ACPM/ACARR

The Association of Canadian Pension Management

L'Association canadienne des administrateurs de régimes de retraite

BRIEF
TO THE
ONTARIO GOVERNMENT
ON
The REPORT OF THE ONTARIO EXPERT COMMISSION ON PENSIONS

February 27, 2009

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FOREWORD

1. Introduction

This brief contains comments by the Association of Canadian Pension Management ("ACPM") in response to "A Fine Balance: Safe Pensions, Affordable Plans, Fair Rules", the report of the Ontario Expert Commission on Pensions (the "Report"). The ACPM was an active participant in the review undertaken by the Commission: the ACPM submitted a written brief, made an oral presentation to the Commission and participated in the stakeholder meetings organized by the Commission.

The ACPM is pleased that the Government of Ontario is seeking focused feedback on the Report. The ACPM believes that it is possible for the government to create an environment in which DB pension plans can flourish and continue to be an important part of retirement income security for citizens of Ontario. However, we also believe that, to bring this about, technical and administrative changes as well as more fundamental changes of principle and law are necessary. In many ways, the current system of pension regulation in Ontario is strong and, perhaps, one of the best in the world. In other ways it is lopsided and unfair, and discourages plan sponsors from establishing new pension plans and funding existing plans beyond the minimum regulatory financing requirements. A greater sense of balance and fairness needs to be brought to the legal and regulatory context of pensions in Ontario. That would be an excellent way for the government to encourage the growth and health of DB pension plans.

2. The Association of Canadian Pension Management (ACPM)

The Association of Canadian Pension Management is the informed voice of Canadian pension plan sponsors, plan administrators and their allied service providers. Established in 1976, ACPM has over the years gained a solid reputation as being an outspoken advocate for an effective and fully sustainable retirement income system in Canada. ACPM's Individual Members and Institutional Members alike are drawn from all of the various industry sectors.

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

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

The ACPM regularly advocates and participates in public dialogue on pension issues.

3. Structure of this Brief

This brief consists of this Foreword, a summary of Major Principles, a "scorecard" summary of the ACPM's responses to the specific Recommendations made in the Report and a chart containing the ACPM's detailed responses to the specific Recommendations made in the Report.

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MAJOR PRINCIPLES

This portion of our brief describes the major principles of the ACPM's response to the Report.

1. OVERVIEW

1. The Report has significant benefits for public sector plans and for multi-employer pension plans and jointly sponsored pension plans in a unionized environment.

2. The ACPM believes that the Report's Recommendations will not stem the decline of private sector, non-union DB plans, particularly in small and medium sized enterprises. The Report does little to encourage new DB plans in this area.

3. The ACPM recommends that the government consider the best ideas of all of the recent expert review panels. In particular, the ACPM supports the package of recommendations proposed by the Alberta/British Columbia Joint Expert Panel on Pension Standards (JEPPS) in its report "Getting Our Acts Together", including the JEPPS recommendations regarding pension security funds and "ring fencing" of legacy surplus issues.

4. We are concerned that many of the Report's Recommendations will add significant cost and additional complexity to an already over-burdened pension system.

5. The proposed single employer target benefit plan holds great promise for increased pension coverage, provided joint governance is optional and not required.

6. Any reform to the legislation must deal with legacy issues and provide a means to transition from existing structures to the new proposals.

7. The impact of traditional trust law needs to be examined. The ACPM believes that traditional trust law rules are inappropriate for workplace pension arrangements.

8. Changes to pension legislation in Ontario should be made as far as possible in harmony with changes in the laws in other Canadian jurisdictions.

9. Pension stakeholders in Ontario are engaged in discussing the proposed changes to pension law. We urge the government to act quickly and take advantage of this historic opportunity to improve and expand pension coverage in Ontario.

2. COVERAGE

In our view, the key question that the government must answer when comparing the Report's Recommendations against the goal of increasing coverage is:

> ***Will these Recommendations assist with the increasing of coverage levels for Ontario workers, particularly in the private sector?***

Many of the Recommendations that relate to coverage would assist in increasing coverage, but mainly in the public and unionized sector. In the case of the private non-unionized sector, however, in our view the answer is a muted "possibly". This is because many of the Recommendations that could potentially increase coverage are quite vague and require significant additional development. The Report acknowledges this fact. For example, Recommendation 8-27 encourages the creation of jointly governed target benefit plans as an alternative to SEPPs. This Recommendation has the potential to increase coverage, but likely only if mechanisms are put in place to allow the conversion of legacy liabilities into this new framework, and if joint governance is optional rather than required.

As such, we believe the government must act quickly to modify and/or flesh out some of the Recommendations to truly have an impact on coverage. As noted in our original submission to the Commission, there are essentially two ways of increasing coverage:

- increase the incentives as well as decrease the disincentives to the ***voluntary*** creation and maintenance of private pension plans, both DB and DC
- implement mandatory coverage, either at a basic level (complement to the CPP) or at a more complete level.

Our preference is to try and increase coverage through the enhancement of the voluntary system. In fact, a possible expansion of the proposed role for the Ontario Pension Agency ("OPA") could be of assistance in this regard and reduce the proliferation of government bodies proposed by the Report. An organization such as the OPA could be useful as a repository for monies owing to members who cannot be located, and a central registry of such members and deferred vested members would be useful, although we can foresee some jurisdictional issues with multi-jurisdictional plans.

Although the proposed OPA has the potential to improve the pension system in Ontario, the ACPM believes that the structure and powers of the OPA require careful review. In particular, we are concerned about the governance of the OPA, believe that a proliferation of government agencies should be avoided, and believe that the OPA should be self funding. The OPA might also form part of a national agency.

The Report's Recommendations deal with three types of plans – multi-employer pension plans (MEPPs), jointly-sponsored pension plans (JSPPs) and single employer pension plans (SEPPs), as well as the creation of a fourth type, the

jointly governed target benefit pension plan (JGTBPP). In order to effectively address the issue of increased pension coverage, we suggest that the Report's Recommendations regarding these four plan types be modified as follows.

- MEPPs and JSPPs – we agree with the proposed recognition and treatment of these plans. However Recommendations 9-2 and 9-3, which could increase the use of these plans beyond classic union-based industry plans and public sector plans, need to be significantly fleshed out to deal with such issues as what types of plan design should be allowed, what restrictions should be imposed to ensure equitable treatment of all plan members and conditions for joining and withdrawing from plans.
- SEPPs – While the Report attempts to deal with some of the challenges facing these plans, in our view the Report does not do enough. We believe SEPPs remain an important ingredient to coverage in Ontario and, as such, the disincentives to creating, even maintaining, SEPPs should be removed.

  Funding remains the biggest issue, as described in "Funding" below.

  There are several Recommendations that could have a negative impact on coverage, particularly when considered together. Even if some of the Recommendations may have other beneficial effects, adding bureaucracy, increased costs and administrative complexity will not help coverage.

- JGTBPPs – While many current SEPP plan sponsors will still want to maintain a true DB promise and/or maintain responsibility for plan governance, the target benefit plan is an interesting idea and should be explored further. In particular, two issues must be addressed:
  - we believe that joint governance should be optional not mandatory, and
  - options to include the legacy or past service liabilities in this new design are crucial to the ultimate success of this concept for existing sponsors of DB plans who are looking to change their current design.

  Promotion of the JGTBPP concept, however, should not be seen as a substitute for action to improve the environment for traditional DB plans.

The ACPM believes that there is a benefit in avoiding placing types of plans into rigid categories (DC, DB, MEPP, SEPP etc.) but rather making the legislation flexible enough to address the plan's risk characteristics without focussing on what "type" of plan it is.

3. FUNDING

At a high level we have addressed our comments relating to funding around the concept of certainty. In a perfect world, workers want certainty regarding the receipt of their retirement income and employers want certainty regarding the amount and timing of the costs of this retirement income. We do not live in a perfect world, but changes to the pension system in Ontario should move the system closer to this ideal.

1. Benefit Certainty

Currently, benefit certainty is enhanced by creating a fund that is protected from creditors and receives contributions designed to achieve a target level of funding at the earliest practical date. Some of the Report's Recommendations, primarily relating to minimum contribution levels and target funding levels for SEPPs, assist in this regard.

However, the contribution Recommendations regarding MEPPs and JSPPs potentially reduce the security of these plans' benefits. The ACPM acknowledges that these plans are different from SEPPs – they cannot change contribution rates very quickly, or at all retroactively; they are unlikely to wind up in total. That argues for different contribution rules from SEPPs, rules that accommodate the realities of these plans.

The ACPM recommends the following:

- MEPPs and JSPPs be exempt from solvency funding (supporting the Report's Recommendations);
- MEPPs/JSPPs be required to provide detailed communications to plan participants in order to ensure their understanding that their pension benefits are potentially subject to reduction (supplementing the Report's Recommendations);
- MEPPs/JSPPs be required to fund on a going-concern basis only, and any margin in the basis be disclosed in accordance with the new standards currently being developed by the Canadian Institute of Actuaries (CIA) (supplementing the Report's Recommendations);
- Valuation reports for MEPPs/JSPPs should provide commentary on the potential for plan benefits to be reduced (or contributions to be increased) with reasonable likelihood, depending on the level of margin (not mentioned in the Report's Recommendations) and that the margin be explicitly disclosed;
- SEPPs be required to fund on a solvency basis only, and with a margin that reflects plan-specific risk attributes (modification of the Report's Recommendations);
- Solvency deficits for SEPPs be amortized over 10 years (not mentioned in the Report's Recommendations); and
- Administrators of all plans subject to solvency funding be required to prepare a brief estimate of the solvency status of the plan no later than three months following the plan's year end (not mentioned in the Report's Recommendations).

Additionally for all plans subject to solvency funding, the ACPM recommends that the implications of being underfunded on a solvency basis be described in the actuarial valuation report.

2. Surplus Certainty

Some of the Recommendations in the Report enhance the benefit security of SEPPs by increasing or accelerating employer contributions, the inclusion of additional benefits and the addition of a solvency margin. While we support the concept of additional benefit security, we cannot support the potential for additional monies to be taken out of the hands of contributors and potentially used for purposes other than initially intended. The ACPM notes the Report's Recommendations for the use of letters of credit and asset pledges, and conceptually supports Recommendations such as these that provide the contributing entity with greater control over its contributions. In its submission to the Commission, the ACPM described the concept of solvency accounts, and continues to support this concept as a way of ensuring that the original intended use of contributions remitted to a pension fund not be changed by the changing circumstances of the plan. We also note that the Alberta / British Columbia Joint Expert Panel on Pension Standards recommended both Pension Security Funds (conceptually similar to solvency accounts) and the ability to "ring fence" legacy surplus issues. We strongly support both of these recommendations. More broadly, the principle that we encourage the government to follow is to create an environment where employers are encouraged to contribute beyond minimum statutory requirements, while at all times providing for the security of promised benefits. This principle can be achieved by instituting statutory contribution requirements at an appropriate level, in conjunction with appropriately flexible approaches to surplus utilization should those contributions prove not to be necessary to provide for the promised benefits.

3. Regulatory Certainty

We commend the Commission for its recommended structure for dealing with the thorny issues of surplus (Recommendations 4-16 and 4-18). The arbitration model is a creative and workable approach, and provides sufficient certainty in this area.

There are two Recommendations that have the potential to increase uncertainty, however. Recommendation 4-6 suggests that the Superintendent can order an interim valuation, without providing detail as to what reasons would cause such an order. Recommendation 4-17 would require the cessation of contribution holidays based on an estimate of the plan's financial status, together with the potential for significant fines for non-compliance.

