Remarks by:
Pat Vanini, Executive Director, Association of Municipalities of Ontario

November 14, 2007
Ontario Expert Commission on the Review of the Pension Benefit Act
390 Bay Street, Toronto, Ontario

- Association of Municipalities of Ontario is pleased to appear before the Commission today.
- My name is Pat Vanini, Executive Director of AMO.
- With me is Jordan Fremont, senior associate in the Pension and Benefits group at Hicks Morley and advisor to AMO who has been working with us on pension issues since Bill 206 was first introduced.
- Before we reference our written submission, I would like to provide some background and context for the Commission about AMO.

Context:

- AMO is a non-profit association with voluntary members; AMO has existed for 107 years – its mandate is to support strong and effective municipal government in Ontario and to promote the value of municipal government as a vital and essential component of Ontario and Canada's political system. In essence, municipal governments are an order of government that touches the lives of citizens more often on a daily basis than the federal and provincial governments combined.
- There are 445 municipalities in Ontario; currently AMO has about 420 of those municipalities as members in the association.
- Unlike other groups, particularly employee groups, membership in AMO is not compulsory – membership renewal is most often based on the perceived performance of the association on a very large range of issues, and now more so than before, that includes the OMERS pension plan.
- Of the 445 municipal governments in Ontario, 380 are participating employers in OMERS.; CUPE and AMO are the largest employer/employee representatives in the Plan
- In terms of the OMERS membership AMO represents – about 59% of those participating municipal employers have less than 50 employees and within this group, 40% have 25 or less employees; in terms of employers with more than 100 employees, that range is quite large – over 11,000 employees in the City of Ottawa and that in itself is quite varied – includes police, fire, and transit and other boards. These figures do not include Toronto as Bill 206 recognizes it separately.
- AMO is new to the sponsorship role as mandated by *Bill 206, the OMERS Act 2006.*
- While in the pre-devolution world there were municipal representatives on the OMERS Board, AMO did not have a mandated representative role or an accountability relationship with those representatives.

- In fact, AMO did not have responsibility to make those municipal appointments. We did provide commentary on governance proposals and dealing with surplus.
- With Bill 206, we have all those responsibilities and more now.
- While joint employee/employer sponsor has merit in principle, the very large number and diverse nature of the employer/employee groups makes it different from any other public pension fund in Ontario – both in terms of structure/composition and how this may or may not impact accountability to all Plan members, and the shared responsibility to the Plan.
- As the largest employer group sponsor, municipal governments have a very keen interest in the Plan for many reasons, not least is that three quarters of municipal operating budgets are salary and benefits and an important part of determining the tax rate needed for a municipal budget.
- From AMO's perspective, at this juncture in the evolution of devolution, it would be premature to make any conclusions as to whether the structure is going to be good for the Plan both in the short term and the long term but we are committed to it and take our representative role very seriously.
- I think it may be reasonable to say at this juncture that board competency, and our own in some ways is catching up to the new governance model.
- I can say with certainty that it has altered AMO's business and resource needs substantively; we have been ramping up to provide our OMERS representatives and AMO's membership points of access and interaction not to mention research and analysis related to municipal government interests .
- At the end of the day, AMO's effectiveness in its new OMERS role will be measured by its members, in part against the impact that decisions of OMERS has on municipal governments' budgets and taxation
- Our written submission to you dealt with three specific matters and I will ask Jordan to briefly summarize these, I will provide a couple of additional considerations and then we will be at your pleasure.

Jordan Fremont: Summary of AMO's perspective on the 3 issues in the written submission – important.

In preparing its submissions to the Commission, AMO has been guided by its role as a representative of municipalities on OMERS issues

It is from this perspective that AMO raises concerns respecting:

- solvency funding requirements
- asset transfers in divestment situations, and
- restrictions respecting OMERS plan design

We know that you have heard from OMERS and others on the first of these two issues – and in this respect AMO wishes to add its voice to the long list of groups that have been before you and that are seeking remedies to these problems

With the aim of keeping my remarks brief, I will focus on why AMO views the three issues that I have mentioned as being of concern to municipalities. I'll start with AMO's submission respecting solvency funding.

Solvency Funding Relief

Understandably, AMO is deeply concerned about the implications if OMERS becomes forced to increase contribution rates to fund a solvency deficiency.

