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Expert Commission on Pensions

Reviewing Ontario's Pension System: *What are the Issues?*

Response to the Discussion Paper

OCTOBER 12, 2007

Introduction

The Ontario Confederation of University Faculty Associations welcomes this opportunity to respond to the Commission's discussion paper on behalf of approximately 15,000 professors and academic staff in Ontario's universities. We applaud the government's decision to establish this commission as we feel that a review of the Ontario *Pension Benefits Act* is both appropriate and timely. There is a growing consensus in many Canadian jurisdictions that pension law and regulations are failing to keep pace with the evolving social, economic and labour market conditions we face in Canada today.

Our goals in this brief are to provide the commission with some background on the pension plans our members are enrolled in, to provide some insight into why the occupational pension plan regime for faculty is unusual relative to the rest of the public or broader public sector, and to raise a number of issues and concerns which are specific to our members. As stakeholders in one particular sector of the Ontario economy, we hope that the background information, data and insight we provide the commission will assist you in piecing together a comprehensive picture of the occupational pension plan regime in Ontario.

OCUFA brings a unique perspective to the discussion of pensions in Ontario; while we only represent a few occupations, our members actually belong to three different types of pension plans – defined contribution, defined benefit and hybrid plans. We hope to contribute something different to the discussion by bringing some ideas forward about why some of our members choose to belong to a hybrid or defined contribution plan, and why we believe the legislative regime should effectively regulate all existing types of plans, and also provide for innovation for the future. We believe that only by fully exploring the full range of pension possibilities in relation to particular career paths and profiles will the commission be able to develop recommendations that meet the needs of all Ontarians covered by occupational pension plans.

Comments on the Expert Commission's Mandate

There are several elements of the panel's mandate that we feel require comment: a) the appropriate role of the commission in relation to the citizens of Ontario, and b) the narrow range of issues and options the commission is mandated to consider.

OCUFA strongly believes that the appropriate role of an Ontario government mandated commission on pensions is to do research and develop recommendations that are designed to ensure income security in retirement for all Ontarians. We know from the results of previous research that defined benefit plans are primarily found in large, unionized workplaces, are over-represented in the public sector and broader public sector, and cover workers with jobs that pay above the industrial average wage for the province. While there can be no doubt that the regulation of defined benefit plans requires serious scrutiny and reform, the majority of Ontarians are outside of this tent, and will be unlikely to find their way in, no matter how effective this commission is at improving the *Pension Benefits Act*.

From the earliest development of the Canadian retirement system in the 1960's, it was envisaged that the appropriate model was a "three-legged stool": a guaranteed income component through the Old Age Security and Guaranteed Income Supplement (OAS/GIS), a mandatory pubic pension component in the Canada Pension Plan (CPP), and a private component comprising both occupational pension plans and personal tax-deductible savings (RRSP's). It is now clear that while the first two components are meeting our public policy expectations, the private component is failing for many Canadians. Less than 20% of employees in the private sector are covered by a pension plan. The current portability provisions in the Act and lack of portability arrangements outside of the public sector mean that even these members are unlikely to achieve a career-based retirement income. Further, whatever income they do receive will be eroded over time since few of these plans are indexed. The RRSP component of the private system has generally not played the role intended for it as a pension plan substitute for employees not covered by a pension plan. Instead, the system has evolved into one in which participation and benefit are concentrated among higher income Canadians who typically already have pension plans and who use the RSP as a tax planning tool.

We do appreciate that the panel has commissioned research from Statistics Canada on the role and importance of occupational pension plans in the total retirement income of Ontarians. However, we feel that the next step ought to be to study the retirement income adequacy of those Ontarians who are not in occupational pension plans of any kind - those in small workplaces, homemakers, the self-employed, the long-term unemployed, and others.

We wish to be clear that we fully support the government of Ontario's goal of maintaining and encouraging the system of defined benefit pension plans in Ontario, and the importance of safeguarding the security of existing pension benefits. For many Ontarians, a defined benefit pension plan provides not only retirement income security, but peace of mind as well. But the government must face up to the fact that the private, voluntary pension system is not the answer to income security in retirement for the majority of Ontarians.

At the same time, we do request that the commission include in its mandate the interests and concerns of those Ontarians that are covered by defined contribution and hybrid pension plans. Currently, the Ontario *Pension Benefits Act* provides little regulation of these plans. The Joint Forum of Financial Market Regulators has produced an extensive set of Guidelines for Capital Accumulation Plans, and expects capital accumulation plan sponsors to be in compliance with these guidelines. The guidelines cover many of the most important governance issues for defined contribution plans, including the number and range of investment options which should be made available, the oversight and performance evaluation of investment options and managers, the information and decision-making tools that should be made available to members and an extensive array of communication and disclosure requirements. These guidelines should be incorporated into the *Pension Benefits Act.*

We are also concerned that so-called group RSP's, financed in part by employer contributions, fall completely outside the regulatory system. Many of these plans are distinguishable from defined contribution plans only in that their members have no regulatory protection; this loophole must be closed. It is both possible and desirable to work to extend the reach of the defined benefit pension plan coverage in Ontario, while at the same time addressing the real needs and concerns of those Ontarians in other types of pension plans.

Follow Up to the Public Consultations

The research program developed by the commission to support its work is laudable for both its breadth and depth, and for its outreach to an international community of scholars who will bring a much needed global perspective to the commission's task. Our one regret is that we did not have access to the results of this research prior to appearing before the commission. We hope that the commission will make the results of its research program as widely available as possible, and ensure that stakeholders and interested Ontarians be given the opportunity to comment on the research. Further, we expect the government to create a process by which individuals may provide comment to the government on the recommendations made by the commission. Finally, should the government enact changes to the Pension Benefits Act as a result of the commission's recommendations, we expect that a full slate of public hearings will be scheduled on the legislative amendments to allow input on the specifics of the language and intent of the amendments.

