Keeping the Pension Promise

Executive Summary

For many years the OFL has fought for pension improvements for working people in Ontario. Most recently, under the Eves Conservative Government, the OFL lobbied and made written submissions on the issue of pension surpluses.

This effort, together with the strong opposition of plan members and retirees across the province, forced the Government to back off its attempt to fundamentally alter pension provisions on surpluses in favour of employers.

Campaigns and lobbying activities have continued to the present. Yet it is some time since delegates to an OFL Convention have debated a pension policy paper.

This policy paper highlights key issues in the field of pensions.

1. The Public Pension System

In the 1960s, there was a major expansion of public pension benefits in Canada. The new system – the federal Old Age Security (OAS) (which is a universal pension paid to most Canadians over 65) and Guaranteed Income Supplement

(GIS) programs (which is a means tested pension which supplements the income of retirees with little or no income) and the federal/ provincial Canada and Quebec Pension Plans (CPP) – has lifted most, but not all, Canadian seniors out of poverty. Yet the incomes of older Canadians remain substantially below the incomes of younger age groups. This is particularly the case for older single women and older immigrants.

Public pensions have made a huge difference for retirees. They provide:

? universality of coverage, portability (you maintain your benefits even if you switch jobs);

? full indexing, they are the most secure (current premium rates of 9.9 percent will ensure CPP financial stability); and

? the most efficient (having low administration costs that no private system can even approximate).

Despite this, public pensions in Canada and around the world have been under constant attack by conservative interests for several decades.

2. Benefit Security

There is no doubt that the stock market slide and declining interest rates have increased the cost of maintaining our pension plans. Pension improvements are more expensive and much harder to negotiate. That is not good news, but it is not a crisis either.

The stock market performance and declining interest rates show that the legislative changes we have been lobbying for continue to be important.

In order to enhance benefit security we must continue to fight for the following improvements.

3. Improving Pension Standards

Inflation Protection Through Indexing

The indexing of pensions is one of the most serious issues facing retirees and fundamental to the right of workers to retire in security and dignity. Many private pensions are either not indexed or not fully indexed.

Ontario Pension Benefits Guarantee Fund

This fund is important as it covers employees within defined benefit plans where pension income has been lost due to plan underfunding or employer insolvency.

The Pension Benefits Guarantee Fund (PBGF) currently provides for a benefit guarantee only to a maximum of $1,000 per month, an amount unchanged from 1988. The failure to raise the cap has made the current Ontario PBGF benefits grossly inadequate.

Pension Benefits Act

Ontario *Pension Benefit Act* (PBA) Regulation 5.1 allows employers who administer pension plans with assets greater than $500 million, who are deemed too big to fail, to waive the solvency funding requirements under the *Act* if they make an additional contribution to the PBGF.

Stelco was granted this option in 1996 and was able to divert millions in otherwise required pension contributions into company general revenue, putting their workers' pensions at much greater risk.

Regulation 5.1 should be completely repealed.

Bankruptcy

Every week dozens of companies declare bankruptcy and close down. Workers pay the price when workplaces shutdown, especially when the closure is triggered by bankruptcy. Not only do workers lose their jobs and their source of income, they often lose wages which are owed but not yet paid, as well as vacation pay, termination pay and severance pay.

The labour movement supports legislative changes which, if adopted, will provide working men and women with greater protection against loss and the real opportunity to recover what they are owed.

Income Tax Act

The *Income Tax Act* currently places limits on the maximum amount that can be contributed to a registered pension plan. In general terms the *Income Tax Act* eliminates the ability to contribute to a registered pension plan that has a surplus of more than 10 percent. The elimination of contributions is often referred to as a "Contribution Holiday".

Such actions can seriously undermine the pension plan and should not be allowed. The Ontario Government should support changes to the *Income Tax Act* to reduce the requirement and opportunity for employers to take Contribution Holidays.

Vesting

Statistics tell us that workers in Ontario are changing their jobs more and more frequently. Yet, it has been 15 years since Ontario's law on pension vesting has been changed.

The OFL believes that the PBA should be amended from requiring vesting after two years, to require immediate vesting when an employee joins a pension plan.

4. Joint Trusteeship – The Struggle Continues

For the labour movement in Ontario, the last two decades have brought significant victories in the area of pension plan governance. The largest sources of institutional capital in Ontario, outside of the banking sector, are now directed in part by trustees representing unionized workers.