Contributions are now at an all-time high, and with municipal budgets already stretched, tax increases or service cuts – or both – are likely in the event of a solvency deficiency.

But municipalities and taxpayers need not be put in that position.

In AMO's view, solvency funding requirements make little sense for OMERS and other public plans, where the risk of insolvency is extremely remote.

This is particularly so for jointly sponsored pension plans such as OMERS, since the sponsors themselves are able to set funding levels with the knowledge that benefits can be reduced in the event of a plan wind up.

Proposed Solution

AMO's proposal is that OMERS be made exempt from solvency funding requirements.

Asset Transfers – Two Pension Issue

The second concern for which AMO seeks a solution involves the treatment of pensions in a public sector divestment situation.

Large public sector db plans are based upon an employee's highest average earnings for service while a member of that plan.

The effect of ceasing to accrue a pension in one plan and commencing to accrue in a second plan is that the benefits in the first plan are effectively frozen – notwithstanding any subsequent increase in earnings. The sum of the two pensions in this case will not typically be as much as they would be if service were combined under one plan.

While section 80 of the *Pension Benefits Act* permits a transfer of assets and liabilities, the legislation is interpreted to allow this only if the second plan replicates the accrued pension in the first. However, replicating the accrued pensions for multiple prior plans is not practical. Therefore public sector plans have not been able to effect transfers in these situations. Nor can they avail themselves of the multi lateral portability agreement among the plans since that

agreement does not apply to divestment situations. Frustrations and concerns respecting the current regulatory environment will no doubt increase over time as more employees suffer the consequences of the asset transfer restrictions, particularly as they become aware of their financial demands in retirement and the level of pension benefits that they will have available to them. AMO is concerned with the potential repercussions within the municipal sector.

Proposed Solution
As a possible solution, AMO proposes that the PBA be amended so as to permit the consolidation of pensions into a single pension plan following a public sector divestment. The solution recently implemented for police officers provides an example of how this might be done.

Flexibility to Determine Future Plan Design

AMO's third submission relates to a restriction contained in the *OMERS Act 2006*, respecting OMERS plan design. In AMO's view, the restriction gives rise to an issue within the broad scope of the Commission's mandate, which includes consideration of "issues relating to the security, viability and sustainability of the pension system in Ontario."

Specifically, AMO's concern is with section 9 of the *OMERS Act 2006*, which requires that the OMERS Primary Plan be a defined benefit plan.

This is a restriction that is not faced by other plans sponsors and, in AMO's view, it undermines the authority and autonomy of the joint sponsors of OMERS.

AMO's concern is that OMERS will be prevented from pursuing alternative plan designs, which might at some point in the future be desired by and be in the interest of participating employers and members.

There are of course trade-offs in any alternative plan design, but in a jointly sponsored plan such as OMERS, the joint sponsors should be entitled to weigh the benefits and risks associated with any change, and – within the parameters of the Pension Benefits Act and the Income Tax Act, to implement those design changes that they deem to be desirable.

AMO believes it would be prudent and reasonable for the joint sponsors of OMERS to have a full array of options available to facilitate the ongoing viability and sustainability of the plan, including an unrestricted ability to determine future plan design.

Proposed Solution

AMO's proposed solution is to remove the restriction contained in section 9 of the *OMERS Act 2006*.

Pat Vanini: Observations/Additional Considerations:

I'd like to make a couple of additional observations/considerations, which were not set out in our written submission:

First – we support the Commission's desire to take a good public policy approach in considering the rules needed or not needed to safeguard pension plans while striking a balance between the interests of employers and employees. Not an easy task.

It strikes us that in terms of good public policy, and from practical experience, a legislative and regulatory framework that sets broader choice or some agility may better serve pension plan participants than the typical detailed prescriptive approach that could preclude growth or the introduction of timely solutions to unforeseen or unintended consequences.

On the other hand, having no restrictions whatsoever may not serve the basic principles of transparency, accountability and fairness that is important to sponsors and OMERS members.

Second – We would urge the Commission to consider as one of its recommendations for the *Pension Benefits Act* that there be a periodic review of the legislation and any related regulations. For example, in the *Municipal Ac*t, there is an automatic review of the legislation every five years. This is one technique to ensure legislation keeps up with the times.