Faculty Pension Plans in Ontario

Ontario universities differ from other parts of the public or broader public sector in the wide range of pension plans on offer. Currently, there are seven defined benefit plans in the system, three defined contribution plans, and eight hybrid plans with varying designs. All of the hybrid plans are defined contribution plans with minimum guaranteed pensions (see Appendices A and B for a summary of the plan details). Of the 18 universities in Ontario, six have more than one plan covering the various employee groups. The pension plans covering academic staff vary considerably in size, with a range of assets from $128 million to $3 billion. The median size of the pension plan in which the faculty are enrolled is approximately $650 million. However, given the preponderance of larger institutions in defined benefit plans, these plans in fact represent almost two thirds of total plan assets. The bulk of the remainder of the assets are in hybrid plans, with no more than 1 to 2 percent of assets held in the defined contribution plans.

All of the pension plans are contributory; on average, faculty contribute roughly 6% to the defined benefit plans, 5.7% to the defined contribution plans and 5.2% to the hybrid plans. Of the seven defined benefit plans, only the Ryerson plan defines the employer contribution to the plan (currently 8%). The average employer contribution to the defined contribution plans is 6.7% and to the hybrid plans is 6.1% (the employer contribution does not include the minimum guarantee reserve which is financed separately). In total, the average combined contribution rate is 12.3% in the defined contribution plans, and 11.3% in the hybrid plans. Contribution rates in the defined benefit plans are variable, a topic we will return to in a later section of the brief. (The contribution rates reflect the weighted average contribution rates above and below the YMPE for an average faculty salary).

A substantial portion of faculty in the Ontario university system retire at salaries that exceed the maximum pensionable salary set by the CRA. A number of universities have created supplemental pension plans to augment the formula pension provided by the registered plan; these plans vary in the extent to which they provide for the full formula pension an individual could expect in the absence of the pension cap. In the remainder of universities, the replacement ratio for retiring faculty is truncated by the cap.

Pension Plan Preferences of Professors

While the wide range of pension options within a single economic sector may seem unusual, in fact, pension plan choice is a hallmark of the higher education system in Canada and the United States. It is not unusual in American universities for the faculty to have a choice of enrolling in either a defined benefit or a defined contribution plan, and several additional optional retirement plans as well. This situation creates a natural laboratory for determining what the pension plan preferences of academics might actually be, when place of employment is held constant.

A study of faculty choice of pension plans was in fact completed for North Carolina State University. Faculty in that system have a choice of enrolling in the state employees' defined benefit plan, or one of several defined contribution plans (contribution rates for the plans are the same). Since 1971 when the defined contribution option was first introduced, only 30% of faculty have chosen the defined benefit option. The preference for defined contribution plans is even more pronounced among more recent hires; since 1989, only 16% of faculty chose the defined benefit plan. As we would expect, faculty who were older than average at age of hire were more likely to enroll in the defined benefit plan, but higher income faculty were more likely to choose one of the defined contribution plans. Survey data collected at the time of the study showed that faculty who expected to experience more career mobility preferred a defined contribution option. Interestingly, contract lecturers with low job security were more likely to prefer the state employees' defined benefit plan. The authors conclude that this outcome is also linked to career mobility; while the tenure-track faculty are hired from a national, and indeed, international labour market, the contract lecturers are hired from the local labour market.[1]

While there are no Ontario universities that offer faculty a choice of pension plans, the prevalence of hybrid and defined contribution plans in this sector can be seen as a different manifestation of the need for pension portability. As high income, high education workers who expect to experience some degree of career mobility, the portability of hybrid and defined contribution pension plans is attractive. This concern about portability is even reflected in the design of some of the defined benefit plans, which provide for higher-than-required termination benefits. While lack of portability is a general problem with defined benefit pension plans, the lack of a comprehensive reciprocal transfer protocol for Ontario universities makes this problem particularly acute for our members.

These particular demographic and career path characteristics of faculty make a variety of pension plans appropriate to their circumstances. For most Ontarians, however, the need for a guaranteed, quantified and adequate retirement income is of paramount importance, making defined benefit pension plans the appropriate choice.

The Academic Career and Pensions

As the commission rightly pointed out in the discussion paper, there are a number of trends occurring in the Ontario labour market that will affect our system of occupational pension plans; some of these trends, such as higher educational levels of the labour force, have been features of the academic career for some time. Others, such as the increasing number of women entering academia, are leading or lagging broader trends in the economy. In this section of the brief, we will discuss a number of features of the current academic career and demographics that affect pension outcomes, and pension choices. Other important labour market changes, particularly the rise of precarious work in academia, will be discussed in future sections of the brief.

The academic career is marked by two distinct characteristics that have implications for pension plan design and outcomes: a) the prolonged period of training and education, leading to a foreshortened career, and b) a salary structure which starts at below market rates, but rises continuously throughout an academic career.

Academic staff typically spend ten to twelve years in university to achieve the terminal degree required for their area of specialization; in the majority of disciplines, the terminal degree is a doctorate. In many fields, this is followed by periods of post-doctoral research and/or contract teaching. As a result, the average professor is middle aged by the time she has completed her education, post-university training and five to six year probationary period. The average age of retirement for faculty is approximately 62 years. While the end of mandatory retirement may change that, the evidence from universities in other jurisdictions would suggest that at most it will rise by one to two years. As a result, the typical academic staff member will have a career which lasts just over 30 years, in contrast to more than 45 years for an occupation requiring a high school diploma, or more than 40 years for an occupation requiring a bachelor's degree.

In addition to contributing to a shorter average career length, periods of time spend in contract teaching will also serve to reduce the years of credited service once an individual secures a tenure stream job, and the lack of pension portability may mean that any pension credits previously earned will not contribute to a career-earnings based pension.

