by the Crown.
3. Any board, commission, authority or unincorporated body of the Crown.
4. A district school board as defined in subsection 1 (1) of the *Education Act*.
5. A person or entity that is a health service provider for the purposes of the *Local Health System Integration Act, 2006*.
6. A college of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*.
7. A university in Ontario, including its affiliated and federated colleges, that receives operating grants from the Government of Ontario.
8. A municipality as defined in section 1 of the *Municipal Act, 2001*.
9. A children’s aid society that is designated in accordance with the *Child and Family Services Act*. 2014, c. 7, Sched. 26, s. 1 (2).

Retired members and former members

Retired member

1.1 (1) For the purposes of this Act, an individual is a retired member of a pension plan if he or she has either terminated the employment that relates to the pension plan or has terminated membership in the pension plan and if one or more of the following criteria is also satisfied:

1. The individual is receiving a pension payable from the pension fund.
2. He or she is entitled to begin to receive a pension from the pension fund by virtue of having reached the normal retirement date under the pension plan, even though he or she has not yet elected to receive the pension.
3. He or she has elected, under subsection 41 (1), to receive an early retirement pension.
4. He or she has elected, under the terms of the pension plan, to begin payment of a pension payable from the pension fund, whether or not receipt of the first payment of the pension is deferred until a later date. 2010, c. 9, s. 2.

Former member

(2) For the purposes of this Act, an individual is a former member of a pension plan if he or she has either terminated the employment that relates to the pension plan or has terminated membership in the pension plan and if either of the following criteria is also satisfied:

1. The individual is entitled to a deferred pension payable from the pension fund.
2. He or she is entitled to receive any other payment from the pension fund. 2010, c. 9, s. 2.

Exception

(3) Despite subsection (2), if an individual is a retired member of a pension plan, the individual is not a former member of the pension plan. 2010, c. 9, s. 2.

Neither

(4) An individual who was a member of a pension plan and who has transferred an amount under subsection 42 (1) in connection with the pension plan is neither a former member nor a retired member of the pension plan. 2010, c. 9, s. 2.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 1.1 (4) of the Act is repealed and the following substituted: (See: 2015, c. 20, Sched. 34, s. 1)

Neither

(4) An individual who was a member of a pension plan is neither a former member nor a retired member of the pension plan if either of the following criteria are satisfied:

1. The individual has transferred an amount equal to the commuted value of the individual's deferred pension under subsection 42 (1) in connection with the pension plan.
2. The individual is not receiving a pension payable from the pension fund and the individual has transferred the entire amount of the individual's variable benefit account under subsection 39.1 (4) in connection with the pension plan.

Definition

(5) In this section,
“variable benefit account” has the same meaning as in subsection 39.1 (1). 2015, c. 20, Sched. 34, s. 1

APPLICATION

Crown bound

2. This Act binds the Crown. R.S.O. 1990, c. P.8, s. 2.

Employees in Ontario

3. This Act applies to every pension plan that is provided for persons employed in Ontario. R.S.O. 1990, c. P.8, s. 3.

Place of employment

4. (1) For the purposes of this Act, a person shall be deemed to be employed in the province in which the establishment of his or her employer is located and to which the person is required to report for work.

Idem

(2) A person who is not required to report for work at an establishment of his or her employer shall be deemed to be employed in the province in which is located the establishment of his or her employer from which the person's remuneration is paid. R.S.O. 1990, c. P.8, s. 4.

Greater pension benefits

5. The requirements of this Act and the regulations shall not be construed to prevent the registration or administration of a pension plan and related pension fund that provide pension benefits or ancillary benefits more advantageous to members than those required by this Act and the regulations. R.S.O. 1990, c. P.8, s. 5.

Designated multi-jurisdictional pension plans

5.1 (1) This section applies with respect to a designated multi-jurisdictional pension plan if there is an agreement under section 100 between the Crown and any designated jurisdiction whose pension benefits legislation applies to the pension plan. 2010, c. 1, Sched. 23, s. 2 (1).

Effect of agreement

(2) Without limiting the generality of section 101, the agreement governs the manner and extent to which this Act and the regulations apply with respect to the designated multi-jurisdictional pension plan. 2010, c. 1, Sched. 23, s. 2 (1).

Duty of administrator

(3) The administrator of the designated multi-jurisdictional pension plan shall comply with the requirements in the agreement that apply with respect to the pension plan and with any requirements imposed under the authority of the agreement. 2010, c. 1, Sched. 23, s. 2 (1).

Duty of employer

(4) An employer or person required to make contributions to a designated multi-jurisdictional pension plan on the employer's behalf shall comply with the requirements in the agreement that apply with respect to the pension plan and with any requirements imposed under the authority of the agreement. 2010, c. 1, Sched. 23, s. 2 (1).

Entitlement of members, etc.

(5) The amount of the pension benefits, deferred pension, pension or ancillary benefits or any other amount payable under a designated multi-jurisdictional pension plan in relation to a member, former member or retired member is determined in accordance with such requirements as may be contained in the agreement. 2010, c. 1, Sched. 23, s. 2.

Pension plan documents

(6) This section applies despite any documents that create and support a designated multi-jurisdictional pension plan and the pension fund. 2010, c. 1, Sched. 23, s. 2 (1).

Trusts

(7) This section applies despite any trust that may exist in favour of any person. 2010, c. 1, Sched. 23, s. 2 (1).

REGISTRATION AND ADMINISTRATION

Prohibition of administration of unregistered pension plan

6. (1) No person shall administer a pension plan unless a certificate of registration or an acknowledgment of application for registration of the pension plan has been issued by the Superintendent.

Application of subs. (1)

(2) Subsection (1) does not apply to prevent administration during the first ninety days after the establishment of the pension plan. R.S.O. 1990, c. P.8, s. 6.

Refusal or revocation

7. (1) No person shall administer a pension plan if registration of the pension plan has been refused or revoked by the Superintendent.

Exception

(2) Subsection (1) does not apply to prevent administration for the purpose of wind up of a pension plan. R.S.O. 1990, c. P.8, s. 7.

Administrator

Requirement

8. (0.1) A pension plan must be administered by a person or entity described in subsection (1). 2010, c. 9, s. 3 (1).

Prohibition

(0.2) No person or entity other than a person or entity described in subsection (1) shall administer a pension plan. 2010, c. 9, s. 3 (1).

Administrator

- (1) A pension plan is not eligible for registration unless it is administered by an administrator who is,
- (a) the employer or, if there is more than one employer, one or more of the employers;
 - (b) a pension committee composed of one or more representatives of,
 - (i) the employer or employers, or any person, other than the employer or employers, required to make contributions under the pension plan, and
 - (ii) members of the pension plan;
 - (c) a pension committee composed of representatives of members of the pension plan;
 - (d) the insurance company that provides the pension benefits under the pension plan, if all the pension benefits under the pension plan are guaranteed by the insurance company;
 - (e) if the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants;
 - (f) a corporation, board, agency or commission made responsible by an Act of the Legislature for the administration of the pension plan;
 - (g) a person appointed as administrator by the Superintendent;
 - (g.1) the Superintendent; or
 - (h) such other person or entity as may be prescribed. R.S.O. 1990, c. P.8, s. 8 (1); 1999, c. 15, s. 1; 2005, c. 31, Sched. 18, s. 2; 2010, c. 24, s. 2 (1).

Appointment, etc., by Superintendent

(1.1) The Superintendent may, in prescribed circumstances, appoint an administrator for a pension plan and may terminate the appointment if the Superintendent considers the termination reasonable in the circumstances. 2010, c. 24, s. 2 (2).

Superintendent as administrator

(1.2) The Superintendent may, in prescribed circumstances, act as administrator of a pension plan. 2010, c. 24, s. 2 (2).

Additional representatives

(2) A pension committee, or a board of trustees, that is the administrator of a pension plan may include one or more representatives of retired members. 2010, c. 9, s. 3 (2).

Interpretation

(3) For the purposes of clause (1) (b), “employer” includes the following persons and entities:

1. Affiliates within the meaning of the *Business Corporations Act* of the employer.
2. Such other persons or entities, or classes of persons or entities, as may be prescribed. 2007, c. 7, Sched. 31, s. 2.

Application for registration

9. (1) Within the prescribed period of time, the administrator of a pension plan shall apply to the Superintendent for registration of the pension plan. 1999, c. 15, s. 2.

Requirements for registration

- (2) An application for registration shall be made by paying the fee established by the Minister and filing,
 - (a) a completed application in the form approved by the Superintendent;
 - (b) certified copies of the documents that create and support the pension plan;
 - (c) certified copies of the documents that create and support the pension fund;
 - (d) a certified copy of any reciprocal transfer agreement related to the pension plan;
 - (e) a certified copy of the explanations and other information provided under subsection 25 (1);
- (e.1) a certification in a form approved by the Superintendent and signed by the applicant in which the applicant attests that the pension plan complies with this Act and regulations; and
- (f) any other prescribed documents. R.S.O. 1990, c. P.8, s. 9 (2); 1997, c. 28, s. 191.

Exception

(2.1) The regulations may provide that the requirement to file a particular document listed in subsection (2) does not apply in specified circumstances or for prescribed classes of pension plans. 2010, c. 9, s. 4.

Collective agreement

(3) For the purpose of subsection (2), “document” includes “collective agreement”. R.S.O. 1990, c. P.8, s. 9 (3).

Contents of pension plan

10. (1) The documents that create and support a pension plan shall set out the following information:
 1. The method of appointment and the details of appointment of the administrator of the pension plan.
 2. The conditions for membership in the pension plan.
 3. The benefits and rights that are to accrue upon termination of employment, termination of membership, retirement or death.
 4. The normal retirement date under the pension plan.
 5. The requirements for entitlement under the pension plan to any pension benefit or ancillary benefit.
 6. The contributions or the method of calculating the contributions required by the pension plan.
 7. The method of determining benefits payable under the pension plan.
 8. The method of calculating interest to be credited to contributions under the pension plan.
 9. The mechanism for payment of the cost of administration of the pension plan and pension fund.
 10. The mechanism for establishing and maintaining the pension fund.

11. The treatment of surplus during the continuation of the pension plan and on the wind up of the pension plan.
12. The obligation of the administrator to provide members with information and documents required to be disclosed under this Act and the regulations.
13. The method of allocation of the assets of the pension plan on windup.
14. Particulars of any predecessor pension plan under which members of the pension plan may be entitled to pension benefits.
15. Any other prescribed information related to the pension plan or pension fund or both. R.S.O. 1990, c. P.8, s. 10 (1).

Exception

(1.1) The regulations may provide that the requirement to include specified information described in subsection (1) in the documents that create and support a pension plan does not apply in specified circumstances or for prescribed classes of pension plans. 2010, c. 9, s. 5 (1).

Multi-employer pension plan

(2) The documents that create and support a multi-employer pension plan pursuant to a collective agreement or a trust agreement shall also set out the powers and duties of the board of trustees that is the administrator of the multi-employer pension plan. R.S.O. 1990, c. P.8, s. 10 (2); 2010, c. 9, s. 5 (2).

Same

(2.1) The documents that create and support a multi-employer pension plan shall specify the consequences, if any, of the withdrawal of a participating employer from the pension plan in respect of the funding and payment of pension benefits of a member, a former member, a retired member or any other person affected by the withdrawal and must satisfy such requirements as may be imposed by this Act and the regulations. 2010, c. 24, s. 3 (1, 2).

Jointly sponsored pension plans

(3) The documents that create and support a jointly sponsored pension plan shall also set out the following information:

1. The obligation of members to make contributions under the plan. This must include their obligations in respect of any going concern unfunded liability and, except in the case of plans described in subsection 1 (2.1), in respect of any solvency deficiency.
2. The obligation of employers to make contributions under the plan or the obligation of other persons or entities to make the contributions under the plan on behalf of employers. This must include their obligations in respect of any going concern unfunded liability and, except in the case of plans described in subsection 1 (2.1), in respect of any solvency deficiency.
3. The consequences, if any, of the withdrawal of a participating employer from the plan in respect of the funding and payment of pension benefits of a member, a former member, a retired member or any other person affected by the withdrawal. The consequences set out in the pension plan must satisfy such requirements as may be imposed by this Act and the regulations. 2005, c. 31, Sched. 18, s. 3; 2010, c. 24, s. 3 (3-5).

Same

(4) The documents that create and support a jointly sponsored pension plan may authorize a prescribed person or entity to establish or maintain a separate jointly sponsored pension plan for persons employed in less than full-time continuous employment. 2005, c. 31, Sched. 18, s. 3.

11. REPEALED: 2010, c. 9, s. 6.

Application for registration of amendment

12. (1) The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is amended, for registration of the amendment. R.S.O. 1990, c. P.8, s. 12 (1).

Requirements for registration

- (2) An application for registration of an amendment shall be made by paying the fee established by the Minister and filing,
 - (a) a certified copy of the amending document;
 - (b) certified copies of any other prescribed documents;
- (b.1) a certification in a form approved by the Superintendent and signed by the administrator of the pension plan in which the administrator attests that the amendment complies with this Act and the regulations; and

(c) any other prescribed information. R.S.O. 1990, c. P.8, s. 12 (2); 1997, c. 28, s. 192.

Exception

(2.1) The regulations may provide that the requirement to file a particular document or information described in subsection (2) does not apply in specified circumstances or for prescribed classes of pension plans. 2010, c. 9, s. 7.

Filing of changes

(3) The administrator of a pension plan shall file a certified copy of each document that changes the documents that create and support the pension plan or pension fund. R.S.O. 1990, c. P.8, s. 12 (3).

When amendment effective

13. (1) An amendment to a pension plan is not effective until the administrator of the plan files an application for registration of the amendment and the application meets the requirements of section 12. 1997, c. 28, s. 193.

Retroactive amendment

(2) An amendment to a pension plan may be made effective as of a date before the date on which the amendment is registered. R.S.O. 1990, c. P.8, s. 13 (2).

Reduction of benefits

14. (1) An amendment to a pension plan is void if the amendment purports to reduce,

- (a) the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment;
- (b) the amount or the commuted value of a pension or a deferred pension accrued under the pension plan; or
- (c) the amount or the commuted value of an ancillary benefit for which a member, former member or retired member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit. R.S.O. 1990, c. P.8, s. 14 (1); 2010, c. 9, s. 8 (1).

Application of subs. (1)

(2) Subsection (1) does not apply in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement. R.S.O. 1990, c. P.8, s. 14 (2).

Idem

(3) Subsection (1) does not apply in respect of a pension plan that provides defined benefits if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement. R.S.O. 1990, c. P.8, s. 14 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 14 is amended by adding the following subsection:

Same, target benefits

(3.1) Subsection (1) does not apply in respect of a pension plan that provides only target benefits or in respect of that part of a pension plan that provides target benefits. 2010, c. 24, s. 4 (1).

See: 2010, c. 24, ss. 4 (1), 49 (4).

Same

(4) Subsection (1) does not apply with respect to an amendment that relates to a transfer of assets authorized by section 80, 80.1, 80.2 or 81 and that affects the transferred members. 2010, c. 9, s. 8 (2); 2011, c. 9, Sched. 35, s. 1 (1).

Note: On July 1, 2017, subsection (4) is amended by striking out “80.1”. See: 2010, c. 9, ss. 8 (3), 80 (4); 2014, c. 7, Sched. 26, s. 14; 2016, c. 5, Sched. 22, s. 4.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out “80.2 or 81” and substituting “80.2, 80.3 or 81”. See: 2010, c. 24, ss. 4 (2), 49 (4).

Same, certain retired members and former members

(5) Without limiting the generality of subsection (4), subsection (1) does not apply with respect to an amendment that relates to a transfer of assets authorized by section 80.1 that affects the eligible employees who are entitled to make the election described in clause 80.1 (4) (a) or (a.1). 2011, c. 9, Sched. 35, s. 1 (2); 2014, c. 7, Sched. 26, s. 2 (1).

Same, conversion of pension plan

(6) Subsection (1) does not apply with respect to an amendment that relates to a transfer of assets under section 80.4 from a single employer pension plan to a jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 2 (2).

Same

(7) Subsection (1) does not apply with respect to an amendment that relates to the conversion under section 81.0.1 of a single employer pension plan into a jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 2 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Improvement in benefits

14.0.1 (1) An amendment to a pension plan is void,

(a) if the amendment purports to increase an amount described in clause 14 (1) (a), (b) or (c); and

(b) if the increase would reduce the transfer ratio or the going concern funded ratio of the pension plan, determined in accordance with the regulations, below the prescribed level. 2010, c. 24, s. 5.

Exceptions

(2) Subsection (1) does not apply if an amendment is required as a result of a judicial decision or in such other circumstances as may be prescribed. 2010, c. 24, s. 5.

See: 2010, c. 24, ss. 5, 49 (4).

Gradual and uniform accrual of pension benefits

14.1 (1) A pension plan must provide for the accrual of pension benefits in a gradual and uniform manner. 2010, c. 9, s. 9.

Variable contributions or pension benefits

(2) A pension plan must not provide that the formula for computation of the employer's contributions under the pension plan or the pension benefit provided under the pension plan is variable at the discretion of the employer. 2010, c. 9, s. 9.

Variable deferred profit-sharing

(3) A deferred profit-sharing pension plan or a pension plan that provides defined contribution benefits must not provide that the formula governing allocation of contributions under the pension plan and profits among members of the plan is variable at the discretion of the employer. 2010, c. 9, s. 9.

Exception

(4) The Superintendent may register a pension plan that does not comply with subsection (1), (2) or (3), and the Superintendent may permit the continued registration of such a plan, if the Superintendent is of the opinion that registration is justified in the circumstances of the pension plan and the members. 2010, c. 9, s. 9.

Acknowledgment of application for registration

15. The Superintendent shall issue an acknowledgment of application for registration of a pension plan within thirty days after receiving an application for the registration that complies with section 9. R.S.O. 1990, c. P.8, s. 15; 1997, c. 28, s. 194.

Issuance of certificate of registration

16. The Superintendent shall issue a certificate of registration for each pension plan registered under this Act. R.S.O. 1990, c. P.8, s. 16.

Issuance of notice of registration

17. The Superintendent shall issue a notice of registration for each amendment to a pension plan registered under this Act. R.S.O. 1990, c. P.8, s. 17.

Refusal or revocation of registration

18. (1) The Superintendent may,

(a) refuse to register a pension plan that does not comply with this Act and the regulations;

(b) revoke the registration of a pension plan that does not comply with this Act and the regulations;

(c) revoke the registration of a pension plan that is not being administered in accordance with this Act and the regulations;

(d) refuse to register an amendment to a pension plan if the amendment is void or if the pension plan with the amendment would cease to comply with this Act and the regulations;

- (e) revoke the registration of an amendment that does not comply with this Act and the regulations;
- (f) refuse to register part of an amendment to a pension plan if the part is void or if the pension plan with that part of the amendment would cease to comply with this Act and the regulations;
- (g) revoke the registration of a part of an amendment that does not comply with this Act and the regulations. R.S.O. 1990, c. P.8, s. 18 (1); 2010, c. 24, s. 6.

Application of subs. (1)

(2) The authority of the Superintendent under subsection (1) is subject to the right to a hearing under section 89. R.S.O. 1990, c. P.8, s. 18 (2).

Effect of refusal or revocation

(3) A refusal of registration of a pension plan or a revocation of registration of a pension plan operates to terminate the pension plan as of the date specified by the Superintendent. R.S.O. 1990, c. P.8, s. 18 (3).

Idem

(4) A refusal of registration of an amendment to a pension plan or the revocation of an amendment to a pension plan operates to terminate the amendment as of the date specified by the Superintendent. R.S.O. 1990, c. P.8, s. 18 (4).

Wind up

(5) Where registration of a pension plan is refused or revoked, the administrator shall wind up the pension plan in accordance with this Act and the regulations. R.S.O. 1990, c. P.8, s. 18 (5).

Duty of administrator

19. (1) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations.

Application of subs. (1)

- (2) Subsection (1) applies whether or not the pension plan is amended to comply with this Act and the regulations.

Idem

(3) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with,

- (a) the filed documents in respect of which the Superintendent has issued an acknowledgment of application for registration or a certificate of registration, whichever is issued later; and
- (b) the filed documents in respect of an application for registration of an amendment to the pension plan, if the application complies with this Act and the regulations and the amendment is not void under this Act.

Application of subs. (3)

(4) Subsection (3) does not apply to enable the administrator to administer the pension plan contrary to this Act and the regulations.

Idem, amendment

(5) The administrator of a pension plan may administer or permit administration of the pension plan and the pension fund in accordance with an amendment pending registration or refusal of registration of the amendment. R.S.O. 1990, c. P.8, s. 19.

Administrator's annual information return

20. (1) The administrator of a pension plan shall file each year an annual information return in respect of the pension plan in the form approved by the Superintendent and shall pay the filing fee established by the Minister. 1997, c. 28, s. 195.

Additional reports

(2) The administrator of a pension plan shall file additional reports at the times and containing the information prescribed by the regulations. R.S.O. 1990, c. P.8, s. 20 (2).

Reciprocal transfer agreement

21. An administrator of a pension plan shall file a certified copy of a reciprocal transfer agreement entered into in respect of the pension plan. R.S.O. 1990, c. P.8, s. 21.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 21 is amended by adding the following subsection:

Requirements

(2) The reciprocal transfer agreement must satisfy such requirements as may be prescribed. 2010, c. 9, s. 10 (1).

See: 2010, c. 9, ss. 10 (1), 80 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 21 is amended by adding the following subsection:

Same

(3) The administrator shall not transfer money or credits for employment under a reciprocal transfer agreement unless it complies with subsection (2). 2010, c. 9, s. 10 (2).

See: 2010, c. 9, ss. 10 (2), 80 (2).

Care, diligence and skill

22. (1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person. R.S.O. 1990, c. P.8, s. 22 (1).

Special knowledge and skill

(2) The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator's profession, business or calling, ought to possess. R.S.O. 1990, c. P.8, s. 22 (2).

Member of pension committee, etc.

(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan. R.S.O. 1990, c. P.8, s. 22 (3).

Conflict of interest

(4) An administrator or, if the administrator is a pension committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund. R.S.O. 1990, c. P.8, s. 22 (4).

Employment of agent

(5) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund. R.S.O. 1990, c. P.8, s. 22 (5).

Trustee of pension fund

(6) No person other than a prescribed person shall be a trustee of a pension fund. R.S.O. 1990, c. P.8, s. 22 (6).

Responsibility for agent

(7) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable. R.S.O. 1990, c. P.8, s. 22 (7).

Employee or agent

(8) An employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections (1), (2) and (4). R.S.O. 1990, c. P.8, s. 22 (8).

Benefits of administrator

(9) The administrator of a pension plan is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits and a refund of contributions. 2010, c. 24, s. 7.

Benefits of members of pension committee, etc.

(10) Subsection (9) applies, with necessary modifications, to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act for the administration of a pension plan. 2010, c. 24, s. 7.

(11) REPEALED: 2010, c. 24, s. 7.

Payment of administrative fees and expenses

22.1 (1) The administrator of a pension plan is entitled to be paid from the pension fund the administrator's reasonable fees and expenses relating to the administration of the pension plan and the administration and investment of the pension fund. 2010, c. 24, s. 8 (1).

Exception

(2) However, the administrator is not entitled to be paid from the pension fund any fees and expenses relating to the administration of the pension plan or the administration and investment of the pension fund,

- (a) if payment to the administrator is prohibited, or payment of the fees and expenses is otherwise provided for, under the documents that create and support the pension plan or the pension fund; or
- (b) if payment to the administrator is prohibited, or payment of those fees and expenses is otherwise provided for, under the Act or regulations. 2010, c. 24, s. 8 (1).

Same, members of pension committee, etc.

(3) Subsections (1) and (2) apply, with necessary modifications, to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act for the administration of a pension plan. 2010, c. 24, s. 8 (1).

Fees and expenses of agent, etc.

(4) The administrator of a pension plan may pay from the pension fund to an agent of the administrator, to the employer or to any other person who provides services relating to the administration of the pension plan or the administration and investment of the pension fund the reasonable fees and expenses of the agent, employer or other person. 2010, c. 24, s. 8 (1).

Exception

(5) However, the administrator is not permitted to pay from the pension fund to an agent, employer or other person described in subsection (4) the fees and expenses relating to the administration of the pension plan or the administration and investment of the pension fund,

- (a) if payment to the agent, employer or other person is prohibited, or payment of the fees and expenses is otherwise provided for, under the documents that create and support the pension plan or the pension fund; or
- (b) if payment to the agent, employer or other person is prohibited, or payment of those fees and expenses is otherwise provided for, under the Act or regulations. 2010, c. 24, s. 8 (1).

Fees and expenses of appointed administrator

(6) If the Superintendent appoints an administrator under subsection 8 (1.1), the appointed administrator is entitled to be paid, from the pension fund, the appointed administrator's reasonable fees and expenses relating to the administration of the pension plan and the administration and investment of the pension fund. 2010, c. 24, s. 8 (2).

Expenses of Superintendent

(7) If the Superintendent acts as administrator under subsection 8 (1.2), the Superintendent is entitled to be paid, from the pension fund, his or her reasonable expenses relating to the administration of the pension plan and the administration and investment of the pension fund. 2010, c. 24, s. 8 (2); 2016, c. 5, Sched. 22, s. 1.

Information from employer

23. An employer shall provide to the administrator of the pension plan any information required by the administrator for the purpose of complying with the terms of the pension plan or of this Act or the regulations. R.S.O. 1990, c. P.8, s. 23.

Advisory committee

24. (1) The members and retired members of a pension plan, by the decision of a majority of them participating in a vote, may establish an advisory committee. R.S.O. 1990, c. P.8, s. 24 (1); 2010, c. 9, s. 11 (1).

Note: On January 1, 2017, the day named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding at the end "in accordance with such conditions and subject to such restrictions as may be prescribed". See: 2010, c. 9, ss. 11 (2), 80 (2).

Representation

(2) Each class of employees that is represented in the pension plan is entitled to appoint at least one representative to the advisory committee established under subsection (1). R.S.O. 1990, c. P.8, s. 24 (2).

Note: On January 1, 2017, the day named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Same

(2) If members of the pension plan are represented by a trade union, the trade union may act on their behalf for the purpose of establishing an advisory committee. 2010, c. 9, s. 11 (3).

See: 2010, c. 9, ss. 11 (3), 80 (2).

Idem, former members

(3) The former members of the pension plan are entitled to appoint one representative to the advisory committee established under subsection (1). R.S.O. 1990, c. P.8, s. 24 (3).

Note: On January 1, 2017, the day named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

Representation

(3) The following rules govern the composition of the advisory committee:

1. Each class of employees that is represented in the pension plan is entitled to appoint at least one representative to the advisory committee.
2. If there is only one class of employees that is represented in the pension plan, that class is entitled to appoint at least two representatives to the committee.
3. The retired members of the pension plan are entitled to appoint at least two representatives to the committee. 2010, c. 9, s. 11 (3).

Same, former members

(3.1) One or more former members of the pension plan may be appointed as representatives on the advisory committee. 2010, c. 9, s. 11 (3).

See: 2010, c. 9, ss. 11 (3), 80 (2).

Purposes

(4) The purposes of an advisory committee are,

- (a) to monitor the administration of the pension plan;
- (b) to make recommendations to the administrator respecting the administration of the pension plan; and
- (c) to promote awareness and understanding of the pension plan on the part of members of the pension plan and persons receiving pension benefits under the pension plan. R.S.O. 1990, c. P.8, s. 24 (4).

Note: On January 1, 2017, the day named by proclamation of the Lieutenant Governor, clause (c) is repealed and the following substituted:

(c) to promote awareness and understanding of the pension plan.

See: 2010, c. 9, ss. 11 (4), 80 (2).

Note: On January 1, 2017, the day named by proclamation of the Lieutenant Governor, section 24 is amended by adding the following subsections:

Duties of the administrator

(4.1) Upon receiving written notice from members, a trade union acting on their behalf, or retired members of their intent to establish an advisory committee, and if such conditions as may be prescribed are satisfied, the administrator shall do the following things to help them to establish the committee:

1. Distribute the notice and such other information as may be prescribed to the members and retired members.
2. Provide such other assistance as may be prescribed. 2010, c. 9, s. 11 (5).

Same, to assist the committee

(4.2) Once the advisory committee has been established, the administrator has the following duties:

1. To meet with the committee as required by the regulations.
2. To provide such assistance to the committee as may be prescribed to help the committee carry out its purposes.
3. To give the committee or its representative such information as is under the administrator's control and is required by the committee or the representative for the purposes of the committee. 2010, c. 9, s. 11 (5).

See: 2010, c. 9, ss. 11 (5), 80 (2).

Examination of records

(5) The advisory committee or its representative has the right to examine the records of the administrator in respect of the administration of the pension plan and the pension fund and to make extracts from and copies of the records, but this subsection does not apply in respect of information as to the service, salary, pension benefits or other personal information related to any specific person without the person's prior consent. R.S.O. 1990, c. P.8, s. 24 (5).

Application of section

(6) This section does not apply,

(a) if the pension plan is administered by a pension committee at least one of the members of which is appointed by the members of the pension plan; or

Note: On January 1, 2017, the day named by proclamation of the Lieutenant Governor, clause (a) is amended by striking out "or" at the end. See: 2010, c. 9, ss. 11 (6), 80 (2).

(b) in respect of a multi-employer pension plan established pursuant to a collective agreement. R.S.O. 1990, c. P.8, s. 24 (6); 2016, c. 5, Sched. 22, s. 2 (1).

Note: On January 1, 2017, the day named by proclamation of the Lieutenant Governor, subsection (6) is amended by adding "or" at the end of clause (b) and by adding the following clause:

(c) in respect of a jointly sponsored pension plan.

See: 2010, c. 9, ss. 11 (6), 80 (2).

Note: On January 1, 2017, the day named by proclamation of the Lieutenant Governor, subsection 24 (6) of the Act is amended by striking out "or" at the end of clause (b), by adding "or" at the end of clause (c) and by adding the following clause: (See: 2016, c. 5, Sched. 22, s. 2 (2))

(d) in respect of a pension plan that satisfies such criteria as may be prescribed.

Administrator to provide information

(7) The administrator of a pension plan shall provide to the advisory committee or its representative such information as is under the control of the administrator and is required by the advisory committee or its representative for the purposes of the committee. R.S.O. 1990, c. P.8, s. 24 (7).

Note: On January 1, 2017, the day named by proclamation of the Lieutenant Governor, subsection (7) is repealed and the following substituted:

Costs of the committee

(7) Such costs associated with the advisory committee as may be prescribed are payable out of the pension fund, subject to the prescribed restrictions. 2010, c. 9, s. 11 (7).

See: 2010, c. 9, ss. 11 (7), 80 (2).

Note: On January 1, 2017, the day named by proclamation of the Lieutenant Governor, section 24 of the Act is amended by adding the following subsection: (See: 2016, c. 5, Sched. 22, s. 2 (3))

Transitional matters

(8) The regulations may provide for transitional rules for the application of this section and the regulations made under it to advisory committees that are established under this section before the day this subsection comes into force. 2016, c. 5, Sched. 22, s. 2 (3).

RECORD KEEPING AND DISCLOSURE

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Duty to retain records

24.1 The administrator of a pension plan shall retain the prescribed records about the pension plan and the pension fund for the prescribed period of time. 2010, c. 9, s. 13.

See: 2010, c. 9, ss. 13, 80 (2).

Information from administrator

25. (1) The administrator of a pension plan shall provide in writing to each person who will be eligible or is required to become a member of the pension plan,

(a) an explanation of the provisions of the plan that apply to the person;

(b) an explanation of the person's rights and obligations in respect of the pension plan; and

(c) any other information prescribed by the regulations.

Time

- (2) The administrator shall provide the information mentioned in subsection (1),
- (a) to each person who becomes a member within the prescribed period of time after the date on which the pension plan is established;
 - (b) to a person who is likely to become eligible to become a member of the pension plan, within the prescribed period of time before the date on which the person is likely to become eligible;
 - (c) to each person who becomes eligible to become a member of the pension plan upon becoming employed by the employer, within the prescribed period of time after the date on which the person becomes so employed.