If the government chooses to implement these particular Recommendations, the ACPM urges the government to work with the Canadian Institute of

Actuaries to develop methodologies for approximating a plan's funded status between formal valuations. We would also suggest that these methodologies be published by the government or the CIA, and that they form a safe harbour for determining whether a plan is "at risk of failure".

4. Review Certainty

Certain Recommendations in the Report include provision for a review after five years (e.g. letters of credit). The Report contains an overall recommendation that pension legislation be reviewed after no more than 8 years. We recommend that there be one timetable for all such reviews, and support an 8-year review cycle.

4. BENEFIT SECURITY

The comments in this chapter relate broadly to the Report's Recommendations relating to "Pension Plans in a Changing Economy" and "When Plans Fail".

1. Pension Benefits Guarantee Fund (PBGF)

We have no particular difficulty with a further review of the Pension Benefits Guarantee Fund, although it seems to us there is considerable literature on the subject already. No increases to benefits should occur before such a review.

We do not, however, agree with the implementation of Recommendations 6-14, 6-16 and 6-17 immediately or at any time. ACPM is on record as calling for the elimination of the PBGF as creating inequities among plan sponsors, and representing an unfair burden on taxpayers, most of whom are themselves without employer sponsored defined benefit pension plans. If the PBGF is to remain, it should be entirely self-financed within the DB pension system, and not create a potential burden to taxpayers.

2. When Plans Fail

The ACPM supports giving priority to special payments that are due but unpaid at the time of bankruptcy. However, the ACPM does not support extending priority to any other deficiencies in the event of bankruptcy. Any greater priority would most likely hinder plan sponsors' access to capital.

We oppose any extension of the ability to pay litigation fees out of pension funds as any extension will simply invite litigation in this area.

3. Partial Wind-ups and Grow-In Rights

ACPM continues to hold the position that both partial wind ups and grow-in rights should be eliminated from the PBA. We are of the view that grow-in rights should be dealt with, like severance, as a matter of employment standards not pension law. We note that the Nova Scotia Pension Review Panel also recommends removal of grow-in as a mandatory benefit.

5. REGULATION

Our general comments on the Recommendations relating to the regulatory system are as follows.

1. Regulatory Complexity

The Report articulates a strong need for a regulator that not only administers the law but is empowered to support the pension system, for example, through the use of opinions and advance rulings. The proposed changes to the regulatory structure set out in the Report are ambitious and well considered. It goes without saying that there is a need to carefully consider and balance cost against the expected benefit of particular changes. An extension of this balancing is giving consideration to whether the existing regulatory structure can be modified in order to fulfill many of the objectives of the Report without the extensive building of new regulatory structures that the Report envisages.

Similarly, although we support greater disclosure and transparency, the actual benefits to members must be weighed against the additional costs to plans and plan sponsors.

2. Principles Rather than Rules

One of the themes in the Report is whether the system should be rules-based or more principles-based. We believe that amendments to the PBA and changes to the regulatory structure should use principles wherever possible. The highly prescriptive statutory codes used in some other jurisdictions (e.g., the United States under the Employee Retirement Income Security Act) do not appear to have increased certainty to stakeholders and are not associated with a lower rate of litigation.

The differing design of pension plans demonstrates that there is no “one size fits all” solution. Similarly, there is no “one size fits all” governance structure. Given the voluntary nature of pension plans, the specifics of their governance should be determined by the parties to the plan and not by legislation.

3. Statute Paramount over Trust Law

Legislation has been recognized by the courts as displacing the common law. In light of that, the PBA should be amended so that the method used to fund a pension plan (e.g., trust, insurance, pension fund society) does not in and of itself have an impact in determining questions of entitlement.

The legislation needs to be clear that it displaces the common law, and that the legislation constitutes a complete code for the administration of pension plans, so that the “pension deal” is not frustrated by the unintended application of trust law to what are really matters of contract law.

4. Technical Amendments

The ACPM generally supports the technical changes to pension legislation contained in the Expert Advisors' Consensus Recommendations on Technical and Operational Issues. There are, however, some proposed changes that require further consultation, such as the proposed changes to sections 1(4), 27 and 28, 39 and 55 of the PBA. We encourage the government to implement these changes, subject to additional consultation.

6. GREATER UNIFORMITY

Since the establishment of the Commission, reviews of pension legislation have been established in Alberta and British Columbia, Nova Scotia and the federal jurisdiction. These reviews have yielded some interesting ideas. The Canadian Association of Pension Supervisory Authorities (CAPSA) has also published its Report on CAPSA's Work on Regulatory Principles for a Model Pension Law.

The ACPM is particularly supportive of the recommendations of the Alberta/British Columbia Joint Expert Panel on Pension Standards (JEPPS). The ACPM encourages the government to review the JEPPS Report "Getting our Acts Together", noting in particular the JEPPS approach relating to pension security funds and "ring fencing" of legacy surplus issues.

As the Ontario government prepares to make changes to Ontario's pension legislation, 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.

7. BEYOND THE REPORT

The ACPM recognizes that the Commission's mandate was limited to defined benefit plans, and was limited to issues subject to Ontario's jurisdiction. We also recognize that the government is seeking focused feedback on the Report. The ACPM believes, however, that it is important to consider broader issues in any revision of Ontario's pension legislation. Set out below is a non-exhaustive list of important issues that the ACPM urges the government to address.

(a) Defined contribution pension plans which are increasingly the form of pension plan on which Ontarians rely.

(b) Limits on pension plans under the Income Tax Act, including DB benefit limits, DC contribution limits and limits on DB funding levels.

(c) Discussions with the federal government to extend bankruptcy priority to the due but unpaid portion of a solvency deficiency.

The government has an historic opportunity to revise the pension laws of Ontario for the benefit of Ontarians. The ACPM urges the government to take action.

SCORECARD SUMMARY OF THE ACPM'S RESPONSES TO THE RECOMMENDATIONS[1]

Recom.	ACPM Response	Recom.	ACPM Response	Recom.	ACPM Response	Recom.	ACPM Response
4-1	Agree	4-16	Partially Agree	5-6	Partially Agree	5-21	Agree
4-2	Agree	4-17	Disagree	5-7	Agree	5-22	Partially Agree
4-3	Partially Agree	4-18	Agree	5-8	Disagree	5-23	Disagree
4-4	Partially Agree	4-19	Agree	5-9	Agree	6-1	Partially Agree
4-5	Agree	4-20	Disagree	5-10	Agree	6-2	Partially Agree
4-6	Disagree	4-21	Disagree	5-11	Disagree	6-3	Partially Agree
4-7	Agree	4-22	Agree	5-12	Agree	6-4	Agree
4-8	Partially Agree	4-23	Agree	5-13	Agree	6-5	Agree
4-9	Agree	4-24	Agree	5-14	Agree	6-6	Agree
4-10	Agree	4-25	Agree	5-15	Agree	6-7	Partially Agree
4-11	Agree	5-1	Partially Agree	5-16	Agree	6-8	Partially Agree
4-12	Partially Agree	5-2	Agree	5-17	Agree	6-9	Agree
4-13	Disagree	5-3	Agree	5-18	Agree	6-10	Partially Agree
4-14	Partially Agree	5-4	Partially Agree	5-19	Partially Agree	6-11	Partially Agree
4-15	Disagree	5-5	Agree	5-20	Agree	6-12	Partially Agree

[1] We have categorized our responses as "agree", "partially agree" and "disagree". Reference should be made to our more detailed responses which are set out in the table that follows.

Recom.	ACPM Response	Recom.	ACPM Response	Recom.	ACPM Response	Recom.	ACPM Response
6-13	Disagree	7-12	Agree	7-30	Agree	8-17	Partially Agree
6-14	Disagree	7-13	Agree	7-31	Agree	8-18	Agree
6-15	Agree	7-14	Disagree	8-1	Agree	8-19	Partially Agree
6-16	Disagree	7-15	Agree	8-2	Disagree	8-20	Agree
6-17	Disagree	7-16	Agree	8-3	Disagree	8-21	Agree
6-18	Disagree	7-17	Agree	8-4	Partially Agree	8-22	Partially Agree
6-19	Partially Agree	7-18	Agree	8-5	Partially Agree	8-23	Agree
7-1	Agree	7-19	Agree	8-6	Agree	8-24	Disagree
7-2	Agree	7-20	Agree	8-7	Agree	8-25	Disagree
7-3	Agree	7-21	Agree	8-8	Partially Agree	8-26	Disagree
7-4	Disagree	7-22	Agree	8-9	Agree	8-27	Partially Agree
7-5	Agree	7-23	Agree	8-10	Partially Agree	8-28	Agree
7-6	Agree	7-24	Agree	8-11	Agree	8-29	Partially Agree
7-7	Agree	7-25	Agree	8-12	Agree	8-30	Disagree
7-8	Agree	7-26	Agree	8-13	Agree	9-1	Agree
7-9	Agree	7-27	Agree	8-14	Agree	9-2	Agree
7-10	Agree	7-28	Agree	8-15	Disagree	9-3	Agree
7-11	Agree	7-29	Agree	8-16	Agree	9-4	Agree

Recom.	ACPM Response	Recom.	ACPM Response	Recom.	ACPM Response	Recom.	ACPM Response
9-5	Agree	10-3	Agree	10-6	Agree	10-9	Agree
10-1	Agree	10-4	Agree	10-7	Agree		
10-2	Agree	10-5	Agree	10-8	Agree		

TABLE OF DETAILED RESPONSES

TO THE RECOMMENDATIONS

Report Recommendation	ACPM Response
Funding **Recommendation 4-1** — The Superintendent should work with the Canadian Institute of Actuaries to ensure that actuarial standards and practices continue to evolve in the direction of greater transparency and more structured discretion. For example, actuarial valuations should reveal the reasons behind the assumptions used in valuations to set discount rates and to select the mortality trends used to calculate plan liabilities. They should also reveal whether the sponsor intends to take a contribution holiday.	• The ACPM supports providing greater clarity in valuation reports, but urges the government to consider the fine balance between the benefit of providing additional information and its cost. • The ACPM is of the view that the rationale for the selection of actuarial assumptions and methods, together with a statement of intention regarding sponsor contributions should be contained in a Funding Policy Statement developed by the sponsor of each plan. This document should form the basis for "more structured discretion" regarding actuarial methods and assumptions. • Contribution holidays are a decision of the sponsor, not the actuary. As such, the ACPM believes that information on short-term contribution intentions should be collected directly from the sponsor. Longer term contribution policy should be contained in the Funding Policy Statement.
Recommendation 4-2 — The Superintendent should have the power to require that plans cease using assumptions that are unreasonable or that depart materially from accepted actuarial practice, and to order an independent valuation or peer review of a report, at the expense of the plan, if there are grounds to believe that the actuarial valuation misrepresents a material factor in its funding.	• The ACPM agrees with this recommendation, provided that the Superintendent publishes guidelines (developed in discussion with the CIA) with respect to what practices are considered acceptable.
Recommendation 4-3 — Going concern valuations should no longer permit the exclusion of promised indexation benefits. Solvency valuations should no longer permit the use of smoothing practices or the exclusion of benefits. A special exception should be made for those plans that continue to provide plant closure benefits pursuant to a specific, long-standing commitment to continue their non-funded status.	• The ACPM agrees that contractually promised indexation benefits be included in the going concern and solvency valuations. On the other hand, the ACPM feels that temporary relief from contribution requirements will continue to be needed from time to time. The Regulations should be sufficiently flexible to allow for such relief. • However, to the extent that contributions are increased, there is a