The salary structure of academic staff also differs in material ways from that of other university-educated professionals. Compensation is highly correlated with years of service. Generally, professors progress through the academic ranks in a fairly linear fashion, achieving annual increases from date of hire to retirement in many cases (a small number of universities do cap salaries toward the end of a career). This career path is characterized by below market salaries for most of a professor's career, with final average earnings being close to market rates. An analysis by Hay Group of faculty compensation in comparison to professional jobs found a resulting gap in lifetime earnings between faculty and professionals in the private sector of 37%, and with professionals in the public sector of 15%. [2]

The combination of a truncated career and a back-end loaded compensation model makes saving for faculty retirement very challenging. Regardless of the type of pension plan faculty are enrolled in, fewer years to invest will require higher annual contributions than would be required over a normal career length. In addition, the below average salaries in the early part of an academic career, coupled with high final average earnings, means less compounding of early contributions, and difficulty achieving the expected replacement income ratio in retirement.

The aging of the academic workforce represents another challenge to the administration of our pension plans. University faculty are much older than many other occupational groups. In 2005-06, only one percent of all faculty were under the age of 30, and 9 percent were under the age of 35. With a recent increase in hiring, the average age of faculty has fallen to roughly 48 years from it peak of almost 50 in 1998. However, this is still almost a decade older than the labour force median of 39 for the country as a whole. At the other end of the age spectrum, 15 percent of faculty are over the age of 60, and 31 percent are over the age of 55. Even with the recent rise in hiring of tenure stream faculty, we can predict with confidence that the ratio of retirees to active faculty will continue to rise for some time. Currently, the ratio of active workers to retired workers in the Queen's pension plan is about 2.4 to 1; the ratio in the University of Toronto plan is around 1.8 to 1.

Pension Plan Coverage of Ontario Faculty

Pension plan coverage of academic staff is of growing concern to OCUFA. In response to decades of underfunding by consecutive Ontario governments, Ontario universities have shifted hiring to a substantial degree from permanent, full-time tenure stream positions to non-permanent types of appointments. Large numbers of faculty are hired to teach on a per-course basis, with limited or no job security. Others are hired on full-time contracts, but limited to a term of one to three years. Recent reports to the Ministry of Training, Colleges and Universities by Ontario universities show that more than half of all new faculty appointments under the Liberal government's Reaching Higher re-investment program for universities have been to part-time and limited term contracts.

OCUFA's member faculty associations have been making strides in improving the terms and conditions of employment for faculty hired outside of the tenure stream. However, much work remains to be done, and pension plan coverage and eligibility is an area where the structure of the appointments makes improvement quite challenging. The rampant use of 8 month contracts for faculty who teach on a per-course basis creates an on-going pattern of discontinuous employment. Even when these individuals have the right to teach the same course again the following year, they begin each year with a new contract of employment. An individual could teach the same course for his or her entire career, without ever achieving any degree of continuity or job security with the employer. Many per-course instructors, particularly in Southern Ontario, teach courses at multiple universities at the same time to try to approximate a full-time employment situation.

While limited term faculty may be more likely to have full-time and full-year appointments, many of them are also employed on a contract basis of limited duration, and one year contracts are quite common, particularly when used as leave replacements for tenure-stream faculty.

The current eligibility requirements in Ontario faculty pension plans set the bar for enrolment at a level that many faculty on contract simply cannot clear (see Appendix C for details of the eligibility rules for Ontario university faculty pension plans). Virtually all of the pension plans require that non-permanent employees be employed continuously for 24 months in order to become eligible to enroll in the pension plan. This stands in contrast to the eligibility requirements for tenure stream faculty, which often provide for eligibility much earlier than the statutory minimum standard. Generally, tenure stream members can elect to join the plan immediately upon date of hire. The 24 month continuous employment standard excludes all per-course instructors, and many limited term faculty from eligibility.

In addition, almost all plans also require part-time members to clear the second statutory bar, requiring that they earn 35% of the YMPE or work more than 700 hours in each of two consecutive years. Individuals teaching a single course at multiple universities will be unable to clear either of these bars, even though they may be carrying the equivalent of a full course load of teaching across the system.

Almost all of the Ontario faculty plans make membership in the pension plan compulsory for tenure stream and permanent faculty, once they have attained a certain age (usually 25 or 30) or a certain number of years of continuous service (ranging from six months to two years), or a combination of the two. However, when contract faculty or part-time faculty do become eligible for service, it is generally elective. From a public policy perspective, elective pension plan coverage for non-tenure stream appointments in Ontario universities is almost certain to lead to reduced pension coverage among these individuals, and put retirement income security out of reach.

The requirement that employees must complete two years of continuous membership in the plan before pension rights are vested is another hurdle that very few part-time or contractually limited term faculty will be able to clear. And finally, if a faculty member was able to establish some pension benefit rights under our single employer university plans, portability of pension benefits would be hampered by the limited number of reciprocal transfer agreements among these plans.

Obviously, these problems and issues are not limited to Ontario contract faculty; they are prevalent across the labour force as an ever increasing number of people are forced to accept precarious work. Clearly if we are to avoid disenfranchising large groups of Ontarians from participating in occupational pension plans, we will need to systematically remove the obstacles to participation: waiting periods for eligibility, delayed vesting rights, and lack of benefit portability.

The world of labour relations has moved considerably ahead of the pension world in the recognition that the use by employers of contracts to create discontinuous service should not be allowed to stand in the way of the achievement of workplace rights. If an individual is recognized as an employee with in the meaning of employment standards or labour relations legislation, he or she should be entitled to participate in the employer's pension plan covering employees performing similar work.

A number of Canadian jurisdictions, such as Manitoba and Quebec, have begun to make strides in these areas, with pension legislation requiring mandatory pension plan membership, and immediate vesting of benefit rights. Quebec has no 2-year provision for eligible employment; part-time employees are automatically eligible to join if they have either worked 700 hours or have earned at least 35% of the YMPE in the previous year. Manitoba's criterion for part-time eligibility is only 25% of YMPE in two consecutive years, ensuring that an even greater number of part-time workers can participate in pension plans.