Information from employer

(3) The employer shall transmit to the administrator the information necessary to enable the administrator to comply with subsection (2) and shall transmit the information in sufficient time to enable the administrator to comply with the time limits set out in that subsection. R.S.O. 1990, c. P.8, s. 25.

Pension plan amendments**Notice of proposed amendment**

26. (1) If the administrator of a pension plan applies for registration of an amendment to the pension plan that would result in a reduction of pension benefits accruing subsequent to the effective date of the amendment or that would otherwise adversely affect the rights or obligations of a member or former member or of any other person entitled to payment from the pension fund, the Superintendent shall require the administrator to transmit to such persons as the Superintendent may specify a written notice containing an explanation of the amendment and inviting comments to be submitted to the administrator and the Superintendent, and the administrator shall provide to the Superintendent a copy of the notice and shall certify to the Superintendent the date on which the last such notice was transmitted. R.S.O. 1990, c. P.8, s. 26 (1).

Registration

(2) If the Superintendent has required the administrator to transmit notices under subsection (1), the Superintendent shall not register an amendment mentioned in that subsection before the expiration of forty-five days after the date certified to the Superintendent under that subsection, but after the expiration of the forty-five day period the Superintendent may register the amendment with such changes as are requested in writing by the administrator. R.S.O. 1990, c. P.8, s. 26 (2).

Notice after registration

(3) Within the prescribed period of time after an amendment to a pension plan is registered, the administrator shall transmit notice and a written explanation of the amendment to each member, former member or other person entitled to payment from the pension fund who is affected by the amendment. R.S.O. 1990, c. P.8, s. 26 (3).

Order dispensing with notice

- (4) The Superintendent need not require the transmittal of notices under subsection (1) or by order may dispense with the notice required by subsection (3), or both,
- (a) if the Superintendent is of the opinion that the amendment is of a technical nature or will not substantially affect the pension benefits, rights or obligations of a member or former member or will not adversely affect any person entitled to payments from the pension fund;
 - (b) if the amendment has been agreed to by a trade union that represents the members; or
 - (c) if the amendment is in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement. R.S.O. 1990, c. P.8, s. 26 (4).

Notice to trade union

(5) Where a proposed amendment affects members or former members represented by a trade union that is a party to a collective agreement filed as a document that creates or supports a pension plan, the administrator shall transmit to the trade union the written notice mentioned in subsection (1). R.S.O. 1990, c. P.8, s. 26 (5).

Same, conversion of pension plan

(6) This section does not apply with respect to an amendment that relates to a transfer of assets under section 80.4 from a single employer pension plan to a jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 3 (1).

Same

(7) Subsection (1) does not apply with respect to an amendment that relates to the conversion under section 81.0.1 of a single employer pension plan into a jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 3 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 26 is repealed and the following substituted:

Pension plan amendments

Notice of proposed amendment

26. (1) Before the administrator of a pension plan applies for registration of an amendment to the pension plan, the administrator shall give a notice to the members, former members and retired members and the notice must contain the prescribed information. 2010, c. 9, s. 15 (1).

Notice to trade union

(2) The administrator shall also give a notice to a trade union that represents members of the pension plan and the notice must contain the prescribed information. 2010, c. 9, s. 15 (1).

Timing

(3) The notice must be given within the prescribed period. 2010, c. 9, s. 15 (1).

Exception

(4) In such circumstances as may be prescribed and despite subsection (1), the administrator may give the notice required by subsection (1) to the members, former members and retired members after the amendment to the pension plan is filed. 2010, c. 9, s. 15 (1).

See: 2010, c. 9, ss. 15 (1), 80 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 26 is amended by adding the following subsection:

Exceptions

(5) This section does not apply with respect to an amendment that relates to a transfer of assets authorized by section 79.1, 80, 80.1, 80.2 or 81. 2010, c. 9, s. 15 (2).

Note: On July 1, 2017, subsection (5) is amended by striking out “80.1”. See: 2010, c. 9, ss. 15 (3), 80 (4); 2014, c. 7, Sched. 26, s. 14; 2016, c. 5, Sched. 22, s. 4.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by striking out “80.2 or 81” at the end and substituting “80.2, 80.3 or 81”. See: 2010, c. 24, ss. 9, 49 (4).

See: 2010, c. 9, ss. 15 (2), 80 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 26 is amended by adding the following subsection: (See: 2014, c. 7, Sched. 26, ss. 3 (2), 15 (1))

Same, conversion of pension plan

(6) This section does not apply with respect to an amendment that relates to a transfer of assets under section 80.4 from a single employer pension plan to a jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 3 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 26 is amended by adding the following subsection: (See: 2014, c. 7, Sched. 26, ss. 3 (4), 15 (1))

Same

(7) Subsection (1) does not apply with respect to an amendment that relates to the conversion under section 81.0.1 of a single employer pension plan into a jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 3 (4).

Annual statement of pension benefits

27. (1) The administrator of a pension plan shall transmit annually to each member a written statement containing the prescribed information in respect of the pension plan, the member’s pension benefits and any ancillary benefits. R.S.O. 1990, c. P.8, s. 27.

Other statements to former members, retired members

(2) When required by the regulations, the administrator of a pension plan shall transmit to each former member and retired member a written statement containing the prescribed information about the pension plan or about his or her pension benefits and any ancillary benefits. 2010, c. 9, s. 16.

Statement of benefits

28. (1) Where a member of a pension plan terminates employment with the employer or otherwise ceases to be a member, the administrator of the pension plan shall give to the member, or to any other person who as a result becomes entitled to a

payment under the pension plan, a written statement setting out the prescribed information in respect of the benefits, rights and obligations of the member or other person.

Multi-employer pension plan

(2) Subsection (1) applies in respect of a multi-employer pension plan where a member ceases to be a member, but does not apply where a member terminates employment with an employer but continues to be a member. R.S.O. 1990, c. P.8, s. 28.

Inspection of administrator's records

29. (1) On written request, the administrator of a pension plan shall make available the prescribed records about the pension plan and the pension fund for inspection without charge by,

- (a) a member, former member or retired member;
- (b) the spouse of a member, former member or retired member;
- (c) REPEALED: 2010, c. 9, s. 17 (2).
- (c.1) a former spouse, within the meaning of sections 67.1 to 67.6, of a member, former member or retired member but only in such circumstances and for such purposes as may be prescribed;
- (d) any other person entitled to pension benefits under the pension plan;
- (e) REPEALED: 1999, c. 15, s. 3 (1).
- (f) a representative of a trade union that represents members of the pension plan;
- (g) an employer;
- (h) a person required to make contributions under the pension plan on behalf of an employer;
- (i) an agent of a person described in any of clauses (a) to (h) who is authorized in writing; or
- (j) such other persons as may be prescribed. R.S.O. 1990, c. P.8, s. 29 (1); 1999, c. 6, s. 53 (3); 1999, c. 15, s. 3; 2005, c. 5, s. 56 (7); 2009, c. 11, s. 42; 2010, c. 9, s. 17 (1-3).

Place of inspection

- (2) The administrator shall make the prescribed records available,
- (a) at the premises of the employer where the member is employed or where the former member or retired member was employed, as the case may be; or
- (b) at a location that is agreed upon by the administrator and the person making the request. 2010, c. 9, s. 17 (5).

Restriction on inspections

(3) A person described in clause (1) (a), (b) or (d), or the person's agent is entitled to make an inspection under subsection (1) not more than once in a calendar year. 2010, c. 9, s. 17 (6); 2011, c. 9, Sched. 35, s. 2 (1).

Obtaining copies during inspection

(4) The administrator shall permit the person making the inspection to make extracts from, or to copy, the prescribed records and, upon request, the administrator shall give the person a copy of any of the prescribed records upon payment of the applicable fee to the administrator. 2010, c. 9, s. 17 (6).

Same, by mail or electronically

(5) If the administrator receives a written request from a person described in subsection (1) and receives payment of the applicable fee, the administrator shall provide prescribed records by mail or electronically to the person in such circumstances as may be prescribed. 2010, c. 9, s. 17 (6).

Restriction on copies

(6) A person described in clause (1) (a), (b) or (d), or the person's agent is entitled to make a request under subsection (5) for a particular prescribed record not more than once in a calendar year. 2010, c. 9, s. 17 (6); 2011, c. 9, Sched. 35, s. 2 (2).

Restriction on fees

(7) The applicable fee referred to in subsection (4) or (5) cannot exceed such amount as may be prescribed. 2010, c. 9, s. 17 (6).

Inspection of filed records

30. (1) The administrator of a pension plan and the persons described in subsection 29 (1) are entitled to inspect the following records at the office of the Superintendent during the business hours of that office:

1. The filed documents that create and support the pension plan and the pension fund.
2. Such other prescribed documents as are filed in respect of the pension plan and the pension fund. 1999, c. 15, s. 4; 2010, c. 9, s. 18 (1).

Obtaining copies during inspection

(2) Upon payment of the applicable fee, the Superintendent shall give the person making an inspection under subsection (1) a copy of any record that the person is entitled to inspect. 2010, c. 9, s. 18 (3).

Same, by mail or electronically

(3) If the Superintendent receives a written request from the administrator or from a person described in subsection 29 (1) and receives payment of the applicable fee, the Superintendent shall provide prescribed records by mail or electronically to the administrator or other person in such circumstances as may be prescribed. 2010, c. 9, s. 18 (3).

Authority to use electronic transmission

30.1 (1) The administrator of a pension plan may use electronic means that comply with the *Electronic Commerce Act, 2000* to send notices, statements and other records to members, former members, retired members and other persons entitled to benefits under the pension plan if the administrator has the person's permission to do so. 2010, c. 9, s. 19.

Exception

(2) Subsection (1) does not apply in such circumstances as may be prescribed. 2010, c. 9, s. 19.

MEMBERSHIP

Eligibility for membership

31. (1) Every employee of a class of employees for whom a pension plan is established is eligible to be a member of the pension plan.

Full-time employment

(2) An employee in a class of employees for whom a pension plan is maintained is entitled to become a member of the pension plan upon application at any time after completing twenty-four months of continuous full-time employment.

Part-time employment

(3) A pension plan may require not more than twenty-four months of less than full-time continuous employment with the employer, with the lesser of,

- (a) earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings; or
- (b) 700 hours of employment with the employer,

in each of two consecutive calendar years immediately prior to membership in the pension plan, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the pension plan.

Multi-employer pension plan

(4) A multi-employer pension plan may require not more than the lesser of,

- (a) earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings with one or more of the participating employers; or
- (b) 700 hours of employment with one or more participating employers,

in each of the two consecutive calendar years immediately before the year in which membership is applied for, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the multi-employer pension plan.

Approval

(5) The Superintendent may give the approval mentioned in subsection (3) or (4) if the Superintendent is of the opinion that the basis is equivalent in the circumstances to the earnings mentioned in the subsection. R.S.O. 1990, c. P.8, s. 31.

Loss of membership

32. A member of a pension plan who is employed continuously on a less than full-time basis does not cease to be a member by reason only that he or she has earnings of less than 35 per cent of the Year's Maximum Pensionable Earnings in a calendar year or is employed for fewer than 700 hours in a calendar year. R.S.O. 1990, c. P.8, s. 32.

Dispute as to member of class of employees

33. (1) Where there is a dispute as to whether or not an employee is a member of a class of employees for whom a pension plan is established or maintained, the Superintendent, subject to section 89, by order may require the administrator to accept the employee as a member.

Ground for order

(2) The Superintendent may make the order if the Superintendent is of the opinion that, on the basis of the nature of the employment or of the terms of employment of the employee, the employee is a member of the class. R.S.O. 1990, c. P.8, s. 33.

Separate pension plan

34. (1) An employer may establish or maintain a separate pension plan for employees employed in less than full-time continuous employment if the separate pension plan provides pension benefits and other benefits reasonably equivalent to those provided under the pension plan maintained by the employer for employees of the same class employed in full-time continuous employment. R.S.O. 1990, c. P.8, s. 34.

Same, jointly sponsored pension plan

(2) If the documents that create and support a jointly sponsored pension plan so authorize, a prescribed person or entity may establish or maintain a separate jointly sponsored pension plan for employees employed in less than full-time continuous employment if the separate plan provides pension benefits and other benefits reasonably equivalent to those provided under the jointly sponsored pension plan maintained for employees of the same class employed in full-time continuous employment. 2005, c. 31, Sched. 18, s. 4.

RETIREMENT

Normal retirement date

35. (1) The normal retirement date under a pension plan submitted for registration after the 1st day of January, 1988 shall not be later than one year after the attainment of sixty-five years of age. R.S.O. 1990, c. P.8, s. 35 (1).

Transitional

(2) Every pension plan registered or submitted for registration before the 1st day of January, 1988 shall be deemed to specify a normal retirement date in respect of pension benefits that accrue after the 1st day of January, 1988, that is not later than one year after attainment of sixty-five years of age, unless the pension plan specifies an earlier retirement date. R.S.O. 1990, c. P.8, s. 35 (2).

Right to pension

(3) If a member of a pension plan continues employment and membership in the pension plan after reaching the normal retirement date under the plan, he or she is entitled, on termination of employment, to payment of,

- (a) the pension benefits to which he or she would have been entitled upon terminating employment at the normal retirement date; and
- (b) any additional pension benefits accrued under the pension plan that result from his or her employment after the normal retirement date. 2010, c. 9, s. 21.

Continuation after normal retirement date

(4) A member of a pension plan who continues employment after attaining the age that is the normal retirement date under the pension plan and who is not receiving a pension under the pension plan is entitled to continue membership in the pension plan and has the right to continue to accrue pension benefits under the pension plan subject to any terms of the pension plan,

- (a) fixing a maximum number of years of employment or membership that can be taken into account for purposes of determining a pension benefit; or
- (b) fixing a maximum amount of the pension benefit. R.S.O. 1990, c. P.8, s. 35 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Phased retirement option

35.1 (1) A pension plan that provides defined benefits may provide a phased retirement option for eligible members in the circumstances described in this section, and the option provided under the pension plan must comply with this Act and the regulations. 2010, c. 9, s. 22.

Application by member

(2) A member whose pension benefit is a defined benefit may apply to the administrator to participate in the phased retirement option if all of the following circumstances exist:

1. The member is at least 60 years of age or is at least 55 years of age and entitled to an unreduced pension under the pension plan.
2. The member has not yet reached the normal retirement date.
3. The member and his or her employer have entered into a written agreement governing the employment arrangements relating to the phased retirement option for the member and governing payments under the phased retirement option.
4. The agreement provides for a reduction in the member's regular hours of work when payments under the phased retirement option begin, and the reduction satisfies such requirements as may be prescribed.
5. The agreement complies with the requirements of the pension plan. 2010, c. 9, s. 22.

Approval

(3) The administrator shall approve an application that satisfies the requirements of this section and the regulations and shall do so within such period as may be prescribed. 2010, c. 9, s. 22.

Participation

(4) If the administrator approves the application, the member participates in the phased retirement option for the period specified by the agreement, and that period cannot begin before the date on which the administrator approves the agreement and it cannot end after the member's normal retirement date. 2010, c. 9, s. 22.

Accruing pension benefits, etc.

(5) During that period, the member continues to accrue pension benefits under the pension plan in the prescribed manner and all contributions shall continue to be made as required under the pension plan. 2010, c. 9, s. 22.

Entitlement to payments

(6) During that period, the member is entitled to periodic payments under the pension plan that are equal to a portion of the pension payments to which he or she would be entitled as a retired member, and the portion is specified in the agreement and cannot exceed 60 per cent of the pension payments to which he or she would be entitled as a retired member. 2010, c. 9, s. 22.

Status of payments

(7) For the purposes of this Act, the periodic payments do not constitute a pension. 2010, c. 9, s. 22.

Restriction on other payments

(8) A member is not entitled to be paid any other amounts under the pension plan during that period. 2010, c. 9, s. 22.

Same

(9) Subsection (8) does not prevent the refund of additional voluntary contributions and interest thereon to the member. 2010, c. 9, s. 22.

Restriction on eligibility

(10) If the member ceases to be a member of the pension plan during that period, he or she ceases to participate in the phased retirement option and the period referred to in subsections (4), (5) and (6) is deemed to have ended. 2010, c. 9, s. 22.

Restrictions affecting the pension plan

(11) A pension plan cannot make payments under a phased retirement option if the pension plan is being wound up or while the pension plan does not satisfy prescribed funding requirements. 2010, c. 9, s. 22.

Information

(12) If a member asks the administrator for information concerning the phased retirement option, if any, provided under a pension plan, the administrator shall provide information to him or her within such period as may be prescribed. 2010, c. 9, s. 22.

See: 2010, c. 9, ss. 22, 80 (2).

Deferred pension for service before 1987

36. (1) A member of a pension plan who terminates his or her employment with the employer on or after the day on which subsection 23 (1) of the *Pension Benefits Amendment Act, 2010* comes into force and before reaching the normal retirement date under the pension plan is entitled to the benefit described in subsection (3) in connection with his or her employment, if any, before January 1, 1987. 2010, c. 9, s. 23 (1).

(2) REPEALED: 2010, c. 9, s. 23 (1).

Amount

(3) The benefit is a deferred pension equal to the pension benefit provided under the pension plan as it existed on December 31, 1986 in respect of employment before January 1, 1987 in Ontario or in a designated jurisdiction,

- (a) under the terms of the pension plan, with respect to employment on or after the qualification date;
- (b) by an amendment to the pension plan made on or after the qualification date; and
- (c) by the creation of a new pension plan on or after the qualification date. R.S.O. 1990, c. P.8, s. 36 (3); 2010, c. 1, Sched. 23, s. 3.

Application of subss. (1, 3)

(4) Subsections (1) and (3) do not apply in respect of benefits that result from additional voluntary contributions. R.S.O. 1990, c. P.8, s. 36 (4); 2010, c. 9, s. 23 (2).

Deferred pension for service after 1986

37. (1) A member of a pension plan who is a member on or after the day on which subsection 24 (1) of the *Pension Benefits Amendment Act, 2010* comes into force and who terminates his or her employment with the employer before reaching the normal retirement date is entitled to the benefit described in subsection (3) in connection with his or her employment after December 31, 1986. 2010, c. 9, s. 24 (1).

(2) REPEALED: 2010, c. 9, s. 24 (1).

Amount

(3) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in Ontario or in a designated jurisdiction,

- (a) under the pension plan in respect of employment by the employer after the later of the 31st day of December, 1986 or the qualification date;
- (b) under any amendment made to the pension plan after the 31st day of December, 1986; and
- (c) under any new pension plan established after the 31st day of December, 1986 for members of the pension plan. R.S.O. 1990, c. P.8, s. 37 (3); 2010, c. 1, Sched. 23, s. 4.

Application of subss. (1, 3)

(4) Subsections (1) and (3) do not apply in respect of benefits that result from additional voluntary contributions. R.S.O. 1990, c. P.8, s. 37 (4); 2010, c. 9, s. 24 (2).

Termination by member

38. (1) A person who is,

- (a) a member of a multi-employer pension plan;
- (b) a member of a pension plan who is employed by the employer on a less than full-time basis; or
- (c) a member of a pension plan who has been laid off from employment by the employer,

is entitled to terminate his or her membership in the pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of the member for twenty-four consecutive months or for such shorter period of time as is specified in the pension plan. R.S.O. 1990, c. P.8, s. 38 (1).

Election

(1.1) If the person elects to terminate his or her membership in the pension plan, the membership is terminated when the person delivers written notice of his or her election to the administrator of the pension plan or at the end of the period described in subsection (1), whichever is later. 2010, c. 9, s. 25 (1).

Effect of termination

(2) For the purpose of determining benefits under this Act, the person is deemed to have terminated his or her employment when his or her membership in the pension plan is terminated. 2010, c. 9, s. 25 (2).

Application of subss. (1, 2)

(3) Subsections (1) and (2) do not apply if contributions are not paid or are not required to be paid because the person has become a member of another pension plan and there is a reciprocal transfer agreement respecting the two pension plans. R.S.O. 1990, c. P.8, s. 38 (3).

Determination of entitlement

(4) For the purpose of determining entitlement to a deferred pension, a member of a multi-employer pension plan who terminates employment with a participating employer or an employer on whose behalf contributions are made under the pension plan shall be deemed not to have terminated employment until the member terminates membership in the pension plan. R.S.O. 1990, c. P.8, s. 38 (4).

Certification of new bargaining agent

(5) Where a member of a multi-employer pension plan is represented by a trade union, which, in accordance with section 62 of the *Labour Relations Act, 1995*, ceases to represent the member, and the member joins a different pension plan, the member is entitled to terminate membership in the first plan. R.S.O. 1990, c. P.8, s. 38 (5); 2004, c. 31, Sched. 31, s. 2.

Application of subs. (5)

(6) Subsection (5) does not apply where there is a reciprocal agreement respecting the two pension plans. R.S.O. 1990, c. P.8, s. 38 (6).

BENEFITS

Value of deferred pension, etc.

39. (1) If the commuted value of a deferred pension accrued by a former member or a pension accrued by a retired member, as the case may be, in respect of employment before January 1, 1987 is less than the value of the contributions that he or she was required, as a member, to make under the pension plan before that date, plus interest credited to the contributions, he or she is entitled to have the commuted value of the deferred pension or the pension increased so that the commuted value is equal to the value of the contributions plus interest. 2010, c. 9, s. 26 (1).

Effect of amendment

(2) An increase in the value of the pension or deferred pension in respect of employment before the 1st day of January, 1987 that results from an amendment to the pension plan made on or after that date may be included in calculating the commuted value of the pension or deferred pension for the purposes of subsection (1). R.S.O. 1990, c. P.8, s. 39 (2).

50 per cent rule

(3) Contributions made on or after January 1, 1987 by a member, and interest on the contributions, shall not be used to provide more than 50 per cent of the commuted value of a deferred pension or pension in respect of contributory benefits accrued after that date to which the member is entitled under the pension plan on termination of employment or membership. 2010, c. 9, s. 26 (2).

Entitlement to excess amount

(4) A former member or retired member who is entitled to a deferred pension or a pension, as the case may be, on termination of employment or membership is entitled to a lump sum payment from the pension fund that is equal to the amount by which his or her contributions, as a member, made on or after January 1, 1987, and interest on the contributions, exceeds one-half of the commuted value of the deferred pension or pension in respect of contributory benefits accrued after that date. 2010, c. 9, s. 26 (2).

Right to transfer excess amount

(4.1) A person entitled to a lump sum payment under subsection (4) may require the administrator to pay the lump sum into a registered retirement savings arrangement by delivering a direction to the administrator within the prescribed period. 2010, c. 9, s. 26 (3).

Same

(4.2) Section 50.1 applies with respect to the payment into the registered retirement savings arrangement. 2010, c. 9, s. 26 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 39 is amended by adding the following subsection:

Reduction re target benefits

(4.3) If a former member transfers an amount under subsection 42 (1) in connection with his or her deferred pension under a pension plan that provides target benefits, and if the transferred amount was reduced under subsection 42 (2.1),

- (a) the lump sum payment to which the former member is entitled under subsection (4) must be reduced in the prescribed manner; and
- (b) subsection (3) does not apply with respect to the reduced lump sum payment. 2010, c. 24, s. 10 (1).

See: 2010, c. 24, ss. 10 (1), 49 (4).

Exclusions

(5) The following may be excluded in determining that part of the commuted value of a pension or deferred pension to which subsections (3) and (4) apply:

1. Defined contribution benefits.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by adding the following paragraph:

1.1 Optional benefits.

See: 2010, c. 24, ss. 10 (2), 49 (4).

2. Benefits that result from additional voluntary contributions.

2.1 Benefits that result from voluntary contributions for past service, as defined in the regulations.

3. In the case of a multi-employer pension plan that permits a member who has not accrued maximum pension benefits permitted under the plan in a fiscal year of the plan to make contributions to increase the member's pension benefit to the maximum permitted for the fiscal year, benefits resulting from such contributions.
4. Any other benefits prescribed for the purposes of this subsection. R.S.O. 1990, c. P.8, s. 39 (5); 1999, c. 15, s. 5.

Matters that may be included

(6) The following may be included by the administrator of the pension plan in calculating a member's contributory benefit for the purposes of subsection (3):

1. Ancillary benefits related to employment on or after the 1st day of January, 1987.
2. Increases to pension benefits and ancillary benefits related to employment before the date of the amendment resulting from an amendment to the pension plan made on or after the 1st day of January, 1987 but that are not included in calculating commuted value under subsection (2).
3. Pension benefits and ancillary benefits related to employment before the date of the establishment of the pension plan, in the case of a pension plan established on or after the 1st day of January, 1987. R.S.O. 1990, c. P.8, s. 39 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2015, c. 20, Sched. 34, s. 2)

Variable benefits

Definitions

39.1 (1) In this section,

"specified beneficiary" means a designated beneficiary of a retired member who is a specified beneficiary for the purposes of the *Income Tax Act* (Canada); ("bénéficiaire déterminé")

"variable benefits" means variable benefits for the purposes of the *Income Tax Act* (Canada); ("prestations variables")

"variable benefit account" means an account under the defined contribution provision of a pension plan that is used, or is to be used, for the payment of variable benefits to a retired member or a specified beneficiary of a retired member. ("compte de prestations variables") 2015, c. 20, Sched. 34, s. 2.

Payment of variable benefits authorized

(2) A pension plan that provides defined contribution benefits may authorize payment of pension benefits that are variable benefits in the manner authorized by the *Income Tax Act* (Canada) and in accordance with such requirements and subject to such restrictions as may be prescribed. 2015, c. 20, Sched. 34, s. 2.

Transfers in

(3) A pension plan that provides for the payment of variable benefits may provide that a retired member receiving variable benefits is entitled to transfer, to the extent authorized by the *Income Tax Act* (Canada) and in accordance with such requirements and subject to such restrictions as may be prescribed, any amount to the retired member's variable benefit account,

- (a) from the pension fund related to another defined contribution pension plan; or
- (b) from a prescribed retirement savings arrangement. 2015, c. 20, Sched. 34, s. 2.

Transfers out

(4) A pension plan that provides for the payment of variable benefits shall provide that a retired member receiving variable benefits is entitled to require the administrator to pay, to the extent authorized by the *Income Tax Act* (Canada) and in accordance with such requirements and subject to such restrictions as may be prescribed, any amount remaining in the retired member's variable benefit account,

- (a) to the pension fund related to another defined contribution pension plan, if the administrator of the other pension plan agrees to accept payment;
- (b) into a prescribed retirement savings arrangement; or
- (c) for the purchase of a life annuity. 2015, c. 20, Sched. 34, s. 2.

Limitation

(5) The entitlement under subsection (4) is subject to the prescribed limitations in respect of the transfer of funds from pension funds. 2015, c. 20, Sched. 34, s. 2.

Cessation of variable benefit payments

(6) Before a pension plan ceases to provide for the payment of a variable benefit, the administrator shall offer a retired member or specified beneficiary who receives that variable benefit the options referred to in subsection (4). 2015, c. 20, Sched. 34, s. 2.

Direction

(7) A retired member may exercise his or her entitlement under subsection (4) by delivering a direction to the administrator in accordance with the prescribed rules. 2015, c. 20, Sched. 34, s. 2.

Compliance with direction

(8) Subject to compliance with the requirements of this section and the regulations, the administrator shall comply with the direction within the prescribed period of time after delivery of the direction. 2015, c. 20, Sched. 34, s. 2.

Terms of arrangement or life annuity

- (9) The administrator shall not make a payment,
 - (a) under clause (4) (b) unless the retirement savings arrangement meets the prescribed requirements; or
 - (b) under clause (4) (c) unless the life annuity meets the prescribed requirements. 2015, c. 20, Sched. 34, s. 2.

Approval

(10) If a payment under subsection (4) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the payment without the approval of the Superintendent. 2015, c. 20, Sched. 34, s. 2.

Terms and conditions

(11) The Superintendent may approve the payment subject to such terms and conditions as the Superintendent considers appropriate in the circumstances. 2015, c. 20, Sched. 34, s. 2.

Order for repayment

(12) If a payment that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is failure to comply with a term or condition attached to the approval, the Superintendent by order, subject to section 89, may require any person to whom payment under subsection (4) has been made to repay an amount not greater than the amount of the payment together with interest thereon. 2015, c. 20, Sched. 34, s. 2.

Enforcement

(13) Subject to section 89, an order for payment under subsection (12), exclusive of the reasons therefor, may be filed in the Superior Court of Justice and is thereupon enforceable as an order of that court. 2015, c. 20, Sched. 34, s. 2.

Discharge of administrator

(14) The administrator is discharged in respect of the amount that is paid or transferred under subsection (4) on making the payment or transfer in accordance with the direction of the retired member if the payment or transfer complies with this Act and the regulations. 2015, c. 20, Sched. 34, s. 2.

Commutation or surrender

(15) Subsections 67 (1) and (2) do not apply to the commutation or surrender, in whole or in part, of the account balance in a variable benefit account in such circumstances or in such amounts as may be prescribed, subject to such restrictions as may be prescribed. 2015, c. 20, Sched. 34, s. 2.

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Target benefits

39.2 (1) The pension benefits provided by a pension plan are target benefits if all of the following criteria are satisfied:

1. The pension benefits are not defined contribution benefits.
2. The obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in one or more collective agreements.
3. The administrator is authorized, by the documents that create and support the pension plan and pension fund, to reduce benefits, deferred pensions or pensions accrued under the plan, both while the plan is ongoing and upon wind up.
4. The reduction referred to in paragraph 3 is not prohibited by the terms of any applicable collective agreement or by the pension legislation of a designated jurisdiction.
5. The pension benefits satisfy such other criteria as may be prescribed.
6. The pension plan satisfies such other criteria as may be prescribed. 2010, c. 24, s. 12 (1).

Same

(2) Despite subsection (1), the pension benefits provided by a pension plan are not target benefits if the administrator's authority to reduce benefits, deferred pensions or pensions accrued under the plan is restricted in a manner or to an extent that is prohibited by regulation for target benefits. 2010, c. 24, s. 12 (1).

Same

(3) Ancillary benefits provided by a pension plan that provides target benefits are also target benefits. 2010, c. 24, s. 12 (1).

Certain multi-jurisdictional pension plans

(4) For a designated multi-jurisdictional pension plan, the pension benefits are target benefits in such circumstances as may be prescribed even though, in a designated jurisdiction, the administrator's authority to reduce benefits, deferred pensions or pensions for members and former members in that jurisdiction is prohibited or restricted under the pension legislation of that jurisdiction. 2010, c. 24, s. 12 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "for members and former members" and substituting "for members, former members and retired members". See: 2010, c. 24, ss. 12 (2), 49 (4).

See: 2010, c. 24, ss. 12 (1), 49 (4).

Ancillary benefits

40. (1) A pension plan may provide the following ancillary benefits:

1. Disability benefits.
2. Death benefits in excess of those provided in section 48 (pre-retirement death benefit).
3. Bridging benefits.
4. Supplemental benefits, other than bridging benefits, payable for a temporary period of time.
5. Early retirement options and benefits in excess of those provided by section 41 (early retirement option).
6. Postponed retirement options and benefits in excess of those referred to in subsection 35 (4).

7. Any prescribed ancillary benefit. R.S.O. 1990, c. P.8, s. 40 (1).

Use in calculating pension benefit

(2) An ancillary benefit for which a member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit shall be included in calculating the member's pension benefit or the commuted value of the pension benefit. R.S.O. 1990, c. P.8, s. 40 (2).

Consent of employer

(3) For the purposes of subsection (2) and clause 14 (1) (c), if the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit and a member, former member or retired member has met all other eligibility requirements, the employer is deemed to have consented. 2010, c. 9, s. 27.

Same, jointly sponsored pension plan

(4) For the purposes of subsection (2) and clause 14 (1) (c), if the consent of the administrator is an eligibility requirement for entitlement to receive an ancillary benefit under a jointly sponsored pension plan and a member, former member or retired member has met all other eligibility requirements, the administrator is deemed to have consented. 2010, c. 9, s. 27.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 40 is amended by adding the following subsection:

Treatment re target benefits

(5) Subsection (2) applies with respect to ancillary benefits under a pension plan that provides target benefits, except in such circumstances as may be prescribed. 2010, c. 24, s. 13 (1).

See: 2010, c. 24, ss. 13 (1), 49 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 40 is amended by adding the following subsection:

Treatment of optional benefits

(6) Subsection (2) applies with respect to ancillary benefits that are optional benefits, except in such circumstances as may be prescribed. 2010, c. 24, s. 13 (2).