And as you may know, the implementation of the *OMERS Act 2006* is to be reviewed no later than 2009, and the effectiveness, fairness and efficiency of OMERS governance is to be reviewed no later than 2012.

Thank you for allowing us to make these comments and we will endeavour to answer your questions. If for some reason we can't respond today, we undertake to get back to you.

Association of
Municipalities of Ontario

October 15, 2007

The Expert Commission on Pensions
P.O. Box 102
777 Bay Street
Toronto, ON M5G 2C8

Dear Commissioner:

Association of Municipalities of Ontario
Submission to Ontario Expert Commission on Pensions

The Association of Municipalities of Ontario (AMO) is pleased to make this submission, to assist the Ontario Expert Commission on Pensions (Expert Commission) with its review of pension regulation in Ontario.

SUMMARY OF PROPOSALS

1. **Solvency Funding Relief**

   AMO proposes that the Ontario Municipal Employees Retirement System (OMERS) Primary Plan be made exempt from solvency deficiency funding requirements.

2. **Asset Transfers**

   AMO proposes that asset transfers be permitted between OMERS and other pension plans, regardless of the benefit formulas, provided that agreements first be reached between plans concerning the basis upon which asset transfers will be permitted, and that the transfers be available as an option to affected individuals.

3. **Flexibility to Determine Future Plan Design**

   AMO proposes that the joint sponsors of OMERS be provided with flexibility to determine the future design of OMERS plans, within the parameters of the *Pension Benefits Act* and the *Income Tax Act* (Canada).

BACKGROUND

AMO is a non-profit organization and has almost all of Ontario's 445 municipal governments as members. For more than a century, AMO has represented the interests of Ontario's municipal governments and advocated on behalf of Ontario's property tax payers.

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AMO's representation extends into pensions, with over 380 of AMO's members as participating employers in OMERS. AMO has a history of representing municipal employer and property tax payer interests with respect to OMERS issues, most recently in 2005 and 2006 in response to Bill 206, *An Act to revise the Ontario Municipal Employees Retirement System Act, 2005*.

AMO's role as a representative for the municipal sector on OMERS matters became entrenched in legislation last year, under the *Ontario Municipal Employees Retirement System Act,* 2006 (OMERS Act 2006). A key feature of the OMERS Act 2006 was the devolution of responsibility for OMERS from the Ontario Government to OMERS participating employers and members. Two new corporations, the Administration Corporation (AC) and the Sponsors Corporation (SC), were established to manage, respectively, OMERS administration and OMERS sponsor responsibilities. AMO, as an umbrella organization representing a large majority of participating OMERS employers from municipal government, was designated by the OMERS Act 2006 as having responsibility for appointing two (2) of a total of seven (7) employer representatives on each of the AC and the SC. No other single employer or employer association was authorized by the OMERS Act 2006 to appoint more than one (1) representative. This was recognition that AMO members represent the largest contingent of employers in OMERS.

AMO takes this representative role very seriously, and has prepared the following submissions for the benefit of the over 380 municipal employers which participate in OMERS, and for the benefit of Ontario tax payers.

DISCUSSION

1. **Solvency Funding Relief**

<u>The Issue</u>

All pension plans registered in Ontario must determine the funding requirements of defined benefits on a going-concern and solvency basis. The going concern valuation assumes the plan is ongoing for an indefinite period of time. The solvency valuation assumes an immediate wind up of the plan with all amounts coming due. Any unfunded liability on a going-concern basis may be amortized over a period not exceeding fifteen (15) years, while any solvency deficit must be amortized over a period not exceeding five (5) years.

In the event of a pension plan wind up, pensions must be annuitized. A consequence for solvency valuations is that they are significantly influenced by long-term interest rates. The current low interest rate environment has caused dramatic increases to annuity rates and solvency liabilities. In the case of OMERS, AMO understands that a one percent decline in real interest rates would create a solvency deficiency, and would give rise to contribution rate volatility.

In view of the potential negative impact of solvency deficiency funding requirements on pension plan sponsors (which includes both employers and employees in the case of OMERS), it is appropriate to consider whether these rules continue to make sense in their present form. Their purpose was to protect the accrued pensions of defined benefit plan members in the event of

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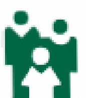

plan sponsor insolvency. This makes sense for the private sector, but much less so in the public sector where the risk of insolvency is extremely remote.