Improving benefit portability may require a variety of legislative and regulatory approaches. One approach would be regulation to require that all Ontario universities have reciprocal transfer agreements with other organizations that employ individuals teaching in comparable organizations, which would include at a minimum all of the Ontario universities and community colleges. A number of Ontario Faculty of Education academic staff are in fact members of the Ontario Teachers Pension Plan, so reciprocal arrangements with that plan would be necessary. The simplest approach might be to require, through regulation, that the Ontario universities join the Major Ontario Pension Plans (MOPPs) transfer agreement, which already includes the CAAT Pension Plan, and the Ontario Teachers Pension Plan. Currently, Ryerson University is the only Ontario university that has become a member. Such a benefit transfer agreement would also aid tenure stream faculty that move to another university to teach.

For Ontario university contract faculty teaching at multiple universities simultaneously, pension credit transfer arrangements may not provide an adequate solution. For such individuals, more creative solutions might be required, such as designating the universities as employers in the Ontario Public Service Pension Plan, which would allow credits to be accumulated from multiple employers.

Another solution would be the creation of a multi-employer university pension plan that would provide a single pension benefit regardless of which institution (or institutions) an individual was teaching in. Although this is an ambitious goal, it is an idea that certainly warrants further exploration.

Pension Plan Governance and Administration

Many employers and pension industry stakeholders have expressed concerns about the viability and sustainability of defined benefit plans. Much of this concern seems to stem from the funding volatility we have experienced over the last decade, with many plans going from large surpluses to deficits in short order. In addition, other factors such as longevity risk and revised accounting standards seem to be receiving inordinate amounts of attention, although neither are direct causes of short-term volatility in the funding status of pension plans.

Of course, many of these factors – longevity risk, declining interest rates and rapid changes in asset valuations – affect defined contribution plans equally. We believe it is fundamental that we not lose sight of that fact; converting defined benefit pension plans to defined contribution plans cannot alleviate these particular risks, it can only shift them on to individual workers. And while it is of course true that defined contribution plans do not have to make up for funding deficits when asset valuations fall, the individual account holder bears the investment risk that the capital pool will be insufficient to provide an adequate retirement income.

Further, the root of the deficits that exist in our defined benefit pension plans today can be linked directly back to administrative and governance decisions made by our pension plan sponsors in the 1980's and 1990's. A combination of extended employer contribution holidays, surplus withdrawals, liberal actuarial assumptions and rapidly escalating administrative costs put our pension plans at risk. These problems were compounded by a governance structure that gave our members little control over such fundamental decisions about how their pension monies were handled.

The University of Toronto plan is an excellent example of every one of these trends at work. Since 1987, the cumulative contribution holidays taken by the university totals more than $1,258 million. The University increased the real return rate assumption in the plan four times over this time frame from 2.25% prior to 1987 to 3% in 1990, 3.5% in 1996 and finally to 4% in 1998. Finally, between 1996 and 2001 administrative costs increased on the University of Toronto plan from 15 basis points to 42 basis points, roughly 15 basis points above the average for the largest 100 pension plans at that time. There are no faculty association representatives on the Pension committee of the Board of Governors to represent the plan members' view of these actions, let alone actually influence the decisions.

Yet at the same time, employers are getting increasingly strident in their insistence that asymmetries exist in the funding of pension plans, because they are barred from accessing surpluses in the plans but retain responsibility for deficits. This position ignores one of the unique features of a pension plan as a financial instrument: its status as an employment benefit, arising from an explicit or implicit employment contract. Pension plan benefit levels and shared contribution rates are subject to negotiation between the faculty association and the university as part of the total compensation package. Pensions are risk-sharing agreements; the amount of money put into the plan does not fully capture the risk and contribution exposure of the employees. If an employee group accepts a lower than pattern salary settlement in exchange for additional pension benefits, is the new money entering the plan an employer or employee contribution? The asymmetry argument would suggest that those are employer contributions, but a total compensation approach to pension financing would clearly support a deferred compensation rationale.

Recent experience in the university sector clearly demonstrates the above points. Despite their lack of control over the funding policy of the plan sponsors, despite having shouldered the burden for the service cost of the plan during the contribution holidays and despite the employers' refusal to improve benefits when there was a surplus in the plan, several of our members have still agreed to take on part of the responsibility for improving the funding status of the plans. Employee contributions to the McMaster plan were raised by .75% in the last round of bargaining, and some benefits were scaled back. The Trent pension plan requires that employee contributions increase by .5% if there are unfunded liabilities, with the balance of the liability funded by the employer.

Retirees also share the burden of unfunded liabilities, due to their exposure to inflation risk. Since most of our plans are only partially indexed, retirees rely on ad hoc pension augmentation to protect their purchasing power. When asset valuations are falling, the indexing formulas that are linked to plan returns do not pay out, and employers with indexing linked to the CPI will not make ad hoc adjustments. Clearly, there is in fact asymmetry in pension plan funding; our employers unilaterally access any surplus in the plan through contribution holidays, but share the burden of any unfunded liabilities with both active members and retirees. Given this reality, if employers are going to reserve the right to demand higher employee contributions and/or lower benefits in the future if plan finances deteriorate, or take contribution holidays where circumstances warrant, they cannot justify continuing to administer the pension plan as if they were bearing all of the risk.

All of this turmoil has revealed many of the fundamental flaws in how these pension plans are administered and governed. It is unclear how the pension plan administrators can fulfill their fiduciary responsibility to plan members when there is not an arms length relationship between the pension plan and the University's Board of Governors. There is a clear conflict of interest, since a reduced pension obligation through overvalued assets or undervalued liabilities means a reduced financial obligation by the employer. It is not a coincidence that many of the changes discussed above to our plans occurred during a time when the Ontario government was dramatically scaling back its funding commitment to universities. Pension plan contribution holidays freed up operating funds that could be diverted to offset the effects of a 16% cut in operating grants to universities.