See: 2010, c. 24, ss. 13 (2), 49 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Optional benefits

40.1 (1) A pension plan that provides defined benefits may provide as optional benefits such benefits as may be prescribed. 2010, c. 24, s. 14.

Optional contributions

(2) Optional contributions may be made by a member for optional benefits under the pension plan and, if the pension plan so permits, the member may choose or vary the amount of the optional contributions to be made. 2010, c. 24, s. 14.

Same

(3) The optional contributions made by a member must be applied, in accordance with the terms of the pension plan, to provide only optional benefits upon the termination of employment or membership. 2010, c. 24, s. 14.

Requirements re contributions

(4) A pension plan that provides optional benefits must satisfy such requirements as may be prescribed about the manner of determining the amount of the optional contributions for the optional benefits. 2010, c. 24, s. 14.

Requirements re conversion

(5) The conversion of optional contributions into optional benefits is subject to such requirements as may be prescribed by regulation. 2010, c. 24, s. 14.

Non-application

(6) Such provisions of the Act and regulations as may be prescribed do not apply with respect to optional benefits and optional contributions. 2010, c. 24, s. 14.

See: 2010, c. 24, ss. 14, 49 (4).

Early retirement option

41. (1) A former member is entitled to elect to receive an early retirement pension under the pension plan if he or she has terminated employment and is within 10 years of reaching the normal retirement date. 2010, c. 9, s. 28 (1).

Idem

(2) A member who is within ten years of attaining the normal retirement date and who would be entitled to a deferred pension on termination of employment with the employer is entitled upon termination of the employment or on the wind up of the pension plan in whole or in part to receive an early retirement pension under the pension plan. R.S.O. 1990, c. P.8, s. 41 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out “in whole or in part”. See: 2010, c. 9, ss. 28 (2), 80 (2).

Commutated value

(3) The commuted value of a member’s early retirement pension must be not less than the commuted value of the member’s pension benefit under the pension plan. R.S.O. 1990, c. P.8, s. 41 (3).

Idem, former member

(4) The commuted value of a former member’s early retirement pension must be not less than the commuted value of the former member’s deferred pension benefit under the pension plan. R.S.O. 1990, c. P.8, s. 41 (4).

Payment

(5) The member or former member is entitled to require the commencement of payment of the early retirement pension at any time within the ten year period mentioned in subsection (1) or (2). R.S.O. 1990, c. P.8, s. 41 (5).

Election

(6) An election under subsection (1) or (2) shall be made in writing, signed by the member or former member and delivered to the administrator of the pension plan. R.S.O. 1990, c. P.8, s. 41 (6).

Transfer

42. (1) A former member of a pension plan is entitled to require the administrator to pay an amount equal to the commuted value of the former member’s deferred pension,

- (a) to the pension fund related to another pension plan, if the conditions set out in subsection (1.1) are satisfied;
- (b) into a prescribed retirement savings arrangement; or
- (c) if the pension plan so permits, for the purchase for the former member of a life annuity that will not commence before the earliest date on which the former member would have been entitled to receive payment of pension benefits under the pension plan. R.S.O. 1990, c. P.8, s. 42 (1); 2010, c. 9, s. 29 (1); 2010, c. 24, s. 15 (1); 2011, c. 9, Sched. 35, s. 3 (1).

Requirements re transfer to another pension plan

- (1.1) The transfer described in clause (1) (a) to the pension fund related to another pension plan is authorized,
 - (a) if the other pension plan is a pension plan registered under this Act, a pension plan established or governed by a statute in a designated jurisdiction, a pension plan registered in a designated jurisdiction or a pension plan prescribed for the purposes of this section; and
 - (b) if the administrator of the other pension plan agrees to accept the payment. 2010, c. 24, s. 15 (2).

Limitation

(2) The entitlement under subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds. R.S.O. 1990, c. P.8, s. 42 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 42 is amended by adding the following subsection:

Reduction re target benefits

(2.1) If a pension plan that provides target benefits does not require contributions to be made in respect of any solvency deficiency that relates to the target benefits, the amount that a former member is entitled to require the administrator to pay under subsection (1) that relates to target benefits may be reduced in the prescribed manner and in the prescribed circumstances. 2010, c. 24, s. 15 (3).

See: 2010, c. 24, ss. 15 (3), 49 (4).

Application

(3) Subsection (1) does not apply to a former member who is entitled to immediate payment of a pension under the pension plan or under section 41 unless the pension plan provides such an entitlement. 2010, c. 9, s. 29 (2).

Direction

(4) A former member may exercise his or her entitlement under subsection (1) by delivering a direction to the administrator within the prescribed period. 2010, c. 9, s. 29 (3).

Compliance with direction

(5) Subject to compliance with the requirements of this section and the regulations, the administrator shall comply with the direction within the prescribed period of time after delivery of the direction. R.S.O. 1990, c. P.8, s. 42 (5).

Terms of arrangement or deferred annuity

(6) The administrator shall not make payment,

- (a) under clause (1) (b) unless the retirement savings arrangement meets the requirements prescribed by the regulations; or
- (b) under clause (1) (c) unless the contract to purchase the deferred life annuity meets the prescribed requirements. R.S.O. 1990, c. P.8, s. 42 (6).

Lump sum payment

(6.1) If the amount of the commuted value of the deferred pension of the former member to be paid into a prescribed retirement savings arrangement under clause (1) (b) is greater than the amount prescribed under the *Income Tax Act* (Canada) for such a transfer, the administrator shall pay the portion that exceeds the prescribed amount as a lump sum to the former member. 1999, c. 15, s. 6.

Purchase of life annuity

(6.2) If a life annuity is purchased under clause (1) (c) for a former member and if the amount of the commuted value of the former member's deferred pension that is used to purchase the life annuity is greater than the amount permitted under the *Income Tax Act* (Canada) for such a purchase, the administrator shall pay to the former member as a lump sum the portion of the commuted value that exceeds the amount permitted under that Act for the purchase of the life annuity. 2010, c. 26, Sched. 15, s. 1 (2); 2011, c. 9, Sched. 35, s. 3 (2).

Approval

(7) If a payment under subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the payment without the approval of the Superintendent. R.S.O. 1990, c. P.8, s. 42 (7).

Terms and conditions

(8) The Superintendent may approve the payment subject to such terms and conditions as the Superintendent considers appropriate in the circumstances. R.S.O. 1990, c. P.8, s. 42 (8).

Order for repayment

(9) If a payment that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is failure to comply with a term or condition attached to the approval, the Superintendent by order, subject to section 89 (hearing and appeal), may require any person to whom payment under subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon. R.S.O. 1990, c. P.8, s. 42 (9).

Enforcement

(10) Subject to section 89 (hearing and appeal), an order for payment under subsection (9), exclusive of the reasons therefor, may be filed in the Superior Court of Justice and is thereupon enforceable as an order of that court. R.S.O. 1990, c. P.8, s. 42 (10); 2006, c. 19, Sched. C, s. 1 (1).

Discharge of administrator

(11) The administrator is discharged on making the payment or transfer in accordance with the direction of the former member if the payment or transfer complies with this Act and the regulations. R.S.O. 1990, c. P.8, s. 42 (11).

Purchase of pension

43. (1) The administrator of a pension plan who is required by the pension plan to provide a pension, a deferred pension or an ancillary benefit may purchase the pension, deferred pension or ancillary benefit from an insurance company. R.S.O. 1990, c. P.8, s. 43 (1).

Limitations

(2) The authority of the administrator under subsection (1) is subject to the entitlement of a member under section 42 and to the limitations prescribed in relation to transfers of funds from pension funds. R.S.O. 1990, c. P.8, s. 43 (2).

Approval by Superintendent

(3) If a purchase under subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the purchase without the prior approval of the Superintendent. R.S.O. 1990, c. P.8, s. 43 (3).

Idem

(4) The Superintendent may approve a purchase mentioned in subsection (3) subject to such terms and conditions as the Superintendent considers appropriate in the circumstances. R.S.O. 1990, c. P.8, s. 43 (4).

Order for repayment

(5) If a purchase that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is a failure to comply with a term or condition attached to the approval, the Superintendent, subject to section 89 (hearing and appeal), by order may require any person to whom payment under subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon. R.S.O. 1990, c. P.8, s. 43 (5).

Enforcement

(6) Subject to section 89 (hearing and appeal), an order for payment under subsection (5), exclusive of the reasons therefor, may be filed in the Superior Court of Justice and is thereupon enforceable as an order of that court. R.S.O. 1990, c. P.8, s. 43 (6); 2006, c. 19, Sched. C, s. 1 (1).

Joint and survivor pension benefits

44. (1) Every pension paid under a pension plan to a retired member who has a spouse on the date that the payment of the first instalment of the pension is due shall be a joint and survivor pension. R.S.O. 1990, c. P.8, s. 44 (1); 1999, c. 6, s. 53 (5); 2005, c. 5, s. 56 (9); 2010, c. 9, s. 30 (1).

Interpretation re “spouse”

(1.1) If, on the date that the payment of the first instalment of the pension is due, a retired member has a spouse described in clause (a) of the definition of “spouse” in subsection 1 (1) from whom the retired member is living separate and apart, that person is not a spouse for the purposes of subsection (1). 2014, c. 7, Sched. 26, s. 4 (1).

Same

(1.2) If, on the date that the payment of the first instalment of the pension is due, a retired member has a spouse described in clause (b) of the definition of “spouse” in subsection 1 (1) and a spouse described in clause (a) of that definition from whom the retired member is living separate and apart, the spouse described in clause (b) of the definition is the spouse for the purposes of subsection (1). 2014, c. 7, Sched. 26, s. 4 (1).

Commuted value

(2) The commuted value of a joint and survivor pension under subsection (1) shall not be less than the commuted value of the pension that would be payable under the pension plan to the retired member. R.S.O. 1990, c. P.8, s. 44 (2); 2010, c. 9, s. 30 (2).

Amount of survivor benefit

(3) Upon the death of the retired member, the pension payable to his or her surviving spouse shall not be less than 60 per cent of the pension paid to the retired member during their joint lives. 2010, c. 9, s. 30 (3).

Same

(3.1) If the spouse of the retired member dies before the retired member, the pension payable to the retired member after the spouse’s death shall not be less than 60 per cent of the pension paid to the retired member during their joint lives. 2012, c. 8, Sched. 44, s. 2 (1).

Application of subss. (1-3.1)

(4) Subsections (1) to (3.1) do not apply in respect of a pension benefit if payment of the pension commenced before January 1, 1988. 2014, c. 7, Sched. 26, s. 4 (2).

Deferred life annuity

(5) Where,

- (a) prior to the 1st day of January, 1988, a deferred life annuity has been purchased from an insurance company for a person entitled to a deferred pension under the *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980;
- (b) payments have not commenced under the annuity on the 1st day of January, 1988; and
- (c) the recipient of the payments has a spouse on the date payments commence,

the annuity shall be paid as a joint and survivor pension in accordance with the requirements of this section and the insurance company shall make payments accordingly. R.S.O. 1990, c. P.8, s. 44 (5); 1999, c. 6, s. 53 (8); 2005, c. 5, s. 56 (12).

Application of ss. 45, 46

(6) For the purposes of subsection (5), the insurance company shall be deemed to be the administrator under sections 45 and 46. R.S.O. 1990, c. P.8, s. 44 (6).

Lump sum payment, small amounts

(7) A pension plan may provide for payment, upon the death of a retired member, of the commuted value of the survivor benefit to a person who is entitled to the survivor benefit if, at the date of death,

- (a) the annual benefit payable is not more than 4 per cent of the Year's Maximum Pensionable Earnings; or
- (b) the commuted value of the benefit is less than 20 per cent of the Year's Maximum Pensionable Earnings. 2010, c. 9, s. 30 (5); 2012, c. 8, Sched. 44, s. 2 (3).

Same

(7.1) However, if the first instalment of the retired member's pension is due before the date on which subsection (7) comes into force, subsection (7) does not apply unless the person entitled to the survivor benefit upon the retired member's death consents in writing to the payment of the commuted value of the survivor benefit. 2012, c. 8, Sched. 44, s. 2 (4).

Right to transfer lump sum

(8) The person to whom the payment under subsection (7) is to be made may require the administrator to pay the commuted value into a registered retirement savings arrangement and the person may exercise this entitlement by delivering a direction to the administrator within the prescribed period. 2010, c. 9, s. 30 (5).

Same

(9) Section 50.1 applies with respect to the payment into the registered retirement savings arrangement. 2010, c. 9, s. 30 (5).

Discharge

(10) An administrator who commenced payment of a pension under this section before the day on which subsection (1.2) comes into force is deemed to have been discharged on making the payment if all of the following circumstances exist:

1. On the date that the payment of the first instalment of the pension was due, the retired member had a spouse described in clause (b) of the definition of "spouse" in subsection 1 (1) and a spouse described in clause (a) of that definition from whom the retired member was living separate and apart.
2. The spouse described in clause (b) of the definition of "spouse" in subsection 1 (1) was the retired member's spouse for the purposes of determining that the pension is a joint and survivor pension under subsection (1).
3. The pension benefit was paid or continues to be paid to the retired member or to the spouse described in clause (b) of the definition of "spouse" in subsection 1 (1).
4. The payment otherwise complied with the requirements under this Act and the regulations. 2014, c. 7, Sched. 26, s. 4 (3).

Claims

(11) If, before the day on which subsection (1.2) comes into force, an administrator made a payment of a pension as a joint and survivor pension and the circumstances set out in subsection (10) existed, no person has a claim against the administrator or against the recipient of the payment in respect of the payment. 2014, c. 7, Sched. 26, s. 4 (3).

Information for payment

45. (1) Before commencing payment of a pension or pension benefit, the administrator of a pension plan shall require the person entitled to the payment to provide to the administrator the information needed to calculate and pay the pension or pension benefit.

Person to provide information

- (2) The person entitled to the payment shall provide the information to the administrator.

Discharge of administrator

(3) In the absence of actual notice to the contrary, the administrator is discharged on paying the pension or pension benefit in accordance with the information provided by the person in accordance with subsection (2) or, if the person does not provide the information, in accordance with the latest information in the records of the administrator. R.S.O. 1990, c. P.8, s. 45.

Waiver of joint and survivor pension benefit

46. (1) The persons entitled to a joint and survivor pension benefit may waive the entitlement to receive payment of pension benefits in the form of a joint and survivor pension by delivering to the administrator of the pension plan or, in the case of a deferred life annuity, to the insurance company a written waiver in the form approved by the Superintendent or a certified copy of a domestic contract containing the waiver. R.S.O. 1990, c. P.8, s. 46 (1); 1997, c. 28, s. 198; 2009, c. 11, s. 43.

Time

- (2) The waiver is not effective unless the following condition is satisfied:
1. For a written waiver in the form approved by the Superintendent, the form is dated and signed within the 12 months preceding commencement of payment of the pension benefit and is delivered to the administrator or insurance company within that 12-month period.
 2. For a certified copy of a domestic contract, the certified copy is delivered to the administrator or insurance company within the 12 months preceding commencement of payment of the pension benefit. 2010, c. 9, s. 31.

Cancellation of waiver

(3) Persons who have delivered a waiver may jointly cancel it by delivering a written and signed notice of cancellation to the administrator or the insurance company, as the case may be, before the commencement of payment of the pension benefit. 1999, c. 15, s. 7.

Remarriage, etc.

47. If the spouse of a deceased former member or retired member of a pension plan is receiving a pension under the pension plan, he or she is not disentitled to payment of the pension by reason only of becoming the spouse of another person after the death of the former member or retired member. 2010, c. 9, s. 32.

Pre-retirement death benefit

48. (1) If a member who is entitled under the pension plan to a deferred pension described in section 37 dies before payment of the first instalment is due, or if a former member or retired member dies before payment of the first instalment of his or her deferred pension or pension is due, the person who is his or her spouse on the date of death is entitled,

- (a) to receive a lump sum payment equal to the commuted value of the deferred pension;
- (b) to require the administrator to pay an amount equal to the commuted value of the deferred pension into a registered retirement savings arrangement; or
- (c) to receive an immediate or deferred pension, the commuted value of which is at least equal to the commuted value of the deferred pension. R.S.O. 1990, c. P.8, s. 48 (1); 1999, c. 6, s. 53 (10); 2005, c. 5, s. 56 (14); 2010, c. 9, s. 33 (1, 2).

Same

(2) If a member of a pension plan continues in employment after the normal retirement date under the pension plan and dies before payment of pension benefits referred to in section 37 begins, the person who is the spouse of the member on the date of death is entitled,

- (a) to receive a lump sum payment equal to the commuted value of the pension benefits;
- (b) to require the administrator to pay an amount equal to the commuted value of the pension benefits into a registered retirement savings arrangement; or
- (c) to receive an immediate or deferred pension, the commuted value of which is at least equal to the commuted value of the pension benefits. 2010, c. 9, s. 33 (3).

Interpretation re "spouse"

(3) If, on the date of death, a member, former member or retired member has a spouse described in clause (a) of the definition of “spouse” in subsection 1 (1) from whom the member, former member or retired member is living separate and apart, that spouse does not have an entitlement under subsection (1) or (2). 2014, c. 7, Sched. 26, s. 5 (1).

Same

(3.1) If, on the date of death, a member, former member or retired member has a spouse described in clause (b) of the definition of “spouse” in subsection 1 (1) and a spouse described in clause (a) of that definition from whom the member, former member or retired member is living separate and apart, the spouse described in clause (b) of the definition has an entitlement under subsection (1) or (2). 2014, c. 7, Sched. 26, s. 5 (1).

Same, entitlement as beneficiary or personal representative

(3.2) Subsection (3) does not prevent a spouse from having an entitlement as a designated beneficiary under subsection (6) or as a personal representative under subsection (7). 2014, c. 7, Sched. 26, s. 5 (1).

Application

(3.3) For greater certainty, subsections (3), (3.1) and (3.2) apply if the member, former member or retired member dies on or after the day subsection 5 (1) of Schedule 26 to the *Building Opportunity and Securing Our Future Act (Budget Measures), 2014* comes into force. 2014, c. 7, Sched. 26, s. 5 (1).

Direction

(4) A spouse may exercise his or her entitlement under subsection (1) or (2) by delivering a direction to the administrator within the prescribed period and, if the spouse does not do so, the spouse is deemed to have elected to receive an immediate pension. 2010, c. 9, s. 33 (5).

Calculation of benefit

(5) For the purposes of this section, the deferred pension or pension benefits to which a member is entitled if the member dies while employed shall be calculated as if the member’s employment were terminated immediately before the member’s death. R.S.O. 1990, c. P.8, s. 48 (5).

Designated beneficiary

(6) A member, former member or retired member described in subsection (1) may designate a beneficiary and the beneficiary is entitled to be paid an amount equal to the commuted value of the deferred pension or pension benefits mentioned in subsection (1) or (2) unless on the date of death the member, former member or retired member has a spouse who has an entitlement under subsection (1) or (2). 2014, c. 7, Sched. 26, s. 5 (2).

Estate entitlement

(7) The personal representative of a member, former member or retired member described in subsection (1) is entitled to receive payment of the commuted value mentioned in subsection (1) or (2) as the property of the member, former member or retired member unless,

- (a) on the date of death, the member, former member or retired member has a spouse who has an entitlement under subsection (1) or (2); or
- (b) the member, former member or retired member has designated a beneficiary who has an entitlement under subsection (6). 2014, c. 7, Sched. 26, s. 5 (2).

Dependent children

(8) If the pension plan provides for payment of pension benefits to or for a dependent child or dependent children of the member, former member or retired member upon the death of the member, former member or retired member,

- (a) the commuted value of the payments in respect of employment after December 31, 1986 may be deducted from the entitlement of a beneficiary designated under subsection (6) or of a personal representative under subsection (7); and
- (b) the commuted value of the payments in respect of employment before January 1, 1987 may be deducted from the entitlement in subsection (8.1) of a beneficiary designated under subsection (6) or of a personal representative under subsection (7). 2011, c. 9, Sched. 35, s. 4 (1).

Additional entitlement

(8.1) A spouse who has an entitlement under subsection (1) or (2), a designated beneficiary who has an entitlement under subsection (6) or a personal representative who has an entitlement under subsection (7) is entitled to a lump sum payment from the pension fund equal to the amount of any contributions that the member or former member was required to make

under the pension plan in respect of employment before January 1, 1987, plus interest credited to the contributions. 2010, c. 9, s. 33 (7).

Spouse's right to transfer additional entitlement

(8.2) A spouse entitled to a lump sum payment under subsection (8.1) may require the administrator to pay the lump sum into a registered retirement savings arrangement and may exercise this entitlement by delivering a direction to the administrator within the prescribed period. 2010, c. 9, s. 33 (7).

Payments into registered retirement savings arrangements

(8.3) Section 50.1 applies with respect to any payment into a registered retirement savings arrangement. 2010, c. 9, s. 33 (7).

Limitation on all payments

(8.4) The entitlements under this section are subject to the prescribed limitations in respect of the transfer of funds from pension funds. 2010, c. 9, s. 33 (7).

Information

(9) It is the responsibility of the person entitled to the payment to provide to the administrator the information needed to make the payment. R.S.O. 1990, c. P.8, s. 48 (9).

Discharge of administrator

(10) In the absence of actual notice to the contrary, the administrator is discharged on making payment in accordance with the information provided by the person. R.S.O. 1990, c. P.8, s. 48 (10).

Discharge, payments prior to October 31, 2012

(10.1) An administrator who made a payment under subsection (1) or (2) before October 31, 2012 is deemed to have been discharged on making the payment if all of the following circumstances exist:

1. On the date of death, the member, former member or retired member had a spouse described in clause (b) of the definition of "spouse" in subsection 1 (1) and a spouse described in clause (a) of that definition from whom the member, former member or retired member was living separate and apart.
2. The payment was made to the spouse described in clause (b) of the definition of "spouse" in subsection 1 (1).
3. The payment otherwise complied with the requirements under this Act and the regulations. 2014, c. 7, Sched. 26, s. 5 (3).

Claims

(10.2) If, before October 31, 2012, an administrator made a payment under subsection (1) or (2) and the circumstances set out in subsection (10.1) existed, no person has a claim against the administrator or against the recipient of the payment in respect of the payment. 2014, c. 7, Sched. 26, s. 5 (3).

Offset

(11) A pension plan may provide for reduction of an amount to which a person is entitled under this section to offset any part of a prescribed additional benefit that is attributable to an amount paid by an employer, subject to the following:

1. The reduction shall be calculated in the prescribed manner.
2. The reduction shall not exceed the prescribed limits. R.S.O. 1990, c. P.8, s. 48 (11).

Discharge of entitlement

(12) Payment in accordance with this section replaces the entitlement of a member, former member or retired member in respect of a deferred pension mentioned in section 37. R.S.O. 1990, c. P.8, s. 48 (12); 2010, c. 9, s. 33 (8).

Restriction on entitlement

(13) An entitlement to a benefit under this section is subject to any right to or interest in the benefit set out in an order made under Part I (Family Property) of the *Family Law Act*, a family arbitration award or a domestic contract. 2009, c. 11, s. 44.

Waiver

(14) The spouse of a member or former member may waive the spouse's entitlement under subsection (1) or (2) by delivering a written waiver, in the form approved by the Superintendent, to the administrator of the pension plan. 1999, c. 15, s. 8; 2005, c. 5, s. 56 (20).

Cancellation of waiver

(14.1) A spouse who has delivered a waiver may cancel it by delivering a written and signed notice of cancellation to the administrator before the date of death of the member or former member. 1999, c. 15, s. 8; 2005, c. 5, s. 56 (21).

Effect of waiver

(14.2) If a waiver is in effect on the date of death of the member or former member, subsections (6) and (7) apply as if the member or former member does not have a spouse on the date of death. 1999, c. 15, s. 8; 2005, c. 5, s. 56 (22).

Definition

(15) In this section,

“personal representative” has the same meaning as in the *Estates Administration Act*. R.S.O. 1990, c. P.8, s. 48 (15).

Variation of payment to disabled person

49. (1) A pension plan may permit variation in the terms of payment of a pension benefit, deferred pension or pension by reason of the mental or physical disability of a member, former member or retired member that is likely to considerably shorten his or her life expectancy. 2010, c. 9, s. 34.

Shortened life expectancy

(2) A pension plan shall be deemed to permit variation in the terms of payment of a pension or deferred pension in such circumstances of shortened life expectancy as may be prescribed, if the prescribed conditions are satisfied. 1999, c. 15, s. 9.

Unlocking for small amounts

50. (1) A pension plan may provide for payment of the commuted value of a benefit to a former member or retired member,

- (a) if the annual benefit payable at the normal retirement date is not more than 4 per cent of the Year’s Maximum Pensionable Earnings in the year that he or she terminated employment; or
- (b) if the commuted value of the benefit is less than 20 per cent of the Year’s Maximum Pensionable Earnings in the year that he or she terminated employment. 2010, c. 9, s. 35 (1, 2).

Idem

(2) A pension plan registered before the 1st day of January, 1988 may provide that upon termination of employment a person entitled to a deferred pension under section 36 (deferred pension) is entitled to payment of an amount not greater than 25 per cent of the commuted value of the deferred pension. R.S.O. 1990, c. P.8, s. 50 (2).

Right to transfer amount

(3) A person entitled to a payment described in subsection (1) or (2) may require the administrator to pay the applicable amount into a registered retirement savings arrangement and may exercise this entitlement by delivering a direction to the administrator within the prescribed period. 2010, c. 9, s. 35 (3).

Same

(4) Section 50.1 applies with respect to the payment into the registered retirement savings arrangement. 2010, c. 9, s. 35 (3).

Payments into registered retirement savings arrangements**Administrator’s duty**

50.1 (1) When a person delivers a direction to the administrator of a pension plan in accordance with subsection 39 (4.1), 44 (8), 48 (4) or (8.2), 50 (3) or 63 (9) to pay an amount into a registered retirement savings arrangement, the administrator shall make the payment in accordance with the direction and shall do so within the prescribed period. 2010, c. 9, s. 36.

Lump sum payment

(2) If the amount to be paid into the registered retirement savings arrangement is greater than the amount prescribed under the *Income Tax Act* (Canada) for such a transfer, the administrator shall pay the portion that exceeds the prescribed amount as a lump sum to the person who gave the administrator the direction. 2010, c. 9, s. 36.

Discharge of administrator

(3) The administrator is discharged on making the payment in accordance with the person’s direction if the payment complies with this Act and the regulations. 2010, c. 9, s. 36.

51. REPEALED: 2009, c. 11, s. 45.

Discrimination on basis of sex

52. (1) The sex of a member, former member, retired member or other beneficiary under a pension plan shall not be taken into account in,

- (a) determining the amount of contributions required to be made by a member of the plan;
- (b) determining the pension benefits, deferred pension or pension or the commuted value of pension benefits, deferred pension or pension to which the member, former member, retired member or other beneficiary may become entitled;
- (c) the provision of eligibility conditions for membership; and
- (d) the provision of ancillary benefits. R.S.O. 1990, c. P.8, s. 52 (1); 2010, c. 9, s. 37.

Administration

(2) In order to comply with subsection (1), the administrator may,

- (a) use annuity factors that do not differentiate as to sex;
- (b) provide for employer contributions that vary according to the sex of the employee; or
- (c) use any prescribed method of calculation or valuation. R.S.O. 1990, c. P.8, s. 52 (2).

Application

(3) This section applies in respect of contributions, benefits and conditions in relation to,

- (a) employment after the 31st day of December, 1986;
- (b) employment before the 1st day of January, 1987, in so far as it is dealt with in an amendment made to the pension plan after the 31st day of December, 1986; and
- (c) employment before the 1st day of January, 1987, in so far as it is dealt with in a pension plan established after the 31st day of December, 1986. R.S.O. 1990, c. P.8, s. 52 (3).

Inflation protection

53. (1) Pension benefits, pensions or deferred pensions shall be adjusted in accordance with the established formula or formulas and in the prescribed manner to provide inflation-related increases.

Idem

(2) Any formula or formulas for any inflation related adjustments to pension benefits, pensions or deferred pensions shall be established only by amendment to this Act. R.S.O. 1990, c. P.8, s. 53.

C.P.P. / Q.P.P. offsets

54. (1) The reduction of a pension benefit that may be required by a pension plan in relation to payments under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada) shall not exceed the reduction calculated in accordance with the prescribed formula applied in the prescribed manner. R.S.O. 1990, c. P.8, s. 54 (1).

Restriction

(2) The amount of the reduction that is required by the pension plan in relation to those payments shall not be increased by reason of an increase in those payments after the date on which the member's employment or membership in the plan is terminated. 2010, c. 9, s. 38 (1).

Reduction re *Old Age Security Act* (Canada)

(3) A pension plan for registration of which application is made on or after the 1st day of January, 1988 shall not permit the reduction of a pension benefit based on a person's entitlement under the *Old Age Security Act* (Canada). R.S.O. 1990, c. P.8, s. 54 (3).

Application of subs. (3)

(4) Subsection (3) does not apply to a pension plan that is a successor of a pension plan registered under the *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980, that permitted such a reduction. R.S.O. 1990, c. P.8, s. 54 (4).

Idem

(5) A pension plan shall not permit reduction of a pension benefit based on a person's entitlement under the *Old Age Security Act* (Canada) in respect of a benefit accrued on or after the 1st day of January, 1987. R.S.O. 1990, c. P.8, s. 54 (5).

Bridging benefit

(6) If a pension plan provides for the reduction of a bridging benefit because a person receives or is eligible to receive retirement benefits under the *Canada Pension Plan* or the *Quebec Pension Plan* before he or she reaches 65 years of age, the reduction may only be made in the prescribed circumstances. 2010, c. 9, s. 38 (2).

Variations based on other benefits

(7) Where a pension plan provides for the variation of a pension benefit by reason of benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada), the variation shall be applied in the prescribed manner. R.S.O. 1990, c. P.8, s. 54 (7).

CONTRIBUTIONS

Funding

55. (1) A pension plan must provide for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this Act and the regulations. R.S.O. 1990, c. P.8, s. 55 (1); 2010, c. 9, s. 39 (1).

Payment by employers, etc.

(2) An employer required to make contributions under a pension plan, or a person or entity required to make contributions under a pension plan on behalf of an employer, shall make the contributions in accordance with the prescribed requirements for funding and shall make the contributions in the prescribed manner and at the prescribed times,

- (a) to the pension fund; or
- (b) if pension benefits under the pension plan are paid by an insurance company, to the insurance company that is the administrator of the pension plan. R.S.O. 1990, c. P.8, s. 55 (2); 2005, c. 31, Sched. 18, s. 6 (1); 2010, c. 9, s. 39 (2).

Payment by members

(3) Members of a pension plan that provides contributory benefits shall make the contributions required under the plan in the prescribed manner and at the prescribed times. 2005, c. 31, Sched. 18, s. 6 (2).

Same, jointly sponsored pension plans

(4) Members of a jointly sponsored pension plan shall make the contributions required under the plan (including their obligations in respect of any going concern unfunded liability and, except in the case of plans described in subsection 1 (2.1), in respect of any solvency deficiency) in accordance with the prescribed requirements for funding and shall make the contributions in the prescribed manner and at the prescribed times. 2010, c. 24, s. 16.

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Contribution holidays

55.1 (1) An employer required to make contributions under a pension plan, or a person or entity required to make contributions under a pension plan on behalf of an employer, may reduce or suspend, in the prescribed manner, contributions for the normal cost of the pension plan if the pension plan has a surplus and if such other requirements as may be prescribed are satisfied. 2010, c. 24, s. 17.

Same

(2) The contributions that members of a pension plan are required to make for the normal cost of the pension plan may be reduced or suspended in the prescribed manner if the pension plan has a surplus and if such other requirements as may be prescribed are satisfied. 2010, c. 24, s. 17.

Exception

(3) However, contributions cannot be reduced or suspended under this section if the documents that create and support the pension plan or the pension fund prohibit the reduction or suspension. 2010, c. 24, s. 17.

Conflict

(4) This section prevails over subsections 55 (2), (3) and (4). 2010, c. 24, s. 17.

See: 2010, c. 24, ss. 17, 49 (4).