The case for solvency deficiency funding requirements is even less supportable for public sector jointly sponsored pension plans, such as the OMERS Primary Plan. The *Pension Benefits Act* contains special rules for jointly sponsored pension plans, which allow pension benefits to be reduced on plan wind up (if there are insufficient assets to pay for member benefits). This ability to reduce benefits is premised on the fact that the joint sponsors (the participating employers and employees) are responsible for setting contribution levels and making investment decisions, and are responsible for determining the consequences if plan assets are insufficient to pay for member benefits. These types of plans should be free from solvency deficiency funding requirements since the participating employers and employees are able to set funding levels, with the knowledge that benefits can be reduced in the event of a plan wind up.

Solvency Deficiency Funding Relief - Ontario Initiatives

The need for relief from solvency deficiency funding requirements has been recognized by most jurisdictions in Canada. This has been demonstrated by a number of recent initiatives, in Ontario, and across Canada. Some of the most recent such initiatives have been in Ontario.

For example, Ontario Regulation 489/07 provided an exemption from solvency deficiency funding requirements for certain types of multi-employer pension plans (but not the OMERS Primary Plan).

Also, Ontario Regulation 413/07 exempted the OMERS Supplemental Pension Plan for Police, Firefighters and Paramedics from solvency deficiency funding requirements. The OMERS Supplemental Plan exemption illustrates an acceptance that there is an extremely low risk of insolvency within the municipal sector. Solvency deficiency funding relief for the OMERS Primary Plan would be consistent with this notion.

In 2006, the Province adopted a Stelco specific Regulation (Stelco Inc. Pension Plan – Ontario Regulation 99/06) setting out the funding regime to apply to Stelco with respect to solvency funding. Regulation 99/06 provides for annual level contributions, payable in monthly instalments, between 2007 and 2015. This level annual funding arrangement replaced the going concern and solvency deficiency special payments which would otherwise have been required. Earlier, in 2005, Ontario Regulation 88/05 gave Algoma Steel's new pension plans fifteen (15) years to amortize initial solvency deficiencies.

The above Ontario regulations recognize that solvency funding exemptions or longer amortization periods for funding solvency deficiencies can be in the best interests for Ontarians.

Initiatives in other Canadian jurisdictions have been summarized in Appendix "A".

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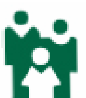


Proposed Solution

AMO proposes that the OMERS Primary Plan be made exempt from solvency deficiency funding requirements. The purpose of solvency deficiency funding is to protect against plan sponsor insolvencies, but since this is a negligible risk in the public sector it is appropriate to exempt the OMERS Primary Plan, and other public sector jointly sponsored pension plans from these requirements. The requested relief would also bring the funding requirements of the OMERS Primary Plan in line with those that apply to OMERS Supplemental Plan for Police, Firefighters and Paramedics.

2. **Asset Transfers**

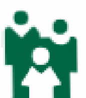
The Issue

The movement of employees from one employer to another due to mergers, acquisitions, restructurings or divestments is a reality of our modern economy, and affects both the public and private sectors. However, under Ontario's current pension regime, where groups of employees are transferred as a result of such transactions, the consolidation of member benefits and related assets is practically impossible amongst and between large public sector plans. Frequently, this results in affected employees having accrued pensions maintained under two or more pension plans, and the combined benefits are often less valuable than if they had been combined under just one plan.

This problem stems from section 80 of the *Pension Benefits Act*, and the asset transfer policy of the Superintendent of Financial Services. Section 80 of the *Pension Benefits Act* applies when an organization sells, transfers or reorganizes all, or part, of its operations and, as a result of such divestment, employees are transferred from one employer to a new employer. The consent of the Superintendent of Financial Services is required for pension assets to be transferred between pension plans under these circumstances. The Superintendent has interpreted Section 80 to mean that past service benefits offered in the new plan must be identical to those offered under the exporting plan. Large public sector pension plans such as OMERS are prepared to provide benefits of equivalent value, but will not provide identical benefits. The result is that where section 80 of the *Pension Benefits Act* applies, asset transfers between public pensions plans are made practically impossible.

