TAB I

This is Exhibit "I" to the

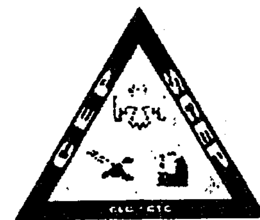
Affidavit of JOHN E. MAGUIRE

sworn before me this 11th day of February, 2010.

Commissioner for Taking Affidavits

JANICE AUDREY ANDERSON
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA,
APPOINTMENT EXPIRES MAY 14, 2010.

GRIEVANCE FORM



COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA

Grievance # \ No.#: **1100-2009-03 (policy)**
Grievor's Name: **The Union**

Date: **July 20, 2009**
Local: **1100**

Nature of Grievance:

The Union grieves that the intention of the Company to unilaterally terminate and/or wind up the retirement plan for CHCH employees is a violation of the Collective Agreement.

The Union further grieves that the Company's intention not to fully fund any shortfall in the retirement plan for CHCH employees on termination and/or wind up is a violation of the Collective Agreement.

Settlement Desired:

The Union demands full redress.

Articles violated: the C.A. including; 4, 18, 20

Signature of Grievor : ______________________

IF WRITTEN RESPONSE IS NEEDED AT ANY STEP PLEASE ATTACH

TAB J

This is Exhibit "J" to the

Affidavit of JOHN E. MAGUIRE

sworn before me this 11th day of February, 2010.

Commissioner for Taking Affidavits

JANICE AUDREY ANDERSON
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA.
APPOINTMENT EXPIRES MAY 14, 2010.

This is Exhibit 2 referred to in the affidavit of DAVID LEWINGTON sworn before me, this 21st day of OCTOBER 2009

A COMMISSIONER FOR TAKING AFFIDAVITS

AGREEMENT BETWEEN:

CH Television Hamilton,
A division of CanWest Television Limited Partnership

(the "Company")

98

And

Communications, Energy and Paperworkers Union of Canada,
and its' Local 1100

(the "Union")

WHEREAS the Company is (pursuant to an assignment effective January 1, 2009), the employer party to a collective agreement between CHCH Television Hamilton, a Division of Global Communications Limited and the Union with a commencement date of April 1, 2005 and an expiry date of March 31, 2008, but which collective agreement continues in operation ("Collective Agreement");

AND WHEREAS the Company is the licensee of and operates CHCH-TV Hamilton and has entered into an agreement dated June 26, 2009 to transfer the broadcasting license and assets of CHCH-TV Hamilton to 2190015 Ontario Inc. ("Channel Zero" or the "Purchaser") (the "Transaction");

AND WHEREAS the above Transaction, subject to CRTC approval, is scheduled to close five (5) days after CRTC approval (the "Closing Date");

AND WHEREAS the intent of this Agreement is to provide terms and conditions satisfactory to the Purchaser in accordance with the June 26, 2009 agreement between the Company and the Purchaser.

NOW THEREFORE the Company and the Union agree as follows:

1. Conditional upon the Closing Date occurring on or before November 10, 2009, the parties agree to the following with respect to the Collective Agreement which shall continue in effect subject to the following amendments:

   a) Immediately upon the closing of the Transaction (the "Closing Time") Article 27.1 of the collective agreement will be changed to reflect that the term of the revised agreement shall be from April 1, 2008 until one year after the Closing Date.

   b) Immediately upon the Closing Time, the positions of Director, Talent, and Information Technology Coordinator shall be included in the bargaining unit. Further, the parties will include the memorandum on Anchor Contracts as part of the collective agreement.

   c) Immediately upon the Closing Time, all references to the Defined Benefit Pension and pension benefits will be removed from the collective agreement. For further clarity, the articles to be removed or revised include but are not limited to:

      Article 3.3.2 m) – delete the final sentence "By virtue of the Pensions Benefit Act an employee may qualify for enrollment in the pension plan, notwithstanding the fact he/she may qualify for insured employee benefits."

Article 3.7 – remove reference to Pension Plan

Article 18.2.1 – replace references to date of commencement of "pension benefits" with "retirement date".

Article 18.3.1 – delete entire article

Article 18.3.2 – delete entire article

Article 18.4.3 e) – delete

d) Immediately upon the Closing Time, all references to post retirement benefits will be removed from the collective agreement. For further clarity, the articles to be removed or revised include, but are not limited to:

Article 18.4.3 e) – delete

Article 20.2 – delete the last 4 paragraphs beginning with "Effective December 31, 2009 the Retiree Benefits..."

e) Immediately upon the Closing Time, the preamble to Article 18.4 shall state "The Company shall provide for benefit plans which are substantially similar in the aggregate to those referred to in Articles 18.4.1 to 18.4.4 of the Collective Agreement".

f) For the avoidance of any doubt, the amendments in 1(b) to 1(e) shall not be retroactive and shall only be effective immediately upon the Closing Time.

2. The elimination of post retirement benefits from the collective agreement does not affect the rights to those benefits of existing retirees as of the Closing Date. Those benefits are provided by the Company and are not under any circumstances the responsibility of the Purchaser.

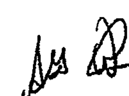
3. Employees will have a maximum of thirty (30) days after the Closing Date to submit health benefit claims incurred prior to the Closing Date. Neither the Company nor the Purchaser will be responsible for claims that are not submitted within that time period.

4. If the Closing Date does not occur on or before November 10, 2009 this Agreement is void ab initio.

5. The Union will recommend ratification of this Agreement to the members of the bargaining unit in a ratification vote that will be concluded by July 31, 2009. Only members of Local 1100 will be eligible to participate in the ratification vote.

6. For the avoidance of any doubt, the Union agrees that the Purchaser shall not inherit as successor any obligations to continue the "Global Communications Limited Retirement Plan for CH Employees" or the post retirement benefits.

7. For the avoidance of any doubt, nothing in this Agreement is intended to remove any existing rights of employees or the Union to grieve under the Collective Agreement regarding pension or post retirement benefits that exist prior to the Closing Time.



This Agreement is signed this 28th day of July, 2009.

Canwest Television Limited Partnership, By its General Partner, Canwest Television GP Inc.

Communications, Energy and Paperworkers Union, and its Local 1100

TAB K

This is Exhibit "K" to the

Affidavit of JOHN E. MAGUIRE

sworn before me this 11th day of February, 2010.

Commissioner for Taking Affidavits

JANICE AUDREY ANDERSON
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA,
APPOINTMENT EXPIRES MAY 14, 2010.

November 2009

Global Communications Limited Retirement Plan for CH Employees

Report on the Actuarial Valuation for Funding Purposes as at December 31, 2008

MERCER

Office of the Superintendent of Financial Institutions Registration Number: 55224
Canada Revenue Agency Registration Number: 0281816

Consulting. Outsourcing. Investments.

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Appendix A: Plan Assets

Appendix B: Actuarial Methods and Assumptions

Appendix C: Membership Data

Appendix D: Summary of Plan Provisions

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Summary of Results

Going-Concern Financial Position	**31.12.2008**	**31.12.2006**
Market value of assets	$36,324,667	$45,983,774
Actuarial liability	$40,154,397	($38,844,626)
Funding excess (unfunded liability)	($3,829,730)	$7,139,148

Solvency Financial Position	**31.12.2008**	**31.12.2006**
Market value of assets	$36,124,667	$45,888,774
Solvency liability	$46,344,400	($45,037,975)
Solvency (deficit)	($10,219,733)	$850,799
Solvency ratio	77.9%	101.9%

Funding Requirements	**01.01.2009 to 31.08.2009**	**2007**
Total current service cost	$540,624	$858,587
Estimated members' required contributions	($240,565)	($369,337)
Estimated employer's current service cost	$300,059	$489,250
Employer's current service cost as a percentage of members' required contributions	124.7%	132.5%
Minimum special payments	$1,529,776	$0
Estimated minimum employer contribution for the period	$1,829,835	$0
Estimated maximum employer contribution for the period	$14,230,841	$0

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Introduction

Report on the Actuarial Valuation as at December 31, 2008

To Mr. John Maguire

At your request and at the direction of the Office of the Superintendent of Financial Institutions ("OSFI"), we have conducted an actuarial valuation of the Global Communications Limited Retirement Plan for CH Employees, sponsored by Canwest Media Inc., (the "Company") as at December 31, 2008. We are pleased to present the results of the valuation.

On June 29, 2009, the Company advised OSFI of its intention to terminate the plan effective August 31, 2009. In its August 10, 2009 letter, OSFI directed the Company to file an actuarial valuation for funding purposes as at December 31, 2008. Members participating in this Plan had their employment with the Company terminated as of August 31, 2009.

Accordingly, the purpose of this valuation is to determine:

- the funded status of the plan as at December 31, 2008 on going-concern, solvency, and hypothetical wind-up bases; and
- the minimum funding requirements from January 1, 2009 to August 31, 2009.

The information contained in this report was prepared for the internal use of the Company and for filing with OSFI and with the Canada Revenue Agency, in connection with our actuarial valuation of the plan. This report is not intended or suitable for any other purpose.

This report will be filed with OSFI and with the Canada Revenue Agency.

A separate report on the actuarial valuation for plan termination purposes as at August 31, 2009 will be required, in accordance with the *Pension Benefits Standards Act, 1985*.