Report Recommendation	ACPM Response
	greater likelihood of future surplus emerging. In exchange for earlier contributions, there must be a fair balance to enshrine surplus utilization by the entity making the contribution. This can be facilitated by the use of Letters of Credit, potentially asset pledges, and the use of Solvency Accounts as described in the ACPM's submission to the OECP. The Solvency Accounts are very similar to the "pension security funds" proposed by JEPPS which provide additional flexibility for solvency funding in lieu of remitting contributions.
Potential increases in sponsor contributions attributable to these enhanced transparency measures should be offset so far as possible by the extension of amortization periods, by selective relief from contribution increases for well-funded plans or by other means.	• The potential increase in solvency liability as a result of the inclusion of additional benefits and the elimination of solvency smoothing will have a dramatic impact on required pension contributions. As a result, the government should ensure that there is a long period over which sponsors can transition to the new rules. • Also, the government should understand that while relief spreads the impact of increased contributions, it does not eliminate the surplus issue described above.
Recommendation 4-4 — The current requirement for an actuarial valuation every three years should be maintained. The time for filing the valuation after it is due should be reduced from nine to six months. Extensions should be given only in exceptional circumstances.	• Currently, audited statements are due 6 months after the end of the plan year. These statements are needed for the actuary to produce the valuation report. As a result, ACPM is of the view that the current 9-month deadline for filing valuation reports should be retained. • We also strongly believe that the Superintendent should have the power to grant extensions as there are always exceptional circumstances. We believe that the Superintendent should focus on ensuring that a report is filed, rather than prosecuting for a minor delay in the filing.
Recommendation 4-5 — Plans whose triennial valuation shows that their funding has fallen below a threshold to be specified by regulation should continue to be required to perform and file an annual valuation.	• The ACPM supports the current thresholds for requiring annual valuations. • The ACPM is also of the view that annual estimates of all plans' solvency status be performed on a simplified basis. This update

Report Recommendation	ACPM Response
	could be prepared no later than 3 months after the plan year end, and would form the basis for determining whether a full valuation is required. Sponsors should be able to rely on this estimate when assessing whether to take contribution holidays, which may be limited if Rec. 4-17 is implemented. These estimates should also be used in annual disclosures to plan participants.
Recommendation 4-6 — The Superintendent should develop the capacity to monitor the pension system, and individual plans, more closely, and should have the power to order an interim valuation at any time if there are reasonable grounds to believe that a particular plan is at risk of failure.	• Sponsors need clarity of when valuations will be required. The ACPM is of the view that the annual estimate proposed in our comments under Rec. 4-5 be used to determine whether an interim valuation needs to be filed.
Recommendation 4-7 — The Superintendent should more aggressively discourage and more predictably sanction late filings, and develop a capacity to scrutinize filings to the extent necessary to improve the likelihood that inaccuracies will be detected.	• Agreed. However, some discretion on the part of the Superintendent in respect of late filings is encouraged, provided it is applied in a consistent manner.
Recommendation 4-8 — MEPPs, JSPPs and SEPPs should have separate funding rules related to their distinctive characteristics. In general, MEPPs and JSPPs should be allowed more flexibility in funding, while SEPPs should be subject to stricter rules than other plans.	• The ACPM understands that MEPPs and JSPPs cannot change contribution rates as rapidly as a SEPP. This reality should be accommodated in the funding requirements by delaying potential contribution changes arising with an actuarial valuation. • On the other hand, the ACPM strongly objects to a series of recommendations that increases minimum contribution requirements for SEPPs, potentially resulting in future surpluses that cannot be completely utilized by the party making the contributions.
Recommendation 4-9 — Following consultation with Ontario's multi-employer pension plans, special legislation and regulations should be developed relating to all aspects of their funding, regulation and governance. The basis for such legislation and regulations should be the Specified Ontario Multi-employer Pension Plan regulation of 2007. After five years, the practical effects of these arrangements should be assessed.	• Agreed in concept, but if all the legislation is going to go through a rigorous review in 8 years, why should this (and others commented on below) be on a 5 year schedule?

Report Recommendation	ACPM Response
Recommendation 4-10 — Multi-employer pension plans should be required to fund only according to going concern valuations, but should continue to provide solvency valuations for the information of the regulator as well as their active and retired members.	• Agreed. However, disclosure should not just be the solvency valuation, but also the implication for plan benefits if the plan were to be wound up as of the valuation date.
Recommendation 4-11 — Jointly sponsored pension plans should be required to fund only according to going concern valuations on the same basis as Specified Ontario Multi-employer Pension Plans, but should continue to provide solvency valuations for the information of the regulator as well as their active and retired members. The comprehensive legislation and regulations governing the funding of multi-employer pension plans, to be developed pursuant to 4-9, should apply, perhaps with appropriate modifications, to jointly sponsored pension plans.	• See comments under 4-10.
Recommendation 4-12 — Jointly governed target benefit pension plans that are based on an agreement between one or more sponsors and one or more unions, that have established explicit arrangements for joint governance, and that permit accrued benefit reduction in an ongoing plan in order to deal with funding deficiencies, should be funded in a manner similar to jointly sponsored pension plans, as provided in Recommendation 4-11.	• The ACPM vigorously supports the ability to provide target benefit plans. However, the ACPM does not support restrictions on their structure – requirement for both union participation and joint governance. As the OECP report points out, union membership is declining in the province. Non-union employers should also have the opportunity to set up such a plan. Further, it may be appropriate, as in Quebec, for governance to be solely in the hands of plan participants, rather than jointly. The view of the ACPM is that the structure for such plans should remain flexible. • There should be a mechanism to deal with legacy benefits.
Recommendation 4-13 — Single employer pension plans should continue to fund according to both going concern and solvency valuations.	• The ACPM believes that SEPPs should only require funding based on a solvency valuation. • The amount required to bring the beginning of year solvency liability to the end of year liability (assuming no movement in discount rates) should represent the current service component of the contribution requirement. • The past service component of the contribution requirement should be the amount required to amortize the deficit over an appropriate period of time. Currently, some amortization bases are over 15

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	years (going-concern) and others are over 5 years (solvency). In consolidating to one liability measure, all should be over 10 years.
Recommendation 4-14 — Single employer pension plans should be required to maintain a security margin (or provision for adverse deviation) of 5% of solvency liabilities. This margin should be amortized over an eight-year period. The security margin should be deemed to be part of the plan surplus on wind-up, but not for other purposes.	• The ACPM has no problem with the concept of a solvency margin. Having said this, the solution of having the same margin regardless of the degree of investment mismatch is overly simplistic. The Ontario government should review the work of Quebec in this area. • Also, similar to the Quebec requirements, the "funding" of the solvency margin should happen through good plan experience rather than explicit additional contributions.
Recommendation 4-15 — For plans that have achieved 95% of solvency funding, the normal amortization period for achieving the new required funding level, inclusive of the security margin, should be extended from five to eight years. For plans funded below 95%, the current amortization period of five years should continue to apply until such time as they become eligible for the extended amortization period.	• The view of the ACPM is that a plan with a solvency ratio of 100% ± solvency margin is essentially solvent, given that future experience will differ from assumptions. Additional solvency contributions should not be required while in this range, nor should contribution holidays be allowed. • Our view on this might be different if solvency margins could be funded through favourable plan experience rather than through explicit contributions.
Recommendation 4-16 — If a single employer pension plan is in surplus on being wound up, the surplus should be distributed in accordance with the plan documents unless the parties agree, or the proposed Pension Tribunal of Ontario rules, that the documents are not clear. In the event of such an acknowledgement or ruling, the sponsor may propose a scheme for the distribution of surplus, which would take effect if approved in one of two ways: (a) if plan members are not represented by a union, the proposal should be submitted to a vote by secret ballot of the plan members and retirees, and would take effect if approved by two-thirds of those voting; or (b) if plan members are represented by a union or other organization, the sponsor should submit its proposal to representatives of the active members and retirees with a view to concluding a surplus	• In many cases, documents are unclear or silent about surplus ownership. As a result, we expect that most wind ups in which there is surplus will be resolved under (a) or (b). In any event, the process will need to be more streamlined than it is currently. This will include confirming whether plan "member" includes deferred vested and make provision for members who cannot be located. • The ACPM urges the government to assess the innovative JEPPS proposal to allow plans to "ring-fence" legacy surplus issues. This allows plans to identify what, if any, legacy surplus entitlement issues exist, and to move forward with a clearer understanding of how future surpluses would be treated. This additional clarity would avoid the potential problems associated with a retroactive override in the legislation, and would encourage plan sponsors to fund at a rate greater than the statutory minimum, thus enhancing benefit

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distribution agreement. If the sponsor and the representative negotiators cannot reach agreement, they should submit the matter for determination to a dispute resolution procedure of their own choosing. If they cannot agree on such a procedure, or if it does not resolve the matter within a reasonable time, any party may apply to the Superintendent to refer the matter to the Pension Tribunal of Ontario, which would then establish the terms of the surplus distribution agreement. Any scheme approved by secret ballot, any surplus distribution agreement reached by representative negotiators, and any determination by the Tribunal or an agreed dispute resolution procedure would be final and binding on the Superintendent and on all persons claiming to be entitled.	security.
Recommendation 4-17 — Plan sponsors should be entitled to reduce or omit their contributions to a plan in any year in which it is funded at 105% or more of its solvency liabilities. However if — based on benchmarks to be developed by the regulator — a plan administrator knows, or ought reasonably to know, that funding has fallen below 95%, the administrator should immediately notify the sponsor to resume contributions until the plan is again funded at 105% of solvency liabilities. The pension regulator should develop benchmarks based on the plan's annual financial statements that will enable plan administrators to determine when contributions should be resumed.	• As it stands now, this recommendation would not be workable. It seems unrealistic to expose a plan sponsor to a material size of fine if an estimate suggests that the funded ratio is above 95% when a full valuation completed later might determine it to be less than 95%. Instead, as mentioned under Rec. 4-5, annual estimates of the solvency status of the plan should be prepared within 3 months of the plan year end. That estimate should form a safe harbour and be the basis for determining whether the sponsor can continue to take contribution holidays.
If the regulator finds that a contribution holiday was improperly taken or continued, any contributions withheld from the plan should become immediately due and payable, together with interest, regardless of the plan's present funded status, and the sponsor should be subject to an administrative fine of up to $1 million, or double the amount withheld during the improper contribution holiday, whichever is less. The improper use of plan surplus to pay the expenses of the plan, including PBGF premiums, should be treated in similar fashion. The parties to a collective agreement should be free to negotiate other arrangements for the use of surplus in an ongoing plan. These	

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arrangements should prevail notwithstanding those proposed in this recommendation or established in the plan documents.	
Recommendation 4-18 — Sponsors may apply to withdraw surplus from an ongoing plan pursuant to the procedures set out in Recommendation 4-16, provided that the plan remains funded subsequent to withdrawal at 125% of full solvency funding, or 105% of full solvency funding plus two years of current service costs, whichever is greater.	• The ACPM wholly supports the recommendation regarding the procedures for surplus withdrawals. However, similar to our comments on the appropriate solvency margin, we believe that a single threshold is not appropriate, being too low for some plans and too high for others. As the government develops an approach for a risk-adjusted solvency margin, it should also develop a consistent approach for risk-adjusted surplus margin.
Recommendation 4-19 — Ontario should investigate strategies for reducing the cost of annuities and the influence of the annuities market.	• For annuities, sponsors find it difficult to plan and price their obligations due to the differences between the theoretical cost (valuation) with the actual cost. The actual cost is dependent on the size of the marketplace at any given time, the type of annuities and their ability to replicate the plan benefits and general market conditions. Many plans are too large for the marketplace to fairly price annuity contracts. This ambiguity creates complexity for DB sponsors.
Recommendation 4-20 — Every plan should contain a clause stating explicitly what provision, if any, has been made for the indexation of benefits and for the funding of indexation. Each triennial valuation and each annual statement provided to the regulator, active plan members and retirees should provide the same information.	• Disagree. If there is no contractual indexation, there should be no need to refer to indexation.
Recommendation 4-21 — The government should proclaim in force the provisions of the *Pension Benefits Act* that allow it to require that pensions be inflation-adjusted in accordance with a formula to be prescribed. That formula should be restricted to "inflation emergencies."	• Disagree. This is unacceptable from a cost perspective. • There are also uncertainties in the recommendation, e.g., the meaning of an inflation emergency? We have seen in other instances that pension issues are highly politicized and consider it inadvisable for the legislation to contain a provision of this nature. Even if there is political will for a provision of this nature, considerable work would be required prior to amending the PBA concerning how such a provision would affect the accounting and funding of plans.