Not surprisingly, however, there is a long way to go to achieve our goals. In many cases, unions are still fighting for joint trusteeship. Despite the fact that joint trusteeship has improved pension plan administration, the Ontario Government has still not followed the lead of other jurisdictions in mandating shared trusteeship.

The Role of the Labour Trustee

A trustee in law is a person who must behave prudently with respect to the funds he or she oversees and be loyal to the interests of the members of the plan. This does not mean that trustees cannot or should not take their beliefs and principles into account when making decisions, but that this decision-making process must, at all times, be supported by independent advice.

5. Socially Responsible Investment

Key to any investment program is the role that investments and returns play in securing benefits.
Yet there is more to pension benefits than investment returns. One of the historic goals of the labour movement has been to counteract and address the fundamental inequalities that run through our society and economy. The possibility that our deferred wages could support our efforts to win social justice at the bargaining table and in civil society has always been an exciting part of the drive towards joint trusteeship.

Socially Responsible Investment (SRI) is supported by the labour movement. It is an approach to investment strategy that integrates financial and ethical concerns.

6. Social Investment and Public Services

Canadian workers' pension funds should be used to strengthen public services and to keep infrastructure in public hands. Instead, our pension funds are increasingly sought after and used as a source of financing for Public Private Partnerships (P3s).

P3s are any of a variety of arrangements in which private for-profit corporations operate, maintain, lease-back or own public services and infrastructure such as highways, hospitals, arenas, rail lines, schools and electricity generating stations. P3s are used by governments to privatize services and infrastructure. The labour movement opposes pension investment in such ventures.

7. Establishing a Managed Pension Regulator

Workplace pension plans would not exist in Canada without unions. Most pension plans were obtained by unionized workers at the bargaining table. Unfortunately, this reality has not been reflected in the institutions that regulate pensions.

The Pension Commission of Ontario (PCO) was dominated by employer representatives and generally did the bidding of employers, unless directed otherwise by the Courts.

In 1998, the Pension Commission of Ontario was replaced by the Financial Services Commission of Ontario (FSCO) and the Financial Services Tribunal (FST). These institutions continue to be dominated by employer representatives.

If workplace pensions are to be effectively regulated, we need a pension commission that deals exclusively with, and can make policy on, pension matters. It must reflect workplace pension reality and have equal numbers of union and management representatives.

Action Plan:

1. The OFL and its affiliated unions will continue to monitor, review and advocate for our public pension system as a priority for working people.

2. The OFL and its affiliated unions will work to raise Old Age Security (OAS), Guaranteed Income Supplement (GIS) and Canada Pension Plan (CPP).

3. The OFL and its affiliated unions will work to improve standards of private pensions by:

   a) pressing for the indexation of all pension plans;

   b) campaigning to raise the level of the Pension Benefits Guarantee Fund (PBGF);

   c) working for the repeal of Regulation 5.1 in the *Pension Benefits Act*;

   d) amending the *Bankruptcy Act* such that pension plan liabilities and all other worker obligations are recovered before those of the banks and other secured creditors; and

   e) amending the *Income Tax Act* to raise the limits on surplus accumulation and by pressing for immediate vesting.

4. The OFL and its affiliated unions will work to require that all plans be administered by a pension committee with worker / union / retiree representation. The OFL will also work to ensure a real and

effective role in plan governance for members of public sector pension plans.

5. The OFL will assist its affiliate unions to develop a list of best practices related to conflicts of interest, the appointment process and communications within unions and between unions, trustees, and plan beneficiaries and educational support for labour trustees.

6. The OFL and its affiliated unions with the Canadian Labour Congress will lobby the Federal and Ontario Governments such that they clarify that Socially Responsible Investment (SRI) considerations are not a violation of fiduciary duty. Further, that these governments ensure that pension plans be required to disclose, in their Statements of Investment Policies and Practices, the degree to and manner in which SRI have been considered.

7. The OFL and its affiliated unions will advocate that all pension fund managers be required to make public their proxy-voting policies and track record.

8. The OFL will take a leadership role in mediating between conflicting social demands and in encouraging union-appointed trustees to learn more about SRI.

9. The OFL will assist with affiliate unions to develop strategies to ensure that pension plan monies not be used to privatize public services.

10. The OFL and its affiliated unions will advocate for a new pension regulatory body with equal union and management representation and sufficient resources to carry out its mandate.

