ACPM/ACARR
The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

February 17, 2010

SENT BY COURIER

The Honourable Dwight Duncan
Minister of Finance
7 Queen's Park Crescent
7th Floor
Toronto, ON M7A 1Y7

Dear Mr. Duncan:

Response to Bill 236 (*Pension Benefits Amendment Act, 2009*)

The Association of Canadian Pension Management (ACPM) is the informed voice of retirement income providers for Canadians.

Established in 1976, the ACPM advocates for an effective and sustainable Canadian retirement income system. Our members are drawn from all aspects of this industry from one side of this country to the other. They represent over 300 pension plans consisting of more than 3 million plan members, with assets under management in excess of $300 billion.

The ACPM promotes its vision for the development of a world-leading retirement income system in Canada by championing the following Guiding Principles:

- Clarity in legislation, regulations and retirement income arrangements;
- Balanced consideration of other stakeholders' interests; and
- Excellence in governance and administration

The ACPM regularly advocates and participates in public dialogue on pension issues. We commend the Ontario Government for taking the first steps toward a comprehensive review of Ontario's pension legislation.

The ACPM has a keen interest in the proposed changes to the *Pension Benefits Act* ("PBA"), as they affect many of our members and their employees, former employees and retirees. In this letter we offer our suggestions for Bill 236 and further changes to the PBA.

<u>General Comments</u>

Coverage Under Pension Plans

Bill 236 does not directly address the issue of pension plan coverage in Ontario. We believe that increased coverage under pension plans is an important element of pension reform that needs to be addressed.

Changes must be made to promote greater pension coverage for the large majority of private sector workers in Ontario who do not participate in a pension plan. In particular, the disincentives that employers have to sponsor and to fully fund defined benefit pension plans, particularly in terms of surplus ownership, must be addressed. The PBA must be amended to accommodate innovative pension plan designs. Some other changes to the PBA or the *Employment Standards Act* (such as removing the requirement for similar benefits by class of member, and facilitating auto-enrolment and auto-escalation), could also assist to increase pension coverage. We urge the Government to include in the proposed future changes provisions that address the issue of increased plan coverage, taking into account that pension plan sponsorship is voluntary.

Trade-offs

Some of the proposed provisions of Bill 236 will be more acceptable to plan sponsors and plan administrators if they are balanced by a relaxing of regulatory requirements at subsequent stages of the reform process. In our comments below we have identified some areas of concern, which may be mitigated by future provisions in the reform package. An example would be the removal of the requirement to fund grow-in benefits.

Harmonization

Pension plans are regulated by the different provinces and the federal jurisdiction, with each having different rules. A more harmonized pension system would benefit employees, pensioners, employers and service providers alike. Compliance with different sets of rules and regulations imposes a burden on these various stakeholders, as well as pension regulators, increasing the cost and complexity of administering a pension plan.

We recommend that the Government strive to maintain harmonization and uniformity with the pension laws of other Canadian jurisdictions. Many of Ontario's pension plans have members in other jurisdictions, and harmonization greatly facilitates the administration of multi-jurisdictional pension plans. In addition, a harmonized system allows service providers, many of which are located in Ontario, to create more efficient and cost-effective administrative solutions for pension plans in all jurisdictions.

A clear position and leadership by the Ontario Government on this issue of harmonization would greatly aid the future development of pension regulation in other jurisdictions and at the federal level. We encourage the Ontario Government to use this opportunity to take the initiative in this area.

<u>Specific Comments</u>

Vesting and Small Amounts

The ACPM supports the proposed changes made regarding immediate vesting of all members' pension benefits, in conjunction with the removal of partial wind-ups, and provided that there is still a reasonable eligibility period for plan membership. The ACPM also agrees with the increase in the threshold of small amounts which may be paid out by the administrator of a pension plan.

Grow-in Benefits

The ACPM does not support the continuation and expansion of grow-in benefits provided by the PBA. It is our position that grow-in rights should be eliminated as a mandatory benefit. Instead, we propose that benefits on termination of employment be governed solely by employment standards law, not pension law. In our view, grow-in benefits discourage the provision by employers of early retirement incentives and are an additional cost to plan sponsors. Following the adoption of the Report (and recommendations) of the Nova Scotia Pension Review Panel, Ontario will be the sole Canadian jurisdiction that requires grow-in benefits.