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Recommendation 4-22 — Irrevocable letters of credit should be permitted as security for a fixed proportion of contributions owing to a plan, and for a maximum period of time, provided they are enforceable by the plan and immune from inclusion in the sponsor's estate in the event of insolvency. The Superintendent should have no power to relieve against these requirements either before or after the fact. After 5 years, experience with letters of credit should be reviewed by the regulator. If no difficulties are found, they should be made available as a permanent feature of pension funding in Ontario.	• The use of Letters of Credit is a good idea, particularly since they are being implemented in other jurisdictions on both a temporary and a permanent basis. • The ACPM recommends that the government consider adopting the details in the Quebec legislation without restrictions on the amount and timing of LoCs. • See comment under Rec. 4-9. Review period should be 8 years.
Recommendation 4-23 — Ontario ought to investigate the possibility of permitting the use of asset pledges to provide security for unpaid contributions to pension funds, and to define the purposes for which, and the conditions under which, such pledges might be used. If asset pledges seem useful for sponsors, safe for pension plans and capable of being overseen by the regulator, their use ought to be allowed for an initial period of five years, subject to renewal on a permanent basis if experience warrants.	• The ACPM looks forward to the results of this investigation.
Recommendation 4-24 — The Ontario government should endeavour to persuade the federal government to increase benefit and contribution levels for registered pension plans under the *Income Tax Act,* and to consider policies that encourage participation by workers and employers in DB plans or their functional equivalents.	• The ACPM agrees with this recommendation and encourages the government to pursue this vigorously. • Agreed. This is one of our principles.
Recommendation 4-25 — The Ontario government should endeavour to persuade the federal government to reform the federal investment rules and, in particular, to remove or amend particular quantitative restrictions that no longer make sense, such as those involving prohibitions on Canadian, but not foreign, investments. However, if the federal government does not do so within a reasonable time frame, the Ontario government should cease to rely on the federal	• Agreed.

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regulations and establish its own investment rules, tracking the federal rules only to the extent that doing so is deemed good public policy in Ontario.	
Pension Plans in a Changing Economy **Recommendation 5-1** — The pension regulator should immediately investigate the causes of extreme delays in approving transactions, including splits, mergers, asset transfers and conversions, and provide a report that can be used to facilitate the processing of such transactions in accordance with the recommendations of this Commission.	• We agree that this is a good first step, but wonder if an independent review would be more effective.
Recommendation 5-2 — The Lieutenant Governor in Council should establish an Ontario Pension Agency to receive, pool, administer, invest and disburse stranded pensions in an efficient manner.	• We support this recommendation in concept. However, the ACPM is concerned about plan sponsors and administrators having to absorb the costs associated with the new agency. See comment under Rec. 5-4(3) • It is not clear who would be responsible for funding the very ambitious regulatory changes outlined in the recommendations. It seems to us that as voluntary undertakings, plans should pay only if such changes provide a service to plans. Any endeavours that are of a policy nature should be funded through general tax revenues. • We note that considerable clarity would be required to determine what pensions are truly stranded and we would encourage private sector solutions in a manner beyond what is currently contemplated, such as access to databases that would allow an employer to locate the missing member.
Recommendation 5-3 — Sponsors should be required to develop a standard policy for dealing with newly hired employees who seek pension credit for service during employment with a previous employer. The policy should state whether such credit will be given and, if so, on what terms, and should be made available to all such employees.	• Agreed. Plan sponsors need the flexibility to make different arrangements with respect to granting pension credits for service with a previous employer, as such arrangements are sometimes negotiated between parties to a corporate transaction.

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Recommendation 5-4 — When individual or group transfers from one plan to another are contemplated, the importing plan should provide a detailed statement of the benefits to be provided. Each transferee should be given four options: 1. as a default option, to accept the asset transfer and begin future accruals in the importing plan, provided it offers benefits of comparable aggregate value to those provided under the exporting plan; 2. to remain as a deferred member of the exporting plan; 3. to transfer the value of the first pension to the Ontario Pension Agency; or 4. to transfer the value to a locked-in account. If active plan members are represented by a union or similar organization, it may accept one option on behalf of all members, or allow each member to exercise one or more of the options provided.	• We generally support the flexibility this recommendation represents. However, we would caution against communication obligations for administrators (in explaining these options to members) that become too costly and onerous. • We do not agree with including an option to transfer to the Pension Agency. The Pension Agency should only be used for transfers in respect of unlocated/missing members and beneficiaries. In our view, the current portability options under the PBA (ie. locked in accounts) would be preferable to a transfer to the Pension Agency.
The value of benefits provided by an "importing" plan should be deemed to be "comparable" to those provided by an "exporting" plan for purposes of the default option, if (a) approved by the Superintendent as approximating the aggregate collective value of such benefits, notwithstanding differences in the nature, value or terms of individual benefits, or (b) agreed to by a union representing active plan members affected by the transfer.	• The deeming provision ("comparable" value) is likely to be difficult to implement in respect of non-union employees due to the burden on the Superintendent to approve in every case and may present significant concerns with respect to FSCO's capacity to process applications in a timely way.
Recommendation 5-5 — The government should promptly address the pension arrangements for groups of public service employees affected by past divestments and transfers, whether by allowing these groups to use the group asset transfer process proposed in Recommendation 5-4, or by other means, including negotiations with their representatives.	• Agreed.

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Recommendation 5-6 — When a pension plan is being wholly or partially wound up, when a transaction provides the opportunity for a pension asset transfer, or when an active plan member leaves a job in which she or he has earned pension credits, active plan members and retirees should be given the choice of depositing the value of any pension accruals standing to their credit with the Ontario Pension Agency. Sponsors and unions negotiating the consequences of corporate or government restructuring should, by mutual consent, also be able to transfer plan assets to the Ontario Pension Agency in respect of some or all of the members affected.	• We generally support this recommendation as it appears to provide greater flexibility in these circumstances. However, we echo our concerns regarding the Pension Agency in Rec. 5-4 (3).
Recommendation 5-7 — The Ontario Pension Agency should receive and administer funds payable to pension beneficiaries who cannot be located. Plan sponsors should be obliged to file with the Ontario Pension Agency a list of all beneficiaries who cannot be located, and of all deferred members whose assets remain under the control of their plan. Plan members seeking to trace their stranded or deferred pensions should have access to this list.	• Agreed.
Recommendation 5-8 — Existing "grow-in" rights that provide access to early retirement benefits for all qualifying single-employer pension plan members in the event of a full or partial plan wind-up should be extended to all such members who are involuntarily terminated. "Qualifying members" should continue to be those whose age and years of service add up to 55.	• It is ACPM's position that "grow-in" rights be eliminated. We are of the opinion that grow-in rights should be a matter of employment standards law, not pension law. We note that the Nova Scotia Pension Review Panel also recommends removal of grow-in as a mandatory benefit.
Recommendation 5-9 — Multi-employer plans, jointly sponsored plans, and the proposed jointly governed target benefit plans should not be required to provide grow-in benefits.	• Agreed, but we would have preferred to see a similar recommendation for SEPPs. See comment in Rec. 5-8.
Recommendation 5-10 — The *Pension Benefits Act* should be amended to provide for phased retirement as contemplated by the *Income Tax Act*.	• Agreed. ACPM supports regulatory uniformity. To the extent that phased retirement is permitted and provided for under the Income Tax Act, the PBA should be amended to be integrated with the phased retirement provisions of the Income Tax Act. Phased retirement must be at the option of the employer.

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Recommendation 5-11 — All active plan members should be immediately vested for all accrued pension benefits. However, as at present, the plan administrator should retain the discretion to authorize the payment out of small amounts in specified circumstances.	• While the immediate vesting of all accrued pension benefits is conceptually appealing, there will be an additional cost to employers. It is important to strike a balance when considering these types of recommendations. ACPM suggests that the current regime that makes immediate vesting permissible but not mandatory is preferable, since it permits employers and plan members to have the flexibility to adapt practices that are appropriate for a given industry.
Recommendation 5-12 — Active plan members who are involuntarily terminated, whether in groups or individually, while a plan is ongoing, should not be entitled to an immediate distribution of surplus. However, those who leave their pension assets in the plan should retain the right to participate in any subsequent surplus distribution.	• Agreed.
Recommendation 5-13 — Involuntarily terminated members may have their benefits annuitized at the option of the sponsor.	• Agreed. We support the annuitization of benefits at the option of the sponsor, but only after the expiry of the member's portability election period.
Recommendation 5-14 — Partial wind-ups of single employer plans should be declared by the Superintendent only when 40% of the active members of the employer are terminated within a two-year period. In such circumstances, administrators should file a plan reduction report, which would enable the Superintendent to ensure that plan funding is secure.	• ACPM's position is that partial wind-ups should be eliminated from the PBA. However, if the partial wind-up provisions continue to exist under the PBA, we agree that it is important to clearly define what constitutes a partial wind-up. • 40% to 50% would be a reasonable level of terminations to trigger a partial wind up.
Recommendation 5-15 — When 90% of the active members of a single employer plan are terminated within a two-year period, the Superintendent should have the power to require that the plan be wound up or reconfigured. This power should be used only if the Superintendent concludes that either (a) the sponsor is not acting bona fide, or (b) the plan in its reduced state is unable to meet its obligations.	• This recommendation is consistent with Rec. 5-14. • It is unclear how the Superintendent will determine if a sponsor is or isn't acting bona fide or what "reconfigure" means.

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Recommendation 5-16 — If a multi-employer or jointly sponsored pension plan experiences a reduction of 40% of its active members, or of sponsors providing 40% of its contributions, or if the sponsoring union splits, the administrator should prepare a plan reduction report and file it with the regulator. The regulator may require the administrator to prepare such a report if there are reasonable grounds to believe that the plan may no longer be viable.	• The 40% threshold seems reasonable. As MEPPs can reduce benefits they will always be viable as defined in this context. Having a sufficiency of contribution test or a statement from the Board should be sufficient. It would be better for the regulator to define exactly what risk they are trying to protect against. Investment risk is a bigger threat than membership risk.
Recommendation 5-17 — Any surplus in a plan that is to be split (the "original plan") can be allocated to any of the new plans derived from it, provided that the liabilities associated with the original plan and all of the derivative plans remain fully funded (including the 5% security margin) as of the date of completion of the transaction.	• Agreed. We generally support this recommendation, subject to comments under Rec. 4-14. We note that this Recommendation assumes a statutory override of trust law principles.
Recommendation 5-18 — Any surplus in a plan that is to be merged with another plan can be assigned to the merged plan, provided that the members of the original plan remain in the new merged plan, and that the merged plan itself is fully funded (including the 5% security margin) as of the date of completion of the transaction.	• Agreed. See comments above under Rec. 5-17.
Recommendation 5-19 — A sponsor considering a plan split or merger must give notice of the proposed transaction to active plan members and retirees, and any union or other organization representing them. The notice should be accompanied by an accurate, readily understood explanation of its implications, as well as technical data relating to the new plan in a form approved by the regulator.	
If the union or representative organization approves of the proposed transaction or, in the absence of such an organization, if the transaction is approved by two-thirds of the active members and retirees voting in a secret ballot, the approval shall be filed with the regulator. Upon receiving the approval and ensuring that the transaction is otherwise in accordance with Recommendations 5-17 and 5-18, the regulator may, without further delay, issue an advance ruling approving the transaction.	• Agreed. We generally support these recommendations. However, instead of requiring two-thirds approval (which is impractical), it is preferred that the one-third written dissent concept be implemented (which is used under the SPPA in Quebec).