For purposes of determining the contribution requirements for the period of January 1, 2009 to August 31, 2009, the Plan was treated as a going concern. There is a going-concern unfunded liability of $3,829,730, and a solvency ratio of 77.9% as at December 31, 2008. As such, the minimum monthly contributions that the Company must make to the plan from January 1, 2009 to August 31, 2009 is as follows:

Monthly Employer Contributions
For current service: 124.7% of members' required contributions
Minimum special payments for unfunded liability: $33,764
Minimum special payments for solvency deficiency: $157,458

On the basis of the members' estimated required contributions, we have estimated the minimum total employer contribution from January 1, 2009 to August 31, 2009 to be $1,829,835 or $228,729 per month.

The maximum contribution that the Company could make to the plan for the period January 1, 2009 to August 31, 2009 is $14,230,841 which is comprised of the current service cost plus the greater of the going-concern unfunded liability and the wind-up deficiency calculated on a maximum liability scenario. The maximum contribution assumes that the Company would fund the full deficit and provide all potential subsidies available under the plan.

The minimum contribution requirements based on this report exceed the minimum contribution requirements recommended in the previous valuation report. The Pension Benefits Standards Act and Regulations made under the Act have the effect that, upon filing this report, the employer under the Plan is required to contribute the excess, if any, of the minimum contribution recommended in this report over contributions actually made in respect of the period following December 31, 2008. Any contribution shortfall should be adjusted with interest to reflect the delayed payment.

The plan is not fully funded on a wind-up basis. Even if the sponsor contributes in accordance with the funding requirements described in this valuation report, the assets of the plan may be less than the liabilities of the plan upon wind-up.

Emerging experience, including the growth of wind-up liabilities compared to the plan's assets (including future contributions and investment returns), will also affect the wind-up funded position of the plan.

This valuation reflects the provisions of the plan as at December 31, 2008. Effective January 10, 2008, the plan was amended to change the name of the plan sponsor from CanWest MediaWorks Inc. to Canwest Media Inc. The plan was further amended during 2008 to clarify the definitions of Employee and Employer as well as to clarify provisions for members transferred to and from other divisions of the Employer or to/from affiliated companies. These amendments did not have an impact on the financial position or the current service cost of the plan.

A summary of the plan provisions is provided in Appendix D. To the best of our knowledge and belief, the plan documents and amendments that we have on file comprise the full and complete plan text.

We have used the same going-concern valuation assumptions and methods as were used for the valuation as at December 31, 2006, except for:

- The assumed investment return which was increased from 6.70% per year to 6.90% per year;
- The assumed increase in the Consumer Price Index which was decreased from 2.50% per year to 2.20% per year;
- The assumed increase in pensionable earnings which was decreased from 4.50% per year to 4.20% per year; and
- The assumed incidence of mortality before and after retirement was updated from the 1994 Uninsured Pensioner Mortality (UP94) Table statically projected using Scale AA to 2015 to the 1994 Uninsured Pensioner Mortality Table with projection scale AA applied to reflect continuing future improvements in mortality.

These changes have resulted in a net increase in the funded position of $525,000 and a decrease of 3.7% in the employer service cost expressed as a percentage of members' required contributions.

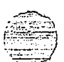
The Company's funding policy is to contribute no more than is necessary to comply with the requirements of applicable legislation and accepted actuarial practice. However, at the direction of the Company due to the announced plan termination, the minimum funding recommendations disclosed in this report do not reflect all available legislative measures which could produce lower employer required contributions.

The solvency and wind-up assumptions have been updated to reflect market conditions at the valuation date.

The assumptions used for purposes of this valuation are described in Appendix B. All assumptions made for the purposes of the valuation were independently reasonable at the time the valuation was prepared.

A new Canadian Institute of Actuaries Standard of Practice for determining pension commuted values ("CIA Standard") became effective on April 1, 2009. The new CIA Standard changed the assumptions to be used to value the solvency and wind-up liabilities for benefits assumed to be settled through a lump sum transfer. As permitted by the *Pension Benefits Standards Act, 1985*, and as directed by the Company, the financial impact of the new CIA Standard has been reflected in this actuarial valuation.

The Company received a letter from OSFI, dated March 10, 2009, advising the Company that effective immediately under Section 26 of the *Pension Benefits Standards Act, 1985,* no transfer of money upon termination of membership from the Plan, may be made from the Plan without the prior consent of the Superintendent. This restriction will continue to



apply until it is withdrawn or amended, and the restriction does not apply to death benefits, non-vested entitlements or monthly pension in pay.

An employee is eligible to join the plan on the first of the month on or after the completion of one year of continuous service. If the employee elects to join the plan on the first of the month on or after the completion of one year of continuous service, the employee's credited service will include their accrued service prior to becoming a member. The results of our valuation include three members who were hired prior to December 31, 2008 and became members following December 31, 2008 but prior to August 31, 2009 and thus received credited service prior to December 31, 2008.

Our valuation does not account for the plan termination as at August 31, 2009. The impact of the plan termination will be the subject of a separate report.

On October 6, 2009 the Company filed for and was granted protection under the Companies' Creditors Arrangement Act ("CCAA"). The impact on the plan, if any, of any arrangement resulting from the CCAA process is currently unknown.

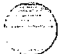
On October 5, 2009, the Canadian Institute of Actuaries revised their guidance for estimating annuity purchase prices. Under the revised guidance, the spread for non-indexed annuities (relative to Canadian Bond Series V39062) has decreased from 1.4% for valuation dates from October 31, 2008 to July 30, 2009 to 0.5% for valuation dates from July 31, 2009 to December 30, 2009. We have estimated that the effect of this change will be to increase the Plan's solvency liabilities by approximately $3,972,000.

There have been no changes adopted to the Statement of Investment Policies and Procedures as of the date of this report that affect the asset allocation. The Plan has had favourable investment experience from January 1, 2009 to September 30, 2009. The rate of return net of expenses for this period has been 13.8%. The actual funded status of member benefits may change significantly based on investment returns and changes in annuity purchase rates up to the date of final settlement.

After checking with representatives of Canwest Media Inc., to the best of our knowledge there have been no other events subsequent to the valuation date which, in our opinion, would have a material impact on the results of the valuation.

This report has been prepared on the assumption that all of the assets in the pension fund are available to meet all of the claims on the pension plan. We are not in a position to assess the impact that the Ontario Court of Appeal's decision in *Aegon Canada Inc. and Transamerica Life Canada versus ING Canada Inc.*, or similar decisions in other jurisdictions, might have on the validity of this assumption.

This report has been prepared, and our opinions given, in accordance with accepted actuarial practice in Canada. It has also been prepared in accordance with the funding and solvency standards set by the *Pension Benefits Standards Act, 1985.*



Respectfully submitted,

Cliff Fox
Fellow of the Society of Actuaries
Fellow of the Canadian Institute of Actuaries

November 4, 2009
Date

Tyler Smith
Fellow of the Society of Actuaries
Fellow of the Canadian Institute of Actuaries

November 4, 2009
Date

Global Communications Limited Retirement Plan for CH Employees

Registration number with the Office of the Superintendent of Financial Institutions: 55224

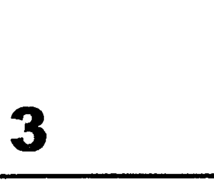
Registration number with the Canada Revenue Agency: 0281816

This valuation report may not be relied upon for any purpose other than those explicitly noted above or by any party other than the Pension Committee, the Management Pension Committee, the Office of the Superintendent of Financial Institutions Canada (OSFI) or the Canada Revenue Agency. Mercer is not responsible for the consequences of any other use. A valuation report is a snapshot of a plan's estimated financial condition at a particular point in time; it does not predict a pension plan's future financial condition or its ability to pay benefits in the future.

Over time, a plan's total cost will depend on a number of factors, including the amount of benefits the plan pays, the number of people paid benefits, the amount of plan expenses, and the amount earned on any assets invested to pay the benefits. These amounts and other variables are uncertain and unknowable at the valuation date.

To prepare this report, *actuarial assumptions*, as described in Appendix B, are used to select a single scenario from the range of possibilities. The results of that single scenario are included in this report. However, the future is uncertain and the plan's actual experience will differ from those assumptions; these differences may be significant or material. In addition, different assumptions or scenarios may also be within the reasonable range and results based on those assumptions would be different. Actuarial assumptions may also be changed from one valuation to the next because of changes in regulatory requirements, plan experience, changes in expectations about the future and other factors.

Because actual plan experience will differ from the assumptions, decisions about benefit changes, investment policy, funding amounts, benefit security and/or benefit-related issues should be made only after careful consideration of alternative future financial conditions and scenarios, and not solely on the basis of a valuation report or reports.



Financial Position of the Plan

Valuation Results – Going-Concern Basis

When conducting a valuation on a going-concern basis, we determine the relationship between the respective values of assets and accumulated benefits, assuming the plan will be maintained indefinitely.