If grow-in rights are to be expanded, we agree that they should extend to involuntary terminations only, as currently contemplated by the Bill.

If grow-in benefits are retained, we propose that Ontario mitigate the cost implications for plan sponsors by, for example, not requiring grow-in benefits to be funded on a solvency basis, or by making the benefit available on plan termination only if there is a surplus that would allow for such payments to be made.

Phased Retirement

We support enabling pension plans to provide phased retirement if the eligibility criteria are met under section 23 of Bill 236.

Consolidation of Benefits under a Single Pension Plan and Past Divestments

We agree with the proposed changes made under proposed section 80.1 of the PBA that allow for pension benefits to be consolidated under a single plan. However, additional information should be provided on how these new provisions will work in practice.

Sale of a Business and Pension Plan Mergers and Splits

We generally agree with the proposals made in sections 66 to 69 of Bill 236 which facilitate the transfer of assets between pension plans. These provisions will provide much needed flexibility in this area.

We observe that the provisions do not expressly over-ride trust law, and we hope that demonstrating entitlement to merge/transfer assets under the plan documents and the costly trust law analyses will not be added as a criterion to be prescribed by regulation.

It is our recommendation that, where the consent of members, former members, retired members or other persons is required, such consent be pursuant to a "non-disapproval" model, that is, consent will be deemed to have been given unless the prescribed number of people object. This concept is utilized under the *Supplemental Pension Plans Act* in Quebec.

Partial Wind-Ups

We agree with the removal of the concept of partial wind-up from the PBA. Please see our additional comment below regarding surplus sharing on partial wind-up.

Surplus Sharing

We support the surplus sharing provisions in section 64 of Bill 236. We are of the opinion that this is a much needed proposal that adds clarity to the statutory scheme relating to surplus sharing, and encourages agreements between plan sponsors and plan members.

In our view, however, this change should go further. Although partial wind-ups are to be removed from the PBA, the surplus sharing regime should apply also to current or ongoing partial wind-ups, to spare the potential surplus sharing beneficiaries the additional cost and effort of going to court where a sharing agreement has been reached.

Pension Advisory Committee

We are in agreement with Bill 236 containing a provision that allows retired members to participate.

Notice and Communication

Several provisions in Bill 236 address the issue of transparency and communication of plan information to plan members, retired members and others. We are generally supportive of these proposed changes that seek to increase transparency. There is, however, a concern with respect to the additional cost that some of these added obligations will create, particularly with respect to former members and retired members.

To increase the effectiveness of the transparency initiatives, we suggest that there be a materiality threshold to be met for the information conveyed by the notice requirement. In particular, advance notice of amendments should be given only to those whose rights are materially affected. All members, former members and retirees could be given notice in annual statements.

An electronic disclosure mechanism could be a more efficient and cost effective means of disclosure. For example, the administrator could post the required information on a website or other forum, along with an electronic notice to each affected individual. In this way, the information would be readily available to those who want it, but administrators would be spared the cost in respect of those who have no interest and who are not affected by the matters being disclosed.

The Superintendent's Powers

We support the extended powers given to the Superintendent in section 76 of the Bill. However, we note that the powers may be exercised "in such circumstances as may be prescribed." It is important that there is transparency regarding the Superintendent's discretion and scope of powers.

Bankruptcy and Insolvency

We support the proposed change under section 72 of Bill 236, which grants to the Superintendent the authority to approve agreements in restructuring proceedings under the *Companies'*

Creditors Arrangement Act (Canada) and the *Bankruptcy and Insolvency Act* (Canada). We do caution that the Superintendent will need the resources to exercise such powers effectively.

Reciprocal Agreements

We are generally in favour of the increased recognition of reciprocal transfer agreements.

Regulations under the PBA

Throughout Bill 236 there are instances where the detailed requirements or arrangements are not specified but are left to the regulations. We have referred to several of these above. Although this approach provides greater flexibility, it makes it difficult to assess the effect of the statutory provisions. We strongly recommend that the Government consult with the pension industry regarding the content of the regulations.

Conclusion

As noted above, we commend the Government on moving forward with much-needed reforms to the PBA. We would be pleased to meet with you or your representatives to discuss these issues in greater detail if that would be helpful.

Yours truly,

Association of Canadian Pension Management

Bryan Hocking
Chief Executive Officer