

**REPORT ON THE FEDERAL DEPARTMENT OF FINANCE
CONSULTATION HEARING ON PENSION PLAN REGULATIONS
THE WESTIN BAYSHORE HOTEL, CYPRESS ROOM
TUESDAY, 14 APRIL 2009 - 0900 - 1200**

The Canadian Federal government Department of Finance at the direction of The Honourable Jim Flaherty, Minister of Finance issued a discussion paper titled "Strengthening the Legislative and Regulatory Framework for Private Pension Plans Subject to the *Pension Benefits Standards Act, 1985*" on January 9th, 2009.

This paper outlined a number of changes the government was considering introducing to the *Pension Benefit Standards Act, 1985*. The *PBSA* is the federal legislation that governs all federally regulated pension plans in Canada, both Defined Benefit and Defined Contribution. There were separate sections of the discussion paper that dealt specifically with each of these two plan types. The Department of Finance invited submissions from any interested parties via its website www.fin.gc.ca or via email to pensions@fin.gc.ca. **They will continue to receive and consider submissions until May 31st 2009.**

The changes being contemplated are decidedly employer friendly. In a joint submission to the Federal government on March 5th, 2009 the "Group of Seven" large federally regulated employers (Air Canada, Bell, Canada Post, Canadian National, Canadian Pacific, MTS Allstream and Nav Canada), who all run federal defined benefit pension plans for their employees, outlined their requirements for legislative relief under the terms of the discussion paper.

The Department of Finance scheduled a series of consultation hearings in eight (8) different cities across Canada between March 13th and April 17th. The hearings were held in Ottawa, Halifax, Montreal, Toronto, Vancouver, Whitehorse, Edmonton and Winnipeg. Brother Ed Wainwright and I attended the April 14th hearing in Vancouver representing the members and retirees of Local Lodge 764. We tabled 2 submissions to the hearing committee; one on behalf of our active employees and the other on behalf our retirees. (These reports have been posted on the Local Lodge website www.iam764.ca and can be viewed there or copies can be obtained by contacting the Lodge offices)

The Canadian Labour Congress held a pre hearing briefing at 0730 for Union representatives who planned to make presentations at the hearing. Ed and I, along with approximately 30 other union representatives were invited to attend and it proved to be a very informative meeting. The keynote speaker was Joel Harden, senior researcher for the CLC and their pension "guru". He had a brief ½ hour presentation on some key facts and figures relating to worker's pension plans and executive pension plans.

As a point of comparison the next time you are told how expensive your DB pension plan is, remember this one fact. **The average executive pension plan in Canada is an individual DB plan and pays that retired executive a pension of \$935,000 per year.** By 10:40 a.m. on January 5th, they have already received a pension payment that is equal to the total annual pension of the average Canadian retiree.

That was followed by a brief of how the hearing was going to be conducted. That brief also included some tips on getting our messages across and controlling the information being presented at the open microphone when that part of the hearing was under way. It was followed by an hour of Q & A and comments from the attendees.

The government hearing began promptly at 0900 and was called to order by Chairman Ted Menzies. Mr. Menzies is the Conservative MP for the federal riding of Macleod in Alberta. He has been elected 3 times as the MP since first taking office in 2004. The other three members of the hearing panel were, John Grace representing The Office of the Superintendent for Financial Institutions Canada (OSFI), Tim Cleland and Nicolas Marion both representing the Department of Finance. There was a support staff of at least 6 people who were engaged in audio recording and video (graphics) presentations for the hearing. While an exact head count was not possible, the room was full to capacity and there had been 200 seats set up plus a number of people who stood along the walls during the hearing.

All words spoken at any of the microphones in the hearing room were recorded and will be submitted with all of the written material presented for consideration of the decision makers who will ultimately wade through all of the testimony submitted via mail, email or presented at any of the eight hearings prior to rendering their recommendation report to Parliament at the end of June 2009.

Mr. Menzies took the first 15 minutes of the hearing to outline the process of the hearing and how it would be conducted. He also presented a précis on the consultation process and the back ground behind it. He spoke of the three pillars of retirement income in Canada - the Canada Pension Plan, Old Age Security and private pensions and savings. This third pillar is often described as a fend for yourself system. It would be that third pillar that this hearing would focus on.

They have heard many calls for changes to the existing regulations but this hearing would only deal with federally regulated DB and DC pension plans. Only 7% of all Canadian pensions are federally regulated. The other 93% fall under provincial regulation. OSFI currently allows for 110% - 115% overfunding of pension plans before plan sponsors (the companies) are forbidden from making any further contributions and are forced to take contribution holidays as happened throughout most of the 1990's.