Financial Position

The results of the valuation as at December 31, 2008, in comparison with those of the previous valuation as at December 31, 2006, are summarized as follows:

Financial Position — Going-Concern Basis

	31.12.2008	**31.12.2006**
Assets		
Market value of assets	$36,324,667	$45,983,774
Actuarial liability		
Present value of accrued benefits for:		
active members	$14,259,376	$15,699,467
pensioners and survivors	$23,679,866	$20,279,898
deferred pensioners	$1,149,770	$1,530,568
disabled members	$389,432	$450,674
pending lump sump payments	$4,279	$0
flexible contribution balances	$671,674	$884,019
Total liability	$40,154,397	$38,844,626
Funding excess (unfunded liability)	($3,829,730)	$7,139,148

Reconciliation of Financial Position

The plan's financial position, an unfunded liability of $3,829,730 as at December 31, 2008, is reconciled with its previous position, a funding excess of $7,139,148 as at December 31, 2006, as follows:

Reconciliation of Financial Position

Funding excess (unfunded liability) as at 31.12.2006	$7,139,000
Interest on funding excess at 6.70% per year to 31.12.2008	$989,000
Net experience gains (losses) over 2007-2008*	($11,353,000)
Employer's contributions drawn from previous funding excess	($985,000)
Impact of changes in economic assumptions	$1,000,000
Impact of change in mortality assumption	($475,000)
Impact of data changes	($262,000)
Programming refinements	$109,000
Net impact of other elements of gains and losses	$8,000
Funding excess (unfunded liability) as at 31.12.2008	($3,830,000)

* *Net experience gains (losses) are detailed on the following page.*

Data Changes

The main data changes in the reconciliation of the plan's financial position ($262,000 loss) above are a result of the changes in the reported earnings at the prior valuation date for two active members. The updated 2006 earnings were higher than the original reported earnings used in determining their December 31, 2006 going concern liabilities.

Programming Refinements

An adjustment was made to the application of the retirement decrements for qualifying for early retirement subsidies. This refinement impacted two active members resulting in a gain of $109,000.

Plan Experience

The main assumptions are compared with actual experience since the previous valuation as at December 31, 2006:

Plan Experience

	Assumption	Actual 2007-2008	Impact Gain (Loss)
Net investment return	6.7%/year	-7.0%/year	($11,785,000)
Increases in pensionable earnings	4.5%/year	4.3%/year	$169,000
Retirements:			
number	2 retired	12 retired	($48,000)
average age	60.1 years	58.6 years	
Retirement of deferred pensioners	0 retired	5 retired	$7,000
Terminations of employment	0 terminated	15 terminated	$35,000
Payout of deferred pensioners			($23,000)
Mortality:			
pre-retirement	0.47 deaths	0 deaths	($35,000)
post-retirement	5.25 deaths	4 deaths	$327,000
Net experience gains (losses)			($11,353,000)

Valuation Results — Solvency Basis

When conducting a solvency valuation, we determine the relationship between the respective values of the plan's assets and its liabilities on a solvency basis, determined in accordance with the *Pension Benefits Standards Act, 1985*. The values of the plan's assets and liabilities on a solvency basis are related to the corresponding values calculated as though the plan were wound up and settled on the valuation date. The circumstances in which the plan wind up is assumed to have taken place is both the plan and Company wind-up, thereby giving rise to termination benefits for those active, disabled and deferred members not yet eligible to retire and retirement benefits for those active, disabled and deferred members already eligible to retire.

In determining the solvency liabilities of the plan as at December 31, 2008, we have included the value of all benefits that are provided by the Plan, except for the consent benefits described in Appendix D.

As at December 31, 2008, the solvency ratio of the plan, being the ratio of solvency assets to solvency liabilities, is 77.9%. The plan's solvency position as at December 31, 2008, in comparison with that of the previous valuation as at December 31, 2006, is determined as follows:

Solvency Position

	31.12.2008	**31.12.2006**
Market value of assets	$36,324,667	$45,983,774
Termination expenses	($200,000)	($95,000)
Market value of assets available to provide benefits	$36,124,667	$45,888,774
Actuarial liability		
Present value of accrued benefits for:		
▪ active members	$15,438,736	$16,956,550
▪ pensioners and survivors	$28,061,467	$24,403,973
▪ deferred pensioners	$1,691,890	$2,147,779
▪ disabled members	$476,354	$645,654
▪ pending lump sum payments	$4,279	$0
▪ flexible contribution balances	$671,674	$884,019
Total liability	$46,344,400	$45,037,975
Solvency excess (deficiency) before adjustment for the present value of special payments for the next five years	($10,219,733)	$850,799
Plus: Present value of special payments for next five years	$1,804,508	$0
Solvency excess (deficiency) after adjustment for the present value of special payments for the next five years	($8,415,225)	$950,799
Solvency ratio – market value of assets/total liability	77.9%	101.9%

On October 5, 2009, the Canadian Institute of Actuaries revised their guidance for estimating annuity purchase prices. Under the revised guidance, the spread for non-indexed annuities (relative to Canadian Bond Series V39062) has decreased from 1.4% for valuation dates from October 31, 2008 to July 30, 2009 to 0.5% for valuation dates from July 31, 2009 to December 30, 2009. We have estimated that the effect of this change will be to increase the Plan's solvency liabilities by approximately $3,972,000.

Payment of Benefits

Since the solvency ratio is less than 100%, the plan administrator should ensure that the monthly special payments are sufficient to meet the requirements of the *Pension Benefits Standards Act, 1985* to allow for the full payment of benefits to terminating members. Otherwise, the plan administrator should take the actions prescribed by the *Act*. However, the Company received a letter from OSFI, dated March 10, 2009, advising the Company that effective immediately under Section 26 of the *Pension Benefits Standards Act, 1985,* no transfer of money upon termination of membership may be made from the Plan without the prior consent of the Superintendent. This restriction will continue to apply until it is withdrawn or amended, and the restriction does not apply to death benefits, non-vested entitlements or monthly pension in pay.

Financial Position on a Wind-Up Basis

The plan's hypothetical wind-up position as of December 31, 2008, assuming the plan and the Company wind-up on the valuation date and excluding the value of consent benefits described in Appendix D, is determined as follows:

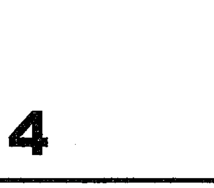
Wind-Up Position

	31.12.2008
Market value of assets	$36,324,667
Termination expenses	($225,000)
Wind-up assets	$36,099,667
Present value of accrued benefits for:	
active members	$15,438,736
pensioners and survivors	$28,061,467
deferred pensioners	$1,691,890
disabled members	$476,354
pending lump sum payments	$4,279
flexible contribution balances	$671,674
Total wind-up liability	$46,344,400
Wind-up excess (deficiency)	($10,244,733)

As required by the actuarial standards of practice, we have also considered the hypothetical wind-up scenario that produces the maximum liability. Had the plan wind up been postulated assuming the plan wound up on the valuation date and employment with the Company continued for the purpose of determining eligibility criteria, the wind-up deficit would be $13,930,782. This scenario also contemplates that consent benefits as described in Appendix D are granted to all eligible members. This scenario would produce the maximum liability on the valuation date.

Impact of Plan Wind Up

In our opinion, the value of the plan's assets would be less than its actuarial liabilities if the plan were to be wound up on the valuation date.



Funding Requirements

Current Service Cost

The estimated value of the benefits that will accrue on behalf of the active and disabled members from January 1, 2009 to August 31, 2009, in comparison with the corresponding value determined in the previous valuation as at December 31, 2006, is summarized below:

Employer's Current Service Cost

	01.01.2009 to 31.08.2009	2007
Total current service cost	$540,624	$858,587
Estimated members' required contributions	($240,565)	($369,337)
Estimated employer's current service cost	$300,059	$489,250
Employer's current service cost expressed as a percentage of members' required contributions	124.7%	132.5%

An analysis of the changes in the employer's current service cost follows:

Changes in Employer's Current Service Cost

Employer's current service cost as at 31.12.2006	132.5%
Demographic changes	2.6%
Data changes	(2.5%)
Programming refinements	(4.2%)
Changes in assumptions	(3.7%)
Employer's current service cost as at 31.12.2008	124.7%

Special Payments

Going-Concern Basis

No special payments existed in the previous valuation. In accordance with the *Pension Benefits Standards Act, 1985*, the unfunded liability of $3,829,730 must be amortized over a period not exceeding 15 years. As such, special payments must be established at $33,764 per month until December 31, 2023 to amortize this unfunded liability.

Solvency Basis

In accordance with the *Pension Benefits Standards Act, 1985*, the solvency deficiency excluding the present value of unfunded liability special payments (the "Total Solvency Deficiency") of $10,219,733 must be eliminated by special payments within five years. The present value of the unfunded liability special payments due in the next five years is determined as follows:

Minimum Monthly Special Payments

Type of Deficit	Effective Date	Special Payment	Last Payment	Present Value of Remaining Payments in the Next 5 Years as at 12.31.2008
Unfunded liability	December 31, 2008	$33,764	December 31, 2023	$1,804,508

Since the present value of the special payments to be made over the next five years is less than the Total Solvency Deficiency, an increase in special payments of $157,458 per month must be made for the next five years to eliminate the deficiency.