Keeping the Pension Promise

Inroduction

For many years the OFL has fought for pension improvements for working people in Ontario. Most recently, under the Eves Conservative Government, the OFL lobbied and made a written submission on the issue of pension surpluses. This effort, plus the strong opposition of plan members and retirees across the province, forced the Government to back off its attempt to fundamentally alter pension provisions on surpluses in favour of employers.

Such lobbying activities have continued to the present, based on resolutions put forward and debated at past OFL Conventions. Affiliated unions have fought employer sponsored concessions and sought improvements to their members' plans. Yet it is some time since delegates to an OFL Convention have debated a pension policy paper.

Back in 1988 a policy paper entitled, *Fair and Indexed Pensions,* outlined the key pension issues facing members at that time. Many of the issues identified remain with us today. As the document stated:

> *Canada's pension system is a muddled conglomeration of tax shelters, social security and private pension plans. While the system meets the needs of the comfortable upper middle class, it fails utterly to provide security and dignity to the overwhelming majority of ordinary working people. We in the trade union movement do not accept that in this country, to grow old must inevitably mean to grow poor.*

Unfortunately, and despite considerable efforts, some improvements and seventeen years since this policy paper was debated and passed at an OFL Convention, many workers in this province face hardship upon retirement due to the lack of adequate private pension coverage, low income levels and a lack of indexing.

This policy paper highlights key issues in the field of pensions in the following order:

1. The Public Pension System
2. Benefit Security
3. Improving Pension Standards

4. Joint Trusteeship - The Struggle Continues

5. Socially Responsible Investment
6. Social Investment and Public Services
7. Establishing an Effective Pension Regulator

1. The Public Pension System

In the 1960s, there was a major expansion of public pension benefits in Canada. The new system – the federal Old Age Security (OAS) (a universal pension paid to most Canadians over 65) and Guaranteed Income Supplement (GIS) programs (a means tested pension which supplements the income of retirees with little or no income) and the federal/provincial Canada and Quebec Pension Plans (CPP) – has lifted most, but not all, Canadian seniors out of poverty. Yet the incomes of older Canadians remain substantially below the incomes of younger age groups.

This is particularly the case for older single women and older immigrants. Women constitute the majority of all seniors living on public pensions and make up a disproportionate share of persons in Canada living on low incomes.

The income improvement experienced by older Canadians reflects not only the maturing of the pension system, but its interaction with specific economic circumstances that are subject to change, namely, low inflation, high returns on financial assets and low wage growth. Thus, any complacency concerning income adequacy is misplaced. Nonetheless, together with Medicare, our public pension system is essential to the dignity of our growing senior population.

Currently, public pensions provide about half of all the income of Canadian seniors. They are particularly important for senior women, providing almost 60 percent of their income. Public pensions are essential for all but the highest income seniors, even those who have belonged to good union-bargained pension plans.

Public pensions are irreplaceable. They provide universality of coverage, portability (you maintain your benefits even if you switch jobs), full indexing (pension levels keep up with inflation), they are the most secure (current premium rates of 9.9 percent will ensure CPP financial stability) and the most efficient (having low administration costs that no private system can even approximate). Survivor and disability pensions are also available; a “drop out” clause compensates for some years out of the workforce. Despite this, public pensions in Canada and around the world have been under constant attack by conservative interests for several decades.

To promote the privatization of public pensions, corporate interests have developed misinformation campaigns aimed at undermining public confidence in, and support for, public pension systems. These multi-national campaigns aim to spread the view that there is a funding crisis, that public pensions are unaffordable and unfair.

They neglect to mention that the privatization alternatives they are peddling are both more costly, and more unfair than the public systems. In privatized systems in places like Chile and Britain, workers have been victimized by huge investment fees that destroy the value of their pensions and have had to face, as individuals, all of the risks and dangers presented by volatile markets.

We have, to date, been relatively successful in restricting the damage to our public pension system in Canada. The OAS claw-back introduced by the Mulroney Conservatives in the 1980s has not yet affected enough seniors to undermine public support for this universal program.

Amendments to the Canada and Quebec Pension Plans in the 1990s included modest reductions to benefits, while increasing funding levels to provide Bay Street with a payoff in the form of investment fees, but the basic public system has remained largely intact.

The privatization campaign is not, however, going to disappear. It has strong backers, both within and outside of governments. We must continue to educate Canadians, particularly younger Canadians, about the significance of and the security provided by the public pension system. In particular Ontario, with a veto on changes to the CPP, must be a prime defender of the system.

We must also move beyond defending public pensions and work for improvements in the system. Many Canadian seniors, particularly women, are still living on incomes below the poverty line, a situation only the public system – primarily through improvements in the OAS and GIS – can remedy.