Letters of credit

55.2 (1) This section applies if a prescribed employer is required to make payments into the pension fund with respect to a solvency deficiency. 2010, c. 24, s. 18.

Use of letter of credit

(2) Instead of making payments into the pension fund with respect to the solvency deficiency, the employer may provide a letter of credit to a prescribed person or entity if the requirements of this section are satisfied. 2010, c. 24, s. 18.

Requirements

(3) The letter of credit must satisfy such requirements as may be prescribed. 2010, c. 24, s. 18.

Restrictions

(4) The employer is not entitled to provide a letter of credit if the total amount of all letters of credit provided to the prescribed person or entity for the pension plan would exceed 15 per cent of the solvency liabilities of the pension plan. 2010, c. 24, s. 18.

Same

(5) For the purposes of subsection (4), the regulations may specify that solvency liabilities must be determined in a manner that may differ from the requirements that otherwise apply. 2010, c. 24, s. 18.

Distribution

(6) The employer must provide the letter of credit to the prescribed person or entity within such period after it is issued as may be prescribed and the employer must give a copy of the letter of credit to the administrator within the same period. 2010, c. 24, s. 18.

Notice to the Superintendent

(7) The administrator shall notify the Superintendent in the prescribed manner and within the prescribed period that a letter of credit has been provided and, upon request, the administrator shall give the Superintendent such information about the letter of credit as the Superintendent may specify. 2010, c. 24, s. 18.

Held in trust

(8) The prescribed person or entity holds the letter of credit in trust for the pension plan. 2010, c. 24, s. 18.

Demand for payment

(9) In such circumstances as may be prescribed, the prescribed person or entity shall demand payment of the amount of the letter of credit into the pension fund by the issuer of the letter of credit. 2010, c. 24, s. 18.

Costs of letter of credit

(10) The fees or expenses associated with obtaining, holding, amending or cancelling a letter of credit are not payable from the pension fund. However, subject to section 22.1, the fees and expenses associated with enforcing a letter of credit are payable from the pension fund. 2010, c. 24, s. 18.

Status of public sector pension plans

(11) This section does not apply with respect to a public sector pension plan unless the regulations specify that it applies to the pension plan. 2010, c. 24, s. 18.

Other exclusions

(12) Despite subsection (11), this section does not apply with respect to a jointly sponsored pension plan or a multi-employer pension plan. 2012, c. 8, Sched. 44, s. 3.

Conflict

(13) This section prevails over subsection 55 (2). 2010, c. 24, s. 18.

Duty re payment of contributions

56. (1) The administrator of a pension plan and the agent, if any, of the administrator who is responsible for receiving contributions under the pension plan shall ensure that all contributions are paid when due.

Notice

(2) If a contribution is not paid when due, the administrator and the agent, if any, shall notify the Superintendent in the prescribed manner and within the prescribed period. 1999, c. 15, s. 10.

Duty to pension fund trustees

56.1 (1) The administrator shall give the persons who are prescribed for the purposes of subsection 22 (6) (trustee of pension fund) a summary of the contributions required to be made in respect of the pension plan, and shall do so in the prescribed manner and within the prescribed period. 1999, c. 15, s. 10.

Exception

(1.1) Subsection (1) does not apply if the administrator is also the trustee of the pension fund. 2005, c. 31, Sched. 18, s. 7.

Notice re summary

(2) A person who is entitled to receive a summary shall notify the Superintendent in the prescribed manner and within the prescribed period if the person is not given the summary in accordance with subsection (1). 1999, c. 15, s. 10.

Notice re contributions

(3) A person who is entitled to receive a summary shall notify the Superintendent in the prescribed manner and within the prescribed period if a contribution is not paid when due. 1999, c. 15, s. 10.

Trust property

57. (1) Where an employer receives money from an employee under an arrangement that the employer will pay the money into a pension fund as the employee's contribution under the pension plan, the employer shall be deemed to hold the money in trust for the employee until the employer pays the money into the pension fund. R.S.O. 1990, c. P.8, s. 57 (1).

Money withheld

(2) For the purposes of subsection (1), money withheld by an employer, whether by payroll deduction or otherwise, from money payable to an employee shall be deemed to be money received by the employer from the employee. R.S.O. 1990, c. P.8, s. 57 (2).

Accrued contributions

(3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund. R.S.O. 1990, c. P.8, s. 57 (3).

Wind up

(4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations. R.S.O. 1990, c. P.8, s. 57 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out "in whole or in part". See: 2010, c. 9, ss. 40, 80 (2).

Jointly sponsored pension plans

(4.1) An employer who transfers assets under section 80.4 from a single employer pension plan to a jointly sponsored pension plan and who is required to make a payment under subsection 80.4 (18) for the benefit of transferred members and other transferees shall be deemed to hold in trust for the transferred members and other transferees an amount of money equal to any payment due under subsection 80.4 (18) that has not been paid into the pension fund of the jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 6 (1).

Lien and charge

(5) The administrator of the pension plan has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust under this section. R.S.O. 1990, c. P.8, s. 57 (5); 2014, c. 7, Sched. 26, s. 6 (2).

Application of subss. (1, 3, 4, 4.1)

(6) Subsections (1), (3), (4) and (4.1) apply whether or not the money has been kept separate and apart from other money or property of the employer. R.S.O. 1990, c. P.8, s. 57 (6); 2014, c. 7, Sched. 26, s. 6 (3).

Money to be paid to insurance company

(7) Subsections (1) to (6) apply with necessary modifications in respect of money to be paid to an insurance company that guarantees pension benefits under a pension plan. R.S.O. 1990, c. P.8, s. 57 (7).

Accrual

58. (1) Money that an employer is required to pay into a pension fund accrues on a daily basis.

Interest

(2) Interest on contributions shall be calculated and credited at a rate not less than the prescribed rates and in accordance with prescribed requirements. R.S.O. 1990, c. P.8, s. 58.

Collection of contributions

59. The administrator may commence proceedings in a court of competent jurisdiction to obtain payment of contributions due under the pension plan, this Act and the regulations. R.S.O. 1990, c. P.8, s. 59.

Bond

60. The administrator of a multi-employer pension plan may require a person who receives contributions to the pension fund or who administers or invests the pension fund to be bonded in an amount required by the administrator or in the prescribed amount. R.S.O. 1990, c. P.8, s. 60.

Statement of employer's obligation

61. An employer who is required to make contributions to a multi-employer pension plan shall transmit to the administrator of the plan a copy of the agreement that requires the employer to make the contributions or a written statement that sets out the contributions the employer is required to make and any other obligations of the employer under the pension plan. R.S.O. 1990, c. P.8, s. 61.

Investment of pension fund

62. Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Act and prescribed by the regulations. R.S.O. 1990, c. P.8, s. 62.

Overpayments, etc., by employer

62.1 (1) This section applies,

- (a) if an employer pays an amount in respect of a pension plan that should have been paid out of the pension fund; or
- (b) if an employer makes an overpayment into the pension fund. 2010, c. 24, s. 19.

Prerequisite for reimbursement

(2) The administrator of the pension plan is not permitted to make or authorize a payment from the pension fund to reimburse the employer for a payment described in subsection (1) unless the Superintendent consents in advance to the payment from the pension fund to the employer. 2010, c. 24, s. 19.

Application for reimbursement

(3) The employer or, in the case of a jointly sponsored pension plan or multi-employer pension plan, the administrator may apply to the Superintendent for consent to the payment from the pension fund to reimburse the employer for a payment described in subsection (1). 2010, c. 24, s. 19.

Deadline

(4) The application must be made before the later of,

- (a) 24 months after the date on which the employer made the payment described in subsection (1); and
- (b) six months after the date on which the administrator, acting reasonably, becomes aware of the payment described in subsection (1). 2010, c. 24, s. 19.

Consent

(5) Subject to section 89, the Superintendent may consent to the payment from the pension fund to the employer if the application is made before the deadline described in subsection (4). 2010, c. 24, s. 19.

LOCKING IN

Refunds

63. (1) No member, former member or retired member is entitled to a refund from a pension fund of contributions made in respect of employment in Ontario or a designated jurisdiction on or after the qualification date. R.S.O. 1990, c. P.8, s. 63 (1); 2010, c. 1, Sched. 23, s. 5; 2010, c. 9, s. 41 (1).

Idem

(2) Subsection (1) does not prevent the refund of an additional voluntary contribution and interest thereon to a member, former member or retired member or a payment under subsection 39 (4) (entitlement to excess amount). R.S.O. 1990, c. P.8, s. 63 (2); 2010, c. 9, s. 41 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 63 is amended by adding the following subsection:

Same, optional contributions

(2.1) Subsection (1) does not prevent the refund of an optional contribution and interest thereon to a former member. 2010, c. 24, s. 20 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2.1) is amended by striking out “to a former member” at the end and substituting “to a former member or retired member”. See: 2010, c. 24, ss. 20 (2), 49 (4).

See: 2010, c. 24, ss. 20 (1), 49 (4).

(3), (4) REPEALED: 2010, c. 9, s. 41 (3).

Application of subs. (1)

(5) Subsection (1) does not apply,

(a) to prevent the commutation of a pension benefit under subsection 50 (1) (commuted value);

(b) to prevent a payment under subsection 50 (2); or

(c) to such other circumstances as are prescribed. R.S.O. 1990, c. P.8, s. 63 (5).

(6) REPEALED: 2010, c. 9, s. 41 (4).

Refund with consent

(7) Despite subsection (1), on application by the administrator of a pension plan, contributions may be refunded to a member, former member or retired member with the consent of the Superintendent. 1997, c. 28, s. 199; 2010, c. 9, s. 41 (5).

Consent of Superintendent

(8) On application by the administrator of a pension plan, the Superintendent may consent to a refund under subsection (7) if the pension plan provides or has been amended to provide for the refund and the employer has assumed responsibility for funding all pension benefits associated with the contributions. R.S.O. 1990, c. P.8, s. 63 (8); 1997, c. 28, s. 200; 2010, c. 9, s. 41 (6).

Right to transfer amount

(9) A person entitled to a payment under subsection (2) or (7) may require the administrator to pay the applicable amount into a registered retirement savings arrangement and may exercise this entitlement by delivering a direction to the administrator within the prescribed period. 2010, c. 9, s. 41 (7).

Same

(10) Section 50.1 applies with respect to the payment into the registered retirement savings arrangement. 2010, c. 9, s. 41 (7).

64. REPEALED: 2010, c. 9, s. 42.

Void transactions

65. (1) Every transaction that purports to assign, charge, anticipate or give as security money payable under a pension plan is void. R.S.O. 1990, c. P.8, s. 65 (1).

Idem

(2) Every transaction that purports to assign, charge, anticipate or give as security money transferred from a pension fund in accordance with section 42 (transfer), 43 (purchase of pension), clause 48 (1) (b) (pre-retirement death benefit), section 67.3 (transfer of a lump sum for certain family law purposes), 67.4 (division of a pension for certain family law purposes) or subsection 73 (2) (transfer rights on wind up) is void. R.S.O. 1990, c. P.8, s. 65 (2); 2009, c. 11, s. 46 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 65 (2) of the Act is amended by striking out “section 42 (transfer), 43 (purchase of pension), clause 48 (1) (b) (pre-retirement death benefit), section 67.3 (transfer of a lump sum for certain family law purposes), 67.4 (division of a pension for certain family law purposes)” and substituting “section 39.1 (variable benefits), 42 (transfer) or 43 (purchase of pension), clause 48 (1) (b) (pre-retirement death benefit), section 67.3 (transfer of a lump sum for certain family law purposes) or 67.4 (division of a pension for certain family law purposes)”. (See: 2015, c. 20, Sched. 34, s. 3 (1))

Exemptions

(3) Subsections (1) and (2) do not apply to prevent the assignment of an interest in money payable under a pension plan or money payable as a result of a purchase or transfer under section 42, 43, clause 48 (1) (b), section 67.3 or 67.4 or subsection 73 (2) by an order under the *Family Law Act*, by a family arbitration award or by a domestic contract. 2009, c. 11, s. 46 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 65 (3) of the Act is amended by striking out “or transfer under section 42, 43” and substituting “or transfer under section 39.1, 42 or 43”. (See: 2015, c. 20, Sched. 34, s. 3 (2))

Exemption from execution, seizure or attachment

66. (1) Money payable under a pension plan is exempt from execution, seizure or attachment. R.S.O. 1990, c. P.8, s. 66 (1).

Idem

(2) Money transferred from a pension fund to a prescribed retirement savings arrangement or for the purchase of a life annuity under section 42, 43, 48, 67.3 or 67.4 or subsection 73 (2) is exempt from execution, seizure or attachment. R.S.O. 1990, c. P.8, s. 66 (2); 2009, c. 11, s. 47 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 66 (2) of the Act is amended by striking out “under section 42, 43” and substituting “under section 39.1, 42, 43”. (See: 2015, c. 20, Sched. 34, s. 4 (1))

Idem

(3) Money payable from a prescribed retirement savings arrangement or from a life annuity purchased in accordance with section 42, 43, 48, 67.3 or 67.4 or subsection 73 (2) is exempt from execution, seizure or attachment. R.S.O. 1990, c. P.8, s. 66 (3); 2009, c. 11, s. 47 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 66 (3) of the Act is amended by striking out “in accordance with section 42, 43” and substituting “in accordance with section 39.1, 42, 43”. (See: 2015, c. 20, Sched. 34, s. 4 (2))

Order for support

(4) Despite subsection (1), payments under a pension or that result from a purchase or transfer under section 42 or 43, clause 48 (1) (b), section 67.3 or 67.4 or subsection 73 (2) are subject to execution, seizure or attachment in satisfaction of an order for support enforceable in Ontario to a maximum of one-half the money payable. R.S.O. 1990, c. P.8, s. 66 (4); 2009, c. 11, s. 47 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 66 (4) of the Act is amended by striking out “transfer under section 42 or 43” and substituting “transfer under section 39.1, 42 or 43”. (See: 2015, c. 20, Sched. 34, s. 4 (3))

Application of subs. (4)

(5) Subsection (4) applies to orders for support enforceable in Ontario whether made before or after the 1st day of January, 1988. R.S.O. 1990, c. P.8, s. 66 (5).

Restriction, locked-in retirement account

(6) The entitlement of a person, in his or her discretion, to withdraw money from a locked-in retirement account as defined in the regulations shall not be considered when determining, for the purposes of any other Act, the income or assets available to the person. 1999, c. 15, s. 11.

Commutation or surrender

67. (1) A pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement that results from a purchase or transfer under section 42, 43, 48, 67.3 or 67.4 or subsection 73 (2) to which a person is entitled is not capable of being commuted or surrendered, in whole or in part, during the person's life. R.S.O. 1990, c. P.8, s. 67 (1); 1998, c. 34, s. 91 (1); 2009, c. 11, s. 48.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 67 (1) of the Act is amended by striking out “transfer under section 42, 43” and substituting “transfer under section 39.1, 42, 43”. (See: 2015, c. 20, Sched. 34, s. 5)

Void transaction

(2) A transaction that purports to commute or surrender, in whole or in part, such a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement is void. R.S.O. 1990, c. P.8, s. 67 (2); 1998, c. 34, s. 91 (2).

Application of subss. (1, 2)

(3) Subsections (1) and (2) do not apply to a variation of a pension or deferred pension under section 49 (variation of payment to disabled person) or to a commutation of a benefit under section 50 (commuted value). R.S.O. 1990, c. P.8, s. 67 (3).

Same

(4) Subsections (1) and (2) do not apply to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement in such circumstances or in such amounts as may be prescribed, subject to such restrictions as may be prescribed. 1998, c. 34, s. 91 (3).

(5)-(7) REPEALED: 2012, c. 8, Sched. 44, s. 4.

FAMILY LAW MATTERS

Interpretation

67.1 (1) In this section and in sections 67.2 to 67.6,

“family law valuation date” means, with respect to a member, former member or retired member of a pension plan and his or her spouse,

- (a) the spouses’ valuation date under Part I (Family Property) of the *Family Law Act*, or
- (b) for spouses to whom Part I of that Act does not apply, the date on which they separate and there is no reasonable prospect that they will resume cohabitation; (“date d’évaluation en droit de la famille”)

“spouse” has the same meaning as in section 29 of the *Family Law Act*. (“conjoint”) 2009, c. 11, s. 49; 2010, c. 9, s. 43 (1).

Former spouse

(2) A reference in this section and in sections 67.2 to 67.6 to the spouse of a member, former member or retired member of a pension plan is, where circumstances require, a reference to him or her as the former spouse of the member, former member or retired member. 2010, c. 9, s. 43 (2).

Valuation for family law purposes

Preliminary valuation, member, former member or retired member

67.2 (1) The preliminary value of a member’s pension benefits, a former member’s deferred pension or a retired member’s pension under a pension plan, before apportionment for family law purposes, is determined by the administrator in accordance with the regulations and as of the family law valuation date of the member, former member or retired member and his or her spouse. 2010, c. 9, s. 44 (1).

Same, spouse

(2) The preliminary value of the pension of the spouse of a retired member under a pension plan, before apportionment for family law purposes, is determined by the administrator in accordance with the regulations and as of the family law valuation date of the spouse and the retired member. 2010, c. 9, s. 44 (2).

Adjustments

(3) If the pension benefits, pension or deferred pension are provided under a pension plan that provides defined benefits, the preliminary value includes such adjustments as may be prescribed for ancillary benefits and other entitlements. 2009, c. 11, s. 49.

Same

(4) There is no preliminary value attributable to ancillary benefits and other entitlements otherwise than by virtue of subsection (3). 2009, c. 11, s. 49.

Imputed value for family law purposes

(5) The imputed value, for family law purposes, of each spouse’s pension benefits, deferred pension or pension, as the case may be, is that portion of the preliminary value that is attributed by the administrator, in accordance with the regulations,

- (a) to the period beginning with the date of the spouses’ marriage and ending on their family law valuation date, for the purposes of an order under Part I (Family Property) of the *Family Law Act*; or
- (b) to the period beginning with the date determined in accordance with the regulations and ending on the spouses’ family law valuation date, for the purposes of a family arbitration award or domestic contract. 2009, c. 11, s. 49.

Application for statement of imputed value

(6) The following persons may apply to the administrator of the pension plan, in accordance with the regulations, for a statement of the imputed value, for family law purposes, of each spouse’s pension benefits, deferred pension or pension, as the case may be:

1. In the case of spouses to whom Part I of the *Family Law Act* applies, either spouse.
2. In the case of spouses to whom Part I of the *Family Law Act* does not apply, the member, former member or retired member. 2009, c. 11, s. 49; 2010, c. 9, s. 44 (3).

Application fee

(7) The application must be accompanied by the applicable fee, if any, imposed by the administrator and the applicable fee must not exceed the prescribed amount. 2009, c. 11, s. 49.

Duty to determine imputed value

(8) Once the application is complete, the administrator shall determine the imputed value, for family law purposes, of each spouse's pension benefits, deferred pension or pension, as the case may be. 2009, c. 11, s. 49.

Duty to provide statement

(9) The administrator shall give a statement containing the prescribed information to both spouses within the prescribed period. 2009, c. 11, s. 49.

Transition

(10) Neither spouse is eligible to apply under paragraph 1 of subsection (6) for the statement if an order made under Part I of the *Family Law Act* before the day on which this section comes into force requires one spouse to pay to the other spouse the amount to which the other spouse is entitled under section 5 (equalization of net family properties) of that Act. 2009, c. 11, s. 49.

Transfer of a lump sum for certain family law purposes

Eligibility

67.3 (1) A spouse of a member, former member or retired member of a pension plan is eligible to apply under this section for an immediate transfer of a lump sum from the plan if all of the following circumstances exist:

1. The spouses are separated and there is no reasonable prospect that they will resume cohabitation.
2. No payment of an instalment of the member's or former member's pension was due on or before the family law valuation date.
3. A statement of the imputed value, for family law purposes, of the member's pension benefits or the former member's deferred pension has been obtained from the administrator under section 67.2.
4. The transfer is provided for by an order made under Part I (Family Property) of the *Family Law Act* or is authorized under a family arbitration award or domestic contract.
5. In the order, family arbitration award or domestic contract, the amount to be transferred as a lump sum is expressed,
 - i. as a specified amount, or
 - ii. as a proportion of the imputed value, for family law purposes, of the member's pension benefits or the former member's deferred pension. 2009, c. 11, s. 49; 2010, c. 9, s. 45.

Application for transfer

(2) The eligible spouse may apply, in accordance with the regulations, to the administrator of the plan for any of the following:

1. Transfer of a lump sum from the plan to another pension plan registered under the pension benefits legislation in any jurisdiction in Canada or provided by a government in Canada. This option is available only if the administrator of the other plan agrees to accept the transfer.
2. Transfer of a lump sum from the plan to a prescribed retirement savings arrangement.
3. Transfer of a lump sum to another prescribed arrangement.
4. Implementation of the transfer of a lump sum by leaving it in the plan to the credit of the eligible spouse. This option is available in such circumstances as may be prescribed and only if the administrator agrees to it. 2009, c. 11, s. 49; 2010, c. 1, Sched. 23, s. 6.

Restrictions on transfers

(3) The transfer is subject to the restrictions set out in this section and to such other restrictions as may be prescribed. 2009, c. 11, s. 49.

Duty to transfer

(4) Once the application is complete, the administrator shall make the transfer within the prescribed period. 2009, c. 11, s. 49.

Transfer to eligible spouse's estate

(5) If the lump sum is not transferred under subsection (4) before the death of the eligible spouse, the lump sum is payable instead to the eligible spouse's estate or as otherwise permitted by regulation. 2009, c. 11, s. 49.

Maximum percentage

(6) The order, family arbitration award or domestic contract is not effective to the extent that it purports to entitle the eligible spouse to the transfer of a lump sum that exceeds 50 per cent of the imputed value, for family law purposes, of the pension benefits or deferred pension, as updated for the purposes of this subsection if the regulations require the imputed value to be updated. 2009, c. 11, s. 49.

Partial transfer directly to spouse

(7) If the amount that would otherwise be transferred in accordance with the application is greater than the amount prescribed under the *Income Tax Act* (Canada) for such a transfer, the administrator shall pay the portion that exceeds the prescribed amount as a lump sum to the eligible spouse. 2009, c. 11, s. 49.

Duty to adjust pension benefits, etc.

(8) Upon making the transfer, the administrator shall, in accordance with the regulations, adjust the benefits and entitlements of the member or former member under the pension plan to take into account the transfer. 2009, c. 11, s. 49.

Discharge of administrator

(9) In the absence of actual notice to the contrary, the administrator is entitled to rely upon the information provided by the spouse in the application and is discharged upon making the transfer in accordance with the application and this section and making the adjustments required by subsection (8). 2009, c. 11, s. 49.

Effect of transfer

(10) Once the transfer is made in accordance with the application and this Act, the eligible spouse has no further claim against the pension plan in respect of the member or former member. 2009, c. 11, s. 49.

Orders for support

(11) This section does not affect any order for support enforceable in Ontario. 2009, c. 11, s. 49.

Priorities

(12) An entitlement to a transfer under this section prevails over any other entitlement under this Act to a payment from the pension plan in respect of the member or former member. 2009, c. 11, s. 49.

Same

(13) For the purposes of subsection (12), an entitlement to a transfer under this section arises on application under subsection (2) by an eligible spouse. 2009, c. 11, s. 49.

Division of a pension for certain family law purposes

Eligibility

67.4 (1) A spouse of a retired member of a pension plan is eligible to apply under this section for the division of the retired member's pension if all of the following circumstances exist:

1. The spouses are separated and there is no reasonable prospect that they will resume cohabitation.
2. Payment of the first instalment of the retired member's pension was due on or before the family law valuation date.
3. A statement of the imputed value, for family law purposes, of the retired member's pension has been obtained from the administrator under section 67.2.
4. The division of the pension is provided for by an order made under Part I (Family Property) of the *Family Law Act* or is authorized under a family arbitration award or domestic contract.
5. In the order, family arbitration award or domestic contract, the amount of each pension instalment to be paid to the spouse is expressed,
 - i. as a specified amount, or
 - ii. as a proportion of the instalment otherwise payable to the retired member. 2009, c. 11, s. 49; 2010, c. 9, s. 46 (1-4).

Application for division and payment

(2) The eligible spouse may apply, in accordance with the regulations, to the administrator of the plan for division of the retired member's pension and for payment of the eligible spouse's share to him or her. 2009, c. 11, s. 49; 2010, c. 9, s. 46 (5).

Restrictions

(3) The division and payment of the pension is subject to the restrictions set out in this section and to such other restrictions as may be prescribed. 2009, c. 11, s. 49.

Duties of administrator

(4) Once the application is complete, the administrator shall revalue the retired member's pension in the prescribed manner and begin the payments to the eligible spouse within the prescribed period. 2009, c. 11, s. 49; 2010, c. 9, s. 46 (6).

Maximum percentage

(5) The order, family arbitration award or domestic contract is not effective to the extent that it purports to entitle the eligible spouse to a share that exceeds 50 per cent of the imputed value, for family law purposes, of the pension, as updated for the purposes of this subsection if the regulations require the imputed value to be updated. 2009, c. 11, s. 49.

Discharge of administrator

(6) In the absence of actual notice to the contrary, the administrator is entitled to rely upon the information provided by the spouse in the application and is discharged on revaluing the retired member's pension and making the payments to the eligible spouse in accordance with the application and this section. 2009, c. 11, s. 49; 2010, c. 9, s. 46 (7).

Orders for support

(7) This section does not affect any order for support enforceable in Ontario. 2009, c. 11, s. 49.

Waiver of joint and survivor pension

(8) Despite subsection 46 (2), the eligible spouse may waive his or her entitlement to a joint and survivor pension after payment of the first instalment of the retired member's pension is due and before the pension is divided in accordance with this section. 2009, c. 11, s. 49; 2010, c. 9, s. 46 (8).

No cancellation

(9) A waiver authorized by subsection (8) cannot be cancelled. 2009, c. 11, s. 49.

Special case, combining payments

(10) The following rules apply if the eligible spouse is entitled to a joint and survivor pension in respect of the retired member in addition to being entitled to payment of a share of the retired member's pension in accordance with this section:

1. The eligible spouse may make a written request, in the form approved by the Superintendent, to the administrator for payment of a single pension from the pension plan instead of payment of a share of the retired member's pension and payment of a joint and survivor pension.
2. If the pension plan so permits, the administrator may comply with the request.
3. When the eligible spouse begins to receive the single pension, he or she ceases to be entitled to payment of the share of the retired member's pension and to payment of the joint and survivor pension in respect of the retired member. 2009, c. 11, s. 49; 2010, c. 9, s. 46 (9-11).

Restriction on other ways of dividing pension benefits, etc.

67.5 (1) An order made under Part I (Family Property) of the *Family Law Act*, a family arbitration award or a domestic contract is not effective to the extent that it purports to require the administrator of a pension plan to divide the pension benefits, deferred pension or pension, as the case may be, of a member, former member or retired member of the plan otherwise than as provided under section 67.3 or 67.4. 2009, c. 11, s. 49; 2010, c. 9, s. 47 (1).

Transition, valuation date

(2) This section applies whether the family law valuation date for the member, former member or retired member and his or her spouse is before, on or after the date on which this section comes into force. 2009, c. 11, s. 49; 2010, c. 9, s. 47 (2).

Transition, previous orders, etc.

(3) This section does not apply to an order, family arbitration award or domestic contract to which section 67.6 applies. 2009, c. 11, s. 49.

Other transitional matters

67.6 (1) This section applies to an order under Part I (Family Property) of the *Family Law Act*, family arbitration award or domestic contract that requires one spouse to pay to the other spouse the amount to which that spouse is entitled under section 5 (equalization of net family properties) of that Act, if the order, award or contract was made before the date on which this section comes into force. 2009, c. 11, s. 49.

Amendments

(2) The application of this section to an order, family arbitration award or domestic contract described in subsection (1) is not affected by an amendment or variation made on or after the date on which this section comes into force to the order, award or contract, if,

- (a) the order, award or contract provided, before that date, for the division of a party's interest in a pension plan; and
- (b) the amendment or variation is made in order to facilitate or effect the division of the party's interest in the pension plan in accordance with the order, award or contract. 2009, c. 11, s. 49.

Timing of payment

(3) The order, family arbitration award or domestic contract is not effective to require payment of a pension benefit before the earlier of,

- (a) the date on which payment of the pension benefit commences; or
- (b) the normal retirement date of the relevant member or former member. 2009, c. 11, s. 49.

Maximum percentage

(4) The order, family arbitration award or domestic contract is not effective to cause the spouse to become entitled to more than 50 per cent of the pension benefits, calculated in the prescribed manner, accrued by the member, former member or retired member during the period when they were spouses. 2009, c. 11, s. 49; 2010, c. 9, s. 48 (1).

Discharge of administrator

(5) If payment of a pension or a deferred pension is divided between spouses by the order, family arbitration award or domestic contract, the administrator is discharged on making payment in accordance with the order, award or contract. 2009, c. 11, s. 49.

Revaluation of joint and survivor pension

(6) If the order, family arbitration award or domestic contract affects a pension, the administrator of the pension plan shall revalue the pension in the prescribed manner. 2009, c. 11, s. 49.

Entitlement to options

(7) The spouse has the same entitlement, on termination of employment by the member, former member or retired member, to any option available in respect of the spouse's interest in the pension benefits as the member, former member or retired member has in respect of his or her pension benefits. 2010, c. 9, s. 48 (2).

WINDING UP

Winding up

68. (1) The employer or, in the case of a multi-employer pension plan, the administrator may wind up the pension plan. R.S.O. 1990, c. P.8, s. 68 (1); 2010, c. 9, s. 49 (1).

Same, jointly sponsored pension plans

(1.1) The following rules apply, and subsection (1) does not apply, with respect to jointly sponsored pension plans:

- 1. If a jointly sponsored pension plan is also a multi-employer pension plan, the administrator may wind up the plan unless the documents that create and support the plan authorize another person or entity to do so. In that case, the authorized person or entity may wind up the plan.
- 2. If a jointly sponsored pension plan is not a multi-employer pension plan, the administrator or another person or entity may wind up the plan if the documents that create and support the plan authorize the administrator, person or entity to do so. 2005, c. 31, Sched. 18, s. 8; 2010, c. 9, s. 49 (2, 3).

Notice

(2) If the employer or the administrator, as the case may be, intends to wind up the pension plan, the administrator shall give written notice of the intended wind up to,

- (a) the Superintendent;

- (b) each member, former member and retired member of the pension plan;
 - (c) each trade union that represents members of the pension plan or that, on the date of the wind up, represented the members, former members or retired members of the pension plan;
 - (d) the advisory committee of the pension plan; and
 - (e) any other person entitled to a payment from the pension fund. 2010, c. 9, s. 49 (4); 2010, c. 24, s. 21 (2).
- (3) REPEALED: 2010, c. 24, s. 21 (5).

Contents of notice

- (4) The notice of the intended wind up must contain such information as may be prescribed. 2010, c. 24, s. 21 (6, 7).

Additional information and documents

(4.1) The Superintendent may require the administrator to give specified additional information and documents to the persons entitled to notice of the intended wind up, and to do so within a specified period. 2011, c. 9, Sched. 35, s. 5.

Effective date

(5) The effective date of the wind up shall not be earlier than the date member contributions, if any, cease to be deducted, in the case of contributory pension benefits, or, in any other case, on the date notice is given to members. R.S.O. 1990, c. P.8, s. 68 (5).

Order by Superintendent

(6) Subject to section 89, the Superintendent by order may change the effective date of the wind up if the Superintendent is of the opinion that there are reasonable grounds for the change. R.S.O. 1990, c. P.8, s. 68 (6); 2010, c. 24, s. 21 (8).

Winding up order by Superintendent

69. (1) The Superintendent by order may require the wind up of a pension plan if,
- (a) there is a cessation or suspension of employer contributions to the pension fund;
 - (b) the employer fails to make contributions to the pension fund as required by this Act or the regulations;
 - (c) the employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada);
 - (d) all or substantially all of the members of the pension plan cease to be employed by the employer;
 - (e) REPEALED: 2010, c. 9, s. 50 (2).
 - (f) all or substantially all of the employer's business or all or substantially all of the assets of the business are sold, assigned or otherwise disposed of and the person or entity who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the person or entity;
 - (g) the liability of the Guarantee Fund is likely to be substantially increased unless the pension plan is wound up;
 - (h) in the case of a multi-employer pension plan,
 - (i) there is a significant reduction in the number of members, or
 - (ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions; or
 - (i) any other prescribed event or prescribed circumstance occurs. R.S.O. 1990, c. P.8, s. 69 (1); 2002, c. 18, Sched. H, s. 5 (1); 2010, c. 9, s. 50 (1-4).