Total Special Payments

The following minimum monthly special payments must be made to the plan to eliminate any unfunded liability and any solvency deficiency as at December 31, 2008, within the periods prescribed by the *Pension Benefits Standards Act, 1985.*

Minimum Monthly Special Payments

Type of Deficit	Effective Date	Special Payment	Last Payment
Unfunded liability	December 31, 2008	$33,764	December 31, 2023
Solvency deficiency	December 31, 2008	$157,458	December 31, 2013
Total		$191,222	

Employer Contributions

There is a going concern unfunded liability of $3,829,730, and a solvency ratio of 77.9% as at December 31, 2008. As such, the minimum monthly contribution that Canwest Media Inc. must make to the plan from January 1, 2009 to August 31, 2009 is as follows.

Minimum Funding Requirements

The minimum monthly required contributions from January 1, 2009 to August 31, 2009 are as follows:

Monthly Employer Contributions
For current service: 124.7% of members' required contributions
Minimum special payments for unfunded liability: $33,764
Minimum special payments for solvency deficiency: $157,458

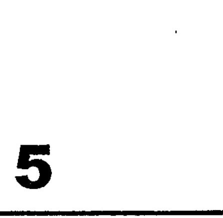
On the basis of the members' estimated required contributions, we have estimated the minimum total employer contribution from January 1, 2009 to August 31, 2009 to be $1,829,835 or $228,729 per month.

Contributions for current service must be made no less frequently than quarterly.

The minimum contribution requirements based on this report exceed the minimum contribution requirements recommended in the previous valuation report. Upon filing this report, Canwest Media Inc. must contribute the excess, if any, of the minimum contribution recommended in this report over contributions actually made in respect of the period following December 31, 2008. Any contribution shortfall should be adjusted with interest to reflect the delayed payment.

Maximum Eligible Contributions

The maximum eligible employer contribution is equal to the Company current service cost plus the greater of the going-concern unfunded liability and the wind-up deficiency calculated on a maximum liability scenario. We have estimated the maximum eligible contribution from January 1, 2009 to August 31, 2009 to be $14,230,841 as at December 31, 2008. The portion of this contribution representing the payment of the wind-up deficiency calculated on a maximum liability scenario ($13,930,782) can be increased with interest at 4.75% per year, from December 31, 2008 to the date the payment is made.



Actuarial Opinion

With respect to the Actuarial Valuation as at December 31, 2008
of the Global Communications Limited Retirement Plan for CH Employees
OSFI Registration 55224
Canada Revenue Agency Registration 0281816

Based on the results of this valuation, we hereby certify that, as at December 31, 2008,

- The employer's current service cost from January 1, 2009 to August 31, 2009 should be calculated as 124.7% of members' required contributions.
- The employer's current service cost contribution from January 1, 2009 to August 31, 2009 is estimated to be $300,059. Member required contributions from January 1, 2009 to August 31, 2009 are estimated to be $240,565.
- The plan would be fully funded on a going-concern basis if its assets were augmented by $3,829,730. In order to comply with the provisions of the *Pension Benefits Standards Act, 1985*, the unfunded liability must be liquidated by monthly special payments at least equal to the amounts indicated, and for the periods set forth, below:

Monthly Unfunded Liability Special Payments

Type of Deficit	Effective Date	Special Payment	Last Payment
Unfunded liability	December 31, 2008	$33,764	December 31, 2023

- After taking into account the going concern unfunded liability special payments, the plan would be fully funded on a solvency basis if its assets were augmented by $8,415,225. In order to comply with the provisions of the *Pension Benefits Standards Act, 1985*, the solvency deficiency must be liquidated by monthly special payments at least equal to the amounts indicated, and for the periods set forth, below:

Monthly Solvency Special Payments

Type of Deficit	Effective Date	Special Payment	Last Payment
Solvency deficiency	December 31, 2008	$157,458	December 31, 2013

- The solvency ratio of the plan is 77.9%.

- We have not included in the solvency liabilities the value of certain benefits that may be contingent upon the circumstances of the postulated plan wind-up. The circumstances in which the plan wind-up is assumed to have taken place is both the plan and the Company wind-up, thereby giving rise to termination benefits for those active, disabled, and deferred members not yet eligible to retire and retirement benefits for those active, disabled and deferred members eligible to retire. We have excluded consent benefits in the calculation of the solvency liabilities.

- As required by the actuarial standards of practice, we have also considered the hypothetical wind-up scenario that produces the maximum liability. Had the plan wind up been postulated assuming the plan wound up on the valuation date and employment with the Company continued for the purpose of determining eligibility criteria, the wind-up deficit would be $13,930,782. This scenario also contemplates that consent benefits are granted to all eligible members. This scenario would produce the maximum liability on the valuation date.

- In our opinion,
  - the data on which the valuation is based are sufficient and reliable for the purposes of the valuation,
  - the assumptions are, in aggregate, appropriate for the purposes of determining the funded status of the plan as at December 31, 2008 on going-concern and solvency bases, and determining the minimum funding requirements, and
  - the methods employed in the valuation are appropriate for the purposes of determining the funded status of the plan as at December 31, 2008 on going-concern and solvency bases, and determining the minimum funding requirements.

- This report has been prepared, and our opinions given, in accordance with accepted actuarial practice in Canada.

- All assumptions made for the purposes of the valuation were independently reasonable at the time the valuation was prepared.

Cliff Fox
Fellow of the Society of Actuaries
Fellow of the Canadian Institute of Actuaries

November 4, 2009
Date

Tyler Smith
Fellow of the Society of Actuaries
Fellow of the Canadian Institute of Actuaries

November 4, 2009
Date

Appendix A

Plan Assets

Sources of Plan Asset Data

The pension fund is held in trust by RBC Dexia Investor Services and is 100% invested in the Global Communications Limited (Formerly WIC) Master Trust Pooled Fund (the "Master Trust"). The assets in the Master Trust are governed by the investment policy.

We have relied upon fund statements prepared by RBC Dexia Investor Services for the period from December 31, 2006 to December 31, 2008.

Reconciliation of Plan Assets

The pension fund transactions for the period from December 31, 2006 to December 31, 2008 are summarized as follows:

Reconciliation of Plan Assets (Market Value)

	2007	2008
January 1	$45,955,142	$44,417,498
PLUS		
Members' required contributions	$366,312	$353,477
Members' flex contributions	$73,592	$67,490
Company's contributions	($172)	$207,441
Investment income	$4,472,662	$2,328,659
Net capital gains (losses)	($4,101,969)	($7,920,245)
	$810,425	($4,963,178)
LESS		
Pensions paid	$1,974,130	$2,224,305
Lump-sum refunds	$57,943	$488,048
Investment and administrative expenses	$315,996	$343,641
	$2,348,069	$3,055,994
December 31	$44,417,498	$36,398,326

The year-end asset value is adjusted to reflect in-transit employee contributions of $23,767, employer contributions of $25,628, pension payments and lump sum refunds of $77,671, an asset transfer out of the plan of $10,534 and expenses of $34,849. The resulting market value is $36,324,667.

In addition, we have reconciled the financial position of the RBC Dexia financial statements to the financial statements prepared by Logos Financial Planning Inc. ("Logos").The Logos statements are the basis for the Plan's audited financial statements prepared and signed by PriceWaterhouseCoopers LLP.

The preliminary financial statements prepared by Logos Financial Planning Inc., disclosed a net asset available for benefits of $36,351,681 as at December 31, 2008. This amount reflects in-transit benefit payments of $43,035, expenses of $56,005 that were incurred in 2008 and not reflected in the fund statements prepared by RBC Dexia Investor Services. In addition, the financial statements prepared by Logos Financial includes in-transit employer contributions of $25,628, in-transit employee contributions of $23,767 and other contributions in-transit of $3,000 that are payable to the plan.

RBC to Logos Reconciliation of Asset Value at December 31, 2008

	31.12.2008
RBC Dexia Investor Services	$36,398,326
PLUS	
Contributions receivable	$52,395
Subtotal	$52,395
LESS	

Benefits payable	$43,035
Expenses payable	$56,005
Subtotal	$99,040
Logos Financial Statements	$36,351,681

We have tested the pensions paid, the lump-sum refunds and the contributions for consistency with the membership data for the plan members who have received benefits or made contributions. The results of these tests were satisfactory.

Investment Policy

The plan administrator adopted a statement of investment policy and objectives. This policy is intended to provide guidelines for the managers as to the level of risk which is commensurate with the plan's investment objectives. A significant component of this investment policy is the asset mix. All of the Company's pension plans with invested assets have the same asset allocation strategy.

The actual asset mix of the pension fund as at December 31, 2008 determined by RBC Dexia Investor Services is provided for information purposes:

Distribution of the Market Value of the Fund by Asset Class

	Actual Asset Mix as at 31.12.2008
Canadian Equities	32.2%
Non-Canadian Equities	23.6%
Fixed Income / Bonds	39.3%
Cash and cash equivalents	4.9%
	100.0%

The actual asset mix of any of the Company's pension plans may differ at any month end from the asset mix of the entire fund of pension assets of the Company due to the timing of contributions.