Municipal Impact

The impact of the Ontario Government's 1998 transfer of property assessment responsibility to the Ontario Property Assessment Corporation helps to illustrate the above asset transfer issue. The transfer was made effective on December 31, 1998, pursuant to the *Ontario Property Assessment Act*, 1997. Amendments to the Act in 2001 renamed the organization the Municipal Property Assessment Corporation ("MPAC"). Every municipality in Ontario is a member of MPAC.



The divestment of the Ontario Government's property assessment responsibility to MPAC also resulted in individuals' employment being transferred to MPAC from the Government of Ontario. As employees of the province, these individuals had participated in the OPSEU Pension Trust ("OPTrust") or the Public Service Pension Plan ("PSPP"), but that participation ceased when they became employees of MPAC. Instead, as MPAC employees, they commenced participation in OMERS. Since OMERS benefits are not identical to those under either the OPTrust or the PSPP, the consolidation of pension benefits was effectively precluded.

For MPAC employees affected by the divestment, their benefits under the OPTrust or PSPP are "frozen" as of December 31, 1998. This means that their benefits in the OPTrust or PSPP are determined based on their earnings up to that date, and earnings increases with MPAC cannot be taken into account for purposes of their pension entitlement under those pension plans. For many affected employees, the result is that the combined value of their pension benefits under the plans will be lower than if they had their benefits calculated under a single plan.

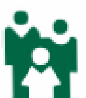
The negative impact that the current restrictive regulatory environment can have on an individual could be very dramatic. It could mean reduced financial security at retirement, prolonged participation in the workforce, beyond the individual's desired retirement date, and lower job satisfaction. This is a significant concern for municipal employers.

In the last decade there has been an increase in government divestments, and it can be expected that this type of activity will continue into the future. The frustrations and concerns respecting the current regulatory environment will no doubt increase over time as more employees suffer the consequences of the asset transfer restrictions, particularly as they become aware of the financial demands in retirement, and the level of pension benefits that they will have available to them.

Proposed Solution

AMO's proposed solution parallels the change that was made for the Province's police officers through an amendment to the *Police Services Act* (i.e. new sections 131.1 to 131.5 to the *Police Services Act* attached as Appendix "B" hereto). The *Police Services Act* amendments enabled the PSPP and OMERS to enter into individualized transfer agreements to consolidate service in the OMERS plan. It required that the two pension plans agree on the basis upon which asset transfers will be made, and file the agreement with the Superintendent. The transfers are made on an individual basis and are optional; they require that an affected officer make an election in writing if he wishes to effect a consolidating transfer.

The amendment to the *Police Services Act* clearly indicates that the Government understands the gravity of this problem and is willing to act to rectify it. However, rectifying the problem on a case by case or piecemeal basis brings into question the integrity of the Ontario pension system. It is submitted that one solution to the problem must be implemented for all former Ontario employees in similar circumstances.



AMO specifically suggests that the solution implemented for police be adopted for OMERS, and for other pension plans. Where two pension plans agree on the transfer of accrued pensions between themselves, the consolidation of pension benefits in a successor employer's plan should be allowed and benefits of equal value be recognized in the successor plan. Transfers in this case should be individual, voluntary and subject to the consent of the members. This would give plan members the flexibility of assessing how best to consolidate their pension assets depending on their individual financial situation.

The solution advocated in this submission would benefit both affected employees and employers, and restore confidence in the administration and regulation of pensions in Ontario.

3. **Flexibility to Determine Future Plan Design**

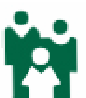
The Issue

A feature that challenges sponsors and members of defined benefit plans is the very volatile nature of their funding obligation. The funding extremes experienced by OMERS in recent years, which quickly went from a period of contribution holidays to the current situation of increasing contribution rates, exemplifies this risk. The havoc created by funding volatility has motivated large numbers of public and private sector sponsors to migrate, or consider migrating towards other types of plan designs. There are of course trade-offs in any alternative plan design, but in a jointly sponsored plan such as OMERS, the joint sponsors (employers and plan members) should be entitled to weigh the benefits and risks associated with any change, and to implement those are deemed to be desirable.