He explained that the hearing would basically be divided into 2 parts. In the first part, there would be 4 invited speakers representing various interest groups in the pension regulation review process and they would be given 15 minutes each to give a prepared statement or presentation. After they had all spoken the hearing would then go to a 90 minute open mic session where anyone in attendance could address the hearing for up to 3 minutes each.

I will present some of the key remarks and points of the invited speakers in point form to give an idea of the various positions presented at the hearing.

The first guest speaker was none other than Mr. Kevin Howlett, Vice-president, Labour Relations for Air Canada, representing the large employer group. He read a prepared statement into the record. Mr. Howlett felt:

- These hearings were extremely critical and can deliver great assistance to the employers
- Urgent action is required to protect employers and their pension plans
- It will help strengthen the position of plan sponsors
- Air Canada represents 30, 000 active employees and 28,000 retirees
- There is too much volatility under the current rules - twice in the last 3 years Air Canada's valuation has changed. While temporary changes have been made (10 year funding payback) there is a need for permanent legislative changes
- There is much darkness and pestilence in the valley of evil and Air Canada is sorely afraid if the government doesn't help them find their way out of the valley. (I paraphrase)

- He outlined almost all of the information (and I use that word with trepidation) contained in the company mailout that was sent to each and every Air Canada employee explaining how lucky we are to have them as our protector and benevolent benefactor
- Outlined the changes requested in the March 5th, 2009 joint submission by the Group of Seven employers to the Department of Finance
- Air Canada needs the solvency funding rules changed or their pension plan is unsustainable under the current regulations
- There has to be a balanced set of solutions
- Throws a bone to employees by calling for annual actuarial valuations regardless of plan funding status and an increased amount of information available to plan members. (He wants to tell plan members what the company is doing; he just doesn't want to have to ask their permission to do it.)
- Feels that sponsors should be allowed to overfund up to 125% to allow for greater asset smoothing but there should not be a deemed trust requirement for funding in excess of 110% - this is just a needless complication
- Any increase in consultation, regulation and oversight by the government and or employees is simply more needless complication and only ties the hands of the companies to make decisions.
- There should be a higher level of tax deductions for contributions between 110% and 125%

The second speaker, representing organized labour was Mr. Jim Sinclair, President of the BC Federation of Labour; his views on pension regulation changes differed somewhat from Mr. Howlett's views. Mr. Sinclair stated:

- There is a fundamental need to treat workers and retirees with dignity and respect
- BC has the highest rate of senior poverty in the country
- There is a fundamental right to a pension and retirement income just as there is a fundamental right to healthcare
- There should be a national standard for pensions that allows harmonization of rules and benefits and allows for portability
- BC and AB did a joint pension review and one of the Task Force's key recommendations was for a National harmonized pension standard. Securities and banks all have such standards, why not pensions? Pension need standards for contributions and benefits
- Solvency funding - any extensions must have rules attached. Times of trouble like these must have rules. This certainly is not the time to relax the rules
- Pensioners need to be afforded protection as primary creditors of company assets upon a windup
- There can be no flexibility to funding rules without companies providing letters of credit to guarantee the funds
- Employers have repeatedly demonstrated that they will move to exploit any lack of rules and regulations. They will do it again if the government allows it
- There should be a government backed pension insurance plan. We are required to have insurance on our house, car, job (EI), why not our pension? It is just as important as any of those things. ON and QB have moved to provide a measure of insurance for the pension plans they regulate. The federal government must also move to provide insurance protection of 100% of earned pension benefits
- Why are contribution holidays allowed? Why give them? Which plan is in such good shape that past contribution holidays have proved to be a good idea?

- There should be an expansion of CPP coverage. This is the answer to a very large number of problems. It covers all Canadian workers and is integrated with DB and DC plans. Increase the coverage from replacing 25% of wages to 50%.
- There is universality and portability regardless of employer. Ideal for the new economy. We are being told the new reality is no more jobs for life and employees having to be flexible and change jobs every few years
- It has to be government run. This is too important for the private sector to run. They will just make a complete balls of it while they are concentrating on raking in their profits
- This has to be universal like Medicare. It has the benefit of offloading employer's liabilities just as Medicare has done for their health insurance costs. This is a further competitive advantage for Canadian companies
- The solution to the existing pension problems is collective and not individual. This last 8 months has proven beyond a shadow of doubt that individual solutions do not work. Look at the devastation that has been wrought upon DC plans and RRSPs.
- It must be mandatory. People, especially young people will not willingly contribute to voluntary pension plans any more than they now contribute to RRSPs and other voluntary savings
- There is a great opportunity before us to do something positive. It would be a shame to not seize it and to do nothing. People are open to change in times of crisis