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In the absence of approval from the union, organization or plan beneficiaries, the sponsor must give 90 days' notice to all interested parties and to the regulator. After expiry of the 90-day notice, the regulator should process the proposed transaction in the normal manner. Where a split or merger is proposed by any plan on whose governing body at least 50% of the members are nominated by active plan members and/or retirees, approval by that governing body should serve in lieu of the approval process set out in this recommendation.	
Recommendation 5-20 — Notwithstanding Recommendations 5-18 and 5-19, a sponsor may, with the consent of the Superintendent, use surplus from the original plan to fund a new plan into which it has been merged, or from which it is derived, provided that (a) if the original plan continues in force, its security margin is maintained; (b) the new plan is funded at not less than 100% from its inception by sponsor contributions, if necessary; and (c) the security margin in the new plan is funded within five years. Recommendations 5-17 to 5-20 do not address a situation in which the original plan is under-funded. Under present rules, the result of a split or merger must be that such a plan should not be worse off after the transaction than it was before. This seems sensible to me, and I recommend no change in this regard.	• Agreed.
Recommendation 5-21 — Following conversion from a defined benefit to a defined contribution plan, or to a hybrid plan with elements of both, surplus carried over from the original plan should first be used to provide the required security margin for defined benefits earned under either plan. If additional surplus remains, it should be available to fund contribution holidays or other expenses of the converted plan.	• Agreed.

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Recommendation 5-22 — A sponsor considering the conversion of a defined benefit plan to a defined contribution or other type of plan must give notice of the proposed conversion to active and retired plan members and to any union or other organization representing them. The notice should be accompanied by an accurate, readily understood explanation of its implications, as well as technical data relating to the new plan in a form approved by the regulator.	• Agreed.
If the union or representative organization approves of the proposed conversion or, in the absence of such an organization, if the conversion is approved by two-thirds of the active members and retirees voting in a secret ballot, the approval shall be filed with the regulator. Upon receiving the approval and ensuring that the transaction is otherwise in accordance with Recommendation 5-21, the regulator may, without further delay, issue an advance ruling approving the conversion. In the absence of approval from the union, organization or plan beneficiaries, the sponsor must give 90 days' notice to all interested parties and to the regulator. After expiry of the 90-day notice, the regulator should process the proposed transaction in the normal manner Where a split or merger is proposed by any plan on whose governing body at least 50% of the members are nominated by active plan members and/or retirees, approval by that governing body should serve in lieu of the approval process set out in this recommendation.	• Instead of requiring two-thirds approval (which is impractical), it is preferred that the one-third written dissent concept be implemented (which is used under the SPPA in Quebec)
Recommendation 5-23 — The regulator should have the power to review the effects of a plan split, merger, asset transfer or other pension transaction involving related corporate entities in order to ensure that the plan's financial prospects have not been compromised by being assigned to a less solvent corporate entity. The regulator's powers should be exercised in accordance with specified criteria, and should include the power to (a) require a plan to be brought up to its previous funding level, or 105% of full funding, whichever is the lesser, (b) require the previous sponsor to provide guarantees that the new sponsor will meet its obligations to the plan, and (c) rescind the transaction.	• We have concerns with this recommendation. Plan sponsors need the flexibility to assign a pension plan to the corporate affiliate that is best able to administer it or that is the employer of the majority of the plan members. In addition, it is not clear how the regulator will determine whether the assignee is a "less solvent entity".

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When Plans Fail	
Recommendation 6-1 — The Superintendent should have the power to establish benchmarks that identify plans "at risk of failure;" to order additional valuations and reports by such plans, if the benchmarks are met; and to require such valuations and reports to be conducted or reviewed by independent auditors and actuaries, or by auditors, actuaries or other staff of the pension regulator, at the cost of the sponsor.	• Our caveats to this recommendation are first, that the benchmarks established by the Superintendent be clear and unambiguous, and secondly, they be published. Thirdly the recommendation is ambiguous as to whether the new reports must be filed and whether funding must proceed on the basis of such new reports whether or not they are filed.
Recommendation 6-2 — The Superintendent should have the power to (a) approve arrangements to reset the funding obligations of single-employer plans at risk of failure, including contributions, payment schedules, amortization periods and premiums to be paid to the Pension Benefits Guarantee Fund, and (b) authorize the provision of additional forms of security, to ensure that the plan does not fail and/or that the interests of plan members are better protected in the event that failure does occur. The Superintendent may exercise this power notwithstanding the provisions of plan documents.	• Although we welcome some flexibility in funding arrangements for employers in financial difficulty, we have concerns regarding the resources and expertise of the regulator to properly assess alternative funding arrangements and additional forms of security in a timely manner, particularly with due regard to the interests of the employer remaining in business.
Arrangements submitted to the Superintendent for approval must be agreed to by the plan sponsor and by a union or other organization authorized to represent active plan members and retirees. In the absence of a union or other authorized organization, the arrangements must be approved by a two-thirds majority of active and retired plan members voting by secret ballot. In the event that the arrangements affect Pension Benefits Guarantee Fund premiums or coverage, the administrator of that Fund must also approve.	• Although it is possible that active employees or unions could be persuaded to vote in favour of modified arrangements in order that jobs be kept, there is no reason that retired members would necessarily vote in favour of funding arrangements that could reduce their benefit security.
Recommendation 6-3 — The Superintendent should have the power to initiate, facilitate and approve arrangements relating to all aspects of multi-employer plans at risk of failure or of significant benefit reduction. The Superintendent may exercise this power notwithstanding the provisions of plan documents.	• The process and circumstances need to be well defined. • Also, note our concerns above under Rec. 6-2.
Arrangements submitted to the Superintendent for approval must be agreed to by the plan sponsors and by a union or other organization	

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authorized to represent active plan members and retirees. In the absence of a union or other authorized organization, the arrangements must be approved by a two-thirds majority of active and retired plan members voting by secret ballot.	
Recommendation 6-4 — When a pension plan has been identified as "at risk," the Superintendent should have power to approve the arrangements identified in Recommendations 6-2 and 6-3, conditional upon the suspension or cancellation of any agreement to improve plan benefits, and/or a prohibition on plan benefit improvements, until funding is restored to a specified level.	• Agreed.
Recommendation 6-5 — When a plan fails and is being wound up, payments attributable to benefit improvements initiated up to five years prior to the date of the wind-up should be paid only after all pre-existing benefits are paid in full.	• Agreed. This is consistent with the 5 year limitation on PBGF coverage, covered in Recommendation 6-15.
Recommendation 6-6 — The regulator should create an office of compliance to deal with the failure of sponsors to remit contributions and other violations of the *Pension Benefits Act* that imperil the security of pension plans and impede regulatory oversight of the pension system. That office should also maintain, for its own purposes and for the benefit of interested parties, an on-line register of delinquent sponsors and other offenders, and the measures taken to deal with them.	• This recommendation is probably already permitted under the PBA. The concept of "interested parties" should be clearly and narrowly defined.
Recommendation 6-7 — The government of Ontario should support recent federal legislation that gives priority to unpaid current pension service costs in the event of bankruptcy. It should also initiate discussions with the federal government concerning the possibility of extending similar priority to all special payments to fund both solvency deficiencies and unfunded liabilities owing to the plan by the sponsor at the time of insolvency.	• The ACPM supports giving priority to special payments that are due but unpaid at the time of bankruptcy. However, the ACPM does not support extending priority to any other deficiencies in the event of bankruptcy. Any greater priority would most likely hinder plan sponsors' access to capital.

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Recommendation 6-8 — The *Pension Benefits Act* should be amended to permit the Superintendent to approve arrangements and changes in arrangements that involve the claims of pension plans under federal bankruptcy legislation.	• First, we assume the proposed power relates to easing funding requirements, and not to reducing or varying benefits. • The Superintendent should have a strong voice in such arrangements. However, easing funding requirements has an obvious impact upon the plan members, in decreasing the security of their pensions. It also has an obvious impact on the Pension Benefits Guarantee Fund (PBGF), and potentially upon the Government of Ontario if it is called upon to lend (de facto give) large amounts to the PBGF and if there are political implications of business continuance. All the foregoing stakeholders are entitled to have their voices heard. • Moreover, altering legislated funding requirements requires legislation (by regulation) in order to ensure enforcement and to ensure the details are carefully considered and drafted.
Recommendation 6-9 — Plan assets should be distributed on a pro rata basis. However, benefit improvements introduced within the last five years should be postponed until after other benefits are paid, in accordance with Recommendation 6-5, above.	• This recommendation may be more complex for plans with combined defined benefit and defined contribution components, contributory plans, or plans providing for voluntary contributions. The existing scheme for the allocation of assets in Ontario seems to work, although we do not disagree with postponing benefit improvements introduced within the last 5 years. • An asset distribution scheme should also take into account multi-jurisdictional plans. In this respect we urge that legislation enabling the implementation of the CAPSA Multi-jurisdictional Agreement be enacted.
Recommendation 6-10 — The Ontario government should seek to persuade the federal government to amend its bankruptcy and insolvency legislation to give the pension regulator the right to intervene in proceedings under that legislation to defend the interests of any pension fund and its members. Provincial law should allow the pension regulator to act on behalf of, and to assert all the rights and powers of, the plan administrator in the context of bankruptcy and insolvency proceedings, if	• As the Government of Ontario has successfully been a party to numerous CCAA and BIA proceedings in Ontario, legislative change may not be necessary. • In any event, pension plan members and retirees are already represented in the process through the claims adjudication process and through the informal or formal organization of employee groups such that the Pension Regulator may not need separate standing

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the regulator believes such action is warranted.	from the Government.
Recommendation 6-11 — The regulator should be specifically empowered to replace the administrator of a plan whose sponsor is involved, or is deemed at risk of being involved, in bankruptcy or insolvency proceedings. The Ontario government should ask the federal government to amend the relevant legislation to ensure that the new administrator so appointed can participate in all proceedings on behalf of the plan.	• The PBA already provides criteria for when the pension plan administrator will be replaced by the Superintendent. • If the new plan administrator is seeking to recover pension funding from the estate of the insolvent company, then the plan administrator should have the standing afforded to other creditors.
Recommendation 6-12 — The Ontario government should explore with the federal government the amendment of relevant federal legislation so as to ensure that pension plans, beneficiaries and organizations representing them can participate as of right in bankruptcy and insolvency proceedings. It should also explore ways to facilitate the collective participation of pension litigants in such proceedings by means of representation orders or otherwise. And it should amend the *Pension Benefits Act* so as to enable courts to order pension plans to reimburse beneficiaries and representative organizations for successfully defending the interests of the plan.	• The PBA already provides a course of action for pension plans, beneficiaries and organizations representing them to participate in insolvency proceedings through the claims and creditor processes. This balance is already achieved in the federal legislation. • We oppose any extension of the ability to pay litigation fees out of pension funds as any extension will simply invite litigation in this area.
Recommendation 6-13 — The Pension Benefits Guarantee Fund should be continued in its present form, but with the improvements proposed in Recommendations 6-14 to 6-17 for at least five years or until completion of the review proposed in Recommendation 6-18, whichever is later. On the basis of the findings of that review, the government should determine whether to continue, amend, replace or discontinue the PBGF.	• We have no particular difficulty with a further review of the Pension Benefits Guarantee Fund, although it seems to us there is considerable literature on the subject already. • ACPM is on record as calling for the elimination of the PBGF as creating inequities among plan sponsors and representing an unfair burden on taxpayers, many of whom are themselves without employer sponsored defined benefit pension plans.