When the Canada and Quebec Pension Plans were introduced in the 1960s, the levels of benefit were kept low (replacing only about 25 percent of income up to the average annual wage) to allow room for expansion of workplace pension coverage.

Workplace pensions have never covered even half of the workforce, and rather than growing, workplace pension coverage has been shrinking in recent years. Thus, most working Canadians have no pension except for the public pension system. We need to expand both the range of coverage and the replacement rate for the Canada Pension Plan, and Ontario should be the leader in this campaign.

2. Benefit Security

Over the last several years there have been a lot of stories in the news about under funded pension plans. A recent study by the Certified General Accountants Association of Canada talked about a $160 billion shortfall.

Those sound like big numbers and a lot of bad news. But it is important to look behind those numbers to see what all this means for your pension plan.

Since the high tech bubble burst, stock markets have been doing badly. Many pension plans lost money from 2000 to 2002 and declining interest rates have also increased pension plan liabilities.

Yet two or three years of bad stock market returns and declining interest rates, while disconcerting, should not cause panic. As trade unionists, we negotiate and improve our pension plans over the long-term and for the long-term.

Similarly, pensions are funded over a long period of time. Your employer, in employer pension plans, and both you and your employer in jointly sponsored plans, are making contributions now for your pension that might not be paid out for another 20 years. From past experience we know that over the long-term, stock markets have always recovered from downturns and come back to more normal rates of return.

This is not the first time that there are a lot of under funded pension plans. Pension plans go in and out of surplus. We know that from periods when we have bargained major plan improvements. What is more important, if your employer continues to operate, your plan isn't at risk, it is just more expensive.

There is no doubt that the stock market slide and declining interest rates have increased the cost of maintaining our pension plans. Pension improvements are more expensive and much harder to negotiate. That is not good news, but it is not a crisis either.

Nonetheless, employers might be in a panic because their free ride is over. In the 1990s many employers did not have to make contributions to their pension plans because the stock market was doing so well. And now almost all employers are back to having to make contributions, and in some cases pay off unfunded liabilities.

Remember when stock markets were riding high? Employers were telling us we had to get rid of our defined benefit pension plans because we would do better playing the market. Now they are telling us we have to get rid of our defined benefit plans because they are costing too much.

This is the same old refrain from employers, "get rid of defined benefit pension plans".

Why do employers want this so much? Mainly because defined benefit (DB) plans are better pension plans. A defined benefit plan is one where the employers guarantee a specific pension benefit to workers when they retire. We know that you never get something for nothing so it stands to reason that these defined benefit plans are also more expensive. One of the reasons they are more expensive is that in these kinds of plans, bad stock market returns are your employer's problem.

In a defined contribution (DC) plan or what is sometimes called a "money purchase plan" the employer contributes a certain amount, but the level of payout is not guaranteed and depends on factors such as the stock market performance. In short, the financial risk is borne by the individual worker. It is the same in an RRSP type pension plan – the level of payout is the worker's problem – not the employer's.

We do not believe that pension plans in Canada are in crisis. However, the stock market performance and declining interest rates show that the legislative changes that we have been lobbying for, through the OFL, continue to be important.

In order to enhance benefit security we must continue to fight for the following improvements.

3. Improving Pension Standards

Inflation Protection Through Indexing

The indexing of private pensions is one of the most serious issues facing retirees and fundamental to the right of workers to retire in security and dignity. We do not believe that in growing old one must grow poor. The reality is that very few pension plans actually provide any form of indexing.

Current statistics indicate that just over half of all pension plan members covered by defined benefit plans have no inflation protection and this rises to an astounding 83 percent among private sector plan members. Without indexing, inflation will continue to erode retiree pension benefits. Inflation can have a significant impact on pensions, even in times of low inflation, plunging retirees further into poverty. For example, the pension of a member who retired in 1994 would have seen inflation erode the real value of their pension by 18 percent.

This is a substantial amount when you consider that inflation was relatively low for the last 10 years.

Furthermore a member who retired in 1984 would have had the real value of their pension reduced by more than 42 percent.

These reductions occurred despite the double digit investment returns of the mid-1990s. During this time many plans were in a surplus position allowing employers to enjoy contribution holidays.

Once again retired workers and their surviving spouses have shouldered the cost of inflation while low inflation and high investment returns allowed employers to reduce pension contributions.