In the case of OMERS, however, section 9 of the OMERS Act 2006 enshrined in legislation the requirement that the OMERS Primary Plan be a defined benefit plan. In other words, the legislation precludes alternative types of plans, even if change is overwhelmingly supported by the joint sponsors (employers and plan members) and warranted by the financial state of the OMERS Primary Plan. The restriction in section 9 of the OMERS Act 2006 imposes restrictions that are not faced by other plans sponsors, and needlessly undermines the authority and autonomy of the joint sponsors of OMERS.

Proposed Solution

AMO's proposed solution is that the restriction in section 9 of the OMERS Act 2006 be removed. The joint sponsor framework of OMERS means that the implementation of any desired plan design changes will necessarily need to strike a balance between employer and plan member interests. Plan changes cannot be made unless they have broad based support, and likewise the sponsors should be permitted to make plan changes, including possible changes to the plan design, which have that high level of support. Also, if that were not enough, the *Pension Benefits Act* contains protections respecting accrued benefits. In view of these safeguards, it would be prudent and reasonable for the joint sponsors of OMERS to have a full array of options available to facilitate the ongoing viability of the plan, including an unrestricted ability to determine future plan design. The proposal would simply provide the joint sponsors of OMERS with a level of flexibility that is already enjoyed by the sponsors of other pension plans.



Thank you for the opportunity to make the above submissions. In the event that the Expert Commission has any questions or concerns, please contact the undersigned at (416) 971-9856, ext. 316.

Respectfully submitted,

Pat Vanini
Executive Director

APPENDIX "A"

Solvency Deficiency Funding Relief - Initiatives in Other Canadian Jurisdictions

Federal

The federal government has introduced four temporary measures to provide solvency funding relief to employers, both in the private and public sector.[1] The measures, which expire on February 1, 2019, permit:

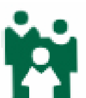
- consolidation of solvency payment schedules;
- amortization of the entire existing solvency deficit over a single, new five year period;
- the extension of the period for making solvency funding payments to ten years (from the existing five years), where no more than one-third of current plan members and retirees object to the change;
- the extension of the period for making solvency funding payments to ten years (from the existing five years) where the difference between the five year and ten year level of payments is secured by a letter of credit; and
- the extension of the period for making solvency funding payments to ten years for agent federal Crown corporations.

In addition, in 2006, the Federal Government released guidelines for seeking the Superintendent's authorization to make an amendment to a pension plan which has the effect of reducing benefits accrued before the date of the amendment. [2] This is based on a provision in the federal pension legislation[3] which does not exist in the *PBA*. The guidelines provide that any such amendment must be permitted by the terms of the plan and its supporting documents. This could include a review of side letters or collective agreements as well as funding documents. Second, while sponsors are generally expected to preserve (rather than reduce) accrued benefits, the Superintendent will consider the purpose of the amendment in the circumstances. Third, the amendment cannot remove those benefits which are required by the federal *Pension Benefits Standards Act ("PBSA*"). For example a pension plan could not be amended to remove the vesting rights required by the *PBSA* after two years of membership. In addition, the Plan administrator is expected to consider other options prior to adopting reducing amendments and will be expected to support any claims that the Plan sponsor is unable to meet increased contributions. Finally the Plan administrator will be required to ensure an appropriate

[1] Department of Finance Canada, "*The Budget Plan 2006: Focusing on Priorities"* (May 2006). Available on the Department of Finance web page at <http://www.fin.gc.ca/ budget06/bp/bptoce.htm>.

[2] Office of the Superintendent of Financial Institutions (April 2006) available online: <www.osfi-bsif.gc.ca/osfi/index_e.aspx?ArticleID=1256>

[3] s. 10.1(2)(a).



process is in place to ensure representation of all affected member groups and will be required to provide written notice of the amendment to members.

Alberta

Effective January 1, 2003, public sector pension plans regulated under Alberta's *Public Sector Pension Plans Act*[4] have had a full exemption from the solvency funding rules.[5] Similar rules were extended effective August 10, 2006 to publicly funded plans governed by Albert's *Employment Pension Plans Act*. Under these rules, a plan must apply to be designated by the Superintendent as a publicly funded plan to receive the exemption from solvency funding payments. Plans seeking this exemption must undertake to file triennial solvency valuations, agree to immediately pay any deficiency if the plan is terminated and include in their applications an acknowledgment that the Superintendent may refuse any amendment to the plan that affects solvency if the plan has a solvency deficiency or its solvency ratio is less than one.[6]

Manitoba

In 2005, Manitoba introduced *Special Payments Exemption Regulation 75/2005*[7] which allows the University of Winnipeg to spread special payments over ten years (with the option to suspend payments altogether in the first few years) instead of the normal five year amortization period. The relief applies to the ten year period between 2004 and 2014.