As outlined in the investment policy, the constraints on the asset mix are as follows:

Distribution of the Market Value of the Fund by Asset Class

	Investment Policy		
	Minimum	Target	Maximum
Canadian Equities	25%	35%	45%
Non-Canadian Equities	15%	25%	35%
Fixed Income / Bonds	30%	40%	50%
		100%	

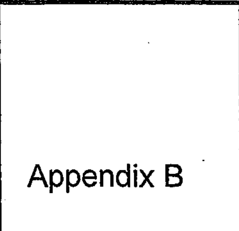
Performance of Fund Assets

The internal rate of return of the assets allocated to this plan from December 31, 2006 to December 31, 2008 as per our calculations (which assume that the net cash flow occurred in the middle of each year), is shown below:

Year	Gross Rate of Return on Market Value of Assets	Net Rate of Return on Market Value of Assets
2007	0.8%	0.1%
2008	(12.9%)	(13.7%)

The return on the market value, net of expenses, since the last valuation at December 31, 2006 was -7.0% per year. This rate is less than the assumed investment return used for the previous valuation at December 31, 2006 of 6.70% by 13.7% per year.

This rate may differ from the rate of return reported by RBC Dexia Investor Services Inc. due to the timing of the cash flows.



Actuarial Methods and Assumptions

Actuarial Valuation Methods – Going-Concern Basis

Valuation of Assets

For this valuation, we have continued to use the market value of assets adjusted for in-transit cashflows for the going-concern valuation.

Valuation of Actuarial Liabilities

Over time, the real cost to the employer of a pension plan is the excess of benefits and expenses over member contributions and investment earnings. The actuarial cost method allocates this cost to annual time periods.

For purposes of the going-concern valuation, we have continued to use the *projected unit credit actuarial cost method*. Under this method, we determine the actuarial present value of benefits accrued in respect of service prior to the valuation date based on projected final average earnings. This is referred to as the *actuarial liability*.

The *funding excess* or *unfunded liability*, as the case may be, is the difference between the actuarial value of assets and the actuarial liability. An unfunded liability will be amortized over no more than 15 years through special payments as required under the *Pension Benefits Standards Act, 1985*. A funding excess may, from an actuarial standpoint, be applied immediately to reduce required employer current service contributions unless precluded by the terms of the plan or by legislation.

This actuarial funding method produces a reasonable matching of contributions with accruing benefits. Because benefits are recognized as they accrue, the actuarial funding method aims at keeping the plan fully funded at all times. This promotes benefit security, once any unfunded liabilities and solvency deficiencies have been funded.

When actuarial liabilities on a solvency basis exceed actuarial liabilities on a going-concern basis and the plan has a solvency deficiency, as are both true in this valuation, contribution requirements will be largely determined by the solvency funded position. This has several implications:

- Special payments are required to amortize solvency deficiencies over a maximum of 5 years; and
- During the amortization period the plan is not expected to be 100% solvent.

As permitted by legislation, certain benefits that could be payable at the discretion of the Company, if the plan were wound up have been excluded in the determination of solvency liabilities. There is no provision in the minimum funding requirements to fund the benefits which have been excluded in determining the solvency liabilities. Therefore, in the event that the plan is wound up and the benefits that are being excluded from the solvency liabilities become payable, the plan is not expected to have sufficient funds to provide these benefits.

In addition, the growth in solvency liabilities resulting from the additional accrual of benefits and development of the plan membership may be different than the growth of plan assets including future contributions and investment returns. This may result in further losses being revealed in future solvency valuations.

Current Service Cost

The *current service cost* is the actuarial present value of projected benefits to be paid under the plan with respect to service during the year following the valuation date.

The employer's current service cost is the total current service cost reduced by the members' required contributions.

The employer's current service cost has been expressed as a percentage of the members' required contributions to provide an automatic adjustment in the event of fluctuations in membership and/or pensionable earnings.

Under the projected unit credit actuarial cost method, the current service cost for an individual member will increase each year as the member approaches retirement. However, the current service cost of the entire group, expressed as a percentage of the members' required contributions, can be expected to remain stable as long as the average age and pay distribution of the group remains constant.

Employer's Contribution

Accordingly, the employer's contributions for this purpose are determined as follows:

Employer's Contributions

With a funding excess	With an unfunded liability
Current service cost	Current service cost
MINUS	PLUS
Any funding excess applied to cover the employer's current service cost	Payments to amortize any unfunded liability

Actuarial Assumptions — Going-Concern Basis

The actuarial value of benefits is based on economic and demographic assumptions. At each valuation, we determine whether, in our opinion, the actuarial assumptions are still appropriate for the purposes of the valuation, and we revise them, if necessary.

In this valuation, we have used the same assumptions as in the previous valuation except as noted. Emerging experience will result in gains or losses that will be revealed and considered in future actuarial valuations. For this valuation, we have used the following assumptions.

Economic Assumptions

Investment Return

The Company's funding policy is to contribute no more than is necessary to comply with the requirements of applicable legislation and accepted actuarial practice. Accordingly, we have assumed that the investment return on the market value of the fund will average 6.90% per year over the long term. We have based this assumption on an expected long-term return on the pension fund less an allowance for investment and administrative expenses and less a margin for adverse deviations, as described below.

We have assumed a gross rate of return of 7.90% per year consistent with market conditions applicable on the valuation date based on an expected long-term return on the pension fund determined for the target asset mix specified in the plan's investment policy. We have allowed for investment and administrative expenses of 0.75% per year. The margin for adverse deviation in accordance with the funding policy is 0.25% per year.

Previously, the investment return on the market value of the fund net of investment and administrative expenses was assumed to average 6.70% per year over the long term.

Inflation

The benefits ultimately paid depend on the level of inflation. We assumed inflation will be 2.20% per year. This assumption reflects our best estimate of future inflation considering the Bank of Canada's inflation target and market expectations of long-term inflation implied by the yields on nominal and real return bonds.

Expenses

The assumed Investment Return reflects an implicit provision for the investment and administrative expenses inherent in the ongoing operation of the plan.

Increases in Pensionable Earnings

The benefits ultimately paid will depend on each member's final average earnings. To calculate the pension benefits payable upon retirement, death or termination of employment, we have taken 2008 pensionable earnings for active members and assumed that such pensionable earnings will increase at 4.20% per year.

This is based on:

- an assumed inflation rate of 2.20% per year,
- an assumed productivity component of 0.50% per year, and
- an assumed merit, service, and promotional increases component of 1.50% per year.

The current merit, service, and promotional increases component is based on our best estimate of future merit, service, and promotional increases considering current economic and financial market conditions. The experience indicates that these assumptions remain appropriate.

In accordance with the plan provisions, pensionable earnings for disabled members increase annually at a rate of 80% of the increase in the Consumer Price Index. Pensionable earnings for disabled members are assumed to increase at a rate of 1.76% per year (80% of the assumed inflation rate of 2.20% per year).

In the previous valuation, pensionable earnings were assumed to increase at 4.50% per year for active members and 2.00% per year for disabled members.

Indexation of Pensions in Payment

Certain pensions in payment are increased each year according to a formula related to increases in the Consumer Price Index (CPI).

For this valuation, we have assumed that the CPI will increase at the rate of 2.20% per year. Consequently, the pensions subject to cost of living increases are assumed to increase annually at the rate of 2.20% per year.

Previously, pensions in payment subject to indexation were assumed to increase at the rate of 2.50% per year.

Interest Credited on Employee-Required Contributions

Interest is credited on employee-required at the 5-year personal fixed-term chartered bank deposit rates. For this valuation, we have assumed that the interest rate to be

credited on employee-required contributions will represent, on average, 4.00% per annum, over the long term.

Demographic Assumptions

Retirement Age

Because early retirement pensions are reduced in accordance with a formula, the retirement age of plan members has an impact on the cost of the plan. We have assumed that members will retire in accordance with the following rates:

Retirement Rates

	> 20 years service		< 20 years service
Age	**Unreduced**	**Regular Retirement**	**Regular Retirement**
55	5%	0%	0%
56	5%	0%	0%
57	5%	5%	0%
58	5%	5%	0%
59	5%	5%	0%
60	5%	15%	0%
61	5%	15%	0%
62	50%	0%	0%
63	50%	0%	0%
64	50%	0%	0%
65	100%	0%	100%

Retirement rates are typically developed taking into account the past experience of the plan. However, considering the size of the plan, there is no meaningful retirement experience appropriate for predicting the future rates of retirements. Accordingly, the rates of retirement have been developed as our expectation of the best-estimate rates of retirement based on the plan provisions.

Termination of Employment

No allowance has been made for termination of employment prior to retirement on the basis that the impact of including such an assumption would not have a material impact on the valuation results.

Mortality

The actuarial value of the pension depends on the life expectancy of the member.

The 1994 Uninsured Pensioner Mortality Table reflects the mortality experience as of 1994 for a large sample of North American pension plans. Applying projection scale AA provides an allowance for improvements in mortality after 1994. This table is commonly

used for valuations where the membership of a plan is insufficient to assess plan specific experience and where there is no reason to expect the mortality to differ from that of other pension plans. Both are true for this plan.

While there is strong evidence of continuing improvement in mortality, forecasts of the rate of future improvement are very uncertain. We have used the projection scale AA to reflect future improvements in mortality.

We have assumed mortality rates, before and after retirement, in accordance with the Uninsured Pensioner Mortality Table with projection Scale AA applied to reflect continuing future improvements in mortality.

Previously, we assumed mortality rates, before and after retirement, in accordance with the 1994 Uninsured Pensioner Mortality (UP94) Table statically projected using Scale AA to 2015.

Disability

No allowance has been made for disability retirement on the basis that the impact of including such an assumption would not have a material impact on the valuation results. We have assumed that those currently disabled would remain disabled until retirement and would continue to accrue benefits until retirement in accordance with the plan terms.