Effective date

- (2) The order must specify the effective date of the wind up. 2010, c. 9, s. 50 (5).

Notice of the order

(3) The administrator of the pension plan shall give notice of the order to the persons and entities listed in clauses 68 (2) (b) to (e) and shall include in the notice such information about the wind up as the order may specify. 2010, c. 9, s. 50 (5).

Duty to file notice

(4) The administrator shall file with the Superintendent a copy of the notice given under subsection (3). 2010, c. 9, s. 50 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 69 is amended by adding the following subsection:

Interpretation

(5) A reduction or suspension of contributions under section 55.1 (contribution holidays) does not constitute a cessation or suspension of employer contributions for the purposes of clause (1) (a) or subclause (1) (h) (ii). 2010, c. 24, s. 22.

See: 2010, c. 24, ss. 22, 49 (4).

Partial wind up not permitted

69.1 A pension plan cannot be wound up in part if the effective date of the wind up would fall on or after the date on which this section comes into force. 2010, c. 9, s. 51.

Wind up report

70. (1) The administrator of a pension plan that is to be wound up shall file a wind up report that sets out,
- (a) the assets and liabilities of the pension plan;
 - (b) the benefits to be provided under the pension plan to members, former members, retired members and other persons;
 - (c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
 - (d) such other information as is prescribed. R.S.O. 1990, c. P.8, s. 70 (1); 2010, c. 9, s. 52 (1, 2).

Restriction on payments

(2) If the administrator has given notice under section 68 or 69 of the intended wind up of the pension plan, no payment shall be made out of the pension fund until the Superintendent has approved the wind up report. 2010, c. 24, s. 23.

Same

(3) However, subsection (2) does not prevent the continued payment of a pension or other benefit if the payment commenced before the administrator gave notice of the intended wind up and it does not prevent any other payment that is prescribed or that is approved by the Superintendent. 2010, c. 24, s. 23.

Approval

(4) An administrator shall not make payment out of the pension fund except in accordance with the wind up report approved by the Superintendent. R.S.O. 1990, c. P.8, s. 70 (4).

Refusal to approve

(5) The Superintendent may refuse to approve a wind up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members, former members, retired members and other persons entitled to benefits under the pension plan. R.S.O. 1990, c. P.8, s. 70 (5); 2010, c. 9, s. 52 (3).

(6) REPEALED: 2010, c. 9, s. 52 (5).

71. REPEALED: 2010, c. 24, s. 24.

Notice of entitlement upon wind up and election

72. (1) Within the prescribed period of time, the administrator of a pension plan that is to be wound up shall give to each person entitled to a pension, deferred pension or other benefit or to a refund in respect of the pension plan a statement setting out the person's entitlement under the plan, the options available to the person and such other information as may be prescribed. 1999, c. 15, s. 14 (1); 2010, c. 9, s. 54 (1).

Additional information

(1.1) The Superintendent may require the administrator to give specified additional information and documents to persons to whom notice is to be given under subsection (1), and to do so within a specified period. 2012, c. 8, Sched. 44, s. 5.

Election

(2) If a person to whom notice is given under subsection (1) is required to make an election, the person shall make the election within the prescribed period of time or shall be deemed to have elected to receive immediate payment of a pension benefit, if eligible therefor, or, if not eligible to receive immediate payment of a pension benefit, to receive a pension commencing at the earliest date mentioned in clause 74 (1.3) (b). R.S.O. 1990, c. P.8, s. 72 (2); 1999, c. 15, s. 14 (2); 2010, c. 9, s. 54 (2, 3).

Same, certain pension plans

(2.1) If the notice under subsection (1) is given in respect of a pension plan for which an election under section 74.1 is in effect and if the person to whom the notice is given does not make an election within the prescribed period of time,

- (a) he or she is deemed to have elected to receive immediate payment of a pension benefit, if he or she is eligible to receive the immediate payment; and
- (b) in any other case, he or she is deemed to have elected to receive a pension beginning at the earliest date on which the person would be entitled to an unreduced pension under the pension plan as of the effective date of the wind up. 2010, c. 9, s. 54 (4).

Payment

(3) Within the prescribed period of time, the administrator shall make payment in accordance with the election or deemed election. 1999, c. 15, s. 14 (3).

Determination of entitlements

73. (1) For the purpose of determining the amounts of pension benefits and any other benefits and entitlements on the winding up of a pension plan,

- (a) the employment of each member of the pension plan shall be deemed to have been terminated on the effective date of the wind up;
- (b) each member's pension benefits as of the effective date of the wind up shall be determined as if the member had satisfied all eligibility conditions for a deferred pension; and
- (c) provision shall be made for the rights, if any, under section 74. R.S.O. 1990, c. P.8, s. 73 (1); 2010, c. 9, s. 55 (1-3).

Transfer rights on wind up

(2) A person entitled to a pension benefit on the wind up of a pension plan, other than a person who is receiving a pension, is entitled to the rights under subsection 42 (1) (transfer) of a member who terminates employment and, for the purpose, subsection 42 (3) does not apply. R.S.O. 1990, c. P.8, s. 73 (2).

Purchase of annuities on partial wind up

(3) Except as provided under subsection (2), the administrator is not required to purchase life annuities for members, former members, retired members or other persons entitled to benefits under the pension plan in order to distribute the assets of the pension fund in connection with a partial wind up. 2010, c. 9, s. 55 (4).

Distribution of assets

(4) If the administrator does not purchase life annuities in the circumstances described in subsection (3), the administrator shall comply with such requirements as may be prescribed in connection with the distribution of the assets of the pension fund in connection with a partial wind up. 2010, c. 9, s. 55 (4).

Repeal

(5) Subsections (3) and (4) are repealed on a day to be named by proclamation of the Lieutenant Governor. 2010, c. 9, s. 55 (4).

Application

- (6) This section applies if the effective date of the wind up is on or after April 1, 1987. 2010, c. 9, s. 55 (5).

Grow-in benefits for members

Activating events

74. (1) This section applies if a person ceases to be a member of a pension plan on the effective date of one of the following activating events:

1. The wind up of a pension plan, if the effective date of the wind up is on or after April 1, 1987.
2. The employer's termination of the member's employment, if the effective date of the termination is on or after July 1, 2012. However, this paragraph does not apply if the termination occurs in any of the circumstances described in subsection (1.1).
3. The occurrence of such other events as may be prescribed in such circumstances as may be specified by regulation. 2010, c. 9, s. 56 (1); 2011, c. 9, Sched. 35, s. 6.

Same, termination of employment

(1.1) Termination of employment is not an activating event if the termination is a result of wilful misconduct, disobedience or wilful neglect of duty by the member that is not trivial and has not been condoned by the employer or if the termination occurs in such other circumstances as may be prescribed. 2010, c. 9, s. 56 (1).

Exceptions, election by certain pension plans

(1.2) This section does not apply with respect to a jointly sponsored pension plan or a multi-employer pension plan while an election made under section 74.1 for the plan and its members is in effect. 2010, c. 9, s. 56 (1).

Benefit

(1.3) A member in Ontario of a pension plan whose combination of age plus years of continuous employment or membership in the pension plan equals at least 55 on the effective date of the activating event has the right to receive,

- (a) a pension in accordance with the terms of the pension plan, if, under the pension plan, the member is eligible for immediate payment of the pension benefit;
- (b) a pension in accordance with the terms of the pension plan, beginning at the earlier of,
 - (i) the normal retirement date under the pension plan, or
 - (ii) the date on which the member would be entitled to an unreduced pension under the pension plan if the activating event had not occurred and if the member's membership continued to that date; or
- (c) a reduced pension in the amount payable under the terms of the pension plan beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the activating event had not occurred and if the member's membership continued to that date. 2010, c. 9, s. 56 (1).

Part year

(2) In determining the combination of age plus employment or membership, one-twelfth credit shall be given for each month of age and for each month of continuous employment or membership on the effective date of the activating event. R.S.O. 1990, c. P.8, s. 74 (2); 2010, c. 9, s. 56 (2).

Member for 10 years

(3) Bridging benefits offered under the pension plan to which a member would be entitled if the activating event had not occurred and if his or her membership were continued shall be included in calculating the pension benefit under subsection (1.3) of a person who has at least 10 years of continuous employment with the employer or has been a member of the pension plan for at least 10 years. 2010, c. 9, s. 56 (3).

Prorated bridging benefit

(4) For the purposes of subsection (3), if the bridging benefit offered under the pension plan is not related to periods of employment or membership in the pension plan, the bridging benefit shall be prorated by the ratio that the member's actual period of employment bears to the period of employment that the member would have to the earliest date on which the member would be entitled to payment of pension benefits and a full bridging benefit under the pension plan if the activating event had not occurred. R.S.O. 1990, c. P.8, s. 74 (4); 2010, c. 9, s. 56 (4).

Notice of termination of employment

(5) Membership in a pension plan that is wound up includes the period of notice of termination of employment required under Part XV of the *Employment Standards Act, 2000*. R.S.O. 1990, c. P.8, s. 74 (5); 2004, c. 31, Sched. 31, s. 3; 2010, c. 9, s. 56 (5).

Application of subs. (5)

(6) Subsection (5) does not apply for the purpose of calculating the amount of a pension benefit of a member who is required to make contributions to the pension fund unless the member makes the contributions in respect of the period of notice of termination of employment. R.S.O. 1990, c. P.8, s. 74 (6).

Consent of employer

(7) For the purposes of this section, where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit, the employer shall be deemed to have given the consent. R.S.O. 1990, c. P.8, s. 74 (7).

Consent of administrator, jointly sponsored pension plans

(7.1) For the purposes of this section, where the consent of the administrator of a jointly sponsored pension plan is an eligibility requirement for entitlement to receive an ancillary benefit, the administrator shall be deemed to have given the consent. 2005, c. 31, Sched. 18, s. 9.

Use in calculating pension benefit

(8) A benefit described in clause (1.3) (a), (b) or (c) for which a member has met all eligibility requirements under this section shall be included in calculating the member's pension benefit or the commuted value of the pension benefit. 2010, c. 9, s. 56 (6).

(9) REPEALED: 2010, c. 9, s. 56 (7).

Election re grow-in benefits, certain pension plans**Jointly sponsored pension plans**

74.1 (1) The employers (or any persons or entities who make contributions on behalf of the employers or who represent the employers) and the members (or the representatives of the members) of a jointly sponsored pension plan may elect, in accordance with this section, to exclude the plan and its members from the operation of section 74. 2010, c. 9, s. 57.

Multi-employer pension plans

(2) The administrator of a multi-employer pension plan may elect, in accordance with this section, to exclude the plan and its members from the operation of section 74. 2010, c. 9, s. 57.

Restrictions

(3) An election may only be made within the prescribed period and the persons or entities making the election must satisfy such requirements as may be prescribed in connection with the election. 2010, c. 9, s. 57.

Same

(4) Only one election may be made in respect of a pension plan. 2010, c. 9, s. 57.

Notice of election

(5) An election to exclude a pension plan and its members from the operation of section 74 takes effect when notice of the election is filed with the Superintendent or on a later date specified in the notice. 2010, c. 9, s. 57.

Rescission

(6) An election may be rescinded by the persons and entities described in subsection (1) or (2), as the case may be, and the rescission takes effect when notice of the rescission is filed with the Superintendent or on a later date specified in the notice. 2010, c. 9, s. 57.

Liability of employer on wind up

75. (1) Where a pension plan is wound up, the employer shall pay into the pension fund,

- (a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and
- (b) an amount equal to the amount by which,
 - (i) the value of the pension benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act and the regulations if the Superintendent declares that the Guarantee Fund applies to the pension plan,
 - (ii) the value of the pension benefits accrued with respect to employment in Ontario vested under the pension plan, and
 - (iii) the value of benefits accrued with respect to employment in Ontario resulting from the application of subsection 39 (3) (50 per cent rule) and section 74,

exceed the value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario. R.S.O. 1990, c. P.8, s. 75 (1); 1997, c. 28, s. 200; 2010, c. 9, s. 58.

Payment

(2) The employer shall pay the money due under subsection (1) in the prescribed manner and at the prescribed times. R.S.O. 1990, c. P.8, s. 75 (2).

Exception, jointly sponsored pension plans

(3) This section does not apply with respect to jointly sponsored pension plans. 2005, c. 31, Sched. 18, s. 10.

Same

(4) This section does not apply with respect to a single employer pension plan that has transferred assets under section 80.4 to a jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 7.

Liability on wind-up, jointly sponsored pension plans

Employers, etc.

75.1 (1) Where a jointly sponsored pension plan is wound up, the employer or the person or entity required to make contributions under the plan on behalf of the employer shall pay into the pension fund,

- (a) an amount equal to the total of all payments that, under this Act, the regulations and the plan, are payable by the employer or by the person or entity on behalf of the employer, that are due or have accrued and that have not been paid into the pension fund; and
- (b) any additional amounts that, under the documents that create and support the plan, are payable in the circumstances by the employer or the person or entity on behalf of the employer. 2005, c. 31, Sched. 18, s. 11; 2010, c. 9, s. 59 (1).

Same re: transfer of assets

(1.1) If an employer has transferred assets under section 80.4 from a single employer pension plan to a jointly sponsored pension plan that is subsequently wound up, the employer shall, in prescribed circumstances, pay the prescribed amount into the pension fund of the jointly sponsored pension plan for the benefit of the transferred members and other transferees under section 80.4. 2014, c. 7, Sched. 26, s. 8 (1).

Same re: conversion of single employer pension plan

(1.2) If an employer has converted a single employer pension plan under section 81.0.1 into a jointly sponsored pension plan that is subsequently wound up, the employer shall, in prescribed circumstances, pay the prescribed amount into the pension fund of the jointly sponsored pension plan for the benefit of the members, former members, retired members and other persons entitled to benefits under the plan. 2014, c. 7, Sched. 26, s. 8 (2).

Members

- (2) Where a jointly sponsored pension plan is wound up, the members shall pay into the pension fund,
 - (a) an amount equal to the total of all payments that, under this Act, the regulations and the plan, are payable by the members, that are due or have accrued and that have not been paid into the pension fund; and
 - (b) any additional amounts that, under the documents that create and support the plan, are payable in the circumstances by the members. 2005, c. 31, Sched. 18, s. 11; 2010, c. 9, s. 59 (2).

Payments

(3) The payments required by this section shall be made in the prescribed manner and at the prescribed times. 2005, c. 31, Sched. 18, s. 11; 2014, c. 7, Sched. 26, s. 8 (3).

Same

(4) Any payments that may be required by subsections (1.1) and (1.2) are in addition to the payments required by subsection (1). 2014, c. 7, Sched. 26, s. 8 (4).

Insufficient pension fund

(5) If the amount paid under subsection (1.1) and the money in the pension fund of the jointly sponsored pension plan, allocated in accordance with the regulations, is not sufficient to pay all the pension benefits and other benefits of the transferred members and other transferees under section 80.4, the pension benefits and other benefits shall be reduced in the prescribed manner on the wind up of the jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 8 (5).

Same

(6) If the amount paid under subsection (1.2) and the money in the pension fund of the jointly sponsored pension plan, allocated in accordance with the regulations, is not sufficient to pay all the pension benefits and other benefits of the members, former members, retired members and other persons entitled to benefits under the plan, the pension benefits and other benefits shall be reduced in the prescribed manner on the wind up of the plan. 2014, c. 7, Sched. 26, s. 8 (6).

Pension fund continues subject to Act and regulations

76. The pension fund of a pension plan that is wound up continues to be subject to this Act and the regulations until all the assets of the pension fund have been disbursed. R.S.O. 1990, c. P.8, s. 76.

Insufficient pension fund

77. Subject to the application of the Guarantee Fund, where the money in a pension fund is not sufficient to pay all the pension benefits and other benefits on the wind up of the pension plan, the pension benefits and other benefits shall be reduced in the prescribed manner. R.S.O. 1990, c. P.8, s. 77; 2010, c. 9, s. 60.

TRANSITION – PARTIAL WIND UP

Authority for partial wind up

77.1 (1) A pension plan may be wound up in part if the effective date of the partial wind up precedes the date on which this section comes into force. 2010, c. 9, s. 61.

Restriction

(2) A pension plan cannot be wound up in part if the effective date of the partial wind up would fall on or after the date on which this section comes into force. 2010, c. 9, s. 61.

Effective date

(3) The effective date of the partial wind up may be determined after the date on which this section comes into force. 2010, c. 9, s. 61.

Same

(4) The Superintendent by order may change the effective date of the partial wind up if the Superintendent is of the opinion that there are reasonable grounds for the change. 2010, c. 9, s. 61.

Definition

(5) In this section and in sections 77.2 to 77.9, “partial wind up” means the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan. 2010, c. 9, s. 61.

Partial wind up by employer, administrator

77.2 Section 68 applies, with necessary modifications, with respect to a partial wind up of a pension plan. 2010, c. 9, s. 61.

Order by Superintendent for partial wind up

77.3 (1) The Superintendent by order may require the partial wind up of a pension plan,

- (a) if a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
- (b) if all or a significant portion of the business carried on by the employer at a specific location is discontinued;
- (c) if part of the employer’s business or part of the assets of the business are sold, assigned or otherwise disposed of and the person or entity who acquires the business or assets does not provide a pension plan for the members of the employer’s pension plan who become employees of the person or entity;
- (d) if the liability of the Guarantee Fund is likely to be substantially increased unless the pension plan is wound up in part;
- (e) if any of the circumstances described in clauses 69 (1) (a), (b), (c) or (h) exists; or
- (f) if any other prescribed event or prescribed circumstance occurs. 2010, c. 9, s. 61.

Date

(2) The order must specify the effective date of the partial wind up. 2010, c. 9, s. 61.

Notice of the order

(3) The administrator of the pension plan shall give notice of the order to the persons and entities listed in clauses 68 (2) (b) to (e) and shall include in the notice such information about the partial wind up as the order may specify. 2010, c. 9, s. 61.

Duty to file notice

(4) The administrator shall file with the Superintendent a copy of the notice given under subsection (3). 2010, c. 9, s. 61.

Wind up report for partial wind up

77.4 (1) Section 70 applies, with necessary modifications, with respect to a partial wind up of a pension plan. 2010, c. 9, s. 61.

Rights and benefits

(2) On a partial wind up, the members, former members, retired members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up. 2010, c. 9, s. 61.

77.5 REPEALED: 2010, c. 24, s. 25.

Notice of entitlement upon partial wind up

77.6 (1) Within the prescribed period of time, the administrator of a pension plan that is to be wound up in part shall give to each person who is affected by the wind up and who is entitled to a pension, deferred pension or other benefit or to a refund in respect of the pension plan a statement setting out his or her entitlement under the plan, the options available to the person and such other information as may be prescribed. 2010, c. 9, s. 61.

Same

(2) Subsections 72 (2) and (3) apply, with necessary modifications, with respect to the partial wind up of a pension plan. 2010, c. 9, s. 61.

Determination of entitlements on partial wind up

77.7 (1) Section 73 applies, with necessary modifications, with respect to members' entitlements on a partial wind up of a pension plan. 2010, c. 9, s. 61.

Purchase of annuities on partial wind up

(2) Except as provided under subsection 73 (2), the administrator is not required to purchase life annuities for members, former members, retired members or other persons entitled to benefits under the pension plan in order to distribute the assets of the plan in connection with the partial wind up. 2010, c. 9, s. 61.

Distribution of assets

(3) If the administrator does not purchase life annuities in the circumstances described in subsection (2), the administrator shall comply with such requirements as may be prescribed in connection with the distribution of the assets of the pension fund in connection with the partial wind up. 2010, c. 9, s. 61.

Grow-in on partial wind up

(4) Section 74 applies, with necessary modifications, with respect to members' entitlements on a partial wind up of a pension plan. 2010, c. 9, s. 61.

Liability on partial wind up

77.8 Sections 75 and 75.1 apply, with necessary modifications, with respect to a partial wind up of a pension plan. 2010, c. 9, s. 61.

Administration of partial wind up

77.9 Sections 76 and 77 apply, with necessary modifications, with respect to a partial wind up of a pension plan. 2010, c. 9, s. 61.

Repeal of transitional provisions

77.10 Sections 77.1 to 77.9 are repealed on a day to be named by proclamation of the Lieutenant Governor. 2010, c. 9, s. 61.

SURPLUS

Entitlement to surplus

77.11 (1) The documents that create and support a pension plan and pension fund govern the entitlement of the employer and other persons to payment of surplus under the pension plan, except as otherwise provided under this Act and subject to the restrictions on payment set out in sections 78 and 79. 2010, c. 24, s. 26 (1).

If no provision in a pension plan

(2) A pension plan that does not provide for the withdrawal of surplus money while the pension plan continues in existence shall be construed to prohibit the withdrawal of surplus money accrued after December 31, 1986. 2010, c. 24, s. 26 (1).

Same, on wind up

(3) If a pension plan does not provide for payment of surplus to the employer on the wind up of the pension plan, the pension plan shall be construed to require that surplus accrued after December 31, 1986 shall be distributed proportionately

on the wind up of the pension plan among members, former members, retired members and other persons entitled to payments under the pension plan on the date of the wind up. 2010, c. 24, s. 26 (1, 2).

On wind up of successor pension plan

(4) If a pension plan is a successor pension plan and if it is being wound up in whole or in part, the employer is not entitled to payment of surplus under the pension plan unless the documents that created and supported the original pension plan and pension fund and those that create and support the successor pension plan and pension fund both provide for payment of surplus to the employer on the wind up or partial wind up, as the case may be, of the pension plan. 2010, c. 24, s. 26 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out “if it is being wound up in whole or in part” and substituting “if it is being wound up” and by striking out “on the wind up or partial wind up, as the case may be, of the pension plan” at the end and substituting “on the wind up of the pension plan”. See: 2010, c. 24, ss. 26 (3), 49 (4).

Same

(5) Subsection (4) does not preclude a written agreement described in subsection (7) from providing for payment of surplus to the employer in the circumstances specified in the agreement. 2010, c. 24, s. 26 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is amended by adding “or an arbitration award made in accordance with section 77.12” after “a written agreement described in subsection (7)”. See: 2010, c. 24, ss. 26 (4), 49 (4).

Transition

(6) Subsection (4) does not apply if the effective date of the transfer of assets from the original pension plan to the successor pension plan is earlier than the date on which the *Securing Pension Benefits Now and for the Future Act, 2010* received Royal Assent. 2010, c. 24, s. 26 (1).

Agreement about surplus

(7) A written agreement among the following persons may provide for payment of surplus to the employer in the circumstances specified in the agreement and as of the date specified in the agreement:

1. If the surplus is to be paid to the employer while the pension plan continues in existence,
 - i. the employer,
 - ii. at least two-thirds of the members of the pension plan (and, for this purpose, a trade union that represents members may agree on behalf of those members), and
 - iii. the number which is considered appropriate in the circumstances by the Superintendent of former members, retired members and other persons who are entitled to payments under the pension plan as of the specified date for payment of the surplus.
2. If the surplus is to be paid to the employer on the wind up of the pension plan in whole,

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 2 is amended by striking out “on the wind up of the pension plan in whole” in the portion before subparagraph i and substituting “on the wind up of the pension plan”. See: 2010, c. 24, ss. 26 (6), 49 (4).

- i. the employer,
 - ii. at least two-thirds of the members of the pension plan (and, for this purpose, a trade union that represents or represented members on the date of the wind up may agree on behalf of those members), and
 - iii. the number which is considered appropriate in the circumstances by the Superintendent of former members, retired members and other persons who are entitled to payments under the pension plan as of the date of the wind up.
3. If the surplus is to be paid to the employer on the partial wind up of the pension plan,
 - i. the employer,
 - ii. at least two-thirds of the members of the pension plan affected by the partial wind up (and, for this purpose, a trade union that represents or represented affected members on the date of the partial wind up may agree on behalf of those members), and
 - iii. the number which is considered appropriate in the circumstances by the Superintendent of former members, retired members and other persons who are affected by the partial wind up and who are entitled to payments under the pension plan as of the date of the partial wind up. 2010, c. 24, s. 26 (1, 5).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 is repealed. See: 2010, c. 24, ss. 26 (7), 49 (4).

Effect of agreement

(8) A written agreement prevails over any document that creates and supports the pension plan and pension fund, it prevails over subsections (2), (3) and (4), and it prevails despite any trust that may exist in favour of any person. 2010, c. 24, s. 26 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 77.11 is amended by adding the following subsections:

Arbitration award

(9) If a pension plan is being wound up in whole or in part, an arbitration award made in accordance with section 77.12 may provide for the allocation of surplus between the employer, members, former members and other persons entitled to a pension, deferred pension or other benefit under the plan who are affected by the wind up or partial wind up. 2010, c. 24, s. 26 (8).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (9) is amended by striking out “the employer, members, former members” and substituting “the employer, members, former members, retired members”. See: 2010, c. 24, ss. 26 (9), 49 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (9) is amended by striking out “wound up in whole or in part” and substituting “wound up” and by striking out “or partial wind up” at the end. See: 2010, c. 24, ss. 26 (10), 49 (4).

Effect of arbitration award

(10) An arbitration award prevails over any document that creates and supports the pension plan and pension fund, it prevails over subsections (3) and (4), and it prevails despite any trust that may exist in favour of any person. 2010, c. 24, s. 26 (8).

See: 2010, c. 24, ss. 26 (8), 49 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Arbitration re allocation of surplus on wind up

77.12 (1) This section applies with respect to the wind up of a pension plan in whole or in part,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out “the wind up of a pension plan in whole or in part” in the portion before clause (a) and substituting “the wind up of a pension plan”. See: 2010, c. 24, ss. 27 (2), 40 (4).

- (a) if the Superintendent has not consented, before the expiry of the prescribed period after the date of the wind up, to the payment of surplus to the employer; and
- (b) if no agreement described in subsection 77.11 (7) is entered into before the expiry of the prescribed period after the date of the wind up. 2010, c. 24, s. 27 (1).

Proposal for arbitration

(2) Any of the following persons may file a notice with the Superintendent proposing that arbitration be used to allocate the surplus under the pension plan, and the notice must be accompanied by such information and documents as may be prescribed or as may be specified by the Superintendent:

1. The employer.
2. A trade union that represents members of the pension plan or that, on the date of the wind up, represented members or former members of the pension plan.
3. Any member of the pension plan.
4. Any former member or other person who is entitled to payments under the pension plan as of the date of the wind up. 2010, c. 24, s. 27 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 4 is amended by striking out “Any former member” at the beginning and substituting “Any former member, retired member”. See: 2010, c. 24, ss. 27 (3), 49 (4).

Same

(3) The employer or the trade union, if any, may file the notice with the Superintendent either before or after the expiry of the prescribed period after the date of the wind up. 2010, c. 24, s. 27 (1).

Proposal by Superintendent

(4) The Superintendent, on his or her own initiative, may propose that arbitration be used to allocate the surplus under the pension plan, and may do so either before or after the expiry of the prescribed period after the date of the wind up. 2010, c. 24, s. 27 (1).

Information

(5) At the Superintendent's request, the employer and the administrator of the pension plan shall give the Superintendent such additional information and documents as the Superintendent may specify in connection with the proposed arbitration. 2010, c. 24, s. 27 (1).

Notice of proposed arbitration

(6) The Superintendent may require the administrator to give notice of the proposed arbitration to the persons and in the manner specified by the Superintendent and within a specified period, and the administrator shall do so. 2010, c. 24, s. 27 (1).

Same

(7) When deciding whether to require an administrator to give notice of the proposed arbitration, and the time and manner in which any notice is to be given, the Superintendent may consider the factors that he or she considers appropriate, including such factors as may be prescribed. 2010, c. 24, s. 27 (1).

Appointment of arbitrator

(8) An arbitrator may be appointed by an agreement entered into by the persons who would be authorized to make an agreement under subsection 77.11 (7) and, if no agreement to appoint an arbitrator is reached before the expiry of the prescribed period after notice is given under subsection (6), the Superintendent may appoint an arbitrator if and when he or she considers it appropriate to do so. 2010, c. 24, s. 27 (1).

Same

(9) When deciding whether, or when, to appoint an arbitrator, the Superintendent may consider the factors that he or she considers appropriate, including such factors as may be prescribed. 2010, c. 24, s. 27 (1).

Effect of appointment

(10) If an arbitrator is appointed, either by agreement or by the Superintendent, all of the persons described in paragraphs 1 to 4 of subsection (2) are deemed to have agreed to arbitration under this section and none of them is permitted to commence a civil proceeding in respect of any person's entitlement to surplus under the pension plan. 2010, c. 24, s. 27 (1).

Jurisdiction of arbitrator

(11) The arbitrator shall make an arbitration award allocating the surplus or determining the manner in which the surplus is to be allocated and the proportions to be allocated to the affected persons or classes of persons. 2010, c. 24, s. 27 (1).

Same

(12) When making an arbitration award, the arbitrator may consider the factors that he or she considers appropriate, including such factors as may be prescribed. 2010, c. 24, s. 27 (1).

Parties

(13) The parties to the arbitration are determined in accordance with the regulations, but the Superintendent is not a party to any arbitration under this section. 2010, c. 24, s. 27 (1).

Procedures, etc.

(14) The *Arbitration Act, 1991* applies with respect to the arbitration, with such restrictions and exclusions as may be prescribed by regulation, and the regulations may establish requirements that apply with respect to arbitrations under this section. 2010, c. 24, s. 27 (1).

Effect of arbitration award

(15) The arbitration award is final and binds the parties to the arbitration and every other person affected by it. 2010, c. 24, s. 27 (1).

Costs of arbitration

(16) The arbitrator shall determine how and by whom the costs of the arbitration shall be paid, including whether the costs may be paid out of the pension fund, but the arbitrator cannot order the Superintendent to pay any of the costs of the arbitration. 2010, c. 24, s. 27 (1).

Transition

(17) If the date of the wind up or partial wind up of a pension plan falls before the day on which this section comes into force, and if there is no written agreement before this section comes into force with respect to the payment of surplus, the

allocation of the surplus may be determined by arbitration under this section within the prescribed transitional period and in accordance with such requirements as may be prescribed. 2010, c. 24, s. 27 (1).

See: 2010, c. 24, ss. 27 (1), 49 (4).

Payment out of pension fund to employer

78. (1) No money that is surplus may be paid out of a pension fund to the employer without the prior consent of the Superintendent. R.S.O. 1990, c. P.8, s. 78 (1); 1997, c. 28, s. 200; 2010, c. 24, s. 28 (1).

Application for payment

(2) An employer who applies to the Superintendent for consent to payment of money that is surplus to the employer out of a pension fund shall transmit notice of the application, containing the prescribed information, to,

- (a) each member, former member and retired member of the pension plan to which the pension fund relates;
- (b) each trade union that represents members of the pension plan;
- (b.1) each trade union that represents the members, former members or retired members of the pension plan on the date of the wind up, if the pension plan is being wound up;
- (c) any other individual who is receiving payments out of the pension fund; and
- (d) the advisory committee of the pension plan. R.S.O. 1990, c. P.8, s. 78 (2); 1997, c. 28, s. 200; 2010, c. 9, s. 62 (1, 2).

Representations

(3) A person to whom notice has been transmitted under subsection (2) may make written representations to the Superintendent with respect to the application within thirty days after receiving the notice. R.S.O. 1990, c. P.8, s. 78 (3); 1997, c. 28, s. 200.

(4), (5) REPEALED: 2010, c. 24, s. 28 (2).