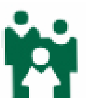
New Brunswick

In 2003, New Brunswick enacted a regulation permitting the Superintendent of Pensions to reduce solvency payments by extending the period of amortization of solvency payments to a date not to exceed December 31, 2018.[8] To qualify for this extension:

- an actuarial valuation must be filed within the preceding 9 months;
- an actuary must certify that the plan has sufficient assets to meet its cash flow requirements during the extended amortization period; and
- each member, former member and other persons entitled to payment must be given written notice of the request, and an explanation for the request and the Superintendent will wait 45 days following this notice before approving any extension.

In December 2005, the New Brunswick *Pension Benefits Regulations* were amended to specifically exclude municipal pension plans from solvency deficiency payments provided that a majority (i.e., 51%) of affected plan participants and beneficiaries consent.[9]

[4] S.A. 2000, c.P-41.
[5] Bill 12, *Financial Sector Statutes Amendment Act, 2003,* S.A. 2003, c.19.
[6] Alberta Finance "Policy Bulletin #31 – Publicly Funded Pension Plans" (August 2006)
[7] Man. Reg. 75/2005.
[8] N.B. Reg. 2003-87.



Nova Scotia

In 2005, the Nova Scotia *Pension Benefits Regulations* were amended to provide universities with up to 15 years to amortize solvency deficiencies.[10] This extended time-frame was intended to recognize the institutional and non-profit character of those employers, and that university insolvencies are virtually unknown. The Superintendent of Pensions acknowledges that this change is the result of universities in that province advising the government that funding had become onerous as a result of the decline in financial markets and the universities request that they receive additional flexibility in funding their plans.[11] However, in the event of a partial wind up of a plan (for example due to outsourcing of a service or termination of a program) immediate and full funding of the benefits payable in respect of those affected employees will be required.

The *Pension Benefits Regulations* have also been generally amended to allow the exclusion of "grow-in" benefit liabilities from solvency valuations. On full or partial wind up of a plan, "grow-in" benefits are only to be paid after all other plan benefit obligations have been fully satisfied[12]. This is in contrast to Ontario, the only other Canadian jurisdiction to require grow-in benefits, where these liabilities remain a requirement of the solvency valuation.

Quebec

In June 2005, Quebec passed Bill 120, *An Act respecting the funding of certain pension plans*,[13] which allows for the consolidation of solvency deficiencies. In addition, municipalities and universities are permitted to amortize any such consolidated deficiencies over ten years (instead of five years). This preferential treatment is granted only to municipalities or higher level educational institutions or where the employer either obtains the consent of members and beneficiaries or alternatively if the employer posts a letter of credit with the pension committee administering the plan. Other employers can benefit from the extended amortization period by obtaining the consent of affected plan participants and beneficiaries and by providing a guarantee, such as a letter of credit. These measures apply to the first full actuarial valuation performed after December 30, 2004.

Summary of Reforms

The above legislative initiatives demonstrate that in those situations where it is unlikely that a pension plan will terminate, for example university and other public sector pension plans, there is a growing willingness by governments to provide relief from solvency funding requirements.

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[9] N.B. Reg. 2005-156.

[10] N.S. Reg. 88/2005.

[11] *Report of the Superintendent of Pensions on the Administration of the Pension Benefits Act for the Year Ending March 31, 2006,* Annual Report of the Pension Regulation Division (Nova Scotia).

[12] N.S. Reg. 243/2004.

[13] S.Q. 2005, chapter 25.

APPENDIX "B"

SCHEDULE 32
POLICE SERVICES ACT

1. The *Police Services Act* is amended by adding the following Part:

PART VIII.1
TRANSFER OF ASSETS BETWEEN PENSION PLANS

Interpretation

131.1 (1) Words and expressions used in this Part have the same meaning as under the *Pension Benefits Act* unless the context requires otherwise.