In order to avoid having this history repeat itself, the administration of our pension plans should be amended to require a clear separation between the plan sponsor and the pension plan administrator. The day to day control of pension plan administration must be ceded to an independent third party, which is required to manage the pension funds in a prudent manner, intended to ensure the on-going viability of the plan. Good governance requires that the needs of the plan members be the paramount consideration of the plan administrator.

In the case of multi-employer plans, and other jointly sponsored plans, employees have shared representation in the governance of the plan, and have input into all of the key decisions related to funding policy, criteria for third party investment managers, monitoring of plan performance and so on. In addition to these models, there are other governance structures which could be incorporated into the Pension Benefits Act which would retain some flexibility in how the separation of plan sponsor and administrator was achieved. For example, the advisory committee which the employer is required to establish at the request of the plan members could become the plan administrator, if the majority of the plan members voted in favour of this model.

Funding of Pension Plans

A great deal of effort is currently being expended in the pension industry debating whether the rules governing the funding of defined benefit and hybrid pension plans are too lax, or too stringent. Some industry groups, such as the Association of Canadian Pension Management, argue we should do away with regulating going concern valuations, and tighten the rules regarding solvency valuations. Many others, including the Bank of Canada Governor, argue that solvency valuations place an inappropriate burden on sponsors that are unlikely to become insolvent. Clearly, when solutions as diverse as these are floating around at the same time, we are badly in need of some anchoring principles regarding the funding of pensions in both the short and long term.

The two models of valuation regulated by the PBA – going concern valuation and solvency valuation – meet two completely different regulatory concerns. The purpose of going concern valuation is to quantify the long-term funding required to meet the obligations of the plan. The purpose of the solvency valuation, on the other hand, is to protect plan members from default risk. Clearly, the two are related; aggressive or liberal actuarial assumptions will increase the negative consequences of default. In addition, both valuation models point to the necessity of taking a risk-based approach to funding regulation.

Beyond meeting the regulatory requirements of the Act, the going concern valuation is an important tool in proper governance of a pension plan, and most importantly, in the management and mitigation of any number of pension risks. A going concern valuation should illuminate all of the risks which might cause a pension plan to fall short of the amount of capital required to fund the plan's obligations to the members. It should help both plan sponsors and plan members understand how demographic and economic factors interact to cause changes in funding requirements. It should involve sensitivity testing of assumptions to make apparent the impact of any changes. It should clarify the amount of volatility associated with particular investment decisions, giving the plan sponsor the opportunity to properly align its funding policy to the degree of mismatch between assets and liabilities. The going concern valuation could be expanded even further, to assess the economic or business risks faced by the plan sponsor. Most importantly, the going concern valuation needs to focus on the long term funding horizon appropriate for an on-going pension plan.

Clearly, from the perspective of plan members, it is the going concern valuation that provides the checks and balances needed to ensure that their pensions will be there when they retire. As a result, it is pressures on the going concern valuation system that are of the greatest concern to our members. We outlined in the previous section of the brief how vulnerable the current pension governance model is to the financial pressures facing our universities, and how easy it was for plan sponsors to adopt liberal funding assumptions to reduce short-term funding obligations. We are seeing deficits today that are at least partially the result of allowing a wide range of acceptable actuarial assumptions to have become the norm. And we are deeply concerned that the tendency still exists to push off on to future generations of university administrators and plan members the responsibility for dealing with the risks that we can see in our plans today. In an era of declining ratios of active to retired members, this is not only inequitable; it is potentially dangerous as well.

Going concern valuations then, deal not only with the real, but with the likely. Solvency valuations, on the other hand, are an attempt to protect plan members from a theoretical outcome that is almost certain not to occur, particularly in mature public sector organizations, such as our universities. Like going concern valuations, the regulatory approach to protecting plan members from insolvency should also be risk-based. Were an organization to become insolvent, the impact on plan members could be catastrophic. By and large, the appropriate way to deal with low probability but potentially catastrophic events is through some form of insurance. However, the risk of default varies considerably among plan sponsors, and a variety of different measures to mitigate the risk will also be appropriate.

The current regulatory approach to solvency valuation assigns the same implicit probability of wind-up to every pension plan. Implicit in this approach is one form of insurance – increased funding – for every plan, with no assessment of the risk of default. In reality, many different options for default insurance are possible, and some are currently in use in other Canadian jurisdictions. The regulatory goal should be to ensure that every pension plan has secure access to sufficient resources to satisfy all of its obligations.

Improving the Pension Benefits Guarantee Fund to replace a greater portion of the pension benefit would be one solution to mitigating the risk of employer insolvency. The use of letters of credit to guarantee solvency funding has been implemented in

Quebec and the federal jurisdiction, and could be considered for Ontario as well. Other forms of access to corporate assets could be considered, as could third party insurance.

In the public sector, the provincial government could provide a guarantee of pension funding in the case of insolvency. For universities, the only likely cause of a wind-up is the shutting down of an institution, or the merging of several institutions. This could only happen as a result of a decision made by the government of Ontario. As such, it seems appropriate that they would provide the necessary funding to wind up a pension plan that had insufficient capital as part of that process. The Council of Ontario Universities has proposed another solution. It notes that if there were a plan wind-up due to the closure of an institution, the land and capital assets of the universities are in a public trust, and could be used to pay for the university's pension obligations. A formal agreement could be written to give the pension plan first claim on the assets of the institution should it be shut down.

In this model, the role of the regulator would be to assess the value and credibility of the sources of funds available in default, and could approve different models of insurance, based on the probability of default of the plan sponsor.