Family Composition

Benefits in case of death, before and after retirement, depend on the plan member's marital status.

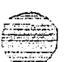
For this valuation, we have assumed that 90% of male plan members and 70% of female plan members will have an eligible spouse on the earlier of death or retirement, and that the male partner will be three years older than the female partner.

Actuarial Valuation Methods and Assumptions — Solvency and Impact of Plan Wind-Up

We have used the market value of the plan's assets in our valuation of the plan for solvency purposes.

To determine the solvency actuarial liability, we have valued those benefits that would have been paid had the plan been wound up on the valuation date, with all members fully vested in their accrued benefits. The circumstances in which the plan wind up is assumed to have taken place is both the plan and Company wind-up, thereby giving rise to termination benefits for those active, disabled and deferred members not yet eligible to retire and retirement benefits for those active, disabled and deferred members already eligible to retire. In determining the solvency liabilities of the plan as at December 31, 2008, we have included the value of all benefits provided by the Plan, except the consent benefits described in Appendix D.

We have considered that active, disabled, and deferred members who were not eligible to retire on the valuation date would be entitled to a deferred pension payable from their



earliest unreduced retirement date. Active, disabled, and deferred members who were eligible to retire on the valuation date and pensioners and survivors are considered to be entitled to an immediate pension, reduced in accordance with the plan rules.

For active, disabled and deferred members not eligible to retire on the valuation date:

- a portion of benefits are assumed to be settled through a lump sum transfer; and
- a portion of benefits are assumed to be settled through the purchase of deferred annuities.

For pensioners and survivors, and active, disabled, and deferred members eligible to retire at the valuation date, benefits are assumed to be settled through the purchase of annuities.

Benefits are expected to be settled in accordance with relevant portability requirements. The value of the benefits accrued on December 31, 2008 assumed to be settled through lump sum transfer are based on the assumptions described in Section 3800 – Pension Commuted Values of the Canadian Institute of Actuaries Standards of Practice applicable for December 31, 2008.[1]

Benefits accrued on December 31, 2008 expected to be settled through purchase of immediate and deferred annuities are based on an estimate of the cost of settlement through purchase of annuities. We have estimated the cost of settlement through purchase of immediate and deferred annuities in accordance with the Canadian Institute of Actuaries Educational Note: Assumptions for Hypothetical Wind-up and Solvency Valuations with Effective Dates Between December 31, 2008 and December 30, 2009.

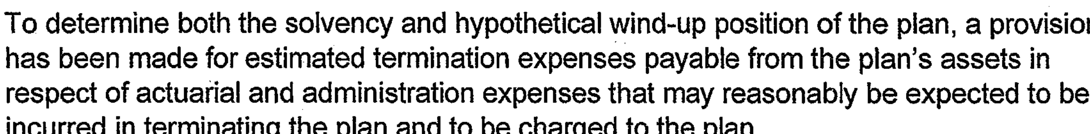
Assumptions are as follows:

[1] A new Canadian Institute of Actuaries Standard of Practice for determining pension commuted values ("CIA Standard") became effective on April 1, 2009. The new CIA Standard changed the assumptions to be used to value the solvency and wind-up liabilities for benefits assumed to be settled through a lump sum transfer. As permitted by the Pension Benefits Standards Act, 1985, Canwest Media Inc. has directed us to use the new CIA Standard for the actuarial valuation. The financial impact of the new CIA standard has therefore been reflected in this actuarial valuation.

Actuarial Assumptions – Solvency Basis

For benefits to be settled through lump sum transfer:	
▪ Interest rates	4.2% per year for the first 10 years following 31.12.2008, 5.7% per year thereafter
▪ Mortality rates	1994 Uninsured Pensioner Mortality table (UP94) statically projected to year 2020 based on Scale AA
For benefits to be settled through immediate annuity purchase:	
▪ Interest rate	4.85% per year
▪ Mortality rates	1994 Uninsured Pensioner Mortality table (UP94) statically projected to year 2015 based on Scale AA
For benefits to be settled through deferred annuity purchase:	
▪ Interest rate	4.45% per year
▪ Mortality rates	1994 Uninsured Pensioner Mortality table (UP94) statically projected to year 2015 based on Scale AA
Assumed election of settlement for active, disabled and deferred members who are not eligible to retire at 31.12.2008	
▪ settled through deferred annuity purchase	30%
▪ settled through lump sum transfer	70%
Assumed election of settlement for pensioners and survivors, and for active and disabled members who have not commenced their pension but are eligible to retire at 31.12.2008	
▪ settled through immediate annuity purchase	100%
Assumed election of settlement for deferred members who have not commenced their pension but are eligible to retire at 31.12.2008	
▪ settled through deferred annuity purchase	100%
Interest rate used to determine the present value of the special payments:	4.75% per year
Assumed rate of indexation of pensions in payment (where applicable) :	1.95% per year
Maximum pension limit:	$1,715 per year of credited service
Final average earnings:	Based on actual pensionable earnings over the averaging period
Termination expenses:	
▪ Solvency	$200,000
▪ Impact of wind-up	$225,000

In a solvency valuation, the accrued benefits are based on the member's final average earnings on the valuation date; therefore, no salary projection is used. Also, the employment of each member is assumed to have terminated on the valuation date; therefore, no assumption is required for future rates of disability and termination of employment.



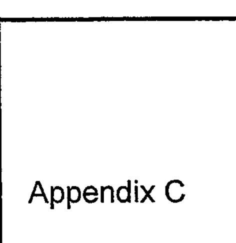
To determine both the solvency and hypothetical wind-up position of the plan, a provision has been made for estimated termination expenses payable from the plan's assets in respect of actuarial and administration expenses that may reasonably be expected to be incurred in terminating the plan and to be charged to the plan.

In addition, but for the sole purpose of determining the financial position of the plan on a hypothetical wind-up basis, termination expenses also include a provision for transaction fees related to the liquidation of the plan's assets and for the reduction in the value of the plan's equity assets resulting from their liquidation. Such fees and liquidation impact are difficult to assess and will vary depending on the nature of the assets held and market conditions at the time assets are liquidated.

Because the settlement of all benefits on wind-up is assumed to occur on the valuation date and is assumed to be uncontested, the provision for termination expenses does not include custodial, investment management, auditing, consulting and legal expenses that would be incurred between the wind-up date and the settlement date or due to the terms of a wind-up being contested. Expenses associated with the distribution of any surplus assets that might arise on an actual wind-up are also not included in the estimated termination expense provisions.

In determining the provision for termination expenses payable from the plan's assets, we have assumed that the plan sponsor would be solvent on the wind-up date. We have also assumed, without analysis, that the plan's terms as well as applicable legislation and court decisions would permit the relevant expenses to be paid from the plan.

Actual fees incurred on an actual plan wind-up may differ materially from the estimates disclosed in this report.



Membership Data

Analysis of Membership Data

The actuarial valuation is based on membership data as at December 31, 2008, provided by Canwest Media Inc.

We have applied tests for internal consistency, as well as for consistency with the data used for the previous valuation. These tests were applied to membership reconciliation, basic information (date of birth, date of hire, date of membership, gender, etc.), pensionable earnings, credited service, contributions accumulated with interest and pensions to retirees and other members entitled to a deferred pension. Contributions, lump sum payments and pensions to retirees were compared with corresponding amounts reported in financial statements. The results of these tests were satisfactory.

Plan membership data are summarized below. For comparison, we have also summarized corresponding data from the previous valuation.

Membership Data

	31.12.2008	31.12.2006
Active Members		
▪ Number	121	126
▪ Total pensionable earnings	$7,929,383	$7,863,518
▪ Average pensionable earnings	$65,532	$62,409
▪ Average years of pensionable service	13.4 yrs.	14.4 yrs.
▪ Average age	44.7	44.7
▪ Accumulated flex account balances	$639,007	$827,388
▪ Accumulated required contributions with interest	$5,384,882	$5,923,363
Disabled Members		
▪ Number	2	2
▪ Total pensionable earnings	$128,152	$85,380
▪ Average pensionable earnings	$64,076	$42,690
▪ Average years of pensionable service	18.1 yrs.	28.0 yrs.
▪ Average age	53.7	57.5
▪ Accumulated flex account balances	$0	$15,928
▪ Accumulated required contributions with interest	$94,614	$180,976
Deferred Pensioners		
▪ Number	16	22
▪ Total annual lifetime pension	$231,492	$278,179
▪ Total annual temporary pension	$9,555	$4,785
▪ Average annual lifetime pension	$14,468	$12,644
▪ Accumulated flex account balances	$32,667	$40,703
▪ Average age	47.4	50.2
Pensioners and Survivors		
▪ Number	96	81
▪ Total annual lifetime pension[2]	$2,175,784	$1,834,669
▪ Total annual temporary pension	$210,845	$160,730
▪ Average annual lifetime pension	$22,664	$22,650
▪ Average age	69.0	69.0

[2] At December 31, 2008, $8,553 of the total annual lifetime pension was subject to indexing, compared to $8,808 at December 31, 2006.