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Recommendation 6-14 — The Pension Benefits Guarantee Fund should be administered, preferably at arm's length from the pension regulator, by an agency with a mandate *to*: · manage the Fund so as to enhance its capacity to evaluate the individual and collective risks of plans whose performance is guaranteed by the Fund; · fix levies, subject to the approval of the Minister, in amounts sufficient to meet claims arising from those risks; · collect such levies and hold and invest them on behalf of the Fund; and · undertake systemic analysis to assist the regulator in reducing the number and aggregate value of claims on the Fund. The regulator's mandate should be extended to include protection of the Pension Benefits Guarantee Fund, and the mandate of the Fund should include specific reference to its obligation to assist the regulator.	• We are concerned with the creation of yet another agency, as the cost of such additional administration will likely fall upon employers or taxpayers. • While we believe that the investment of the funds in the PBGF should be done by professional investment managers, sufficient expertise may already exist within the government without incurring much expense.
Recommendation 6-15 — Benefit improvements agreed to within five years prior to the failure of a plan should be ineligible for payment out of the Pension Benefits Guarantee Fund.	• Agreed.
Recommendation 6-16 — The risk assessment protocol by which levies are established for the Pension Benefits Guarantee Fund should be studied and revised to include not only the funding status of plans but other risk-generating factors such as the asset/liability match within the plan and the sponsor's financial health.	• This recommendation is fine theoretically but we believe that the protocol would be so complex that consultation with the industry would be critical. We can foresee problematic disputes as regulators make judgments as to the financial health of employers in the pension plan context.
Recommendation 6-17 — The level of monthly pension benefits eligible for protection by the Pension Benefits Guarantee Fund should be increased to a maximum of $2,500 to reflect the effect of inflation on the original maximum of $1,000.	• While we recognize the impact that inflation has had on the level of PBGF benefits, we are opposed to such a significant increase in coverage prior to completion of a more formal review of the PBGF.

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The Superintendent (or other agency responsible for the administration of the Pension Benefits Guarantee Fund) should recommend to the Minister of Finance within one year: · the formula by which benefit levels should be determined on a going-forward basis; · the basis on which the levy paid by sponsors should be calculated; · procedures for ensuring that both the benefits and the levy are adjusted at regular intervals; and · any other matter relevant to the implementation of this recommendation. The recommendations should be accompanied by a statement concerning the anticipated effects of any such adjustment. The Minister should act promptly upon receipt of these recommendations and the accompanying statement.	
Recommendation 6-18 — The Ministry of Finance or some other agency, either alone or in cooperation with other Canadian pension authorities, should initiate a study of possible alternatives to the Pension Benefits Guarantee Fund. Unless and until such an alternative that provides comparable or better protection for active plan members and retirees can be identified, the Pension Benefits Guarantee Fund should continue to exist in the form proposed in Recommendations 6-14 to 6-17.	• See comment as to Recommendation 6-13.
Recommendation 6-19 — The Pension Benefits Guarantee Fund should be governed by the following principles: · The Fund should be self-financing. · It should not receive government grants or subsidies in order to meet its obligations.	
· It should be allowed to borrow funds from the government on a commercial basis, for defined purposes and at defined times.	• While we agree with these principles, we are very concerned that, regardless of the rules, politically the government will always be called upon to rescue large pension fund insolvencies.

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· The terms on which the Fund itself should be deemed insolvent, and the effects of such insolvency, should be clearly set out in the *Pension Benefits Act*.	
Regulation **Recommendation 7-1** — So far as possible, substantive rules intended to define the rights and responsibilities of participants in the pension system should be set out in the *Pension Benefits Act* or rules and regulations made pursuant to it. If feasible as a matter of statutory drafting, the Act should convey the intention of the legislature that the Act should be treated as the exclusive source of pension law.	• Agreed.
Recommendation 7-2 — As a medium-term project, the PBA and regulations should be re-drafted so as to clearly articulate both (a) general principles applicable to all types of pension plans, and (b) comprehensive codes applicable to specific plan types.	• Agreed.
Recommendation 7-3 — Revisions to the *Pension Benefits Act* should be drafted to provide both rules-based and principles-based approaches, as appropriate. In particular, minimum standards with respect to benefits should generally be rules-based; some aspects of investment, plan governance and innovation are more appropriately regulated by a principles-based approach; and funding requirements should likely involve a mixture of the two.	• Agreed. We believe that it is important to emphasize principles wherever possible. In this regard, we note that there is support for this view in the reports from other jurisdictions.
Recommendation 7-4 — The government should accept ultimate responsibility for ensuring that all standards governing the conduct of professional and other participants in the pension system are appropriate and in the public interest.	• This recommendation reflects the implicit role of government, but given that professional standards are inherently technical, additional governmental oversight may be neither necessary nor appropriate.
The *Pension Benefits Act* and regulations should make clear provision for the adoption by reference of standards established by professional governing bodies such as the Canadian Institute of Actuaries. In addition, the pension regulator should work closely with professional governing bodies to ensure that the standards they establish, amend and apply to	

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their own members from time to time are consistent with Ontario's pension law and policy. To the extent that they are not, they should be replaced with more appropriate standards laid down in the Act or by regulation.	
Recommendation 7-5 — Legislation should provide standard-form or template plans, particularly for the use of small- and medium-sized enterprises, and the regulator should develop simplified registration and filing requirements for such plans.	• Agreed.
Recommendation 7-6 — Simplified registration and filing requirements should be adopted for designated or individual pension plans for senior executives. In addition, a protocol should be developed to identify a minimum membership threshold for plans below which the regulator should react to complaints, but not provide its normal level of regulatory oversight.	• In principle, having appropriate oversight given different plan types and risks is a reasonable and cost-effective regulatory approach.
Recommendation 7-7 — The pension regulator should develop filing requirements, processes and review procedures that enable it to better discharge its compliance, risk-assessment and data-gathering mandate. It should develop an electronic system for the timely review of filings and for the development of useful interrelated databases and reports.	• Agreed. We trust that it could be implemented in a cost-effective manner.
Recommendation 7-8 — The present Notice of Proposal procedures should be repealed. Applications seeking approval for major plan transactions should be dealt with in accordance with Recommendations 5-17 to 5-22. Applications involving routine processing of other matters should be dealt with on the basis of a file review by the Superintendent. Other, more important matters should be dealt with pursuant to the procedures proposed in Recommendation 7-15.	• Agreed.
The Superintendent should have power to approve, disapprove or issue directives concerning the matter at hand. Decisions of the Superintendent should be subject to appeal to and enforceable by the proposed Pension Tribunal of Ontario.	• Agreed.

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Recommendation 7-9 — The pension regulator should issue policy statements indicating how it views and intends to process all standard pension transactions. Before doing so, it should give notice of its intention to issue such statements, and provide stakeholders with an opportunity to submit comments. After doing so, while not bound by such statements, the regulator should depart from them only for good reason and, preferably, by way of an amending statement rather than in the context of a particular proceeding.	• Agreed. We expect that its implementation would be useful for standard transactions.
Recommendation 7-10 — The pension regulator should have power to provide opinion letters and advance rulings in connection with proposed or pending transactions. The regulator should feel free to disregard such letters or rulings in subsequent proceedings if the applicant has not made full disclosure of relevant facts; if they adversely affect other parties who have not had a prior opportunity to be heard; or if they contravene legal rules or regulatory policies that were not in force when the letter or ruling was issued.	• Agreed. We are supportive of the transparency in this recommendation but caution that if there are too many exceptions, the opinions and rulings will lose their practicality.
Recommendation 7-11 — The regulator should: · develop a program of proactive monitoring, auditing, inspections and investigations directed especially at plans whose profiles, sponsors' profiles or sectoral location suggest that they may be at risk of failure or of significant under-funding; · expand and update its existing systems for monitoring risks, ensure that these systems are designed and administered by expert staff, and supplement them with other strategies for detecting plans at risk; and · be empowered to undertake remedial measures based on the results of its proactive monitoring.	• Agreed.
Recommendation 7-12 — The regulator should develop a set of internal controls to better understand the provenance, track the processing and evaluate the outcome of inquiries and complaints; use the results of this process to improve its performance; and communicate those results to stakeholders.	• Agreed.

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Recommendation 7-13 — The regulator should appoint a Complaints Officer with a mandate and supporting staff to assist complainants and persons making inquiries to secure the information they seek and the recourse to which they are entitled; to ensure the timely and responsive processing of inquiries and complaints; and to advocate on behalf of complainants within the regulatory process, where appropriate.	• Agreed. It appears that a Complaints Officer would function in a capacity similar to that of an ombudsman.
Recommendation 7-14 — The *Pension Benefits Act* should clearly establish the right of unions and other representative organizations to participate in regulatory proceedings on behalf of individuals whom they represent, and of individuals to represent themselves. The Pension Tribunal of Ontario should be given discretion to order the sponsor or the plan to reimburse all legal and other costs necessarily incurred in the course of such participation in appropriate cases when claims or complaints are meritorious.	• We understood that the participation right already exists and does not have to be articulated in the PBA. We would also defer to other decision makers as to whether a union represents retirees, as the issue is broader than pensions alone. • We oppose any extension of the ability to pay litigation fees out of pension funds as any extension will simply invite litigation in this area.
Recommendation 7-15 — The *Pension Benefits Act* should grant the Superintendent power to: · hold hearings, require the production of documents and the giving of testimony, receive and rely on valuations and reports submitted in the regular course of his or her oversight functions, and order the preparation of and rely upon special valuations and reports; · make interim orders with effect for not more than 30 days — unless extended by the proposed Pension Tribunal of Ontario — on the basis of written documents, valuations, reports and submissions, where necessary to preserve the assets of a pension plan; and	• Agreed.
· make any final order necessary to secure compliance with the Act or with regulations and rules made pursuant to the Act. The Superintendent should provide all affected parties with as full a right to be heard as is feasible given the urgency of the situation. Orders of the Superintendent should be enforceable by the Pension Tribunal of Ontario. All decisions and orders of the Superintendent should be subject to appeal to the Tribunal.	

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Recommendation 7-16 — The regulator should improve its internal and external data collection and reporting activities and implement a program of rigorous self-evaluation that will contribute to the identification of possible improvements in its regulatory functions. It should make the results of this self-evaluation publicly available. The regulator should be given the human and material resources necessary to pursue this approach.	• Agreed.
Recommendation 7-17 — The *Pension Benefits Act* should include a "purpose clause" that will provide guidance to its interpretation and implementation. That clause should include reference to the need to maintain a balance among stakeholder interests, to keep pensions both secure and affordable, to both protect and promote the pension system, and to encourage innovation within the system.	• Agreed. By extension the regulator should adopt the same objectives thereby making the system more predictable.
Recommendation 7-18 — An independent pension regulator — the Ontario Pension Regulator — should be established with budgetary, staffing and other powers of self-management comparable to those of the Ontario Securities Commission.	• Agreed.
Recommendation 7-19 — The Ontario Pension Regulator should comprise five commissioners — the Superintendent of Pensions and four independent, part-time commissioners with extensive experience in pensions regulation or policy. The commissioners should act as a board of directors with general power to:	• Agreed.
· oversee and direct the functions of the Ontario Pension Regulator; · approve its budget and administration; · approve policies and issue policy statements relating to regulatory approaches; · adopt procedural rules; and · report annually to the Minister of Finance concerning the operations of the Regulator. The commissioners should not perform operational regulatory functions involving individual plans.	