In the end, the most important principle in determining the appropriate regime of regulation of pension plan funding is the security of the pension benefit promise to the plan members. Proper going concern valuations and the prompt infusion of money to keep our plans solvent and well-funded is the best form of insurance against catastrophic loss in the event of an institutional closure. The best way to improve the going concern valuation regulatory scheme is by strengthening the governance structure and giving our members the opportunity to oversee how their pension monies are being managed. In the context of strengthened going concern valuations to secure pension funding for the foreseeable future, we can envisage experimenting with different models of solvency funding.

Pension Plan Regulation

There are few areas of public policy as difficult to regulate as occupational pension plans. Private sector pension plans are initially voluntary and contractual but as benefits become vested, evolve into a form of trust. At the same time, they are commonly viewed as part of the social policy framework within which income security benefits are provided to seniors. Different aspects are regulated by the federal and provincial governments. Labour law, contract law, trust law, administrative law, constitutional law and even the Charter all have some bearing on the regulation of pensions. In addition, the application of these laws has resulted in confusing, conflicted and constantly evolving case law that makes it difficult, if not impossible, to predict the outcome of litigation.

In such a complex environment as pension regulation, it is essential that the regulatory bodies overseeing the system be experts in the field of pensions, with the specialized knowledge that comes from years of experience in the pension field. Prior to the creation of the Financial Services Commission (FSCO), Ontario had a single purpose pension regulator in the Pension Commission (PCO).

While the PCO shared many of the flaws inherent in the current Financial Services Tribunal (FST), there is evidence that the replacement of the PCO by the FST has undermined the quality of the adjudicative process. The multi-disciplinary nature of the FST means that members of the Tribunal do not require any expertise in pension matters to adjudicate pension decisions. The end result has been a reduction in the standard of deference afforded decisions of the FST by the appeal courts, and a large increase in the number of decisions overturned on appeal. For those parties that must appear before the tribunal, there is much greater uncertainty around whether the FST decision will stand. This can only lead to an increase in the number of appeals, and an increase in the costs to the parties of adjudicating pension decisions.

A further problem with the FST is the nature of the appointments procedure. Because appointments to the tribunal are part-time in nature, its members often continue an active practice in addition to serving on the FST. This gives rise to the potential for conflict of interest, as individuals may sit on panels hearing issues in which they have a remunerative interest in the outcome. Further, the part-time nature of the appointment may also serve to undermine the development of expertise in the panel members.

One flaw that both the PCO and the FST share is that their appointment procedures do not adequately reflect the fact that pensions are employment benefits that arise largely through the collective bargaining process between employers and bargaining agents. Just like the Labour Relations bar, the Pension bar is also split between representatives of employers and workers. In light of this, we believe that the best model for a reconstituted adjudicative body under the PBA is the Ontario Labour Relations Board. The OLRB is an independent quasi-judicial tribunal; its members are labour relations practitioners with broad experience representing either unions or management. The OLRB Chair and many of the Vice-Chairs and Board members hold full-time appointments, removing them, at least temporarily, from potential pressure from clients with an interest in the outcome of cases. A new adjudicative body constructed along these lines could expect a high level of deference to its decisions, restoring some predictability to the outcome of adjudication, and would likely result in less litigation and lower costs for the parties.

Conclusion

OCUFA wishes to thank the commission for the opportunity to participate in this crucial review of the Ontario Pension system. This year marks the 20th anniversary since the last time an Ontario government passed comprehensive legislation to modernize the pension regulatory regime. Although our society is more complex than it was then, at the same time we are a richer province, and better positioned than ever to ensure that all Ontarians enjoy a secure and adequate retirement income.

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[1] Robert L. Clark and M. Melinda Pitts. "Faculty Choice of a Pension Plan: Defined Benefit versus Defined Contribution. Industrial Relations Vol. 38 No. 1, January 1999.

[2] Hay Management Consultants. "A Comparative Study of Compensation of Faculty and Senior Administrative Personnel in Ontario Universities". Original study: 1988. OCUFA data update: 1998.

Appendix A
Ontario University Faculty Association Pension Plans
Assets and Memberships

University	# faculty	Plan membership (employee groups included)	Investment control	Governance	Assets (000s)
Defined Benefit					
Guelph	792	Professional Plan; one of three	Trusteed	Pension and benefits sub-committee of Board of Governors; no stipulated faculty representation	580,314
McMaster	1,173	Salaried plan; one of two	Trusteed	Pension Trust Committee, subject to BoG; 3 FA reps of 16	948,061
Ottawa	942	Single plan	Trusteed	Pension Plan Committee of Board of Governors; 3 APUO members of 13	1,262,000
Ryerson	630	Single plan	Trusteed	Employee Relations and Pension Committee of BoG; 1 faculty member of 9; no stipulated FA representation	724,479
Toronto	2,541	Single plan; plus smaller plans including OISE plan and Teachers' Pension Plan members	Trusteed	Business Board; occasional Pension Committee of University Governing Council; no stipulated FA membership; Business Board include 1 - 2 faculty.	3,258,200
Trent	255	Faculty only	Trusteed	Pension Subcommittee of Board of Governors; 3 TUFA members, 3 BoG members	127,797
Waterloo	975	Single plan	Trusteed	Pension committee appointed by BoG	877,855

Appendix A
Ontario University Faculty Association Pension Plans
Assets and Memberships