Payment of surplus

Continuing pension plan, payment to employer

79. (1) Subject to section 89, the Superintendent shall not consent to payment of surplus to an employer out of a continuing pension plan unless,

- (a) the Superintendent is satisfied, based on reports provided with the employer's application for payment of the surplus, that the pension plan has a surplus;
 - (b) the withdrawal of surplus by the employer while the pension plan continues in existence is authorized either as provided in section 77.11 or by a court order declaring that the employer is entitled to the surplus while the plan continues;
 - (c) where all pension benefits under the pension plan are guaranteed by an insurance company, an amount equal to at least two years of the normal cost of the pension plan, determined in accordance with the regulations, is retained in the pension fund as surplus;
 - (d) the greater of the following amounts is retained in the pension fund as surplus:
 - (i) the sum of "A" and "B" where,
 - "A" is an amount equal to twice the normal cost of the pension plan, and
 - "B" is an amount equal to 5 per cent of the liabilities of the pension plan, determined in accordance with the regulations, and
 - (ii) an amount equal to 25 per cent of the liabilities of the pension plan, determined in accordance with the regulations; and
 - (e) REPEALED: 2010, c. 24, s. 29 (1).
 - (f) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus money out of a pension fund. R.S.O. 1990, c. P.8, s. 79 (1); 1997, c. 28, s. 202 (1, 2); 2010, c. 9, s. 63 (1, 2); 2010, c. 24, s. 29 (1).
- (2) REPEALED: 2010, c. 24, s. 29 (2).

Wind up, payment to employer

(3) Subject to section 89, the Superintendent shall not consent to payment of surplus to an employer out of a pension plan that is being wound up in whole unless,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out “being wound up in whole” in the portion before clause (a) and substituting “being wound up”. See: 2010, c. 24, ss. 29 (4), 49 (4).

- (a) the Superintendent is satisfied, based on reports provided with the employer’s application for payment of the surplus, that the pension plan has a surplus;
- (b) the payment of surplus to the employer on the wind up of the pension plan is authorized either as provided in section 77.11 or by a court order declaring that the employer is entitled to the surplus when the plan is being wound up;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is amended by striking out “section 77.11 or” and substituting “section 77.11, or by an arbitration award made under section 77.12, or”. See: 2010, c. 24, ss. 29 (5), 49 (4).

- (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of the termination of the pension plan; and
- (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus. 2010, c. 24, s. 29 (3).

Same, partial wind up

(3.1) Subject to section 89, the Superintendent shall not consent to payment of surplus to an employer out of a pension plan that is being wound up in part unless,

- (a) all of the criteria described in clauses (3) (a), (c) and (d) are satisfied; and
- (b) the payment of surplus to the employer on the partial wind up of the pension plan is authorized either as provided in section 77.11 or by a court order declaring that the employer is entitled to the surplus when the plan is being wound up in part. 2010, c. 24, s. 29 (6).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is amended by striking out “section 77.11 or” and substituting “section 77.11, or by an arbitration award made under section 77.12, or”. See: 2010, c. 24, ss. 29 (7), 49 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3.1) is repealed. See: 2010, c. 24, ss. 29 (8), 49 (4).

(3.2) REPEALED: 2010, c. 24, s. 29 (6).

Wind up, payment to members, etc.

(4) If a pension plan is being wound up in whole or in part, payment from surplus may be made to or for the benefit of members, former members, retired members and other persons, other than an employer, who are entitled to payments under the plan as of the date of the wind up or partial wind up. 2010, c. 24, s. 29 (9, 10).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is amended by striking out “being wound up in whole or in part” and substituting “being wound up” and by striking out “or partial wind up” at the end. See: 2010, c. 24, ss. 29 (11), 49 (4).

(5)-(8) REPEALED: 1997, c. 28, s. 202 (5).

Superintendent’s order re surplus

79.0.1 (1) The Superintendent may order the administrator of a pension plan to distribute surplus in accordance with a written agreement described in subsection 77.11 (7). 2010, c. 24, s. 30 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding at the end “or an arbitration award made under section 77.12”. See: 2010, c. 24, ss. 30 (2), 49 (4).

Same

- (2) The order of the Superintendent is final. 2010, c. 24, s. 30 (1).

Enforcement

(3) An order under this section, excluding the reasons for the order, may be filed in the Superior Court of Justice and upon being filed it is enforceable as an order of that Court. 2010, c. 24, s. 30 (1).

ASSET TRANSFERS BETWEEN PENSION PLANS

Prohibition on asset transfers

Transfers re defined benefits

79.1 (1) No person shall transfer assets between pension plans if the transferred assets relate to the provision of defined benefits unless,

- (a) the transfer is authorized under section 21, 42, 80, 80.1, 80.2, 80.4 or 81; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is repealed and the following substituted: (See: 2014, c. 7, Sched. 26, ss. 9 (2), 15 (1))

- (a) the transfer is authorized under section 21, 42, 80, 80.2, 80.4 or 81; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is repealed and the following substituted: (See: 2014, c. 7, Sched. 26, ss. 9 (3), 15 (1))

- (a) the transfer is authorized under section 21, 42, 80, 80.1, 80.2, 80.3, 80.4 or 81; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is repealed and the following substituted: (See: 2014, c. 7, Sched. 26, ss. 9 (4), 15 (1))

- (a) the transfer is authorized under section 21, 42, 80, 80.2, 80.3, 80.4 or 81; or

- (b) the transfer satisfies the prescribed requirements and the Superintendent has consented in advance to the transfer. 2010, c. 9, s. 65 (1); 2014, c. 7, Sched. 26, s. 9 (1).

Transfers re defined contributions

(2) No person shall transfer assets between pension plans if the transferred assets relate to the provision of defined contribution benefits unless,

- (a) the transfer is authorized under section 21, 42, 80, 80.2 or 81; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 79.1 (2) (a) of the Act is amended by striking out “transfer is authorized under section 21, 42” and substituting “transfer is authorized under section 21, 39.1, 42”. (See: 2015, c. 20, Sched. 34, s. 6)

- (b) the transfer satisfies the prescribed requirements and the Superintendent has consented to the transfer. 2012, c. 8, Sched. 44, s. 6.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 79.1 is amended by adding the following subsection:

Transfers re target benefits

(3) No person shall transfer assets between pension plans if the transferred assets relate to the provision of target benefits unless the transfer satisfies the prescribed requirements and the Superintendent has consented in advance to the transfer. 2010, c. 24, s. 31 (2).

See: 2010, c. 24, ss. 31 (2), 49 (4).

Requirements, etc., for all asset transfers

79.2 (1) In this section,

“original pension plan” means the pension plan from which assets are transferred, and includes the pension fund for that pension plan; (“premier régime de retraite”)

“successor pension plan” means the pension plan to which assets are transferred, and includes the pension fund for that pension plan. (“régime de retraite subséquent”) 2010, c. 9, s. 66 (1).

Application

(2) This section applies to every transfer of assets between pension plans that is authorized under section 79.1, 80, 80.1, 80.2 or 81. 2010, c. 9, s. 66 (1).

Note: On July 1, 2017, subsection (2) is amended by striking out “80.1”. See: 2010, c. 9, ss. 66 (2), 80 (4); 2014, c. 7, Sched. 26, s. 14; 2016, c. 5, Sched. 22, s. 4.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 79.2 is amended by adding the following subsection:

Same, transfers between certain public sector pension plans

(2.1) For a transfer of assets to which section 80.3 applies,

- (a) subsections (4), (5), (6), (7) and (14) apply, with necessary modifications, with respect to the original pension plan and its administrator; and

- (b) subsections (8) and (9) apply with respect to individuals. 2010, c. 24, s. 32 (1).

See: 2010, c. 24, ss. 32 (1), 49 (4).

Same, transfers to jointly sponsored pension plan

(2.2) Subsections (3) to (5), (7) to (9) and (14) to (16) apply, with necessary modifications, with respect to a transfer of assets to which section 80.4 applies. 2014, c. 7, Sched. 26, s. 10.

Effective date

(3) The effective date of the transfer of assets is determined in accordance with the regulations. 2010, c. 9, s. 66 (1).

Conditions re defined benefits

(4) If any of the assets to be transferred relate to the provision of defined benefits in the original pension plan, the transferred assets must be used to provide defined benefits in the successor pension plan at the effective date, in accordance with such requirements as may be prescribed. 2010, c. 9, s. 66 (1).

Conditions re funding

(5) Every transfer of assets must satisfy such funding requirements as may be prescribed. 2010, c. 9, s. 66 (1).

Same

(6) If either pension plan has going concern unfunded liabilities or solvency deficiencies determined as of the effective date of the transfer, the transfer of assets must satisfy such additional requirements as may be prescribed. 2010, c. 9, s. 66 (1).

Duty of administrator

(7) The administrator of each pension plan shall comply with such requirements as may be prescribed with respect to the transfer of assets between the pension plans, including any requirement to give notice about the transfer. 2010, c. 9, s. 66 (1); 2010, c. 24, s. 32 (2).

Transfer to prescribed retirement savings arrangement

(8) If the amount of the assets to be transferred in relation to an individual's pension benefits and other benefits under the original pension plan is greater than the amount allowed under the *Income Tax Act* (Canada) for such a transfer, the administrator of the original pension plan shall pay the portion that exceeds that allowed amount into a prescribed retirement savings arrangement on behalf of the individual. 2010, c. 24, s. 32 (3).

Exception

(9) If the amount to be paid under subsection (8) into a prescribed retirement savings arrangement is greater than the amount prescribed under the *Income Tax Act* (Canada) for such a transfer, the administrator shall pay the portion that exceeds the prescribed amount as a lump sum to the individual. 2010, c. 9, s. 66 (1).

Effect of transfer of assets

(10) When the assets are transferred in accordance with this Act and the regulations, the transferred assets become part of the assets of the pension fund for the successor pension plan and they cease to be identified as assets of the original pension plan. 2010, c. 9, s. 66 (1).

Same, status of transferred members, etc.

(11) When the assets are transferred in accordance with this Act and the regulations,

- (a) the employer who is the sponsor of the successor pension plan assumes responsibility for providing pension benefits and other benefits under the original pension plan to the transferred members, former members, retired members and other persons entitled to payments under that plan, and they have no further claim against the original pension plan; or
- (b) in the case of a transfer of assets between multi-employer pension plans that are established pursuant to a collective agreement or trust agreement,
 - (i) the successor pension plan shall be amended to provide that the pension benefits and other benefits provided under the original pension plan to the transferred members, former members, retired members and other persons entitled to payments under the original pension plan shall be provided under the successor pension plan, and
 - (ii) the transferred members, former members, retired members and other persons entitled to payments under the original pension plan have no further claim against the original pension plan. 2015, c. 38, Sched. 17, s. 1.

Pension benefits, etc., under successor pension plan

(12) Subsection (11) does not require the successor pension plan to provide the same pension benefits and other benefits for the transferred members that were provided for them under the original pension plan. 2010, c. 9, s. 66 (1).

Claims of transferred members, etc.

(13) Subsection (12) does not affect any claims of the transferred members, former members, retired members or other persons under the successor pension plan. 2010, c. 9, s. 66 (1).

Discharge of administrator

(14) If the transfer of assets is made with the consent of the transferred member, former member, retired member or other person, the administrator of the original pension plan is discharged on transferring the assets in accordance with this Act and the regulations. 2010, c. 9, s. 66 (1).

Order to return assets

(15) The Superintendent by order may require the administrator of the successor pension plan to return to the original pension plan, with interest calculated in the prescribed manner, assets transferred in contravention of this Act or the regulations. 2010, c. 9, s. 66 (1).

Enforcement

(16) Subject to section 89, an order under subsection (15), exclusive of the reasons therefor, may be filed in the Superior Court of Justice and is thereupon enforceable as an order of that court. 2010, c. 9, s. 66 (1).

Transfers upon the sale of a business

Definitions

80. (1) In this section,

“employers’ agreement” means the agreement described in subsection (6); (“accord des employeurs”)

“original employer” means the employer who sells, assigns or otherwise disposes of all or part of the employer’s business or all or part of the assets of the employer’s business; (“premier employeur”)

“original pension plan” means the original employer’s pension plan; (“premier régime de retraite”)

“sale of the business” means the sale, assignment or other disposal referred to in subsection (2) of all or part of a business or all or part of the assets of the business; (“vente de l’entreprise”)

“successor employer” means the person who acquires the business or the assets of the original employer; (“employeur subséquent”)

“successor pension plan” means the successor employer’s pension plan; (“régime de retraite subséquent”)

“transferred member” means the original employer’s employee who is a member of the original pension plan who becomes the successor employer’s employee and a member of the successor pension plan in connection with the sale of the business. (“participant transféré”) 2010, c. 9, s. 68.

Application

(2) This section applies if an employer who contributes under a pension plan (or on whose behalf another person or entity makes contributions under a pension plan) sells, assigns or otherwise disposes of all or part of the employer’s business or all or part of the assets of the employer’s business to another person or entity. 2010, c. 9, s. 68.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 80 is amended by adding the following subsection:

Same, transfers between certain public sector pension plans

(2.1) If section 80.3 applies with respect to a transfer of assets,

(a) subsections (3) and (5) to (9) apply, with necessary modifications, with respect to the transfer; and

(b) if the transfer requires the consent of the eligible former employee and if he or she does not consent to the transfer, clauses (4) (a) and (c) apply. 2010, c. 24, s. 33 (1).

See: 2010, c. 24, ss. 33 (1), 49 (4).

Transfer of employment

(3) If, in conjunction with the sale of the business, an employee of the original employer who is a member of the original pension plan becomes an employee of the successor employer and a member of the successor pension plan, his or her employment is deemed, for the purposes of this Act, not to have been terminated by the change of employer. 2010, c. 9, s. 68.

Transferred employees’ entitlements

(4) If the original employer's employee who is a member of the original pension plan becomes the successor employer's employee and a member of the successor pension plan,

- (a) he or she continues to be entitled to the benefits provided under the original pension plan in respect of employment in Ontario or in a designated jurisdiction to the effective date of the sale of the business without further accrual;
- (b) he or she is entitled to credit in the successor pension plan for the period of his or her membership in the original pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the successor pension plan; and
- (c) he or she is entitled to credit in the original pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the original pension plan. 2010, c. 9, s. 68; 2010, c. 1, Sched. 23, s. 7 (4).

Exception

(5) If the successor employer assumes responsibility for the accrued pension benefits of the transferred member under the original pension plan, clause (4) (a) does not apply with respect to him or her and the successor pension plan is deemed to be a continuation of the original pension plan with respect to any benefits or assets transferred. 2010, c. 9, s. 68.

Employers' agreement to transfer assets, etc.

- (6) The original employer and the successor employer may enter into an agreement,
 - (a) to transfer to the successor employer the responsibility for providing pension benefits and other benefits under the original pension plan for transferred members, former members, retired members and other persons entitled to benefits or for classes of them; and
 - (b) to transfer assets from the original pension plan to the successor pension plan in connection with this transfer of responsibility. 2010, c. 9, s. 68.

Same

(7) A person or entity required to make contributions on behalf of the original employer or the successor employer, as the case may be, under the employer's pension plan may enter into the employers' agreement on behalf of that employer. 2010, c. 9, s. 68.

Same

(8) Clause (6) (a) does not require the successor pension plan to provide the same pension benefits and other benefits for the transferred members that were provided for them under the original pension plan. 2010, c. 9, s. 68.

Consent of members, etc.

(9) If the employers' agreement provides for the consent of any member, the consent of any former member, the consent of any retired member or the consent of any other person to the transfer of assets in respect of his or her pension benefits and ancillary benefits for which any eligibility requirements have been met,

- (a) the agreement must give all members, all former members, all retired members or all other persons, as the case may be, the opportunity to consent to the transfer of assets in respect of their pension benefits and ancillary benefits for which any eligibility requirements have been met; and
- (b) their prior consent must be obtained in accordance with such requirements as may be prescribed. 2011, c. 9, Sched. 35, s. 7 (1).

Requirement for Superintendent's consent

(10) The Superintendent's prior consent is required to authorize the transfer of assets from the original pension plan to the successor pension plan. 2010, c. 9, s. 68.

Application for consent

(11) The administrator of either pension plan or such other person as may be prescribed may apply for the Superintendent's consent to the transfer of assets from the original pension plan to the successor pension plan. 2010, c. 9, s. 68.

Notice of application

(12) If the employers' agreement to transfer assets requires the consent of transferred members, former members, retired members or other persons, the applicant shall ensure that notice of the application for the Superintendent's consent is given in accordance with such requirements as may be prescribed. 2010, c. 9, s. 68.

Statutory criteria for Superintendent's consent

(13) The Superintendent shall consent to the transfer of assets in accordance with the application and in accordance with the employers' agreement if all of the following criteria, and such other criteria as may be prescribed, are satisfied:

1. The original employer and the successor employer must have entered into an agreement to transfer the assets, and the applicant must give the Superintendent notice of their agreement.
2. If the agreement requires the consent of the transferred members, former members and retired members of the original pension plan, or the consent of other persons entitled to benefits under the original pension plan, their consent must have been given for the transfer, and the applicant must give the Superintendent notice of their consent.
3. The administrators of the two pension plans must have agreed upon the manner of determining the amount of the assets to be transferred, and the applicant must give the Superintendent notice of their agreement.
4. If the pension benefits and other benefits to be provided under the successor pension plan for the transferred members are not the same as the pension benefits and other benefits provided for them under the original pension plan, the commuted value of the benefits provided for the transferred members under the successor pension plan must not be less than the commuted value of the benefits provided for them under the original pension plan, as adjusted for any payments made from the original pension plan to a prescribed retirement savings arrangement or directly to the transferred members in connection with the transfer of the assets.
5. The commuted value of the benefits referred to in paragraph 4 is determined as of the effective date of the transfer of the assets.
6. If the original pension plan has a surplus as of the effective date of the transfer of assets, the amount of assets to be transferred must include a portion of the surplus determined in accordance with the regulations. 2010, c. 9, s. 68; 2010, c. 24, s. 33 (2, 3); 2011, c. 9, Sched. 35, s. 7 (2).

Notices

(14) The notices required by subsection (13) must comply with such requirements as may be prescribed. 2010, c. 9, s. 68.

Waiver of conditions

(15) The Superintendent may waive one or more of the conditions referred to in subsections 79.2 (5) and (6) in the prescribed circumstances. 2010, c. 9, s. 68.

Transition, transfers upon the sale of a business

Interpretation

80.1 (1) In this section,

“original employer” means the employer who sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business; (“premier employeur”)

“original pension plan” means the original employer's pension plan; (“premier régime de retraite”)

“sale of the business” means the sale, assignment or other disposal referred to in subsection (2) of all or part of a business or all or part of the assets of the business; (“vente de l'entreprise”)

“successor employer” means the person who acquires the business or the assets of the original employer; (“employeur subséquent”)

“successor pension plan” means the successor employer's pension plan; (“régime de retraite subséquent”)

“transfer agreement” means the agreement described in subsection (4). (“accord de transfert”) 2010, c. 9, s. 68.

Application

(2) This section applies if both of the following criteria are satisfied:

1. Before the day on which this section comes into force, an employer who contributes under a pension plan (or on whose behalf another person or entity makes contributions under a pension plan) sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business to another person or entity.
2. The pension plan is in a prescribed class of pension plans or is a prescribed pension plan. 2011, c. 9, Sched. 35, s. 8 (1).

Eligible employees

(3) This section applies with respect to employees of the original employer who were members of the original pension plan and who, in connection with the sale of the business, become the successor employer's employees and members of the successor pension plan. 2010, c. 9, s. 68.

Transfer agreement

(4) The administrator of the original pension plan and the administrator of the successor pension plan or such other persons as may be prescribed may enter into one or more agreements,

- (a) authorizing eligible employees who are employed by the successor employer on the day this section comes into force to elect to transfer the value of their accrued pension benefits under the original pension plan to the successor pension plan;
- (a.1) authorizing eligible employees whose employment with the successor employer or whose membership in the successor pension plan terminated on or after May 18, 2010 and before the date on which this section comes into force to elect to transfer the value of their accrued pension benefits under the original pension plan to the successor pension plan;
- (b) transferring to the successor employer the responsibility for providing pension benefits and other benefits under the original pension plan for all or any of the eligible employees who make the election described in clause (a) or (a.1);
- (c) authorizing the transfer of assets from the original pension plan to the successor pension plan in connection with this transfer; and
- (d) establishing the manner of determining the amount of assets to be transferred. 2010, c. 9, s. 68; 2010, c. 24, s. 34 (1); 2011, c. 9, Sched. 35, s. 8 (2, 3); 2014, c. 7, Sched. 26, s. 11 (1).

Same

(4.1) A transfer agreement may authorize the election described in clause (4) (a) or (a.1) or in both clauses. 2011, c. 9, Sched. 35, s. 8 (4).

Same, employers

(5) A person or entity required to make contributions on behalf of the original employer or the successor employer, as the case may be, under the employer's pension plan may enter into the transfer agreement on behalf of that employer. 2010, c. 9, s. 68.

Same, eligible employees

(6) The transfer agreement cannot authorize individuals to elect to make the transfer described in clause (4) (a) or (a.1) if, before May 18, 2010, they began receiving a pension from the original pension plan or the successor pension plan. 2012, c. 8, Sched. 44, s. 7.

Same, benefits

(7) Neither clause (4) (b) nor subsection 79.2 (11) requires the successor pension plan to provide the same pension benefits and other benefits for the eligible employees who make the election described in clause (4) (a) or (a.1) that were provided for them under the original pension plan. 2014, c. 7, Sched. 26, s. 11 (2).

Same, prescribed requirements

(8) The transfer agreement must satisfy such requirements as may be prescribed. 2010, c. 9, s. 68.

Duty to transfer assets

(9) The administrator of the original pension plan shall transfer assets to the successor pension plan in accordance with the transfer agreement if all of the following criteria, and such other criteria as may be prescribed, are satisfied:

1. The transfer agreement must be filed with the Superintendent before the assets are transferred.
2. The transfer agreement must establish the manner of determining the amount of assets to be transferred.
3. Eligible employees must have been given notice of their right, under the transfer agreement, to elect to transfer the value of their accrued pension benefits and the ancillary benefits for which they have met the eligibility requirements to the successor pension plan, and the notice must satisfy such requirements as may be prescribed.
4. The eligible employees who elected to make this transfer must have made their election in accordance with the transfer agreement and in accordance with such other requirements as may be prescribed. 2010, c. 9, s. 68; 2010, c. 24, s. 34 (2).

Repeal

(10) This section is repealed on July 1, 2017. 2010, c. 9, s. 68; 2014, c. 7, Sched. 26, s. 11 (3); 2015, c. 20, Sched. 34, s. 7.

Transfers upon a change of trade unions, MEPPs

80.2 (1) This section applies if a group of members of a multi-employer pension plan (the “original pension plan”) are represented by a trade union and, in accordance with section 62 of the *Labour Relations Act, 1995*, the trade union ceases to represent the members and they become represented by a different trade union certified as their bargaining agent and become members of a different pension plan (the “successor pension plan”). 2010, c. 9, s. 69.

Transfer, election by members

(2) The administrator of the original pension plan shall transfer to the successor pension plan all the assets and liabilities respecting those members who have elected under section 42 to transfer their entitlement to the successor pension plan and the administrator of the successor pension plan shall accept them as assets and liabilities of the successor pension plan. 2010, c. 9, s. 69.

Transfer, other circumstances

(3) If the members of the original pension plan are not entitled to make an election under section 42, the administrator shall transfer to the successor pension plan all assets and liabilities of the pension plan attributable to such members determined as prescribed and the administrator of the successor pension plan shall accept them as assets and liabilities, determined as prescribed, of the successor pension plan. 2010, c. 9, s. 69.

Exception

(4) This section does not apply where there is a reciprocal transfer agreement respecting the pension plans or in such other circumstances as may be prescribed. 2010, c. 9, s. 69; 2010, c. 24, s. 35.

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Transfers between certain public sector pension plans

Definitions

80.3 (1) In this section,

“federal public service” has the same meaning as “public service” in subsection 2 (1) of the *Public Service Employment Act* (Canada); (“fonction publique fédérale”)

“Public Service Superannuation Plan (Canada)” means the pension plan established under the *Public Service Superannuation Act* (Canada). (“Régime de pension de retraite de la fonction publique (Canada)”) 2010, c. 24, s. 36.

Interpretation

(2) Expressions used in this section have the same meaning as in section 80 unless the context requires otherwise. 2010, c. 24, s. 36.

Eligible former employees

(3) A person who ceases to be employed in the Ontario public sector is an eligible former employee for the purposes of this section if he or she becomes an employee in the federal public service in connection with the sale of a business to the Government of Canada. 2010, c. 24, s. 36.

Application

(4) This section applies with respect to the transfer of assets from such public sector pension plans as may be prescribed to the Public Service Superannuation Plan (Canada) in respect of eligible former employees. 2010, c. 24, s. 36.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 80.3 is amended by adding the following subsection:

Exception

(4.1) However, this section does not apply with respect to a transfer of assets under section 6.1 of the *Ministry of Revenue Act*. 2011, c. 9, Sched. 35, s. 9.

See: 2011, c. 9, Sched. 35, ss. 9, 14 (2).

Requirement for Superintendent’s consent

(5) The Superintendent’s prior consent is required to authorize a transfer of assets from the original pension plan to the successor pension plan, and the Superintendent shall consent to the transfer if the requirements of this Act are satisfied. 2010, c. 24, s. 36.

Same

(6) The administrator of the original pension plan or such other person as may be prescribed may apply for the Superintendent's consent to the transfer of assets from the original pension plan to the successor pension plan. 2010, c. 24, s. 36.

Same, if eligible former employee's consent is required

(7) If the employers' agreement requires the prior consent of an eligible former employee to the transfer of assets in respect of his or her benefits and if the eligible former employee gives his or her consent in accordance with the agreement, the administrator of the original pension plan is authorized to transfer the assets in accordance with the employers' agreement. 2010, c. 24, s. 36.

Commuted value

(8) If the pension benefits and other benefits to be provided under the successor pension plan for the eligible former employees are not the same as the pension benefits and other benefits provided for them under the original pension plan, the commuted value of the benefits provided for them under the successor pension plan must not be less than the commuted value of the benefits provided for them under the original pension plan, as adjusted for any payments made from the original pension plan to a prescribed retirement savings arrangement or directly to the eligible former members in connection with the transfer of assets. 2010, c. 24, s. 36.

Same

(9) The commuted value of the benefits referred to in subsection (8) is determined as of the effective date of the transfer of the assets. 2010, c. 24, s. 36.

See: 2010, c. 24, ss. 36, 49 (4).

Transfers to jointly sponsored pension plan (conversion of single employer pension plan)

80.4 (1) This section applies with respect to pension plans that are public sector pension plans and with respect to prescribed pension plans or classes of pension plans. 2014, c. 7, Sched. 26, s. 12.

Proposed conversion and transfer of assets

(2) This section applies if an employer proposes to convert a single employer pension plan that provides defined benefits into a jointly sponsored pension plan, and proposes to implement the conversion through a transfer of assets and liabilities from the single employer pension plan to another pension plan that is a jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 12.

Requirements re: defined contribution benefits

(3) If the single employer pension plan provides defined contribution benefits as well as defined benefits, the transfer of assets is not authorized unless the employer complies with such requirements relating to the defined contribution benefits as may be prescribed. 2014, c. 7, Sched. 26, s. 12.

Notice of proposal

(4) The administrator shall give the members, former members, retired members and other persons entitled to benefits under the single employer pension plan a notice about the proposed conversion of the pension plan and transfer of assets to the jointly sponsored pension plan, in accordance with such requirements as may be prescribed by regulation, and the notice must contain the following information and such other information as may be prescribed:

1. A statement that the employer and the members of a jointly sponsored pension plan are required to make contributions in respect of any going concern unfunded liability and solvency deficiency, if applicable, and that these contributions may be required in respect of benefits that accrued before the date of the transfer of assets.
2. A statement indicating that on the wind up of a jointly sponsored pension plan, the amount or commuted value of a pension benefit, a deferred pension or an ancillary benefit may be reduced.
3. A statement that pension benefits provided by jointly sponsored pension plans are not guaranteed by the Guarantee Fund.
4. If applicable, a statement that the jointly sponsored pension plan and its members are excluded from the operation of section 74 (grow-in benefits for members). 2014, c. 7, Sched. 26, s. 12.

Same, to trade union

(5) The administrator shall give notice of the proposed conversion and transfer of assets to any trade union that represents members of the single employer pension plan, and the notice must be given within the prescribed period and must contain the information specified by the regulations. 2014, c. 7, Sched. 26, s. 12.

Requirement re: consent of members, etc.

(6) The transfer of assets is not authorized unless the members, former members, retired members and other persons entitled to benefits under the single employer pension plan consent to the proposed conversion and transfer of assets, or are deemed in accordance with the regulations to have consented to the conversion and transfer. 2014, c. 7, Sched. 26, s. 12.

Same

(7) The consent of the members, former members, retired members and other persons entitled to benefits under the single employer pension plan to the proposed conversion and transfer of assets must be obtained in accordance with such requirements as may be prescribed by regulation, and the regulations may permit a trade union that represents members of the pension plan to consent on their behalf. 2014, c. 7, Sched. 26, s. 12.

Same

(8) The regulations may authorize the Superintendent to vary the prescribed requirements for determining whether consent is given or is deemed to have been given by the members of the single employer pension plan, and to vary the prescribed requirements for obtaining their consent. 2014, c. 7, Sched. 26, s. 12.

Notice to Superintendent

(9) The administrator shall give notice of the proposed conversion and transfer of assets to the Superintendent and the notice must be given within the prescribed period and must contain the information specified by the regulations. 2014, c. 7, Sched. 26, s. 12.

Requirement re: consent of Superintendent

(10) The transfer of assets is not authorized unless the Superintendent consents to it in advance. 2014, c. 7, Sched. 26, s. 12.

Application for Superintendent's consent

(11) The employer may apply for the Superintendent's consent to the transfer of assets from the single employer pension plan to the jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 12.

Notice of application

(12) The administrator shall ensure that notice of the application for the Superintendent's consent is given to members, former members, retired members and other persons entitled to benefits under the single employer pension plan, and to any trade union that represents members of the plan, in accordance with such requirements as may be prescribed. 2014, c. 7, Sched. 26, s. 12.

Statutory criteria for Superintendent's consent

(13) The Superintendent shall consent to the transfer of assets in accordance with the application if all of the following criteria, and such other criteria as may be prescribed, are satisfied:

1. Notice of the application for the Superintendent's consent has been given in accordance with this section to the members, former members, retired members and other persons entitled to benefits under the single employer pension plan and to any trade union that represents members of the plan.
2. The employer of the single employer pension plan and the sponsors of the jointly sponsored pension plan have entered into an agreement with respect to the proposed transfer of assets.
3. Notice of the proposed conversion of the pension plan and transfer of assets has been given in accordance with this section to the members, former members, retired members and other persons entitled to benefits under the plan, to any trade union that represents members of the plan and to the Superintendent.
4. Consent to the proposed conversion and transfer of assets has been given or is deemed to have been given, in accordance with this section, by the members, former members, retired members and other persons entitled to benefits under the plan.
5. As of the effective date of the transfer, the employer is a participating employer under the jointly sponsored pension plan.
6. As of the effective date of the transfer, the transferred members and other transferees cease to be entitled to benefits under the single employer pension plan and they are entitled to benefits under the jointly sponsored pension plan.

7. As of the effective date of the transfer, the commuted value of the pension benefits provided under the jointly sponsored pension plan for the transferred members is not less than the commuted value of their pension benefits under the single employer pension plan.
8. As of the effective date of the transfer, the pension benefits provided under the jointly sponsored pension plan for the other transferees are, at a minimum, the same as the pension benefits provided for them under the single employer pension plan.
9. As of the effective date of the transfer, every transferred member is entitled to credit in the jointly sponsored pension plan for the period of his or her membership in the single employer pension plan for the purpose of determining eligibility for membership in, or entitlement to benefits under, the jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 12.

Amount of assets to be transferred

(14) The regulations may authorize the Superintendent, in prescribed circumstances, to vary the amount of assets otherwise required to be transferred from the single employer pension plan to the jointly sponsored pension plan. 2014, c. 7, Sched. 26, s. 12.

Surplus

(15) If any assets remain in the single employer pension plan after the transfer of assets under this section, the amount of the remaining assets, excluding any assets that relate to defined contribution benefits, is deemed to be surplus under the single employer pension plan. 2014, c. 7, Sched. 26, s. 12.