The third speaker was Mr. Bodhan Bodnar, CFO of Spectra Energy (formerly West Coast Energy). They are a Fortune 500 company whose primary business focus is natural gas. They have 7000 employees in a series of federally and provincially regulated pension plans in almost every jurisdiction in Canada. While still representing the employer's interests in the regulatory review process, Mr. Bodnar brought a slightly different perspective and set of imperatives than Mr. Howlett presented on behalf of the larger corporations.

- Letters of credit and reserve accounts had to be allowed to cover underfunding deficits
- There was no need to seek consent of the employees for the use of these letters or accounts. That would create extra work and regulation for nothing
- Increase the limits for tax assisted retirement savings
- Allow increased funding to 125% of the greater of the going concern or solvency deficit funding requirement
- Harmonize legislation and requirements across all jurisdiction. Huge administrative costs of dealing with different rules and standards
- Increased flexibility in the PBSA to allow new hybrid pension plans (like Shared Cost) that are not strictly DB or DC by the current definitions
- Surpluses will return to pension plans. Because of the tight funding rules this is simply a matter of when not if. There has to be clarification on ownership of pension surpluses
- There will be trapped capital in the plans that the companies cannot access under current rules. This will deter companies from funding their pension plans any more than they absolutely have to. This serves only to weaken plan stability.
- Allowing letters of credit or reserve accounts to cover the underfunding will prevent this
- Legislation has to be changed to shift the risk/reward equation associated with DB plans
- CCRA caps on the amount of tax assisted retirement savings allowed are well below the G7 average
- They must be increased for DB and DC plans
- Increase allowable funding to 125% to smooth asset valuations and to allow for an opportunity to implement ad-hoc pension benefit improvements from time to time if the plan becomes sufficiently well funded

- There are 13 jurisdictions across Canada that creates a huge administrative cost and unfairness. There needs to be harmonization and standardization
- Private sector pension plan coverage should be encouraged and expanded through changes in the PBSA that will make it less onerous for employers to start and maintain pension plans.
- New plan designs have to be allowed to help encourage this process - like those proposed by the joint BC - AB task force recommended. One example is the SCTB (Shared Cost Target Benefit)
- There has to be “Safe Harbour” * protection for DC plan sponsor liability
- Spectra is a subsidiary of a US company that has “Safe Harbour” * protection under US pension legislation
- There is a need to introduce “Safe Harbour” * to Canada and to change the requirement from “fiduciary responsibility” to “good faith investment”
- * Note - “Safe Harbour” is a term that plan sponsors use as a seemingly innocuous euphemism for legislation that serves to limit their exposure to lawsuits from DC plan members for any mismanagement of the DC plan investments they might make as the plan sponsor. As an example, if they had put 25% of the plans funds into AIG stock in early 2008, you would not be able to sue them for breaching their “fiduciary responsibility” to protect the plans assets from bad investments because they had made the investment in “good faith”

The fourth and final invited speaker was Mr. Steve Butterfield. Mr. Butterfield is an actuary with Towers Perrin (and was involved in doing some work on our behalf in setting up the old CAIL IAMAW pension plan) He is a member of the actuarial review board that has recently (December 2008) made changes to the standard actuarial assumptions used to calculate DB plan commuted values. Mr. Butterfield read a prepared statement that highlighted:

- Believes strongly in DB plans and feels that they should be encouraged and expanded in the private sector and not just public sector pensions.
 - Does not consider DC plans a true pension plan, just a fancy form of RRSPs
 - He is a member and fervent supporter of DB pension plans and loves the peace of mind that brings him. He does not have to worry every morning when he gets up what the markets did yesterday
 - He knows what his retirement income will be and can already plan accordingly
 - Most workers want to be members of a DB plan but simply do not have the opportunity
 - He believes that the expansion of DB plans will help employers with recruitment and retention and ultimately provide them with a competitive advantage
 - There needs to be changes made to the current regulations. They are too complex and serve to discourage employers from setting up and maintaining pension plans
 - There is too much emphasis on protection of benefits and not enough on coverage.
 - DB plan coverage has been shrinking as a % of the total work force. That trend needs to be reversed to cover more workers not fewer
 - He has submitted a detailed brief to the panel but he will focus on and discuss 4 key recommendations:
- 1) Harmonize the pension legislation. Simplify the rules. There is needless complexity that adds huge costs. Legislators don't often listen to their regulators when they draft legislation and laws. They need to listen to the end users to make meaningful changes.
 - 2) There has to be a solution to the existing surplus asymmetry. If the plan is underfunded, the sponsor has the responsibility but any surplus belongs to the members. This harms the health of the plan and ultimately the members by discouraging proper levels of

funding. The government needs to amend the rules to allow the use of letters of credit, trust funds or reserve accounts. They should consider ring fencing the existing liabilities under the old rules and institute new rules going forward.