It has become apparent over the last several decades that employers are not interested in providing indexing when times are good and complain about the cost of indexing during any downturn in investment return. In order to correct this injustice, inflation protection must become mandatory under the Ontario *Pension Benefits Act*.

Ontario Pension Benefits Guarantee Fund

The Ontario government established the Ontario Pension Benefits Guarantee Fund (PBGF) in 1980. This fund is important as it covers employees within defined benefit plans where pension income has been lost due to plan underfunding or employer insolvency.

Although this plan is the only one of its kind in Canada, the need to improve its level of coverage has never been greater. Ontarians participate in pension plans with the expectation that they will receive the pension that they have been promised.

Unfortunately, due to bankruptcy many workers are realizing that this is not so. Workers have to come to grips with losing their job, only to find out several months later that because their pension plan was under funded, their pensions will have to be reduced simply because the PBGF does not provide adequate coverage. Clearly this is not acceptable.

The PBGF currently provides for a benefit guarantee only to a maximum of $1,000 per month, an amount unchanged from 1988. The failure to raise the cap has made the current Ontario PBGF benefits grossly inadequate. The PBGF should provide a maximum guarantee benefit of $2,750 per month for defined benefit plans and this maximum should be indexed for future inflation.

The PBGF currently excludes certain benefits from coverage, most notable any increase that has occurred within the last three years. The PBGF should be amended to provide coverage for all benefits regardless of when they came into effect.

Pension Benefits Act

Ontario *Pension Benefits Act* Regulation 5.1 allows employers who administer pension plans with assets greater that $500 million, who are deemed too big to fail, to waive the solvency funding requirements under the *Act* if they make an additional contribution to the PBGF.

At the present time the government is no longer granting this election. However, it may be available again in the future. Stelco was granted this election in 1996 and was able to divert millions in otherwise required pension contributions into company general revenue, putting their workers' pensions at much greater risk. Regulation 5.1 should be completely repealed.

Bankruptcy and the *Corporate Creditors Arrangement Act* Process

Every week dozens of companies declare bankruptcy and close down. Workers pay the price when workplaces shutdown, especially when the closure is triggered by bankruptcy. Not only do workers lose their jobs and their source of income, they often lose wages which are owed, but not yet paid, as well as vacation pay, termination pay and severance pay. In addition, in many cases of bankruptcy the pension plan is not fully funded and workers and retirees face cutbacks in their pensions. Group insurance benefits are lost as well.

Bankruptcy is an expected and normal event in our economy. The economic text books tell us that the weakest companies cannot, or even should not, survive and that the economy will be stronger for it. Based on the record of the last five years it can be expected that there will be about 10,000 commercial bankruptcies per year in Canada. The situation of the employees in those bankruptcies must be taken much more seriously. It must become a public policy priority to minimize the economic impact of bankruptcy in the workers caught up in them.

The labour movement must support proposed legislative changes which, if adopted, will provide working men and women with greater protection against loss and the real opportunity to recover what they are owed. Workers should be first on the list to recover their lost wages and pensions from the assets of a bankrupt employer, rather than last.

The labour movement must also advocate for changes in *Corporate Creditors Arrangement Act* (*CCAA*). The *CCAA* is the legislation governing the process under which companies who are facing financial distress attempt to develop a restructuring plan which will avoid bankruptcy and liquidation. In cases of insolvency and restructuring the labour movement objective must be the protection and preservation of the living standards of our active and retired members. This objective is more likely to be achieved if the employer's business continues. Therefore, labour must be an active and positive participant in the restructuring process.

Recent *CCAA* filings have raised troubling questions concerning the *CCAA* legislation itself. In these cases the initial court orders which granted a "stay" (i.e. provided protection against the company's creditors from forcing the payment of debts) were so broad that they appeared to give the company the right to ignore collective agreements, as well as provincial human rights, environmental, health and safety and labour standards.

For example, the Stelco order provided that "no action, grievance, arbitration, … enforcement process … shall be commenced, proceeded with, or continued … by any person … (including … employees, pensioners, unions)". In effect, the court undercut the union's ability to enforce the collective agreement through the grievance procedure, thereby leaving the Union's members unprotected against whatever action management might want to take.

The labour movement must challenge the right of the court to override collective agreements and provincial standards. However, to date there has been no court decision addressing the concerns raised by unions. The uncertainty about the status of collective agreements during *CCAA* has fuelled a combative and confrontational climate surrounding the *CCAA* process, which hampers efforts to build a successful restructuring plan.