	31.12.2008	31.12.2006
Pending Lump Sum Payment		
▪ Number	2	0
▪ Total pending lump sum amount	$4,279	$0

The membership movement for all categories of membership since the previous actuarial valuation is as follows:

Reconciliation of Membership

	Actives	Disabled	Deferred Vested	Pensioners and Beneficiaries	Pending Lump Sum Payment	Total
Total at 31.12.2006	**126**	**2**	**22**	**81**	**0**	**231**
New entrants	22					22
Disabled	(1)	1				-
Return to active status	1	(1)				-
Terminations:						
▪ transfers/refunds	(11)		(3)			(14)
▪ deferred pensions	(2)		2			-
▪ pending lump sum payments	(2)				2	-
Deaths				(4)		(4)
Retirements	(12)		(5)	17		-
Beneficiaries				2		2
Total at 31.12.2008	**121**	**2**	**16**	**96**	**2**	**237**

The distribution of the active members by age and credited service as at December 31, 2008, is summarized as follows:

Distribution of Active Members by Age Group and Credited Service as at 31.12.2008

	Years of Credited Service								
Age	**0-4**	**5-9**	**10-14**	**15-19**	**20-24**	**25-29**	**30-34**	**35+**	**Total**
20 -24	3								3
	$35,963								$35,963
25 - 29	8	2							10
	$39,300	*							$42,587
30 - 34	2	12	1						15
	*	$55,276	*						$59,639
35 - 39	3	7	1						11
	$53,475	$71,661	*						$66,365
40 - 44	3	2	3	3	1				12
	$81,337	*	$58,495	$59,525	*				$65,084
45 - 49	3	4	4	1	7	2	1		22
	$87,686	$58,476	$84,024	*	$58,121	*	*		$66,155
50 - 54	1	3	1	1	3	13			22
	*	$59,140	*	*	$61,150	$67,645			$64,765
55 - 59	2	4	2		1	4	7		20
	*	$86,098	*		*	$71,309	$58,442		$82,955
60 - 64	1		1		1			2	5
	*		*		*			*	$83,760
65+	1								1
	*								*
Total	27	34	13	5	13	19	8	2	121
	$57,837	$63,367	$75,607	$55,380	$76,050	$67,043	$58,509	*	$65,532

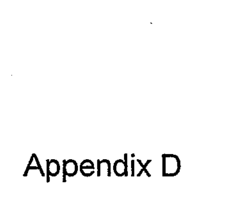
** Suppressed for confidentiality purposes.*

The distribution of the inactive members by age as at December 31, 2008, is summarized as follows:

Distribution of Inactive Members By Age Group as at 31.12.2008

	Deferred Pensioners			Pensioners and Survivors			
Age	**Number**	**Average Annual Lifetime Pension**	**Average Annual Temporary Pension**	**Number**	**Average Annual Lifetime Pension**	**Number**	**Average Annual Temporary Pension**
25 - 29	1	$3,414					
30 - 34	2	$5,141					
35 - 39							
40 - 44	2	$10,800		1	$3,082		
45 - 49	2	$21,333					
50 - 54	4	$15,624					
55 - 59	4	$17,694	$4,778*	11	$21,586	8	$7,568
60 - 64	1	$20,254		23	$27,050	23	$6,535
65 - 69				21	$25,051		
70 - 74				17	$23,945		
75 - 79				13	$20,278		
80 - 84				3	$10,275		
85 - 89				4	$12,580		
90 +				3	$11,741		
Total	16	$14,468	$4,778*	96	$22,664	31	$6,801

** 2 deferred pensioners are entitled to a temporary benefit upon retirement.*



Appendix D

Summary of Plan Provisions

Introduction

The *Global Communications Limited Retirement Plan for CH Employees* became effective October 6, 1959.

The plan is a defined benefit plan; it provides benefits based on a set formula and is paid for by employer and employee contributions.

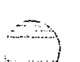
This valuation reflects the provisions of the plan as at December 31, 2008. Effective January 10, 2008, the plan was amended to change the name of the plan sponsor from CanWest Mediaworks Inc. to Canwest Media Inc. The plan was further amended during 2008 to clarify the definitions of Employee and Employer as well as to clarify provisions for members transferred to and from other divisions of the Employer or to/from affiliated companies. To the best of our knowledge and belief the plan documents and amendments that we have on file comprise the full and complete plan text.

Eligibility for Membership

An employee is eligible to join the plan on the first of the month on or after the completion of one year of continuous service. Part-time employees may enrol in the plan on the first day of the month following the completion of the earlier of:

- the completion of a specified number of hours of employment based on the class of employee; or
- two consecutive years of employment provided that the employee has earned at least 35% of the YMPE in each of those two years.

The YMPE, or Year's Maximum Pensionable Earnings, refers to the maximum annual amount of earnings upon which an employee and an employer contribute to the Canada/Québec Pension Plan (C/QPP).



Required Contributions

Members are required to contribute 5.0% of earnings per year up to a maximum contribution of $4,287.50. Contributions are not required after 35 years of Credited Service.

Credited Service means complete years and months of contributory participation in the plan including the period of continuous service before joining the plan (up to a maximum of 12 months) if the member joined the plan when they were first eligible to do so.

Flex Contributions

Members may elect to contribute an additional 1.0% to 9.0% of earnings per year to their Flexi-Post-1989 Contribution Account, subject to Income Tax Act limitations.

Retirement Dates

Normal Retirement Date

The normal retirement date is the first day of the month coincident with or next following the member's 65th birthday.

Early Retirement Date

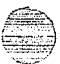
If a member has been enrolled in the plan for at least two years, the member may choose to retire as early as age 55. If a member has completed at least 20 years of Credited Service, the member may elect to retire as early as age 52.

Unreduced Retirement Date

A member who has completed at least twenty years of Credited Service shall have an unreduced retirement date on the first day of the month coincident with or next following the member's 62nd birthday. In any other case the unreduced retirement date shall be the member's normal retirement date.

Postponed Retirement

An active member may postpone retirement beyond the normal retirement date, but no later than the first day of December in the calendar year in which the member attains age 69.



Retirement Benefits

Normal Retirement

If a member retires on the normal retirement date, the member will be entitled to two percent (2%) of Final Average Earnings times years of Credited Service.

Final Average Earnings is defined as the greater of:

- the average of the Member's highest five full plan years' Earnings, and
- the average of the Member's Earnings in the 60 consecutive months prior to the date of determination.

Earnings are defined to be the member's base salary, bonus, and commission.

Early Retirement Pension

If a member retires early, the member will be entitled to a pension that is calculated the same way as for a normal retirement. The lifetime pension payable will be reduced by a given percentage for each month before the normal retirement date, as follows:

Early Retirement Reduction

Prior to attaining 20 years of Credited Service or age 55:	
Actuarial equivalent of pension payable at Unreduced Retirement Date	
After attainment of 20 years of Credited Service and age 55:	
For the first 36 months prior to age 65	0% per month
For each month from age 60 to 62	1/4% per month
For each month prior to age 60	1/2% per month

In addition, a member who retires following the attainment of age 57 and completion of 20 years of Credited Service is entitled to receive a monthly bridge benefit payable to age 65 in the amount of $15.00 per year of credited service up to a maximum of 35 years.

Consent Benefits

The Company, with the approval of the Board of Directors, may waive:

- the early retirement reduction in respect of a member who has attained age 55 and whose attained age plus Credited Service total at least 85; and
- the eligibility conditions for the bridge benefit (age 57 with 20 years of Credited Service) in respect of a member who has attained age 55 and whose attained age plus Credited Service total at least 85.

Postponed Retirement Pension

A member may elect to postpone retirement. In that case, the amount of the member's retirement income is calculated based on Earnings and Credited Service at the member's postponed retirement date.

Maximum Pension

The total annual pension payable from the plan upon retirement, death, termination of employment or termination of the plan cannot exceed the lesser of:

- 2% of the average of the best three consecutive years of total compensation paid to the member by the Company, multiplied by total Credited Service not exceeding 35 years; and
- $1,715 multiplied by the member's total Credited Service not exceeding 35 years.

Survivor Benefits

Death Before Retirement

If a member dies before the normal retirement date and before any pension payments have begun, the member's spouse is entitled to a lump sum settlement for service on and after January 1, 1987 equal to the value of the benefits to which the member would have been entitled had employment terminated on the date of death. If the member was eligible for early retirement at the date of death, the member's spouse is entitled to a lifetime pension equal to 60% of the reduced early retirement benefit determined at the date of death for service on and after January 1, 1987. The death benefit for service prior to January 1, 1987 is a refund of the member's required contributions with interest.

If the member is not survived by a spouse or has not completed two years of participation in the plan, the beneficiary is entitled to a cash payment equal to the member's required contributions with interest.

Death After Retirement

The normal form of payment is a lifetime pension guaranteed for five years. The member may elect to receive an optional form of pension on an actuarial equivalent basis.

Termination Benefits

If a member's employment terminates for reasons other than death or retirement, the benefits payable from the plan will depend on the member's length of plan membership, as follows:

Benefits in the Event of Termination of Employment

If member has:	The plan will pay:
Less than two years of service for benefits accrued on or after January 1, 1987 or less than ten years of service for benefits accrued prior to January 1, 1987	A refund of the member's contributions with interest.
More than two years of service for benefits accrued on or after January 1, 1987 and more than ten years of service for benefits accrued prior to January 1, 1987	A deferred lifetime pension based on the member's Earnings, contributions and Credited Service up to the date of termination.