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Recommendation 7-20 — The Ontario Pension Regulator and the Superintendent of Pensions should exercise all pension-related functions now exercised by the Financial Services Commission of Ontario and the Superintendent of Financial Services, respectively, together with the additional functions recommended in this report.	• Agreed.
Recommendation 7-21 — The new Ontario Pension Regulator should assist in the development of pension policy by collecting data, contributing its experienced-based insights into the operation of the regulatory system and refining and reflecting on the exercise of its statutory powers. However, it should not be assigned primary responsibility for overall pension policy development.	• Agreed.
Recommendation 7-22 — The Ontario Pension Regulator should have greater control over its budget and hiring practices so that it can recruit, train and retain the professional and expert staff it needs to discharge its enhanced regulatory functions. With the approval of the Lieutenant Governor in Council, the Regulator should be able to fix levies on plans according to plan size or type, to charge user fees for particular regulatory transactions and to retain for its own purposes administrative fines levied by the new Pension Tribunal of Ontario.	• We support the hiring of expert staff and the ability to charge fees; however, we are concerned about cost efficiency and accountability particularly if the Regulator is able to both levy and retain administrative fines.
Recommendation 7-23 — The Ministry of Finance should supplement the budget of the Ontario Pension Regulator to enable it to perform functions such as data collection and analysis, which support policy-making and other non-regulatory functions.	• Agreed. We note that funding by MOF should apply to any policy-making and non-regulatory functions.
Recommendation 7-24 — The pension regulator should facilitate the introduction of a program of enhanced risk-based regulation by consulting closely with stakeholder groups concerning the collection and analysis of standard data on which risk assessment can be based, and it should subject its own risk-assessment systems to rigorous self-evaluation and to critical comment by stakeholders.	• Agreed. The concept of "enhanced" risk-based regulation needs clarification.

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Recommendation 7-25 — The new Ontario Pension Regulator should have power to make rules in order to define and lend greater specificity and clarity to its governing statute and regulations. It should exercise this power only after giving stakeholders notice of, and an opportunity to comment on, proposed rules. Rules adopted pursuant to the use of this power should have the force of law so long as they are made in accordance with the statute and regulations and do not purport to contradict or derogate from them.	• Agreed - in principle.
Recommendation 7-26 — The pension jurisdiction of the Financial Services Tribunal should be transferred to a new Pension Tribunal of Ontario. The Tribunal should have power to hear and decide specified matters at first instance, and to hear and decide all appeals from orders made by the Superintendent.	• Agreed but the Tribunal needs to be staffed with people who have the necessary expertise, and needs to be managed at a reasonable cost.
Recommendation 7-27 — The Pension Tribunal of Ontario should comprise a Chair who is a jurist of stature, two members with a background in law (or equivalent), and two members with a background in actuarial science (or equivalent). Appointments to the Tribunal should be recommended by a bipartisan nominating committee with a view to ensuring that the Tribunal enjoys the confidence of both sponsor-side and member-side stakeholders and is perceived to be balanced and neutral.	• Agreed. Consideration should be given to including experienced pension practitioners who are not actuaries or lawyers.
The Chair and members of the Tribunal should be allowed to serve part-time, but not to hold concurrent employment that might involve, or be seen to involve, them in a conflict of interest. All members of the Tribunal should possess expertise in pensions or some closely related field.	• While the “no conflict” basis is ideal, given the number of people who would be appropriate to fill these roles, it seems to us that it may not be practical. The issue is not so much whether there is a conflict, but how it is managed.
Recommendation 7-28 — The Chair of the Pension Tribunal of Ontario should be allowed to sit alone to hear and decide cases relating to specific provisions, such as the enforcement of orders made by the Superintendent. In more complex matters that may require specialized actuarial or legal knowledge, the Chair may designate the two members with backgrounds in those fields to serve on a hearing panel. If in the opinion of the Chair both types of knowledge are required, all four members may be designated to	• We agree to the extent that the single panel recommendation applies to straightforward matters. The addition of members should include members with extensive proven knowledge.

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serve.	
Recommendation 7-29 — The Pension Tribunal of Ontario ought to have all powers necessary to dispose of matters before it.	• Agreed.
Recommendation 7-30 — The Pension Tribunal of Ontario should exercise exclusive and ultimate jurisdiction over all matters arising out of or incidental to the interpretation of the *Pension Benefits Act*. Decisions of the Tribunal should be final and binding, subject to appeal to the Divisional Court only if they involve a denial of natural justice, a misinterpretation of the applicable law so serious as to amount to jurisdictional error, or a violation of the constitutional rights of a party.	• Agreed.
Recommendation 7-31 — The Tribunal should have plenary power, upon enforcing or hearing an appeal from any order made by the Superintendent, to make any order required to secure compliance with the *Pension Benefits Act*, including but without limiting its general power, the power to: · require the doing of any act required by the statute and the cessation of any act forbidden by it; · order the payment of contributions, benefits or premiums wrongly withheld, together with interest thereon;	• Agreed.
· require the disclosure of information and the provision of documents to the regulator, active and retired plan members, unions and representative organizations and others entitled to such information or documents; and impose administrative fines for non-compliance with the *Pension Benefits Act*.	
<u>Governance</u> **Recommendation 8-1** — The regulator should establish benchmarks or performance indicators covering the broadest possible range of governance issues, including funding, benefits, expense ratios, administrative costs and service to members and retirees. Plan administrators should provide, and the regulator should collect and analyse, data relevant to these indicators.	• Agreed. We observe, however, that any benchmark needs to be practical and reflect current practices and economic realities.

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The results of this exercise should be made publicly available so that sponsors, administrators and beneficiaries can evaluate the performance of their plans as against the performance of specific comparator groups and of the whole system.	
Recommendation 8-2 — Unions should be encouraged to negotiate both the major substantive elements of pension plans arising out of collective agreements and the governing structures of such plans. The regulator should accord plans with joint governing structures a greater margin of regulatory discretion than would be available to plans lacking such structures.	• In the absence of clear evidence that jointly governed plans are better governed we would question why such plans would automatically be eligible for greater discretion.
Recommendation 8-3 — Unions that seek and accept a role in plan governance should be encouraged to ensure that both active and retired members have a voice in decisions that affect them. Unions should also develop the technical and analytical capacities necessary to support effective member participation in plan governance.	• We would leave this issue to individual unions.
Recommendation 8-4 — Multi-employer and jointly sponsored pension plans should develop governance policies that ensure participation of representatives of both active and retired members in their governance, establish the means of selection of those representatives, fix their remuneration and lay down rules governing their conduct in office.	• We believe that good governance should be more inclusive.
Recommendation 8-5 — Multi-employer and jointly sponsored pension plans should provide annual statements to all active, deferred and retired plan members, which include: · a statement of the plan's current funded status; · a reminder that benefits provided under the plan are not defined or guaranteed but subject to reduction while the plan is ongoing (in the case of multi-employer plans) or on wind-up (in the case of jointly sponsored plans); · disclosure of any known events likely to lead to a reduction in benefits; and	• We generally agree, however, we observe that there can be difficulties in locating deferred and, in some cases, retired plan members. • It is not clear what would constitute a "known event." This aspect of the recommendation seems problematic.

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· an indication of any procedure or formula specified by law or in the plan documents by which benefit reduction may be determined.	
Recommendation 8-6 — Multi-employer and jointly sponsored plans should develop and abide by investment rules that prevent self-dealing either by the union that has negotiated them or by plan trustees.	• Agreed.
Recommendation 8-7 — All policies, statements or reminders required by current law or provided by multi-employer and jointly sponsored plans pursuant to these recommendations should be communicated to plan members and beneficiaries and filed with the regulator. The regulator should have the power to sanction violations of both statutory requirements and plan policies.	• Agreed.
Recommendation 8-8 — Any plan with some recognized form of joint governance and with the requisite capacity to make complex investment decisions (as defined by regulations) should be allowed to adopt a resolution claiming an exemption from the 30% investment rule. The resolution should be filed with the pension regulator and have effect upon filing, unless and until it is successfully challenged.	• We encourage a rule that applies to all pension plans and therefore encourage regulators to look to the prudent person test alone rather than the plan's governance structure.
Recommendation 8-9 — Plan sponsors who administer their own plan should be encouraged to reduce or eliminate inherent conflicts of interest by: · ensuring, so far as possible, that those assigned to the role are given an unequivocal mandate to act in the best interests of the plan; · providing representation for members and/or retirees and/or independent members on the plan's highest decision-making body; or · retaining arm's-length professional advisors to administer the plan on their behalf.	• Agreed. We note, however, that inclusion of members and retirees in the administration of a single employer plan is not always practical.
Recommendation 8-10 — Plans that appoint active or retired members to serve on their governing bodies should be encouraged to resolve potential conflicts of interest in advance by:	• This may present significant practical issues, particularly for smaller plans.

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· adopting clear policy statements in the plan documents; · ensuring the significant representation on those bodies of groups with divergent interests; or · appointing some trustees or governors unaffiliated with any group whose members are covered by the plan.	
Recommendation 8-11 — The Pension Champion, proposed in Recommendation 10-5, should work with stakeholders to identify approaches to the resolution of conflicts of interest appropriate to their particular circumstances.	• Agreed.
Recommendation 8-12 — The pension regulator and/or the proposed Pension Champion should initiate consultations with stakeholders and with representatives of the relevant professional governing bodies in order to ensure that their members provide services in the pension context in a manner consistent with the good governance and proper regulation of pension plans. These consultations should focus on rules governing the conduct of professionals in pension practice, and on the redesign of regulatory and governance structures and processes — in both cases, with a view to ensuring the honest and transparent administration of pension plans.	• Agreed.
Recommendation 8-13 — The pension regulator and/or the proposed Pension Champion should initiate consultations with stakeholders and with representatives of the relevant professional governing bodies in order to clarify: · which participants in the governance of pension plans are bound by fiduciary duties; · the scope of such duties; · whether such duties can be assigned to professional advisors and agents; · whether advisors and agents are themselves bound by the same duties; and	• Agreed.

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· whether fiduciaries, their advisors and agents can enter into exculpatory contracts and indemnification agreements in order to limit their liability to the client or third persons.	
Recommendation 8-14 — Following such consultations, the pension regulator should draw up codes of best practice for the guidance of all participants in the governance process. The regulator should urge the governing bodies of professions whose members are involved in the pension field to: · adapt this code to the particular circumstances confronted by their members; · implement the code, as adapted, through revision of their own professional standards, if required; and · educate — and if necessary, discipline — their members in order to ensure compliance with the new standards.	• We agree, and would note that there is already a lot of work on this issue in circulation from which the regulator could draw.
Recommendation 8-15 — All persons responsible for providing valuations, reports or other documents that are filed with the regulator, or provided to active and retired plan members, should be required to certify that all such documents have been prepared in accordance with the law and with relevant professional standards.	• Disagree. The ACPM believes that professional standards are sufficient.
Recommendation 8-16 — An early task for the proposed Pension Champion should be to consult with pension stakeholders, relevant professional bodies, educational institutions and the pension regulator with a view to determining what lay and professional participants in plan governance ought to know about pension plans and the pension system, how they might best acquire such knowledge, and to what extent its acquisition should be a necessary qualification for service as a trustee or administrator of, or advisor or service provider to, a plan.	• Agreed.
Recommendation 8-17 — Following the consultations outlined in Recommendation 8-16, the Pension Champion ought to develop standards for educational programs for all participants in pension governance. The Pension Champion ought also to determine how educational programs should be provided and at whose expense, and whether acquisition of	• We believe that there already exists high quality educational material. It is necessary to be mindful of costs and the willingness of individuals to serve as trustees or pension committee members.