The recent *CCAA* cases are of concern as they reflect what appears to be a growing trend in Canada of employers attempting to use the *CCAA* process to eliminate their pension plans and retiree health benefit plans. Particularly in this context, the *CCAA* legislation must ensure that a balanced playing field is maintained during the period a restructuring plan is developed. The legislation cannot allow employers or other creditors to use the court to attack workers' wages, pensions, and benefits.

To allow collective agreements to be suspended or interfered with during the *CCAA* process would not only create hardship for employees, it would seriously undermine the ability of unions to pursue restructuring plans which would protect the interests of employees. Workers' rights and employees' bargaining position must not be prejudiced by court order before a restructuring plan is agreed upon.

The labour movement must push for legislative changes to the *CCAA* that will ensure that during the *CCAA* process working men and women are provided with the security and stability of a negotiated collective agreement and are protected against cynical corporate attempts to escape commitment to pensions and benefits.

Income Tax Act

The *Income Tax Act* currently places limits on the maximum amount that can be contributed to a registered pension plan. In general terms the *Income Tax Act* eliminates the ability to contribute to a registered pension plan that has a surplus of more than 10 percent. The elimination of contributions is often referred to as a "Contribution Holiday". The funded status of a pension plan changes yearly.

There have been incidents in the past where employers have taken Contribution Holidays based on the most recent actuarial valuation (which can be two or three years old) even though the employer knows the pension plan is no longer in a surplus position. Such actions can seriously undermine the pension plan and should not be allowed. The Ontario Government should support changes to the *Income Tax Act* to reduce the requirement and opportunity for employers to take Contribution Holidays.

Vesting

Statistics tell us that workers in Ontario are changing their jobs more and more frequently. Yet, it has been 15 years since Ontario's law on pension vesting has been changed.

In 1987 the *Pension Benefits Act (PBA)* was amended to require that pensions become an employee entitlement, that is vested, after only two years of service. Vesting means that an employee who terminates employment has a right to the portion of the pension benefit provided by the employer contributions. Before a plan is vested, an employee who terminates employment and membership in a pension plan will *only* receive back their contributions plus interest.

The OFL believes that the *PBA* should be amended to require immediate vesting when an employee joins a pension plan. In this way all employees covered by a pension plan receive the benefits of employer contributions from day one. This would recognize the reality that labour is much more mobile than it was 15 years ago.

4. Joint Trusteeship – The Struggle Continues

For the labour movement in Ontario the last two decades have brought significant victories in the area of pension plan governance. The largest sources of institutional capital in Ontario, outside of the banking sector, are now directed in part by trustees representing unionized workers. These dramatic developments have taken place since the last major OFL pension policy was released – 1988 – and it is incumbent upon us to pause and celebrate our victories.

Not surprisingly, however, there is a long way to go to achieve our goals. In many cases unions are still fighting for joint trusteeship. Despite the fact that joint trusteeship has, in all cases, improved pension plan administration, winning over some of its harshest critics, the Ontario Government, has still not followed the lead of other jurisdictions in mandating shared trusteeship.

Quebec has, for some time, required the committee which administers every workplace pension plan to include representatives of the active workforce as well as the retirees.

In other cases, workers are forced – as in years gone by – to launch costly legal actions to hold the managers of their deferred wages accountable.

In this regard, it is worth noting the current struggle to hold the Ontario Municipal Employee's Retirement System (OMERS) accountable for the Borealis fiasco – where a number of individuals, staff of OMERS and outsiders, benefited enormously from questionable transactions and internal restructuring.

Even for those with joint trusteeship, plan governance can often seem as if it was designed to frustrate the effective exercise of joint trusteeship and joint control. While the historic roots of retirement savings can be traced back into the 19th Century, the current constellation of major pension plans in Ontario developed over the last few decades. Governance structures that favour only employers, or that force together groups of workers with fundamentally different needs or approaches to pension plan investments and administration, serve to undermine joint trusteeship.

These are only some of the challenges facing our movement. We need to carefully consider our approach to joint trusteeship. Proactive attention to plan governance is critical to ensure that our trustees, while ever conscious of and sensitive to their fiduciary responsibilities, are empowered to work together and in consultation with the union movement to move our historic agenda forward.

To protect the pension promise and to use our members' deferred wages to build a better future for us all, the labour movement needs to understand the role of the union trustee and support it. We also need to understand some of the challenges and opportunities involved in pension plan investing as developments here may represent a new turning point in the history of pension plans and organized labour in Ontario. First, let us turn to the role of our appointed trustees and how they can be supported in advancing our movement's historic agenda.