University	# faculty	Plan membership (employee groups included)	Investment control	Governance	Assets (000s)
Defined Contribution					
Nipissing	132	Single plan; Faculty of Education faculty in Teachers Pension Plan	Self-directed		
OCAD	75	Single plan	Self-directed employee portion; Trusteed employer portion		
Western	1,371	Academic staff only; one of two	Self-directed		554,000
Hybrid: DC with minimum guarantee					
Brock	525	Single plan; some members in	Trusteed	Pension Committee, subject to Board of Trustees approval; 7 FA members of 15	
Carleton	774	Single plan	Trusteed	Subject to approval of Board of Governors: Pension Committee 2 faculty of 7 members	
Lakehead	285	Professional Staff; one of two	Trusteed	Subject to Board of Governors approval: Pension Board 2 faculty of 6 members	190,985
Laurentian	399	Single plan	Trusteed		214,577
Queen's	786	Single plan	Trusteed	Board of Trustees; advice from Pension Committee	1,111,000
Wilfrid Laurier	471	Single plan	Trusteed	Board of Governors; advice from a) Pension and b) Investments and Investment Performance sub-committees	274,229
Windsor	528	Faculty and certain others; one of two	Trusteed	Retirement committee, subject to BoG approval; 2 FA appointees of 5 members	282,399
York	1,395	Single plan	Trusteed	Board of Trustees; faculty 2 of 11 members	1,337,812

Notes

Lakehead	Provides DB guarantee for service before 1997; assets apply to DB portion on going concern basis; January 2005 valuation shows solvency deficiency of $6,740
Laurentian	Employer contribution above YMPE is 7.0% plus 1.5% for supplementary fund.
OCAD	Contributions: two choices for matching contributions; table shows maximum, minimum is 3.5% and 5%; percentages are to threshold of $450 in contributions rather than YMPE
Queen's	Data on assets from 2004 valuation; latest deficiency estimate is $38.5 million
Waterloo	Members' contribution above YMPE is to 2x YMPE; above YMPE x 2, rate is 7.85%
Western	Faculty contribute 1.5% or 5.5%; Brescia employees contribute 5%; Huron employees contribute 7%; Brescia contributes 6%; Huron contributes 7%

Appendix B
Ontario University Faculty Pension Plans
Contributions, Benefit Formula and Indexing

University	Contributions						Benefits - % of earn per yr of service		Indexation
	Members		Employers						
	to YMPE	> YMPE	to YMPE	> YMPE	Supp.	Current serv. % payroll	to YMPE	> YMPE	
Defined Benefit									
Guelph	4.80%	6.50%	As req'd			8.84%	1.50%	2.00%	Annual: above 2% CPI; max 8%; additional subject to BoG approval
McMaster	5.00%	6.50%	As req'd			10.90%	1.40%	2.00%	Subject to plan performance above 4.5%; capped by CPI; excess may be applied for catch-up
Ottawa	4.25%	6.55%	As req'd			9.35%	1.30%	2.00%	Annual, CPI to 2%, CPI -1% above 3%; CPI subject to investment performance
Ryerson	6.20%	8.00%	6.20%	8.00%			1.35%	2.00%	Annual, CPI to 8%; above 8% carried forward
Toronto	4.50%	6.00%	As req'd			9.34%	1.50%	2.00%	CPI minus 4% or 75% of CPI to 8%, plus 60% of CPI above 8%; top-up to 100% of CPI negotiated each round
Trent	6.50%	6.50%	As req'd					2.00%	Plan text: Subject to performance of plan performance above 6% / annum (6.5% for retirements after June 30 200); not to exceed lesser of CPI or increase in average industrial wage; excess may be used for catch-up for previous years
Waterloo	4.80%	7.18%	As req'd			6.78%	1.40%	2.00%	Plan text: CPI to 5%; above 5% subject to Pension Committee discretion, and eligible for catch-up pending investment results

Appendix B
Ontario University Faculty Pension Plans
Contributions, Benefit Formula and Indexing

University	Contributions						Benefits - % of earn per yr of service		Indexation
	Members		Employers						
	to YMPE	> YMPE	to YMPE	> YMPE	Supp.	Current serv. % payroll	to YMPE	> YMPE	
Defined Contribution									
Nipissing	4.05%	9.00%	4.05%	9.00%					
OCAD	6.00%	7.50%	6.00%	7.50%					
Western	0.55%	5.50%	3.55%	8.50%					
							Min Pension Gtee		
Hybrid: DC with minimum guarantee									
Brock	4.40%	6.00%	7.40%	9.00%			1.7% less 1/35 of annual CPP benefit		Plan text: CPI indexing to max 2%; plus occasional other adjustments
Carleton	4.20%	6.00%	4.20%	6.00%	as req'd		1.29%	2.00%	Subject to performance of plan performance above 4 yr average 6% / annum
Lakehead	1.55%	6.50%	3.10%	8.05%					Plan text: CPI or account performance
Laurentian	0.05%	5.00%	2.05%	7.00%	1.50%		1.30%	2.00%	Automatic CPI indexing to max of 3%
Queen's	4.50%	6.00%	6.00%	7.00%	1.5% of me	1.64%	1.40%	1.80%	Subject to performance of plan performance above 4 yr average 6% / annum
Wilfrid Laurier	7.00%	7.00%	7.00%	7.00%		1.80%	1.37%	2.00%	Plan text: Partial CPI indexing automatic - to 4% max
Windsor	6.00%	6.00%	6.00%	6.00%	as req'd		1.50%	2.00%	Plan text: CPI to 2%; 2% for CPI between 2 & 4%; half of CPI above 4%
York	4.50%	6.00%	4.50%	6.00%	3% of member contributior		1.40%	1.90%	Plan text: Subject to performance of plan performance above 6% / annum