Definitions

(2) In this Part,

"police force employee" means, in relation to a municipal police force, a member of the police force and, in relation to the Ontario Provincial Police, a police officer or an employee who is not a police officer; ("employé d'un corps de police")

"receiving pension plan" means,

(a) a pension plan that is referred to in subsection 80 (1) of the *Pension Benefits Act* as a pension plan provided by the successor employer,

(b) a pension plan that is referred to in subsection 81 (1) of that Act as the new pension plan, or

(c) a pension plan for a pension fund to which assets are transferred in the circumstances referred to in subsection 81 (8) of that Act; ("régime de retraite cessionnaire")

"transferring pension plan" means,

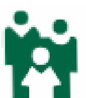
(a) a pension plan that is referred to in clauses 80 (1) (a), (b) and (c) of the *Pension Benefits Act* as the employer's pension plan,

(b) a pension plan that is referred to in subsection 81 (1) of that Act as the original pension plan, or

(c) a pension plan for a pension fund from which assets are transferred in the circumstances referred to in subsection 81 (8) of that Act. ("régime de retraite cédant")

Agreement governing transfers

131.2 (1) The administrators of the Public Service Pension Plan and the Ontario Municipal Employees Retirement System may enter into one or more agreements governing the transfer of assets between pension plans in any of the circumstances that are referred to in subsection 80 (1) or 81 (1) or (8) of the *Pension Benefits Act* in respect of eligible police force employees whose employment has been transferred between a municipal police force and the Ontario Provincial Police.



Amount

(2) An agreement must set out the manner of determining the amount of assets to be transferred from a transferring pension plan to a receiving pension plan in respect of the pension benefits and ancillary benefits of an eligible police force employee who consents to the transfer of assets.

Notice to employees

(3) An agreement must provide for the contents of the notice to be given to each eligible police force employee concerning the option of consenting to a transfer of assets in respect of his or her pension benefits and ancillary benefits under the transferring pension plan, and the notice must contain sufficient information to allow the employee to make an informed decision about whether to consent to the transfer.

Transition

(4) An agreement cannot establish an effective date for a transfer of assets that is earlier than the day on which the *Budget Measures and Interim Appropriation Act, 2007* received Royal Assent.

Duty to file agreement

131.3 (1) If the administrators of the Public Service Pension Plan and the Ontario Municipal Employees Retirement System enter into an agreement under section 131.2, the administrators shall file it with the Superintendent of Financial Services.

Effect of filing

(2) Sections 14 and 26 of the *Pension Benefits Act* do not apply with respect to a filed agreement or with respect to any amendment to a pension plan that relates to the implementation of a filed agreement.

Eligibility of police force employees

131.4 (1) For the purposes of an agreement filed under section 131.3, a police force employee is an eligible police force employee if he or she is employed as a police force employee on the effective date of the proposed transfer of assets under the agreement in respect of his or her pension benefits and ancillary benefits under the transferring pension plan.

Exception

(2) Despite subsection (1), a police force employee is not an eligible police force employee if he or she is receiving a pension under the Public Service Pension Plan or the Ontario Municipal Employees Retirement System on the effective date of the proposed transfer of assets under the agreement.

Same

(3) Despite subsection (1), a person is not an eligible police force employee if he or she is entitled, on the effective date of the proposed transfer of assets, to a deferred pension under the Public Service Pension Plan or the Ontario Municipal Employees Retirement System.

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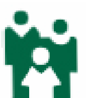

Employee's consent to transfer of assets

131.5 (1) An eligible police force employee may consent to the transfer of assets under an agreement filed under section 131.3 from a transferring pension plan to a receiving pension plan in respect of his or her pension benefits and ancillary benefits under the transferring pension plan.

Same

(2) The employee must indicate his or her consent in writing in the manner specified by the administrator of the transferring pension plan.

Effect of consent

(3) Subsections 80 (4), (5), (6) and (7) and 81 (4), (5), (6), (7) and (8) of the *Pension Benefits Act* do not apply with respect to a transfer of assets to which the employee consents in accordance with this section.

Commencement

2. This Schedule comes into force on the day the *Budget Measures and Interim Appropriation Act, 2007* receives Royal Assent.