The Role of the Labour Trustee

A trustee in law is a person who must behave prudently with respect to overseeing funds and be loyal to the interests of the members of the plan. This does not mean that trustees cannot or should not take their beliefs and principles into account when making decisions but that this decision-making process must, at all times, be supported by independent advice. This can be both a restriction and an opportunity as trustees should be empowered to seek whatever advice they require to support the decision-making process.

The role of the labour trustee requires a much greater commitment than time alone as they are constrained by law and placed into an environment that is far removed from the normal working lives of their members and retirees.

Unions in jointly-trusteed plans should give careful consideration to establishing policies that ensure that the trustees they appoint maintain regular communications with the union and that they agree to follow a clear conflict of interest policy.

Trustees cannot make decisions that benefit them personally and they cannot use information received from the investment process for personal benefit. Not surprisingly, the potential for this kind of conflict of interest is more common among employer nominated trustees and union trustees should carefully monitor the activities of their fellow trustees as well.

It is also entirely reasonable and certainly prudent to establish policies regarding expenses either paid directly to trustees or received in kind (for example, invitations to lavish and unnecessary industry conferences which can be lobbying opportunities for pension consultants and financial advisors). Unions can also require that their trustees claim no more than what other union members are entitled to for union business even if the pension plan adopts a higher amount.

A broader conflict-of-interest situation involves acting in the interests of the union or, more commonly, the corporation or public sector employer rather than in the interest of plan members. This needs to be avoided at all costs. There are, however, many instances when the interests of plan members can be said to coincide with broader labour movement interests and our trustees should resist intimidation from employers when pursuing these win-win scenarios.

Unions entering into jointly-trusteed arrangements need to consider and adopt a process for making pension plan appointments. This can be done through election by the membership or by appointment by the union. There should be a regular reporting requirement, clear communication guidelines, terms of appointment, and the ability to rescind appointments or elections, with cause.

From the perspective of nominating unions, it is perfectly reasonable to expect a regular flow of information from their respective trustees concerning the decisions they make. Keeping in mind their overwhelming legal constraints, it is not acceptable to attempt to direct trustees how to vote on a given issue or to mandate how trustees conduct themselves.

Regular communication is very important. If unions forget about their trustees after appointment to a plan, they are setting themselves up for potential problems down the road.

One approach that should be considered is an active pension committee within union structures that liaises with appointed trustees. Again, in keeping with the comments above, unions must ensure they are not encroaching on areas of trustee activity that would undermine the trustees' fiduciary obligations.

Communication with the membership is also important. Policies affecting pensions should be developed in consultation with union members to ensure that pension plan administrators and/or employers cannot pit the interests of our active and former members as workers against their interests as current or future retirees.

Finally, educational support is critical. Pension plan administration is incredibly complex, covering plan terms, actuarial assessments, financial reporting, investment guidelines and strategies, and a web of laws and regulations. Unions must be willing to assist their trustees in their duties by providing them with education and information. Trustees should be required or encouraged to take advantage of industry courses, and the cost of these is a legitimate expense for pension plans, as well as specific training from a labour perspective, provided either by unions or by affiliated organizations.

All of these points indicate that the role of the labour trustee is a very challenging one indeed. The labour movement can be of great assistance to the extent that communication within and between unions helps develop a standard approach to supporting and working with labour trustees.

5. Socially Responsible Investment

Key to any investment program is the role that investments and returns play in securing benefits. Yet this is more to pension benefits than investment returns.

One of the historic goals of the labour movement has been to counteract and address the fundamental inequalities that run through our society and economy. The possibility that our deferred wages could support our efforts to win social justice at the bargaining table and in civil society has always been an exciting part of the drive towards joint trusteeship.

Socially Responsible Investment (SRI), supported by the labour movement, is an approach to investment strategy that integrates financial and ethical concerns. It can take many forms: positive inclusion or negative exclusion of companies that exceed or fall short of ethical standards; shareholder advocacy; social venture capital; and community investment.

There are now enough studies to show that SRI strategies either enhance investment returns or, at worst, are neutral compared to traditional strategies. This understanding is beginning to spread throughout the financial industry, even in Canada where ideological blinders have prevented many from recognizing the value of an ethical approach to corporate activity.
It is becoming increasingly clear that a commitment to progressive policies and practices by major corporations can be an important indicator of the quality of their management and the business' long-term prospects. But Canada has a long way to go to catch up to the pioneering examples from Europe's social-democratic tradition.