Exclusion from grow-in benefits

(16) If the jointly sponsored pension plan and its members are excluded from the operation of section 74 (grow-in benefits for members) on the effective date of the transfer of assets, the transferred members are excluded from the operation of section 74 as of that date. 2014, c. 7, Sched. 26, s. 12.

Cancellation, etc., of special payments

(17) If, before the effective date of the transfer of assets, the employer is required to make special payments under the single employer pension plan in respect of a going concern unfunded liability or solvency deficiency, the regulations may specify circumstances in which the requirement to make special payments on or after the effective date of the transfer of assets is cancelled or the amount of the special payments is reduced, and the regulations may impose conditions relating to the cancellation or reduction. 2014, c. 7, Sched. 26, s. 12.

Withdrawal as participating employer

(18) If, after the transfer of assets, the employer withdraws as a participating employer in the jointly sponsored pension plan, the employer shall, in the prescribed circumstances, pay the prescribed amount into the pension fund of the jointly sponsored pension plan for the benefit of the transferred members and other transferees. 2014, c. 7, Sched. 26, s. 12.

Conflict

(19) This section prevails over any document that creates and supports the single employer pension plan or the jointly sponsored pension plan and over any collective agreement and it prevails despite any trust that may exist in favour of any person. 2014, c. 7, Sched. 26, s. 12.

Crown immunity

(20) The following rules apply with respect to the transfer of assets from the single employer pension plan to the jointly sponsored pension plan, if the transfer complies with this Act and the regulations:

1. Any reduction in the amount or the commuted value of a pension benefit, an ancillary benefit, a pension or a deferred pension that results from the transfer of assets is deemed not to constitute an expropriation.
2. No amount on account of damages, compensation or costs is owing or payable to any person and no remedy is available to any person against the Crown in connection with the transfer of assets. This rule does not apply with respect to an arbitration proceeding under section 77.12.
3. No action, claim or demand that is directly or indirectly related to the transfer of assets may be brought or maintained against the Crown. This rule does not apply with respect to an arbitration proceeding under section 77.12. 2014, c. 7, Sched. 26, s. 12.

Expenses incurred by trade union

(21) If a trade union that represents members of the single employer pension plan is entitled to vote on the conversion and transfer of assets on behalf of the members, the trade union is entitled to be reimbursed from the pension fund its reasonable fees and expenses, of the type that are prescribed, relating to the vote. 2014, c. 7, Sched. 26, s. 12.

Order to return contributions

(22) If the transfer of assets does not comply with this Act or the regulations, the Superintendent may, by order, require the administrator of the jointly sponsored pension plan to pay to a transferred member from the pension fund the amount by which the transferred member's contributions, made on or after the effective date of the transfer of assets, exceed the amount that would have been payable by him or her if the transfer had not been implemented, with interest calculated in the prescribed manner. 2014, c. 7, Sched. 26, s. 12.

Enforcement

(23) Subject to section 89, an order under subsection (22), exclusive of the reasons therefor, may be filed in the Superior Court of Justice and is thereupon enforceable as an order of that court. 2014, c. 7, Sched. 26, s. 12.

Definitions

(24) In this section,

"other transferees" means the individuals who are former members, retired members and other persons entitled to benefits under the single employer pension plan immediately before the effective date of the transfer of assets described in this section to the jointly sponsored pension plan; ("autres personnes transférées")

"transferred members" means the individuals who are members of the single employer pension plan immediately before the effective date of the transfer of assets described in this section to the jointly sponsored pension plan. ("participants transférés") 2014, c. 7, Sched. 26, s. 12.

Adoption of successor pension plan

81. (1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the successor pension plan shall be deemed to be a continuation of the original pension plan. R.S.O. 1990, c. P.8, s. 81 (1); 2010, c. 9, s. 70 (1).

Same, multi-employer pension plans

(1.1) Where a multi-employer pension plan established pursuant to a collective agreement or trust agreement is amended to be a successor to an existing multi-employer pension plan established pursuant to a collective agreement or trust agreement and the participating employers cease to make contributions to the original multi-employer pension plan, the original pension plan shall be deemed not to be wound up and the successor pension plan shall be deemed to be a continuation of the original pension plan. 2015, c. 38, Sched. 17, s. 2 (1).

Continuation of benefits

(2) The benefits under the original pension plan in respect of employment and membership before the establishment of the successor pension plan are deemed to be benefits under the successor pension plan. 2010, c. 9, s. 70 (2); 2015, c. 38, Sched. 17, s. 2 (2).

Same

(2.1) Subsection (2) does not require the successor pension plan to provide the same pension benefits and other benefits for the transferred members that were provided for them under the original pension plan. 2010, c. 9, s. 70 (2).

Application of subs. (2)

(3) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the successor pension plan. R.S.O. 1990, c. P.8, s. 81 (3); 2010, c. 9, s. 70 (3).

Requirement for Superintendent's consent

(4) The Superintendent's prior consent is required to authorize the transfer of assets from the original pension plan to the successor pension plan. 2010, c. 9, s. 70 (4).

Application

(5) The administrator of either pension plan or such other persons as may be prescribed may apply for the Superintendent's consent to the transfer of assets from the original pension plan to the successor pension plan. 2010, c. 9, s. 70 (4).

Statutory criteria for Superintendent's consent

(6) The Superintendent shall consent to the transfer of assets in accordance with the application if all of the following criteria, and such other criteria as may be prescribed, are satisfied:

1. The administrators of the two pension plans must have agreed upon the manner of determining the amount of assets to be transferred, and the applicant must give the Superintendent notice of their agreement.
2. If the pension benefits and other benefits to be provided under the successor pension plan for the transferred members are not the same as the pension benefits and other benefits provided for them under the original pension plan, the commuted value of the benefits provided for the transferred members under the successor pension plan must not be less than the commuted value of the benefits provided for them under the original pension plan, as adjusted for any payments made from the original pension plan to a prescribed retirement savings arrangement or directly to the transferred members in connection with the transfer of the assets.
3. The commuted value of the benefits referred to in paragraph 2 is determined as of the effective date of the transfer of the assets.
4. If the original pension plan has a surplus as of the effective date of the transfer of assets, the amount of assets to be transferred must include a portion of the surplus determined in accordance with the regulations. 2010, c. 9, s. 70 (4); 2010, c. 24, s. 37.

Waiver of conditions

(7) The Superintendent may waive one or more of the conditions referred to in subsections 79.2 (5) and (6) in the prescribed circumstances. 2010, c. 9, s. 70 (4).

(8) REPEALED: 2010, c. 9, s. 70 (5).

CONVERSION OF SINGLE EMPLOYER PENSION PLANS

Conversion by amending the pension plan

81.0.1 (1) This section applies with respect to single employer pension plans that are public sector pension plans and with respect to prescribed pension plans or classes of pension plans. 2014, c. 7, Sched. 26, s. 13.

Proposed conversion

(2) This section applies if an employer proposes to convert a single employer pension plan that provides defined benefits into a jointly sponsored pension plan, and proposes to implement the conversion by amending the pension plan. 2014, c. 7, Sched. 26, s. 13.

Restriction re: filing of amendments

(3) Amendments to the pension plan to convert it into a jointly sponsored pension plan cannot be filed under section 12 until the requirements of this section are satisfied. 2014, c. 7, Sched. 26, s. 13.

Requirements re: defined contribution benefits

(4) If the single employer pension plan provides defined contribution benefits as well as defined benefits, the conversion of the pension plan is not authorized unless the employer complies with such requirements relating to the defined contribution benefits as may be prescribed. 2014, c. 7, Sched. 26, s. 13.

Notice of proposed conversion

(5) The administrator shall give notice of the proposed conversion to the members, former members, retired members and other persons entitled to benefits under the plan, in accordance with such requirements as may be prescribed by regulation, and the notice must contain the following information and such other information as may be prescribed:

1. A statement that the employer and the members of a jointly sponsored pension plan are required to make contributions in respect of any going concern unfunded liability and solvency deficiency, if applicable, and that these contributions may be required in respect of benefits that accrued before the date of the conversion.
2. A statement indicating that on the wind up of a jointly sponsored pension plan, the amount or commuted value of a pension benefit, a deferred pension or an ancillary benefit may be reduced.
3. A statement that pension benefits provided by jointly sponsored pension plans are not guaranteed by the Guarantee Fund. 2014, c. 7, Sched. 26, s. 13.

Same, for trade union

(6) The administrator shall give notice of the proposed conversion to any trade union that represents members of the pension plan, and the notice must be given within the prescribed period and must contain the information specified by the regulations. 2014, c. 7, Sched. 26, s. 13.

Requirement re: consent of members, etc.

(7) The conversion of the pension plan is not authorized unless the members, former members, retired members and other persons entitled to benefits under the plan consent to the conversion, or are deemed in accordance with the regulations to have consented to the conversion. 2014, c. 7, Sched. 26, s. 13.

Same

(8) The consent of the members, former members, retired members and other persons entitled to benefits under the pension plan to the proposed conversion of the plan must be obtained in accordance with such requirements as may be prescribed by regulation, and the regulations may permit a trade union that represents members of the pension plan to consent on their behalf. 2014, c. 7, Sched. 26, s. 13.

Same

(9) The regulations may authorize the Superintendent to vary the prescribed requirements for determining whether consent is given or is deemed to have been given by the members of the pension plan, and to vary the prescribed requirements for obtaining their consent. 2014, c. 7, Sched. 26, s. 13.

Notice to Superintendent

(10) The administrator shall give notice of the proposed conversion to the Superintendent and the notice must be given within the prescribed period and must contain the information specified by the regulations. 2014, c. 7, Sched. 26, s. 13.

Requirement re: consent of Superintendent

(11) The conversion of the pension plan is not authorized unless the Superintendent consents to it in advance. 2014, c. 7, Sched. 26, s. 13.

Application for consent

(12) The employer may apply for the Superintendent's consent to the proposed conversion of the pension plan. 2014, c. 7, Sched. 26, s. 13.

Notice of application

(13) The administrator shall ensure that notice of the application for the Superintendent's consent is given to members, former members, retired members and other persons entitled to benefits under the plan, and to any trade union that represents members of the plan, in accordance with such requirements as may be prescribed. 2014, c. 7, Sched. 26, s. 13.

Statutory criteria for Superintendent's consent

(14) The Superintendent shall consent to the conversion of the pension plan in accordance with the application if all of the following criteria and such other criteria as may be prescribed are satisfied:

1. Notice of the application for the Superintendent's consent has been given in accordance with this section to the members, former members, retired members and other persons entitled to benefits under the plan, and to any trade union that represents members of the plan.
2. Notice of the proposed conversion has been given in accordance with this section to the members, former members, retired members and other persons entitled to benefits under the plan, to any trade union that represents members of the plan and to the Superintendent.
3. Consent to the proposed conversion has been given or is deemed to have been given, in accordance with this section, by the members, former members, retired members and other persons entitled to benefits under the plan.
4. The effective date of the conversion has been determined in accordance with the regulations.
5. As of the effective date of the conversion, the commuted value of the pension benefits provided for the members is not less than the commuted value of their pension benefits under the single employer pension plan.
6. As of the effective date of the conversion, the pension benefits provided for former members, retired members and other persons entitled to benefits under the plan are, at a minimum, the same as their pension benefits under the single employer pension plan.

7. If the plan has a going concern unfunded liability or solvency deficiency as of the effective date of the conversion, the employer is required to make contributions in accordance with the regulations to liquidate the liability or deficiency. 2014, c. 7, Sched. 26, s. 13.

Conflict

(15) This section prevails over any document that creates and supports the pension plan and over any collective agreement and it prevails despite any trust that may exist in favour of any person. 2014, c. 7, Sched. 26, s. 13.

Crown immunity

(16) The following rules apply with respect to the conversion of the pension plan, if the conversion complies with this Act and the regulations:

1. Any reduction in the amount or the commuted value of a pension benefit, an ancillary benefit, a pension or a deferred pension that results from the conversion is deemed not to constitute an expropriation.
2. No amount on account of damages, compensation or costs is owing or payable to any person and no remedy is available to any person against the Crown in connection with the conversion.
3. No action, claim or demand that is directly or indirectly related to the conversion may be brought or maintained against the Crown. 2014, c. 7, Sched. 26, s. 13.

Expenses incurred by trade union

(17) If a trade union that represents members of the pension plan is entitled to vote on the conversion on behalf of the members, the trade union is entitled to be reimbursed from the pension fund its reasonable fees and expenses, of the type that are prescribed, relating to the vote. 2014, c. 7, Sched. 26, s. 13.

Order to return contributions

(18) If the conversion of the pension plan does not comply with this Act or the regulations, the Superintendent may, by order, require the administrator to pay to a member of the pension plan from the pension fund the amount by which the member's contributions, made on or after the effective date of the conversion, exceed the amount that would have been payable by him or her if the conversion had not been implemented, with interest calculated in the prescribed manner. 2014, c. 7, Sched. 26, s. 13.

Enforcement

(19) Subject to section 89, an order under subsection (18), exclusive of the reasons therefor, may be filed in the Superior Court of Justice and is thereupon enforceable as an order of that court. 2014, c. 7, Sched. 26, s. 13.

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

INSOLVENCY AND BANKRUPTCY

Authority to approve agreements re insolvency, etc.

Companies' Creditors Arrangement Act (Canada)

81.1 (1) For the purposes of subsection 6 (7) of the *Companies' Creditors Arrangement Act* (Canada), the Superintendent may approve an agreement by the relevant parties referred to in that subsection respecting the payment to a pension fund of certain amounts referred to in subsection 6 (6) of that Act in connection with a compromise or arrangement under that Act. 2010, c. 9, s. 71.

Bankruptcy and Insolvency Act (Canada)

(2) For the purposes of subsection 60 (1.6) of the *Bankruptcy and Insolvency Act* (Canada), the Superintendent may approve an agreement by the relevant parties referred to in that subsection respecting the payment to a pension fund of certain amounts referred to in subsection 60 (1.5) of that Act in connection with a proposal under that Act. 2010, c. 9, s. 71.

Prerequisites

(3) The Superintendent shall not approve an agreement under this section unless it satisfies such requirements as may be prescribed. 2010, c. 9, s. 71.

Decision

(4) A decision by the Superintendent under this section to approve or not to approve an agreement is final and is not subject to a hearing or an appeal. 2010, c. 9, s. 71.

See: 2010, c. 9, ss. 71, 80 (2).

PENSION BENEFITS GUARANTEE FUND

Guarantee Fund continued

82. (1) The Pension Benefits Guarantee Fund is continued under the name Pension Benefits Guarantee Fund in English and Fonds de garantie des prestations de retraite in French. R.S.O. 1990, c. P.8, s. 82 (1).

Administration

(2) The Superintendent is responsible for the administration of the Guarantee Fund including the investment of the assets of the Guarantee Fund. R.S.O. 1990, c. P.8, s. 82 (2); 1997, c. 28, s. 203.

Expenses

(3) The Superintendent may charge to the Guarantee Fund the reasonable expenses incurred by the Superintendent in the administration of the Guarantee Fund. R.S.O. 1990, c. P.8, s. 82 (3); 1997, c. 28, s. 203.

Funding of the Guarantee Fund

(3.1) The Guarantee Fund is to be funded by all employers required to make contributions under pension plans that provide defined benefits that are not exempt from the application of the Guarantee Fund by this Act or the regulations. 2009, c. 18, Sched. 24, s. 1 (1).

Same

(3.2) The amounts to be paid under subsection (3.1) by employers to the Guarantee Fund shall be determined in accordance with the prescribed rules. 2009, c. 18, Sched. 24, s. 1 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 82 is amended by adding the following subsection:

Matters to be considered in determining amount of funding

(3.3) In making regulations to prescribe rules for determining the amount to be paid by employers to the Guarantee Fund, the Lieutenant Governor in Council shall take into account the following:

1. The risk of claims against the Guarantee Fund and the estimated amount of potential claims to be paid by the Guarantee Fund.
2. That the amount standing to the credit of the Guarantee Fund should be sufficient for the purpose of paying claims without any additional amount provided by a loan or grant under subsection (4) or (5).
3. That the level of funding required from employers should be reasonably stable over the long term. 2009, c. 18, Sched. 24, s. 1 (2).

See: 2009, c. 18, Sched. 24, ss. 1 (2), 3 (2).

Loans to Guarantee Fund

(4) If at any time the amount standing to the credit of the Guarantee Fund is insufficient for the purpose of paying claims, the Lieutenant Governor in Council may authorize the Minister of Finance to make loans out of the Consolidated Revenue Fund to the Guarantee Fund on such terms and conditions as the Lieutenant Governor in Council directs. R.S.O. 1990, c. P.8, s. 82 (4); 2004, c. 31, Sched. 31, s. 5.

Grant to Guarantee Fund

(5) If at any time the amount standing to the credit of the Guarantee Fund is insufficient for the purpose of paying claims, the Lieutenant Governor in Council may authorize the Minister of Finance to make a grant, on such terms and conditions as the Lieutenant Governor in Council directs, to the Guarantee Fund out of money appropriated for that purpose by the Legislature. 2009, c. 18, Sched. 24, s. 1 (3); 2010, c. 1, Sched. 23, s. 8.

Loans and grants discretionary

(6) Nothing in this Act or the regulations requires the Lieutenant Governor in Council to authorize the Minister of Finance to make either a loan or a grant to the Guarantee Fund. 2009, c. 18, Sched. 24, s. 1 (3).

Liability of Guarantee Fund limited

(7) The total liability of the Guarantee Fund to guarantee pension benefits at any particular time is limited to the assets of the Guarantee Fund at that time, calculated after including any loan or grant that may have been made to the Guarantee Fund under subsection (4) or (5). 2009, c. 18, Sched. 24, s. 1 (3).

Guarantee Fund declaration

83. (1) Subject to section 89 (hearing and appeal), the Superintendent shall by order declare, in the circumstances mentioned in subsection (2), that the Guarantee Fund applies to a pension plan. 1997, c. 28, s. 204 (1).

Conditions precedent

- (2) The Superintendent shall make the declaration if,
- (a) the pension plan is registered under this Act or is registered in a designated jurisdiction to provide for the reciprocal application of this Act;
 - (b) the pension plan provides defined benefits that are not exempt from the application of the Guarantee Fund by this Act or the regulations;
 - (c) the pension plan is wound up in whole or in part; and

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) is amended by striking out “in whole or in part”. See: 2010, c. 9, ss. 72 (1), 80 (2).

- (d) the Superintendent is of the opinion, upon reasonable and probable grounds, that the funding requirements of this Act and the regulations cannot be satisfied. R.S.O. 1990, c. P.8, s. 83 (2); 1997, c. 28, s. 204 (2); 2010, c. 1, Sched. 23, s. 9; 2010, c. 9, s. 72 (2).

Guaranteed benefits

84. (1) If the Superintendent by order declares that the Guarantee Fund applies to a pension plan, the following are guaranteed by the Guarantee Fund, subject to the limitations and qualifications as are set out in this Act or are prescribed:

- 1. Any pension in respect of employment in Ontario.
- 2. Any deferred pension in respect of employment in Ontario to which a former member is entitled, if the former member’s employment or membership was terminated before the 1st day of January, 1988 and the former member was at least forty-five years of age and had at least ten years of continuous employment with the employer, or was a member of the pension plan for a continuous period of at least ten years, at the date of termination of employment.
- 3. A percentage of any defined pension benefits in respect of employment in Ontario to which a member or former member is entitled under section 36 or 37 (deferred pension), or both, if his or her employment or membership was terminated on or after the 1st day of January, 1988, equal to 20 per cent if the combination of his or her age plus years of employment or membership in the pension plan equals fifty, plus an additional $\frac{2}{3}$ of 1 per cent for each additional one-twelfth credit of age and employment or membership to a maximum of 100 per cent.
- 4. All additional voluntary contributions, and the interest thereon, made by members, former members or retired members while employed in Ontario.
- 5. The minimum value of all required contributions made to the pension plan by a member, former member or retired member in respect of employment in Ontario plus interest.
- 6. That part of a pension or deferred pension guaranteed under this subsection to which a former spouse of a member, former member or retired member is entitled under an order under the *Family Law Act*, a family arbitration award or a domestic contract.
- 7. Any pension to which a survivor of a former member or retired member is entitled under subsection 48 (1) (death before commencement of payment). R.S.O. 1990, c. P.8, s. 84 (1); 1997, c. 28, s. 205; 1999, c. 6, s. 53 (20); 2005, c. 5, s. 56 (26); 2010, c. 9, s. 73 (1-5).

Bridging benefits

(2) For the purpose of this section, if a member, former member or retired member has at least ten years of continuous employment with the employer, a deferred pension or a pension benefit includes bridging benefits. R.S.O. 1990, c. P.8, s. 84 (2); 2010, c. 9, s. 73 (6).

Part year

(3) In determining the combination of age and membership or employment for subsection (1), one-twelfth credit shall be given for each full month of age and for each full month of continuous employment or membership as of the date of termination of employment. R.S.O. 1990, c. P.8, s. 84 (3).

Application

(3.1) This section applies if the effective date of the wind up of the pension plan is on or after April 1, 1987. 2010, c. 9, s. 73 (7).

(4) REPEALED: 2010, c. 9, s. 73 (8).

Payments not guaranteed

85. The following are not guaranteed by the Guarantee Fund:

1. The payment of a pension or pension benefit under a pension plan that has been established or maintained for less than five years at the date of the wind up, if the date of the wind up is on or after the date on which the *Securing Pension Benefits Now and for the Future Act, 2010* received Royal Assent.
- 1.1 The payment of a pension or pension benefit under a pension plan that has been established or maintained for less than three years at the date of the wind up, if the date of the wind up is before the date on which the *Securing Pension Benefits Now and for the Future Act, 2010* received Royal Assent.
2. Any increase to a pension or pension benefit or increase to the value of a pension or pension benefit that became effective within five years before the date of the wind up, if the date of the wind up is on or after the date on which the *Securing Pension Benefits Now and for the Future Act, 2010* received Royal Assent.
- 2.1 Any increase to a pension or pension benefit or increase to the value of a pension or pension benefit that became effective within three years before the date of the wind up, if the date of the wind up is before the date on which the *Securing Pension Benefits Now and for the Future Act, 2010* received Royal Assent.
3. The amount of any pension or pension benefit, including any bridging supplement, in excess of \$1,000 per month or such greater amount as is prescribed by the regulations.
4. Pension benefits provided under a multi-employer pension plan.
- 4.1 Pension benefits provided under a designated multi-jurisdictional pension plan in respect of employment outside Ontario or in respect of included employment as defined in subsection 2 (1) of the *Pension Benefits Standards Act, 1985* (Canada).
5. Pension benefits provided under a pension plan that provides defined benefits, if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 85 is amended by adding the following paragraph:

5.1 Pension benefits that are target benefits.

See: 2010, c. 24, ss. 38 (2), 49 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 85 is amended by adding the following paragraph:

5.2 Optional benefits.

See: 2010, c. 24, ss. 38 (3), 49 (4).

6. Pension benefits provided by prescribed pension plans or prescribed classes of pension plans. R.S.O. 1990, c. P.8, s. 85; 2010, c. 1, Sched. 23, s. 10; 2010, c. 24, s. 38 (1).

Lien for payment out of Guarantee Fund

86. (1) Where money is paid out of the Guarantee Fund as a result of the wind up, in whole or in part, of a pension plan, the Superintendent has a lien and charge on the assets of the employer or employers who provided the pension plan. R.S.O. 1990, c. P.8, s. 86 (1); 1997, c. 28, s. 206.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out “in whole or in part”. See: 2010, c. 9, ss. 74, 80 (2).

Amount of lien

(2) The lien and charge is in an amount equal to the amount of the payment out of the Guarantee Fund plus interest thereon calculated at the rate and in the manner prescribed by the regulations. R.S.O. 1990, c. P.8, s. 86 (2).

Real property

(3) The lien and charge does not affect assets that are real property until a notice of the lien and charge that includes a description of the real property is registered in the proper land registry office, and the Superintendent may so register notice of the lien and charge. R.S.O. 1990, c. P.8, s. 86 (3); 1997, c. 28, s. 206.

Subrogation

(4) The Superintendent is subrogated to the rights of the administrator of a pension plan in respect of which the Superintendent authorizes payment from the Guarantee Fund in satisfaction of a pension, deferred pension, pension benefit or contribution guaranteed under section 84 (guaranteed benefits). R.S.O. 1990, c. P.8, s. 86 (4); 1997, c. 28, s. 206.

ORDERS

Order by Superintendent

87. (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund. R.S.O. 1990, c. P.8, s. 87 (1).

Condition precedent to order

(2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,

- (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
- (b) that the pension plan does not comply with this Act and the regulations; or
- (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations. R.S.O. 1990, c. P.8, s. 87 (2).

Time

(3) In an order under this section, the Superintendent may specify the time or times when or the period or periods of time within which the person to whom the order is directed must comply with the order. R.S.O. 1990, c. P.8, s. 87 (3).

Reasons for order

(4) An order under this section is not effective unless the reasons for the order are set out in the order. R.S.O. 1990, c. P.8, s. 87 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 87 is repealed and the following substituted:

SUPERINTENDENT'S ORDERS

Superintendent's orders

Order re administration in contravention of Act

87. (1) Subject to section 89, the Superintendent may make an order requiring an administrator or any other person to take or refrain from taking any action in respect of a pension plan or a pension fund if the Superintendent is of the opinion, upon reasonable and probable grounds,

- (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
- (b) that the pension plan does not comply with this Act and the regulations; or
- (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations. 2010, c. 9, s. 75.

Same

(2) An order under subsection (1) may specify one or more deadlines or periods for complying with the order. 2010, c. 9, s. 75.

Same

(3) An order under subsection (1) is not effective unless the reasons for the order are set out in it. 2010, c. 9, s. 75.

Order re preparation of report

(4) Subject to section 89, the Superintendent may make an order requiring an administrator to take an action specified in subsection (5) if the Superintendent is of the opinion,

- (a) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are inappropriate for a pension plan;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is repealed and the following substituted:

- (a) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are not consistent with accepted actuarial practice;

See: 2010, c. 24, ss. 39 (1), 49 (4).

- (b) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are not consistent with accepted actuarial practice; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed and the following substituted:

- (b) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are inappropriate in the circumstances for the pension plan, whether or not those assumptions or methods are otherwise consistent with accepted actuarial practice; or

See: 2010, c. 24, ss. 39 (1), 49 (4).

- (c) that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the regulations or the pension plan. 2010, c. 9, s. 75.

Same

- (5) An order under subsection (4) may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both to be used in the preparation of the new report. 2010, c. 9, s. 75.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 87 is amended by adding the following subsection:

Same

- (5.1) An order under subsection (4) may specify one or more deadlines or periods for complying with the order. 2010, c. 24, s. 39 (2).

See: 2010, c. 24, ss. 39 (2), 49 (4).

Special order re preparation of report

- (6) In such circumstances as may be prescribed, the Superintendent may make an order requiring an administrator, an employer or any other person to prepare and file a new report or another prescribed type of report in respect of a pension plan if the Superintendent is of the opinion that there are reasonable and probable grounds to believe,

- (a) that there is a substantial risk to the security of the benefits payable under the pension plan to members, former members, retired members or other persons entitled to payments under the pension plan; or
(b) that there has been a significant change in the circumstances of the pension plan. 2010, c. 9, s. 75.

Same

- (7) An order under subsection (6) may,
(a) specify the assumptions or methods or both to be used in the preparation of the report;
(b) require an employer or other person to give the administrator any information necessary to prepare the report;
(c) require the administrator, employer or other person to pay all or part of the cost of preparing the report; and
(d) specify one or more deadlines or periods for complying with the order. 2010, c. 9, s. 75.

Same

- (8) The order takes effect immediately upon its making. 2010, c. 9, s. 75.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (8) is repealed. See: 2010, c. 24, ss. 39 (3), 49 (4).

Notice of special order

- (9) The Superintendent shall serve a copy of the order under subsection (6), together with written reasons, upon the administrator, the employer and every other person who is required to comply with it. 2010, c. 9, s. 75.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 87 is amended by adding the following subsection:

Effective date of order

- (10) The order under subsection (6) takes effect on the later of,
(a) the latest date on which a person is served under subsection (9) with a copy of the order; and
(b) the date specified in the order. 2010, c. 24, s. 39 (4).

See: 2010, c. 24, ss. 39 (4), 49 (4).

See: 2010, c. 9, ss. 75, 80 (2).

Order by Superintendent

88. (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 89 (hearing and appeal), by order may require an administrator to take the action specified in subsection (3). R.S.O. 1990, c. P.8, s. 88 (1); 1997, c. 28, s. 207 (1).

Grounds for order

- (2) The Superintendent may make an order under this section where the Superintendent is of the opinion,
- (a) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are inappropriate for a pension plan;
 - (b) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are not consistent with accepted actuarial practice; or
 - (c) that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the regulations or the pension plan. R.S.O. 1990, c. P.8, s. 88 (2); 1997, c. 28, s. 207 (2); 1999, c. 15, s. 15.

Contents of order

(3) An order under this section may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report. R.S.O. 1990, c. P.8, s. 88 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 88 is repealed and the following substituted:

Appeal or judicial review of special orders

88. (1) A person who is required to comply with an order made under subsection 87 (6) may appeal the order to the Tribunal by filing a notice of appeal with the Tribunal, and serving it on the Superintendent, within 15 days after the person receives the order. 2010, c. 9, s. 75.

Effect of appeal

(2) The appeal does not stay the order but the Tribunal may grant a stay until it disposes of the appeal. 2010, c. 9, s. 75.

Parties

(3) The parties to the appeal are the appellant, the Superintendent and such other persons as the Tribunal may specify. 2010, c. 9, s. 75.

Power of the Tribunal

(4) The Tribunal may, by order, confirm, vary or revoke the order or substitute another order. 2010, c. 9, s. 75.

Effect of judicial review

(5) An application for judicial review of an order made under subsection 87 (6) or under subsection (4), and any appeal from an order of the court on the application for judicial review, does not stay the order made under subsection 87 (6) or under subsection (4), as the case may be. 2010, c. 9, s. 75.

Same

(6) Despite subsection (5), a judge of the court to which the application is made or a subsequent appeal is taken may grant a stay until the matter is finally determined. 2010, c. 9, s. 75.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 88 is repealed and the following substituted:

Tribunal hearing re special orders

88. (1) A person who is required to comply with an order made under subsection 87 (6) is entitled to a hearing by the Tribunal about the order if the person delivers a written request to the Tribunal within 30 days after a copy of the order is served on the person. 2010, c. 24, s. 40.

Effect of request

(2) The request for a hearing by the Tribunal does not stay the order, but the Tribunal may grant a stay until it disposes of the request. 2010, c. 24, s. 40.

Hearing

(3) Upon receiving the request made in accordance with subsection (1), the Tribunal shall appoint a time for and hold the hearing. 2010, c. 24, s. 40.

Parties

(4) The parties to the hearing are the person who requests the hearing, the Superintendent and such other persons as the Tribunal specifies. 2010, c. 24, s. 40.

Power of Tribunal

(5) At or after the hearing, the Tribunal by order may confirm, vary or revoke the order or substitute another order. 2010, c. 24, s. 40.

See: 2010, c. 24, ss. 40, 49 (4).

See: 2010, c. 9, ss. 75, 80 (2).

NOTICES OF, AND APPEALS FROM, INTENDED DECISIONS AND ORDERS

Notices and hearings

Notice of intention re registration

89. (1) If the Superintendent intends to refuse to register a pension plan, an amendment to a pension plan or part of an amendment to a pension plan or to revoke such a registration, the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the applicant or administrator of the plan. 2010, c. 24, s. 42 (1).

Notice of intention re various orders

(2) If the Superintendent intends to make or refuse to make any of the following orders, the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the administrator of the pension plan and on any other person to whom the intended order is to be directed:

1. An order under subsection 42 (9) or 43 (5) (repayment of money).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 of subsection 89 (2) of the Act is repealed and the following substituted: (See: 2015, c. 20, Sched. 34, s. 8)

1. An order under subsection 39.1 (12), 42 (9) or 43 (5) (repayment of money).

- 1.1 An order under subsection 68 (6) (effective date of a wind up).
2. An order under subsection 79.2 (15) (return of transferred assets).
3. An order under section 83 (application of the Guarantee Fund).
4. An order under section 87 (administration of pension plan).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 4 is repealed and the following substituted:

4. An order under subsection 87 (1) (administration of pension plan).

See: 2010, c. 9, ss. 77 (3), 80 (2).