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appropriate educational qualifications should be mandatory and, if so, for the performance of what functions.	
Recommendation 8-18 — The regulator should develop codes of best practice to guide plan governors, administrators and their agents. These codes of best practice should be based on the experience of successful plans, disseminated across the pension system and used to give meaning to the general statutory requirements for "prudence," "care," "diligence" and "skill."	• Agreed.
Recommendation 8-19 — The regulator should make available on-line to active and retired plan members and their authorized representatives — without charge but subject to security arrangements — all plan documents as well as triennial, annual or other valuations and reports required to be filed with the regulator.	• In light of the right of access to documents from the administrator, it is not clear to us that the demand for this service would outweigh the obvious costs. If this recommendation is implemented, we assume that online access will be appropriately designed to protect pension plan and administrator information.
Recommendation 8-20 — The regulator should develop guidelines and codes of best practice with regard to the provision of plan information to active and retired members in accessible form.	• Agreed.
Recommendation 8-21 — Plan administrators should provide an annual information statement to active and retired plan members in easily understood language or languages. The statement should include: · a simple description of how pensions are funded and benefits are calculated under the plan; · information on the plan's funded status (including whether it is in surplus or deficit and whether a contribution holiday is in progress or contemplated);	• Agreed in principle, but are concerned about the cost of implementation relative to its benefits.
· the potential impact of its funded status on active and retired members' pensions; and · a telephone number and/or website address where further information can be obtained from the administrator or the sponsor, and similar coordinates for the pension regulator.	

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Recommendation 8-22 — Plan board members, governors or trustees should prepare, file with the regulator and make available to active and retired members at three-year intervals (or more often, if material changes have occurred) the plan's detailed governance, funding and investment policies. Particulars of the matters to be addressed by these policies should be developed by the pension regulator in consultation with the stakeholders. Template policy statements should be developed for the assistance of smaller plans.	• We suggest that governance, funding and investment policies be developed and maintained in the same manner as the SIP&P is currently regulated.
Recommendation 8-23 — Plan statements of investment policy should reveal whether, and if so, how, socially responsible investment practices are reflected in the plan's approach to investment decisions.	• Agreed.
Recommendation 8-24 — Except as provided in Recommendation 8-26, every pension plan should be required to establish a pension advisory committee (PAC). A PAC should comprise at least five members, including one representative selected by retired members and one by each class or group of active members. When plan members are represented by one or more trade unions or equivalent organizations, such unions or organizations should nominate their PAC representatives.	• We would prefer that issues of this nature be dealt with in a flexible, principles-based approach and not in a prescriptive manner.
Recommendation 8-25 — The PAC should: · be provided with effective means of communicating with all plan members, including retired members; · have access to all information distributed to plan members or filed with the regulator;	• Disagree. We believe this imposes additional cost and complexity on plan administration.
· receive notice of all amendments, applications, proceedings or transactions involving the plan; and	

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· be informed of all votes or consultations designed to solicit the views of plan members. The PAC should present annually to plan members a report on the state of the plan and an account of its own activities during the year. This report should be distributed with other information that the administrator is required to provide to plan members.	
Recommendation 8-26 — No PAC need be formed when (a) a plan provides for the participation of active and retired member representatives on its governing body, (b) a collective agreement provides for a joint sponsor–member–retiree advisory committee, or (c) a majority of active and retired members vote in a secret ballot not to establish a PAC.	• We reiterate our comment under 8-24 that we would prefer that issues of this nature be dealt with in a flexible, principles-based approach and not in a prescriptive manner.
Recommendation 8-27 — The sponsor of a single-employer pension plan may enter into an agreement with a trade union, or other union-like organization that represents plan members, to establish a jointly governed target benefit pension plan. Such plans should (a) be governed by a board of trustees or comparable body on which representatives of plan members and retirees should comprise not less than one-half of its members, (b) offer target benefits, and (c) be funded on the same going concern basis as multi-employer and jointly sponsored plans.	• We recommend that this be implemented through legislative amendment. See our comments under Rec. 4-12.
Recommendation 8-28 — The *Pension Benefits Act* should be amended to describe pensioners as "retired" rather than "former" plan members.	• Agreed.
Recommendation 8-29 — Retired and deferred plan members should be assured effective access to all plan information available to active plan members.	• Agreed in principle, but do not agree with mandatory distribution given the difficulties associated with locating deferred and, at times, retired members.
Recommendation 8-30 — Retired plan members should be eligible to participate in any plan governance process in which active plan members are eligible to participate. The extent of their representation and participation in governance should be determined by the governing body of each plan, but must be sufficient to ensure that their voice is heard and their interests protected.	• It seems to us that it is not strictly necessary to require that retirees participate in plan governance, as they are already protected by the standard of care that is imposed on the administrator.

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Innovation in Plan Design **Recommendation 9-1** — Innovation in plan designs should be promoted and facilitated by the proposed Pension Champion (see Recommendation 10-5).	• Agreed in principle. Providing sponsors more choice in how to deliver retirement income to members should encourage participation.
Recommendation 9-2 — Pension policy and legislation ought to facilitate the growth and operation of large-scale pension plans or to enable and encourage cooperation among small- and medium-sized plans.	• Agreed. This is likely the most important recommendation from a coverage standpoint and is broadly accepted by various stakeholder groups.
Recommendation 9-3 — Legislation and regulations should be enacted to enable and promote large commingled target benefit plans that might provide affordable pension coverage to Ontarians who do not presently have pensions or for whom the costs of obtaining a pension are unnecessarily high.	• Agreed. In line with Rec. 9-2. Portability would be more easily accomplished within such vehicles. Although these plans are typically aligned by industry, a wider utilization could be achieved through grouping by design objectives (e.g. Unreduced age 62 plan, etc.) • To encourage movement to these vehicles sponsors must be provided with conversion options that deal with legacy benefits.
Recommendation 9-4 — The government of Ontario should investigate the advantages and disadvantages of expanding the mandate of the Canada Pension Plan, or creating a comparable provincial plan, so as to enhance pension coverage, control costs and improve benefit portability.	• Agreed, assuming it is voluntary for employers who already offer retirement products and is targeted at those with no pension coverage.
Recommendation 9-5 — The government of Ontario should support the call for a national pension summit whose agenda should extend to all ideas for significantly expanding pension coverage, including the innovative proposals contained in this report.	• Agreed. In line with our principles.

Report Recommendation	ACPM Response
The Future of DB Pensions and Pension Policy in Ontario **Recommendation 10-1** — The government should: · considerably improve the collection of data concerning all aspects of the pension system;	• Agreed, subject to the understanding that the community that uses this data should fund this initiative (i.e. Ministry of Finance). They could choose to resell this data to manage costs – like Statistics Canada. If plans are obligated to submit their data outside the current reporting, the system should be very easy to use and not materially impact administration cost. A key goal for these additional initiatives and related resources is to be efficient. Coverage in the pension system will not benefit from a larger bureaucracy without clear objectives and accountability to those who fund them.
· regularly produce analyses of pension coverage, the funding status of pension plans, the contribution of pension plans to capital and labour markets, the performance of the pension regulator and other indicators of how Ontario's pension system is working;	• Agreed. Aligned with our principles.
· use such analyses to support periodic and ongoing review of pension policy and the regulation of the pension system; and	• Agreed. Aligned with our principles.
· make pension data and analysis readily available to stakeholder, professional and academic users.	• Agreed. Aligned with our principles.
Recommendation 10-2 — A Pension Community Advisory Council should be formed comprising representatives of all significant stakeholder groups together with other interested parties such as professionals, service providers, academic researchers and business and social advocacy groups. It should be provided with access to data and interpretative studies on Ontario's pension system, invited to advise on significant policy initiatives, and used as a forum to promote an informed and ongoing exchange of views on pension issues.	• Agreed.

Report Recommendation	ACPM Response
Recommendation 10-3 — The *Pension Benefits Act* and regulations should be drafted in such a way that changes can be made with all deliberate speed to facilitate the introduction of new types of pension plans, to enable rapid regulatory responses to significant changes in the social and economic environment, and to safeguard the interests of sponsors and plan members. Significant changes in pension law should be accomplished through regulation-making. Except in emergencies, the process of regulation-making should provide for timely notice to and comment by stakeholders and other interested parties, and for advice by the proposed Pension Community Advisory Council.	• Agreed. ACPM applauds any initiative that can improve the speed with which the regulatory environment in which pension plans operate can be made more responsive to emerging issues affecting them. Drafting the Act and regulations in such a way to facilitate speedy changes is one solution. An additional option is to allow for some form of rule-making authority to vest in the Superintendent, perhaps based on the powers granted to the Ontario Securities Commission.
Recommendation 10-4 — Ontario's pension policy, legislation and performance should be comprehensively reviewed every eight years.	• ACPM supports a mandated periodic review of pension policy and legislation, provided that such periodic reviews do not ultimately serve as a rationale for inaction on matters requiring attention during the intervening period. Best efforts should be made to ensure that pension policy and legislation are at all times relevant and responsive to the evolving environment in which pension plans exist.
Recommendation 10-5 — Ontario should identify an agency or unit of government as its Pension Champion with responsibility for conducting research into the pension system, for working closely with the stakeholders and the proposed Pension Community Advisory Council, for promoting and facilitating innovation in the pension system and for leading policy development efforts in the pension field.	• Agreed, assuming the costs, which relate to policy, are borne by the government.
Recommendation 10-6 — The new Pension Champion should be provided with highly qualified and sufficient staff and resources adequate to undertake its assigned functions.	• Agreed, provided there is also a sufficient budget and authority.

Report Recommendation	ACPM Response
Recommendation 10-7 — The Minister of Finance for Ontario should promote and support a meeting, at the earliest feasible date, of provincial and federal ministers responsible for pension issues with a view to discussing: · the possible implications of further divergence in provincial pension policies, legislation and regulatory arrangements if, as and when the recommendations in this report, and in the reports of other provincial pension commissions, come forward for consideration, enactment and implementation by the governments involved; · the need for the provinces to act collectively in order to secure changes in federal legislation, particularly the raising of pension contribution limits under the *Income Tax Act* and the more favourable treatment of pension plans and members under federal bankruptcy and insolvency legislation; and · the potential for some greater standardization of procedural and technical requirements in provincial pension legislation, in light of recommendations contained in the reports of the three current pension commissions and an anticipated report from the Canadian Association of Pension Supervisory Authorities.	• Agreed.
Recommendation 10-8 — The government should maintain momentum in pension reform by moving as rapidly as possible to determine whether or to what extent it wishes to implement the recommendations in this report. Having established its basic direction, the government should then identify issues for priority treatment. An early priority for the government should be to put in place appropriate agencies and officials who can carry forward the ongoing work of reform.	• Agreed. The pension community needs some positive signals that change will happen.

Report Recommendation	ACPM Response
Recommendation 10-9 — The government should identify recommendations that will require phased implementation as well as transitional measures to allow stakeholders to bring themselves into compliance with the new regulatory regime over some reasonable period of time. However, it should be vigilant to ensure that arguments favouring phased implementation and transitional measures are not used to obstruct reforms that the government believes to be necessary and appropriate.	• Agreed. Transitional rules will be particularly critical for items that impact funding and costs to sponsors.