As a first step, the federal and provincial governments should clarify, through legislation and regulation, that social and ethical considerations are a valid part of the investment process and do not violate fiduciary duties. In fact, all pension plans and mutual fund managers should be required to disclose, if and how, environmental, labour, ethical, human rights and social considerations are taken into account when making investment decisions.

An important element of SRI is the active voting of shares held by our pension plans. The holdings of our largest pension plans can be used to exert considerable pressure on corporate managers to behave in a manner consistent with our movement's commitment to labour rights, environmental stewardship, ethical behaviour, human rights and social progress. But this will only happen if our ownership position within these companies is given voice, in part through voting of our shares.

Some pension plans have taken important steps in this regard and have clearly defined and publicly available proxy voting policies. It is important that these precedents be extended throughout the pension industry.

The above notwithstanding, it is difficult to develop a comprehensive interpretation of SRI that can be applied to all plans in all contexts. Opinions about what is and what is not socially responsible will differ from plan to plan, from employer to employer and from union to union. To provide just one example, investments in the energy sector are seen by some as environmentally irresponsible and to others as vital support for workers, whether organized or not.

There is considerable debate within our society about the proper balance between the collective rights of workers in any given industry and the collective rights of all citizens to live in a clean and just world.

There are no easy answers to this debate and unions and their pension funds must make their own determinations. However, because of its twin roles as protector of current workers and of the longer-term interests of society, the labour movement can continue to play a critical role in bridging these social divisions.

One other area of active investments that is sometimes grouped under the SRI banner is community investment and it is here that a changing environment, especially in Ontario, poses many risks to our pension plans and the labour movement but also a potential opportunity to stabilize the pension promise and increase our influence within the broader society.

6. Social Investment and Public Services

Canadian workers' pension funds should be used to strengthen public services and to keep infrastructure in public hands. Instead, our pension funds are increasingly sought after and used as a source of financing for Public Private Partnerships (P3s).

P3s are any of a variety of arrangements in which private for-profit corporations operate, maintain, lease-back or own public services and infrastructure such as highways, hospitals, arenas, rail lines, schools and electricity generating stations. P3s are used by governments to privatize services and infrastructure.

Traditionally, governments have raised capital to finance new infrastructure by issuing bonds and direct borrowing. Participating in direct public financing of public services is how our pension funds should partner with government.

This type of investment will support keeping public services in public hands, as well as being more likely to ensure that unionized building trades workers will build the project.

Pension administrators have a fiduciary duty to plan members. This simply means that the pension fund must work in the best interests of its members. Typically, the ultra conservative professionals who usually get to determine the "interest" of the plans' owners have simplified it to a very narrow position of maximizing returns, without consideration of the consequences.

This blind doctrine does not always represent the broadest interest of workers. Workers' interests go well beyond profit making to include an interest in our own employment, overall employment levels, healthy communities and the continuing operation of a sustainable and healthy economy to say nothing of international solidarity.

As large and long-term institutional investors, pension funds have been perfectly positioned to invest in securities of governments needing to finance budgetary deficits. These partnerships have allowed important public projects and programs to proceed on a financed basis, while providing very good returns to the pension funds doing the investing.

P3s on the other hand are highly risky ventures, both financially and politically. Community opposition, critical reviews by provincial auditors, changes in government, reversal of government policy are only a few of the reasons pension funds should reject P3s proposals. This to say nothing of the fact that P3s are bad public policy.

Workers deferred wages must not be used to spread and promote P3s.

7. Establishing an Effective Pension Regulator

Workplace pension plans would not exist in Canada (except for senior managers) without unions. Most pension plans were obtained by unionized workers at the bargaining table. Unfortunately, this reality has not been reflected in the institutions that regulate pensions.

In Ontario, the Pension Commission (PCO) was dominated by employer representatives, and generally did the bidding of employers, unless directed otherwise by the Courts. In 1998, the PCO was replaced by the Financial Services Commission of Ontario (FSCO) and the Financial Services Tribunal (FST). The FSCO and the FST continue to be dominated by employer representatives and their pension mandate was diluted by adding other regulatory responsibilities for the insurance and mortgage broker industries.

If workplace pensions are to be effectively regulated we need a pension commission that deals exclusively with (and can make policy on) pension matters.

It must reflect workplace pension reality and have equal numbers of union and management representatives. It must also be given the resources to effectively regulate workplace pensions, rather than simply responding to complaints.

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