- 3) There needs to be an increase to the funding threshold under the Income Tax Act (ITA). 110% is simply not enough to allow for meaningful asset smoothing to cover market volatility. Mark to market does not work.
- 4) The PBSA has to amend its definitions of pension plans to allow for and recognize more flexible plan design and not just simply the current DB or DC plan designs. The future is in new plan designs. Things such as the shared risk plans Mr. Bodnar spoke of. This is the time to be bold, forward thinking and innovative.
 - Supports full funding of pension plans on windup prior to any dispersion of company assets
 - Supports the elimination of partial terminations. There should be no such thing
 - He supports an increase in information available to the plan members but cautions the cost side of this initiative. Be careful what you do and how you implement it
 - No support for statements of funding

That concluded the first structured portion of the hearing. There was a 10 minute break and then the hearing reconvened with the open mic portion. There were 21 speakers already lined up to speak when Mr. Menzies reconvened the hearing. A total of 27 people took the opportunity to address the hearing before the 90 minutes allotted had elapsed.

Every single speaker represented the workers or retirees. There was a large number of retirees in attendance and about 2/3 of the speakers were retirees. Air Canada and its retiree groups were very well represented and close to half of all the people in attendance had ties to Air Canada. There were a large contingent of both CAW and CUPE active employees and retirees. There was no one present from ACPA which I found a little surprising although they had made presentations at some of the meetings in eastern Canada earlier in the process. Brother Wainwright and I plus about 10 other IAM&AW members and retirees represented our local although I was the only one to speak to the hearing committee.

The message delivered by all of the speakers was very forceful, direct and unmistakable in either its tone or content. Each of us had our own personal slant on the issues before the hearing committee but they were simply variations on a theme.

That theme boiled down to this. Pensions are our deferred wages and an earned benefit. We will not sit by and watch the government loosen the regulations for the employers at our expense. The government must allow for better funding rules, allow more money to be tax sheltered in pension plans, guarantee pension plans preferred creditor status in the case of windup, move to stop the stripping of company assets while their pension funds are underfunded (like ACE has done to Air Canada since 2004), insure pension plans and keep a close eye on what the companies are doing with our pension money.

The committee and Mr. Menzies in particular because he was the only elected official present was very clearly but politely warned that they ignore the voice and concerns of workers and retirees at their peril come election time. We are watching what they do and will vote accordingly.

As I stated at the beginning of this report, the committee will accept submissions until May 31st, 2009. They are to have a report with their recommendations for any changes to the PBSA and ITA ready to go to Parliament at the end of June 2009 and the House of Commons plans on

passing the new legislation before the end of 2009. As anyone who has followed politics and government in Canada can attest, that is lightening speed for these types of processes. That clearly speaks to the extremely high priority the government has put on this issue.

That is partly because Ontario and Quebec have already passed legislative improvements to their respective provincial pension regulations and they don't want to be seen as indecisive or inept. It also tells you that this is a very high priority for their biggest supporters and monetary contributors - the companies and they have prodded the government into action.

I have very little doubt that the companies will be granted the funding changes that they are seeking. What we wanted to convey to the government was that if they do that, they have to step up to the plate and uphold their mandate to the workers and retirees in this country and offer us increased protection for our pension assets.

They need to afford us primary creditor status, they need to insure the pension plans, they need to expand coverage of the CPP and they must encourage enhanced coverage of private DB or new hybrid pension plans. This is the message that was forcefully and unmistakably delivered on eight separate days in eight separate cities by an estimated 1500 average Canadian workers and retirees representing a wide cross section of industries and occupations.

Let us all hope that the government heard us. They had better hope that we like the changes they ultimately make or I can assure you that they will be very unhappy with the results of the next federal election. If the government will not protect its citizens then we will elect one that will.

Respectfully submitted,

Christopher Hiscock
President and Pension Committee Chair
Canadian Airways Lodge 764
International Association of Machinists
And Aerospace Workers