5. An order under section 88 (preparation of a report). 2010, c. 9, s. 77 (1, 2); 2010, c. 24, s. 42 (2, 3).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 5 is repealed and the following substituted:

5. An order under subsection 87 (4) (preparation of a report).

See: 2010, c. 9, ss. 77 (3), 80 (2).

Notice of intention re membership

(3) If the Superintendent intends to make or refuse to make an order requiring an administrator to accept an employee as a member of a class of employees for whom a pension plan is established or maintained, the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the administrator of the pension plan and the Superintendent shall serve, or require the administrator to serve, a copy of the notice and written reasons on the employee. 2010, c. 24, s. 42 (4).

Notice re reimbursement of overpayment, etc.

(3.0.1) If the Superintendent intends to consent or refuse to consent under subsection 62.1 (5) to a payment from the pension fund to the employer, the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the applicant and the Superintendent may require the applicant to transmit a copy of the notice and written reasons to

such other persons or classes of persons or both as the Superintendent specifies in the notice to the applicant. 2010, c. 24, s. 42 (5).

Notice re payment of surplus

(3.1) If an application is filed in accordance with subsection 78 (2) for the payment of surplus to the employer and the Superintendent intends to consent or refuse to consent under subsection 78 (1), the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the applicant and on any person who made written representations to the Superintendent in accordance with subsection 78 (3). 2010, c. 24, s. 42 (6).

(3.2) REPEALED: 2010, c. 24, s. 42 (7).

Notice re terms and conditions of approval or consent

(4) If the Superintendent intends to refuse to give an approval or consent or intends to attach terms and conditions to an approval or consent under this Act or the regulations, other than a consent referred to in subsection (3.0.1) or (3.1), the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the applicant for the approval or consent. 2010, c. 24, s. 42 (8).

Notice re wind up order

(5) If the Superintendent intends to make an order requiring the wind up of a pension plan or declaring a pension plan wound up, the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the administrator and the employer, and the Superintendent may require the administrator to transmit a copy of the notice and written reasons to such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator. 2010, c. 24, s. 42 (9).

Notice requiring hearing

(6) A notice under subsection (1), (2), (3), (3.0.1), (3.1), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Tribunal if the person delivers to the Tribunal, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing. R.S.O. 1990, c. P.8, s. 89 (6); 1997, c. 28, s. 208 (6); 2010, c. 24, s. 42 (10).

Power of Superintendent

(7) Where the person on whom the notice is served does not require a hearing in accordance with subsection (6), the Superintendent may make the intended decision indicated in the notice. R.S.O. 1990, c. P.8, s. 89 (7); 2010, c. 24, s. 42 (11).

Hearing

(8) Where the person requires a hearing by the Tribunal in accordance with subsection (6), the Tribunal shall appoint a time for and hold the hearing. R.S.O. 1990, c. P.8, s. 89 (8); 1997, c. 28, s. 208 (7).

Power of Tribunal

(9) At or after the hearing, the Tribunal by order may direct the Superintendent to make or refrain from making the intended decision indicated in the notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent. R.S.O. 1990, c. P.8, s. 89 (9); 1997, c. 28, s. 208 (7); 2010, c. 24, s. 42 (12).

(10) REPEALED: 1997, c. 28, s. 208 (8).

Parties

(11) The Superintendent, the person who requires a hearing and such other persons as the Tribunal specifies are parties to the proceeding before the Tribunal under this section. R.S.O. 1990, c. P.8, s. 89 (11); 1997, c. 28, s. 208 (9).

(12), (13) REPEALED: 1997, c. 28, s. 208 (10).

Release of documentary evidence

(14) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined. R.S.O. 1990, c. P.8, s. 89 (14).

90. REPEALED: 1997, c. 28, s. 209.

Appeal to court

91. (1) A party to a proceeding before the Tribunal under section 89 may appeal to the Divisional Court from the decision or order of the Tribunal. 1997, c. 28, s. 210 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out “section 89” and substituting “section 88 or 89”. See: 2010, c. 9, ss. 78, 80 (2).

Certified copy of record

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the fee established by the Minister, the Tribunal shall furnish the party with a certified copy of the record of the proceeding, including the documents received in evidence and the decision or order appealed from. R.S.O. 1990, c. P.8, s. 91 (2); 1997, c. 28, s. 210 (2).

92. REPEALED: 1997, c. 28, s. 211.

FINANCIAL SERVICES COMMISSION OF ONTARIO

93. REPEALED: 2010, c. 1, Sched. 23, s. 11.

94. REPEALED: 1997, c. 28, s. 213 (1).

Reciprocal agreements

95. (1) The Commission may, subject to the approval of the Lieutenant Governor in Council,

- (a) enter into agreements with the authorized representatives of another province or the Government of Canada to provide for the reciprocal application and enforcement of pension benefits legislation, the reciprocal registration, audit and inspection of pension plans and for the establishment of a Canadian association of pension supervisory authorities;
- (b) authorize a Canadian association of pension supervisory authorities to carry out such duties on behalf of the Commission as the Commission may require; and
- (c) delegate to a pension supervisory authority or the government of a designated jurisdiction such functions and powers under this Act as the Commission may determine and the Commission may accept similar delegations of functions and powers from a pension supervisory authority or the government of a designated jurisdiction. R.S.O. 1990, c. P.8, s. 95 (1); 2010, c. 1, Sched. 23, s. 12 (1, 2).

Same

(2) Without limiting the generality of subsection (1), an agreement may provide for,

- (a) the delegation of any powers and duties of the Superintendent under this Act and the regulations to a pension supervisory authority or the government of a designated jurisdiction;
- (b) the delegation to the Superintendent of any powers and duties of a pension supervisory authority or of the government of a designated jurisdiction under pension benefits legislation. 1999, c. 15, s. 17; 2010, c. 1, Sched. 23, s. 12 (3-5).

Delegation to the Superintendent

(3) The Superintendent may accept a delegation described in clause (2) (b). 1999, c. 15, s. 17.

96. REPEALED: 1997, c. 28, s. 213 (1).

Research

97. (1) It is a function of the Superintendent to conduct surveys and research programs and to compile statistical information related to pensions and pension plans. R.S.O. 1990, c. P.8, s. 97 (1); 1997, c. 28, s. 214.

Provision of information

(2) The Superintendent may request an employer or an administrator or a member of a pension plan to provide information necessary to compile the statistical information and such persons shall comply with the request within a reasonable period of time. R.S.O. 1990, c. P.8, s. 97 (2); 1997, c. 28, s. 214.

Confidentiality

(3) The Superintendent shall use the information only for the purpose of compiling the statistical information. R.S.O. 1990, c. P.8, s. 97 (3); 1997, c. 28, s. 214.

Order to provide information to the Superintendent

98. (1) The Superintendent may, by order, require an employer, an administrator or any other person to give such information as the order specifies to the Superintendent or a person designated by the Superintendent for the purpose of enabling the Superintendent or designate to ascertain whether this Act and the regulations are being complied with. 2010, c. 24, s. 43.

Contents

(2) Without limiting the generality of subsection (1), the order may require the administrator to secure an appraisal of any or all of the assets of the pension fund by one or more independent valuers and provide the appraisal to the Superintendent or designate or it may authorize the Superintendent to obtain an appraisal at the administrator's expense. 2010, c. 24, s. 43.

Same

(3) The order may specify the form in which information is to be provided and the time within which it is to be provided to the Superintendent or designate. 2010, c. 24, s. 43.

Same

(4) The order has no effect unless the reasons for the order are set out in it. 2010, c. 24, s. 43.

Enforcement

(5) An order under this section, excluding the reasons for the order, may be filed in the Superior Court of Justice and upon being filed it is enforceable as an order of that court. 2010, c. 24, s. 43.

Security

99. Every person entrusted by the Superintendent with the custody or control of money in the course of employment shall give security in the manner and form provided by the *Public Officers Act*. R.S.O. 1990, c. P.8, s. 99; 1997, c. 28, s. 216.

AGREEMENTS WITH DESIGNATED JURISDICTIONS

Agreements with designated jurisdictions

100. (1) With the approval of the Lieutenant Governor in Council, the Minister may enter into one or more agreements on behalf of the Crown with a representative of a designated jurisdiction concerning the pension benefits legislation that governs designated multi-jurisdictional pension plans in Ontario and in the designated jurisdiction. 2010, c. 1, Sched. 23, s. 13.

Contents

(2) An agreement may provide for the application of this Act and the regulations to designated multi-jurisdictional pension plans, the application of the pension benefits legislation of a designated jurisdiction to those plans, the application of the agreement itself to those plans and the supervision and regulation of those plans. 2010, c. 1, Sched. 23, s. 13.

Same, changes in legal requirements

(3) Without limiting the generality of subsection (2), an agreement may provide for any of the following matters in relation to a designated multi-jurisdictional pension plan:

1. It may establish a mechanism for determining whether the Superintendent, or a person who has supervisory or regulatory powers under the pension benefits legislation of another designated jurisdiction, has the principal regulatory jurisdiction for the pension plan.
2. It may provide that this Act and the regulations, or any portion thereof, does not apply with respect to the pension plan in specified circumstances.
3. It may establish additional requirements that apply with respect to the pension plan in specified circumstances.
4. It may provide that a requirement of this Act or a regulation is deemed to be satisfied in respect of the pension plan if a corresponding requirement of the principal regulatory jurisdiction is satisfied or in such other circumstances as may be specified. 2010, c. 1, Sched. 23, s. 13.

Same

(4) For greater certainty, an agreement may provide for the following matters:

Final location

1. If, under a designated multi-jurisdictional pension plan, a member or former member has service in Ontario and in a designated jurisdiction, the agreement may establish requirements for determining the amount of the pension benefits, deferred pension, pension or ancillary benefits or any other amount payable under the pension plan in relation to the member or former member that differ from the requirements that would otherwise apply in the absence of the agreement. The requirements established by the agreement may result in an increase or a decrease in the amount to which the person would otherwise be entitled.

Additional contributions

2. It may require an employer, or a person or entity required to make contributions to the pension plan on the employer's behalf, to make contributions in addition to those required under this Act and the regulations and may specify the times and manner in which the contributions are to be made.

Allocation of assets

3. It may provide for the allocation of the assets of the pension plan between jurisdictions at the times and in the manner specified. 2010, c. 1, Sched. 23, s. 13.

Same, administrative matters

- (5) Without limiting the generality of subsection (2), an agreement may provide for the following matters:
 1. Matters respecting the administration and enforcement of this Act and the regulations and of the pension benefits legislation of the designated jurisdiction.
 2. The reciprocal application and enforcement of pension benefits legislation and the reciprocal registration, audit and inspection of the designated multi-jurisdictional pension plans.
 3. The delegation of any powers or duties of the Superintendent under this Act and the regulations to a person who has supervisory or regulatory powers under the pension benefits legislation of the designated jurisdiction.
 4. The delegation to the Superintendent of any powers or duties of a person who has supervisory or regulatory powers under the pension benefits legislation of the designated jurisdiction.
 5. The reciprocal exchange of information between the Superintendent and a person who has supervisory or regulatory powers under the pension benefits legislation of the designated jurisdiction if the information is necessary for the purposes of,
 - i. complying with, implementing or enforcing the agreement, or
 - ii. the administration and enforcement of this Act and the regulations and the pension benefits legislation of the designated jurisdiction. 2010, c. 1, Sched. 23, s. 13.

Effective date

- (6) An agreement or an amendment to an agreement with a designated jurisdiction does not come into effect in Ontario until a date that is specified by regulation. 2010, c. 1, Sched. 23, s. 13.

Same

- (7) An agreement with a designated jurisdiction ceases to have effect in Ontario on a date that is specified by regulation. 2010, c. 1, Sched. 23, s. 13.

Publication of agreements

- (8) The Minister shall publish each agreement and any amendments to the agreement in *The Ontario Gazette*. 2010, c. 1, Sched. 23, s. 13.

Status of agreement

101. (1) An agreement under section 100 is enforceable with respect to a designated multi-jurisdictional pension plan as if the agreement formed part of this Act and, in case of a conflict between the agreement and this Act or the regulations, the agreement prevails. 2010, c. 1, Sched. 23, s. 13.

Exception

- (2) Sections 84 and 85 prevail over an agreement under section 100. 2010, c. 1, Sched. 23, s. 13.

Restriction

- (3) An agreement under section 100 is not enforceable until it is published in *The Ontario Gazette*. 2010, c. 1, Sched. 23, s. 13.

Status of agreement

- (4) An agreement under section 100 is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 2010, c. 1, Sched. 23, s. 13.

EXEMPTIONS AND SPECIAL ARRANGEMENTS

Arrangements re windup of Nortel pension plans

102. (1) This section applies with respect to the following pension plans:
 1. The pension plan known as the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan, registered under this Act as number 0342048.

2. The pension plan known as the Nortel Networks Negotiated Pension Plan, registered under this Act as number 0587766. 2011, c. 9, Sched. 35, s. 10.

Transfer re pension

(2) A person who is receiving a pension from a Nortel pension plan as of the date of the wind up of the plan is entitled, despite subsection 73 (2), to require the administrator to transfer an amount equal to the commuted value of the person's pension into a life income fund that satisfies the prescribed requirements. 2012, c. 8, Sched. 44, s. 8.

Restriction

(2.1) However, the person's entitlement to the transfer is subject to such conditions and restrictions as may be prescribed. 2012, c. 8, Sched. 44, s. 8.

Direction

(3) The person may exercise his or her entitlement by delivering a direction to the administrator within the prescribed period, and the direction must be in a form approved by the Superintendent and must contain the prescribed information. 2011, c. 9, Sched. 35, s. 10.

Compliance

(4) The administrator shall comply with the direction within the prescribed period of time after it is delivered. 2011, c. 9, Sched. 35, s. 10.

Discharge of administrator

(5) The administrator is discharged on making the payment in accordance with the direction of the person if the payment complies with this Act and the regulations. 2011, c. 9, Sched. 35, s. 10.

Life income fund

(6) In this section,
"life income fund" has the meaning assigned in the regulations. 2011, c. 9, Sched. 35, s. 10.

GENERAL

Pension agency

103. The Lieutenant Governor in Council may establish or designate an agency for the purposes, among others, of receiving, holding and disbursing pension benefits under this Act. R.S.O. 1990, c. P.8, s. 103.

Transitional

104. Every pension plan that was registered and that continued to be qualified for registration under the *Pension Benefits Act*, being chapter 373 of the Revised Statutes of Ontario, 1980, immediately before the 1st day of January, 1988 is deemed to be registered. R.S.O. 1990, c. P.8, s. 104.

Extension of time

Procedural time limits

105. (1) Upon application by an affected person, the Superintendent may extend the following time limits, before or after they have expired, if the Superintendent is satisfied that there are reasonable grounds for doing so:

1. A procedural time limit related to the powers and duties of the Superintendent under this Act or the regulations. 2010, c. 24, s. 44.

Filing deadlines

(2) Upon application by an affected person, the Superintendent may extend the following time limits subject to the limits indicated, before or after they have expired, if the Superintendent is satisfied that there are reasonable grounds for doing so:

1. A time limit related to the filing of such documents as may be prescribed that, under this Act or the regulations, must be filed. The time limit may be extended for a maximum of 60 days and, if the Superintendent is satisfied that extraordinary grounds exist and that no person will be unduly prejudiced, for further periods. 2010, c. 24, s. 44.

Conditions

(3) When extending a time limit under this section, the Superintendent may impose such conditions as he or she considers appropriate in the circumstances. 2010, c. 24, s. 44.

Examinations, investigations and inquiries

Interpretation, persons

106. (1) The persons referred to in subsections (3) to (5) and (8) to (10) are the following:

1. The Superintendent.
2. A person designated by the Superintendent, and the designate does not have to be a person who is employed in the Commission. R.S.O. 1990, c. P.8, s. 106 (1); 1997, c. 28, s. 219; 2010, c. 24, s. 45.

Interpretation, purposes

(2) The purposes mentioned in subsections (3) to (5) and (10) are the following:

1. The administration of this Act and the regulations.
2. The administration of the Guarantee Fund.
3. The enforcement of any section of this Act or the regulations.
4. The exercise of a power or the carrying out of a duty under this Act or the regulations.
5. The carrying out of an order made under this Act. R.S.O. 1990, c. P.8, s. 106 (2).

Entry

(3) For a purpose mentioned in subsection (2), a person mentioned in subsection (1) may enter and have access to, through and over any business premises, where the person has reasonable grounds to believe books, papers, documents or things are kept that relate to a pension plan or pension fund. R.S.O. 1990, c. P.8, s. 106 (3).

Examinations

(4) A person mentioned in subsection (1) may make examinations, investigations and inquiries and may require the production of any book, paper, document or thing related to a pension plan or pension fund. R.S.O. 1990, c. P.8, s. 106 (4).

Copies or extracts

(5) A person mentioned in subsection (1) may make, take and remove or require the making, taking and removal of copies or extracts related to an examination, investigation or inquiry for a purpose mentioned in subsection (2). R.S.O. 1990, c. P.8, s. 106 (5).

Reasonable times

(6) The authority under subsections (3) to (5) shall be exercised only at reasonable times. R.S.O. 1990, c. P.8, s. 106 (6).

Private residence

(7) Subsection (3) is not authority to enter a private residence without the consent of the occupier. R.S.O. 1990, c. P.8, s. 106 (7).

Removal of books, etc., for copying

(8) A person mentioned in subsection (1) who is making an examination, investigation or inquiry may, upon giving a receipt therefor, remove any books, papers, documents or things relating to the subject-matter of the examination, investigation or inquiry for the purpose of making copies of the books, papers, documents or things, but the copying shall be carried out with reasonable dispatch and the books, papers, documents or things shall be returned forthwith after the copying is completed. R.S.O. 1990, c. P.8, s. 106 (8).

Copies

(9) A copy of any written or recorded material found in an examination, investigation or inquiry and purporting to be certified by a person mentioned in subsection (1) is admissible in evidence in any action, proceeding or prosecution for all purposes for which the original would have been admissible. R.S.O. 1990, c. P.8, s. 106 (9).

Application for warrant

- (10) If an occupier of a premises,
 - (a) denies entry or access to, through or over the premises to a person mentioned in subsection (1);
 - (b) instructs a person mentioned in subsection (1) to leave the premises;
 - (c) obstructs a person mentioned in subsection (1) who is acting for a purpose mentioned in subsection (2);
 - (d) refuses to comply with a request for the production of any thing the production of which is requested for the purpose of an examination, investigation or inquiry or for a purpose mentioned in subsection (2),

a person mentioned in subsection (1) may apply to a justice of the peace for an inspection order under section 108. R.S.O. 1990, c. P.8, s. 106 (10); 2016, c. 5, Sched. 22, s. 3 (1).

Identification

(11) A person exercising a power under this section shall provide identification at the time of entry. R.S.O. 1990, c. P.8, s. 106 (11).

Opinion, report, etc.

(12) The Superintendent may require a person exercising a power under this section to prepare an opinion, report or professional attestation about the results of any examination, investigation or inquiry made by the person under this section. 1999, c. 15, s. 18; 2016, c. 5, Sched. 22, s. 3 (2).

Cost of examination, etc.

(13) The Superintendent may order any person to pay all or part of the cost of an examination, investigation or inquiry under this section and to pay all or part of the cost of any opinion, report or professional attestation prepared following such an examination, investigation or inquiry (whether or not the opinion, report or attestation was required by the Superintendent), if the Superintendent considers it to be reasonable and fair in the circumstances to do so. 1999, c. 15, s. 18.

Same

(14) Without limiting the generality of subsection (13), an administrator or employer may be required to make a payment under that subsection. 1999, c. 15, s. 18.

Payment for reports

106.1 The Superintendent may order an administrator, an employer or any other person to pay all or part of the cost of preparing any report required by this Act or the regulations, if the Superintendent considers it to be reasonable and fair in the circumstances to do so. 1999, c. 15, s. 19.

Obstruction

107. (1) No person shall hinder or obstruct a person mentioned in subsection 106 (1) who is lawfully carrying out a duty under this Act.

Private residence

(2) A refusal of consent to enter a private residence is not and shall not be deemed to be hindering or obstructing within the meaning of subsection (1). R.S.O. 1990, c. P.8, s. 107.

Order by justice of the peace

108. (1) Where a justice of the peace is satisfied on evidence upon oath or affirmation,

(a) that there is reasonable and probable ground for believing that it is necessary,

(i) to enter and have access to, through and over any premises,

(ii) to make examinations, investigations or inquiries, and

(iii) to make, take and remove photographs, samples, copies or extracts related to an examination, investigation or inquiry,

or to do any of such things, for a purpose mentioned in subsection 106 (2); and

(b) that a person mentioned in subsection 106 (1),

(i) has been denied entry to the premises,

(ii) has reasonable grounds to believe that entry to the premises will be denied,

(iii) has been instructed to leave the premises,

(iv) has been obstructed, or

(v) has been refused production of any thing related to an examination, investigation or inquiry,

by the occupier of the premises,

the justice of the peace may issue an inspection order authorizing a person mentioned in subsection 106 (1) to act as mentioned in clause (a) in respect of the premises specified in the inspection order, by force if necessary, together with such police officer or officers as the person calls upon for assistance.

Execution of order

(2) An inspection order issued under this section shall be executed between 6 a.m. and 9 p.m. standard time unless the justice of the peace otherwise authorizes in the order.

Expiry of order

(3) An inspection order issued under this section shall state the date on which it expires, which shall be a date not later than fifteen days after the inspection order is issued.

Application without notice

(4) A justice of the peace may receive and consider an application for an inspection order under this section without notice to and in the absence of the owner or the occupier of the premises. R.S.O. 1990, c. P.8, s. 108.

Offence

109. (1) Every person who contravenes this Act or the regulations is guilty of an offence.

Idem

(2) Every person who contravenes an order made under this Act is guilty of an offence. R.S.O. 1990, c. P.8, s. 109.

Penalty

110. (1) Every person who is guilty of an offence under this Act is liable on conviction to a fine of not more than \$100,000 for the first conviction and not more than \$200,000 for each subsequent conviction. 1997, c. 28, s. 220 (1).

Persons re corporation

(2) Every director, officer, official or agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association is guilty of an offence if the person,

- (a) causes, authorizes, permits, acquiesces or participates in the commission of an offence referred to in section 109 by the corporation or unincorporated association; or
- (b) fails to take all reasonable care in the circumstances to prevent the corporation or unincorporated association from committing an offence referred to in section 109. 1997, c. 28, s. 220 (1).

Penalty

(3) A person who is guilty of an offence described in subsection (2) is liable on a first conviction to a fine of not more than \$100,000, and on each subsequent conviction to a fine of not more than \$200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of an offence arising from the same facts or circumstances. 1997, c. 28, s. 220 (1).

Order for payment

(4) Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company, the court that convicts the person may, in addition to any fine imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the insurance company. R.S.O. 1990, c. P.8, s. 110 (4).

Enforcement

(5) An order for payment under subsection (4), exclusive of the reasons therefor, may be filed in the Superior Court of Justice and is thereupon enforceable as an order of that court. R.S.O. 1990, c. P.8, s. 110 (5); 2006, c. 19, Sched. C, s. 1 (1).

Time limit

(6) No prosecution for an offence under this Act shall be commenced after five years after the date when the offence occurred or is alleged to have occurred. 1997, c. 28, s. 220 (2).

Power to restrain

111. Where a provision of this Act or the regulations or an order, approval or consent of the Superintendent under this Act is contravened, in addition to any other remedy and to any penalty imposed by law, the contravention may be restrained by action at the instance of the administrator of the pension plan affected by the contravention. 1997, c. 28, s. 221.

Service

112. (1) Any notice, order or other document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by regular mail addressed to the person to whom it is to be given, served or delivered at the person's last known address. R.S.O. 1990, c. P.8, s. 112 (1); 2004, c. 31, Sched. 31, s. 6.

Deemed service

(2) A notice, order or other document sent by regular mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, the person did not receive the notice, order or other document, or did not receive it until a later date, through absence, accident, illness or other cause beyond the person's control. R.S.O. 1990, c. P.8, s. 112 (2); 2004, c. 31, Sched. 31, s. 6; 2011, c. 9, Sched. 35, s. 11.

General notice

(3) Where the Superintendent is of the opinion that because the persons who are to be given any notice or document under this Act or the regulations are so numerous or for any other reason it is not reasonable to give the notice or document to all or any of the persons individually, the Superintendent may authorize the giving of the notice or document or reasonable notice of the contents of the notice or document to the persons by public advertisement or otherwise as the Superintendent may direct and the date on which the notice or document or the reasonable notice of the contents is first published or otherwise given as directed shall be deemed to be the date on which the notice or document is given. R.S.O. 1990, c. P.8, s. 112 (3).

Time for actions by administrator

113. An administrator of a pension plan who is required to take an action under this Act or the regulations shall take the action within the prescribed period of time. R.S.O. 1990, c. P.8, s. 113.

Fees

113.1 The Minister may require the payment of fees in relation to any matter under this Act and may approve the amount of those fees. 1997, c. 28, s. 223.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 113.1 of the Act is repealed and the following substituted: (See: 2015, c. 20, Sched. 34, s. 9)

Fees

113.1 The Minister may make regulations governing fees under this Act, including,

- (a) requiring the payment of fees in relation to any matter under this Act, including any services provided by or through the Ministry of Finance or the Commission;
- (b) prescribing the amount of fees or the manner of determining fees;
- (c) prescribing the manner in which and the period within which fees must be paid. 2015, c. 20, Sched. 34, s. 9.

Forms

113.2 (1) The Superintendent may approve forms for any purpose of this Act and require their use. 1997, c. 28, s. 223.

Content

(2) Any person required to use forms approved by the Superintendent shall provide the information specified in them. 2002, c. 18, Sched. H, s. 5 (2).

Conflict

114. In the event of a conflict between this Act and any other Act, except the *Financial Services Commission of Ontario Act*, 1997, this Act prevails unless the other Act states that it is to prevail over this Act. R.S.O. 1990, c. P.8, s. 114; 1997, c. 28, s. 222.

Regulations

115. (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing any matter that, under this Act, is permitted or required to be prescribed or to be otherwise done by regulation or in accordance with the regulations;
- (b) prescribing the times for filing or the last dates for filing of documents that are required to be filed under this Act;
- (c) prescribing reports that shall be submitted to the Superintendent, the contents and the method of preparation of the reports and the persons or classes of persons by whom the reports must be prepared;
- (d) prescribing pension benefits that are not guaranteed by the Guarantee Fund;
- (e) governing the payment of amounts by employers to the Guarantee Fund under subsection 82 (3.2), including rules,
 - (i) relating to assessments of amounts required to be paid,

- (ii) determining due dates for required payments,
- (iii) imposing interest or penalties on late payment or non-payment of amounts required to be paid and describing the method for determining the rate of interest or the amount of a penalty,
- (iv) determining the amount of any overpayment made by an employer and the circumstances in which the overpayment is to be refunded or applied in whole or in part against the amount of a future assessment;
- (f) prescribing procedures that shall govern the appointments of members of pension committees;
- (g) prescribing procedures that shall govern the establishment of advisory committees and the appointments of members of advisory committees;
- (h) prescribing requirements and restrictions that apply with respect to actuarial methods and assumptions that may be used in the preparation of reports required under this Act or the regulations;
- (i) prescribing the methods of calculating the values of assets and liabilities of pension funds;
- (j) prescribing criteria that must be complied with before any surplus may be paid out of a pension fund;
- (k) prescribing the rate or the method of determining the rate at which an employer shall pay money due from the employer under this Act on the winding up of a pension plan, and prescribing the manner of payment and to whom the payments shall be made;
- (l) regulating or prohibiting the investment of money from pension funds and prescribing investments or classes of investments in which such money may be invested;
- (m) prescribing requirements for retirement savings contracts and life annuity contracts between members, former members and retired members of pension plans and trustees to whom administrators may make payment when required in accordance with this Act, requiring such trustees to file specimens of such contracts before such payments may be made, and authorizing the Superintendent to refuse to file a specimen contract that does not meet the requirements;
- (n) prescribing the rate of interest and the method of calculating interest payable under this Act or the regulations, if such rate or method is not specified in the requirement for payment of the interest;
- (o) REPEALED: 1997, c. 28, s. 224 (2).
- (p) prescribing the time within which any document specified in the regulations that this Act requires to be given, transmitted, filed or served shall be given, transmitted, filed or served;
- (q) prescribing requirements that shall be complied with in the administration of a pension plan;
- (r) prescribing records that shall be kept by the administrator of a pension plan and the period of time for which such records shall be retained by the administrator;
- (s) requiring the audit of pension plans or classes of pension plans and pension funds and classes of pension funds and prescribing the persons or classes of persons who may perform the audits and the manner of performing the audits;
- (t) prescribing the manner of determining the portion of a pension benefit, pension, deferred pension or ancillary benefit that is attributable to employment before the 1st day of January, 1988 or that is attributable to employment on or after the 1st day of January, 1988;
- (u) prohibiting or regulating the reduction of bridging benefits or the variation of pension benefits by reference to benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act* (Canada);
- (v) governing the wind up of pension plans or classes of pension plans and prescribing priorities or the method of determining priorities on wind up, including priorities in allocation of assets;
- (w) governing the receiving, holding and disbursing of pension benefits by any agency established or designated under this Act;
- (x) exempting pension plans, pension funds, employees, administrators or other persons from the application of this Act or the regulations or from any section of this Act or the regulations;
- (y) governing the fees that may be imposed by an administrator under section 67.2;
- (z) prescribing, for the purposes of the definition of “designated jurisdiction” in subsection 1 (1), any jurisdiction in Canada, including Canada itself, as a jurisdiction in which there is in force legislation substantially similar to this Act;

- (z.1) prescribing the date on which an agreement under section 100 comes into effect with respect to a designated jurisdiction, and the date on which such an agreement ceases to have effect with respect to the designated jurisdiction;
- (z.2) providing for any matter that the Lieutenant Governor in Council considers necessary or advisable for the implementation of an agreement under section 100. R.S.O. 1990, c. P.8, s. 115 (1); 1997, c. 28, s. 224; 2007, c. 7, Sched. 31, s. 3 (1); 2009, c. 11, s. 50; 2009, c. 18, Sched. 24, s. 2 (1); 2010, c. 1, Sched. 23, s. 14 (1, 2); 2010, c. 9, s. 79 (1); 2010, c. 24, s. 46 (1).

Scope of regulations

(2) A regulation may be general or particular in its application and may be limited as to time or place or both. R.S.O. 1990, c. P.8, s. 115 (2).

Adoption of codes in regulations

(3) A regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, formula, standard or procedure, and may require compliance with a code, formula, standard or procedure so adopted. R.S.O. 1990, c. P.8, s. 115 (3).

Terms, conditions, qualifications, requirements

(4) Any provision of a regulation may be subject to such terms, conditions, qualifications or requirements as are specified in the regulation. R.S.O. 1990, c. P.8, s. 115 (4).

Classes of multi-employer pension plans

(5) Without limiting the generality of subsection (2), a regulation may establish one or more classes of multi-employer pension plans. 2007, c. 7, Sched. 31, s. 3 (2).

Public sector pension plans

(5.1) Different requirements may be prescribed for public sector pension plans than are prescribed for other classes of pension plans. 2010, c. 24, s. 46 (2).

Authority to make retroactive regulations re funding defined benefit plans

(6) A regulation relating to the funding of a pension plan that provides defined benefits, including any regulation prescribing anything referred to in section 55 as being prescribed and any regulation prescribing matters referred to in clause 115 (1) (c) or (i), may come into force on a day earlier than the day the regulation is filed and apply to a period that commences on or after December 31, 2009. 2009, c. 18, Sched. 24, s. 2 (2); 2010, c. 1, Sched. 23, s. 14 (3); 2010, c. 9, s. 79 (2).

(7) REPEALED: 2013, c. 2, Sched. 11, s. 1 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Review of Act, regulations

116. The Minister shall initiate a review of this Act and the regulations, or portions of this Act and the regulations, every five years beginning within five years after this section comes into force. 2010, c. 24, s. 47.

See: 2010, c. 24, ss. 47, 49 (4).

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