Appendix C

Ontario University Faculty Pension Plans

Eligibility Rules

University	Full Time Tenure Stream Faculty	Contract/Limited Term Faculty	Part-Time Faculty
Brock	Elective as of date becomes a full time employee. Compulsory in month coincident with or next following completion of 1 yr service or attainment of age 30.	Elective if they have been employed for two consecutive years or more and have earned 40% of YMPE or more or have worked a minimum of 700 hours in each of the two preceding calendar years.	Elective if they have been employed for two consecutive years or more and have earned 40% of YMPE or more or have worked a minimum of 700 hous in each of the two preceding calendar years.
Guelph	Mandatory on the first day of the month coincident with or immediately following date of employment	Elective after employed for 24 continuous months provided member has earned at least 35% of YMPE or worked 700 hours in each of 2 consecutive calendar years.	Elective after employed for 24 continuous months provided member has earned at least 35% of YMPE or worked 700 hours in each of 2 consecutive calendar years.
Lakehead	Mandatory on first day that he/she becomes an Eligible Employee	Mandatory on first day that he/she becomes an Eligible Employee	Mandatory if completed 24 months of continuous employment and has earned not less than 35% YMPE or worked 700 hours in each of two consecutive years
Laurentian	Elective as of date employee has attained aged 25 or completed 12 months service. Compulsory July 1 coincident with following date employee has attained age 30 and completed 12 months service.	Elective as of date employee has attained aged 25 or completed 12 months service. Compulsory July 1with or following date employee has attained age 30 and completed 12 months service. Fixed term employees are considered to have broken service at end of each contract.	Elective on first day of any month provided that employee has been continuously employee for at least 24 months and earned at least 355 of YMPE or worked 700 hours in each of two consecutive calendar years.
McMaster	Elective immediately if appointment exceeds 12 months. Compulsory on July 1 coincident with or following completion of 8 months service.	Faculty whose initial appointment is less than 12 months become eligible employees on the effective date of a subsequent appointment which would continue their service beyond a one year period.	
Nipissing	Elective on first date of appointment.	Laboratory Instructors, Seminar Instructors and Service Course Instructors with contract duration of 8 or more months have same pension plan eligibility as full-time faculty.	Eligible to participate if they have achieved right of first renewal, or have taught 24 credits since May 2001. Employee contribution of 2% to structured RRSP matched by employer.
OCAD	Membership is elective for all permanent teaching faculty.	Elective for faculty who have been employed for 24 continuous months and, in each of the two previous calendar years, have earned at least 35% of the YMPE or completed 700 hours of employment.	Elective for part-time faculty who have been employed for 24 continuous months and, in each of the two previous calendar years, have earned at least 35% of the YMPE or completed 700 hours of employment.
Ottawa	Elective if under age 30; compulsory on first day of month following 2 consecutive years of employment or 30th birthday.	Elective for members who, in any two consecutive calendar years, worked 24 continuous months and either earned 35% or YMPE or worked 700 hours each year.	
Queen's	Compulsory on start date of appointment.	Compulsory as soon as employment extends beyond one year. Optional arrangements may be made retroactive to date of first appointment.	Elective for part-time employees with a continuous appointment, Adjunct II's and III's who are scheduled to work more than 700 hours may join one year following initial appointment. Part-time employees who do not have continuing appointment eligible to join following completion of 24 months of continuous service if they work at least 700 hours or they earn at least 35% of the YMPE in the two preceding 2 consecutive calendar years.

Ryerson	Mandatory and effective from date of hire.	Mandatory and effective from date of hire for limited term faculty. Sessional instructors are prohibited from joining.	Voluntary for a term employee who has 24 months of continuous employment, and in each of the two most recent previous calendar years has either worked 700 or more hours, or earned total pay equal to **35%** of the Canada Pension Plan's Year's Maximum Pensionable Earnings (YMPE).
Trent	Compulsory on becoming a full-time faculty member.	May elect to become a Member on the earliest date at which the Employee commences employment with the University pursuant to an appointment for a limited term, the duration of which, when added to the terms of previous limited term appointments, if any, exceeds two years.	Mandatory for Part-Time Employees upon the completion of three months of Continuous Service, provided that no Member shall suffer any interruption of Continuous Service upon changing from Full-Time to Part-Time employment under the terms of the Collective Agreement. This provision is for members of the Trent University Faculty Association collective agreement and excludes sessional appointments.
Toronto	Elective to age 35 and one year continuous service. Compulsory on first quarterly opening date coincident or following 35th birthday or if hired after age 35**,** after one year of service.	Elective to age 35 and one year continuous service. Compulsory on first quarterly opening date coincident or following 35th birthday or if hired after age 35**,** after one year of service.	Part-time faculty are eligible if their annual part-time salary exceeds **35%** of the yearly Canada Pension Plan Maximum Pensionable Earnings Ceiling.
Waterloo	Regular full-time and regular part-time faculty must join the plan on the January 1st coinciding with or following their 35th birthday, but may join on appointment	Elective for Lecturers during the first five years of employment, but must join the plan on January 1st coinciding with or following beginning of sixth year of employment, or on appointment to a higher rank , provided age 35 has been attained.	Elective if individual has worked continuously for the University during the previous two calendar years and has earned at least **35%** YMPE or worked at least 700 hours in each of previous two calendar years.
Western	Compulsory on the first day of the month coinciding with or next following your date of employment.	Elective. Eligible to join if employee has earned at least 21% of the Canada Pension Plan earnings ceiling in each of the two previous calendar years, and has been employed for at least 24 continuous month	Elective. Eligible to join if employee has earned at least 21% of the Canada Pension Plan earnings ceiling in each of the two previous calendar years, and has been employed for at least 24 continuous month
WLU	Elective on first date of appointment. Compulsory at age 30.		Elective for Part-time employees of the University are eligible following two consecutive calendar years of continuous employment in which they have either earnings greater than **35%** of the Canada Pension Plan Yearly Maximum Pensionable Earnings, or have worked 700 hours in each of the two years.
Windsor	Compulsory; coincident with or next following Employment Date	Voluntary; coincident with or next following Employment Date	
York	Elective under age 25 after 2 years of service. Elective after 1 month of service if between 25 and 30. Compulsory on first day of month after attaining age 30.	For full-time limited term employees: elective under age 25 after 2 years of service. Elective after 1 month of service if between 25 and 30. Compulsory on first day of month after attaining age 30.	Elective for part-time employees after completing 24 months of continuous either by and earning 35% of the year's maximum pensionable earnings (YMPE); or working at least 700 hours of service in each of two consecutive years.