Deferred pensions are payable commencing at the member's unreduced retirement date. However, a member who is within 120 months of his unreduced retirement date may elect to receive an actuarially reduced early retirement pension.

Appendix E

Employer Certification

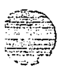
With respect to the report on the actuarial valuation of the *Global Communications Limited Retirement Plan for CH Employees*, as at December 31, 2008, I hereby certify that, to the best of my knowledge and belief:

- the Company's funding policy is to contribute no more than is necessary to comply with the requirements of applicable legislation and accepted actuarial practice,
- notwithstanding the Company's funding policy, the actuary was directed to use the market value of assets in determining the plan's funded status on a solvency basis;,
- a copy of the official plan documents and of all amendments made up to December 31, 2008, were provided to the actuary,
- the membership data provided to the actuary included a complete and accurate description of every person who is entitled to benefits under the terms of the plan for service up to December 31, 2008, and
- all events subsequent to December 31, 2008 that may have an impact on the results of the valuation have been communicated to the actuary.

Date

Signed

Name



MERCER

Mercer (Canada) Limited
One Lombard Place
Suite 1410
Winnipeg, Manitoba R3B 0X5
204 947 0055

Consulting. Outsourcing. Investments.

TAB L

This is Exhibit "L" to the

Affidavit of JOHN E. MAGUIRE

sworn before me this 11th day of February, 2010.

Commissioner for Taking Affidavits

JANICE AUDREY ANDERSON
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA,
APPOINTMENT EXPIRES MAY 14, 2010.

Department of Finance Canada   Ministère des Finances Canada   Canada

Home > About Finance Canada > Strengthening the Legislative and Regulatory Framework for Defined Benefit Pension Plans Registered under the Pension Benefits Standards Act, 1985

STRENGTHENING THE LEGISLATIVE AND REGULATORY FRAMEWORK FOR DEFINED BENEFIT PENSION PLANS REGISTERED UNDER THE *PENSION BENEFITS STANDARDS ACT, 1985*

Financial Sector Division
Department of Finance
Consultation Paper

May 2005

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INTRODUCTION

There is a broad range of challenges facing defined benefit pension plans in Canada. The Government of Canada is committed to regularly reviewing the legislative and regulatory framework for pension plans to ensure that it remains effective and responsive to changing market conditions.[1]

The objective of this consultation paper is to seek the views of Canadians on how to strengthen the legislative and regulatory framework for defined benefit pension plans registered under the *Pension Benefits Standards Act, 1985* (PBSA) in order to improve the security of pension plan benefits and ensure the viability of defined benefit pension plans. While the list of issues raised herein is not exhaustive, this paper identifies a number of key questions related to these goals and how to balance the interests and incentives of plan sponsors and plan members in advancing them.

Submissions should be received by September 15, 2005. Subject to the consent of submitting parties, comments received will be made available on the Department of Finance's Web site for greater transparency.

CONTEXT

Ensuring a robust retirement framework has been an ongoing focus of the Government of Canada.[2] The two public pension pillars (Old Age Security and the Canada Pension Plan) of Canada's three pillar retirement income system ensure a minimum level of income in retirement for Canadian seniors. The third pillar, tax-deferred private retirement savings, is comprised of Registered Retirement Savings Plans (RRSPs) and registered pension plans, and helps Canadians supplement their retirement income by providing incentives to save for retirement and filling the gap between public pension benefits and their desired post retirement income objectives.

Pension plans registered under the PBSA include defined contribution and defined benefit pension plans. Under defined contribution plans, plan sponsors, and in most cases the employees, make contributions to an individual account for each member, with benefits on retirement based on the amount contributed to the account plus any

investment income, expenses, gains and losses; benefits paid are therefore subject to the return on investment. Defined benefit pension plans provide members with benefits related to their earnings and years of service. As a result, defined benefit plans are designed to provide more predictable retirement income for plan members because the employer commits to delivering a certain level of benefits and incurs the risk associated with delivering on that promise.

While private pension plans are voluntary, they must generally be registered, either federally or provincially. Private pension plans established for employees working in areas that fall under federal jurisdiction are subject to the PBSA. The PBSA covers some 1,200 pension plans or close to 10 per cent of the asset value of all registered plans in Canada; 428 of the federal plans are defined benefit pension plans.[3] One of the main purposes of the PBSA is to set out minimum standards for federally registered pension plans to ensure that the rights and interests of pension plan members, retirees, and their beneficiaries are protected. Private pension plans, however, represent an agreement between stakeholders and the Government of Canada's role is to ensure that the framework is appropriate and enables all parties to make informed decisions.

In recent years, there have been growing concerns that defined benefit pension plans have had to deal with adverse market conditions, funding deficits, legal rulings creating uncertainty, some lack of clarity regarding pension rights under insolvency and questions regarding the impact of pension accounting rules. Experts say this is creating incentives to shift from defined benefit to defined contribution pension plans, which in general, shifts much of the risk of financing retirement income from the plan sponsor to the plan member.[4] It is important to note that defined benefit pension plans in the United States (U.S.) and the United Kingdom (U.K.) are facing similar challenges. Indeed, the U.S. has recently proposed changes to its defined benefit pension plan framework and the U.K. is developing long-term pension reform proposals.

As a result of the challenges facing defined benefit pension plans, the Office of the Superintendent of Financial Institutions[5] (OSFI) has stepped up its efforts to more proactively identify plans that pose higher levels of risk and ensure that plan administrators take prompt corrective action where needed. While about half of the defined benefit plans that OSFI regulates currently have solvency funding deficits, almost all are actively funding their deficits and the Superintendent of Financial Institutions has described the current situation as stable and manageable.[6]

It has been suggested that pension accounting rules could also be a factor affecting the incentives to start up or maintain a defined benefit pension plan given the impact a plan's funding status can have on a company's financial statements. Most countries have adopted accounting standards that eliminate a company's ability to smooth gains and losses in order to recognize the pension liability of the company based on market value. However, this introduces significant volatility into the financial statements of the company. While Canada's current accounting rules allow for the smoothing of pension obligations and assets, the Accounting Standard Board has indicated that it will review its rules once there is substantial international convergence.

ISSUES FOR DISCUSSION

A. Surplus

The PBSA requires that pension plans be funded, in accordance with the prescribed tests and standards, so that pension and other benefits required to be paid under the terms of the plan are backed by the financial assets of the plan. This requirement helps secure the promised benefits to the plan members.

Although the PBSA provides for minimum funding requirements, pension plans that fund above the minimum can improve the stability of pension contributions over the business cycle by building up a cushion against market shocks. This can help relieve funding pressure on sponsoring companies during economic downturns and periods of poor market returns.

At the same time, the income tax rules currently require that employer contributions cease once the amount of surplus in a plan exceeds a specified level.[7] This allows a moderate amount of surplus to be retained in a plan while limiting the government revenue cost associated with deferrals of tax on amounts over and above those required to fund the promised pension benefits.

Many plan sponsors and pension experts have argued that there may be an "apparent" asymmetry in surplus[8] ownership under the PBSA. They argue that, in the absence of contractual clarity, the PBSA has the effect of requiring the plan sponsors to share any surplus while remaining fully responsible for pension plan deficits. There is also the uncertainty of surplus distribution during partial termination, where the surplus is notional until

the full termination of the plan. As a result, plan sponsors claim that they are discouraged from contributing more than the required minimum.

On the other hand, some members of PBSA registered plans have argued that pension benefits are deferred compensation, paid as a consequence of contract negotiations that would otherwise have been paid in another form. Plan members bear some risk of not obtaining fully promised benefits and may be exposed to increased contributions, reduced benefits, or wage concessions as a result of the sponsor being forced to fund its pension deficits. In this context, it is argued that plan members ought to have a claim to the surplus.

This section seeks views on possible changes to the regulatory framework for private pension plans that could provide more certainty about surplus distribution and how to improve incentives for plan sponsors to help fund their plans beyond the minimum requirements.

The Government of Canada is seeking views as to whether there are any disincentives or obstacles preventing plan sponsors from adequately funding their plans and building up a funding cushion.

The Dispute Settlement Mechanism for Surplus Distribution

While most modern private pension plans typically have clear wording concerning the ownership of pension surplus, many older private pension plans are unclear or silent concerning surplus ownership, which has led to uncertainty as to how surplus should be handled. While surplus ownership rules could be part of the contractual agreement between plan sponsors and plan members, a dispute settlement mechanism for surplus distribution was introduced into the PBSA in 1998.

Under the PBSA, if an employer can demonstrate that it is entitled to the surplus, regulatory requirements would have to be met and the consent of the Superintendent of Financial Institutions would have to be given before the employer would be able to withdraw any of the surplus.[9] An employer that is unable to demonstrate such entitlement would be able to gain access to the surplus by gaining support for a proposal for it to do so from (1) at least two thirds of the members of the plan and (2) at least two thirds of former members of the plan, and others entitled to a benefit under the plan.

If the employer's proposal does not receive the two-thirds support necessary to gain access to the surplus but does receive support from more than half of each of the above groups, the employer can submit the proposal to arbitration. If the employer and the two groups voting do not agree on an acceptable arbitrator, one is chosen by the Superintendent and the arbitrator's decision is final.

These rules and guidelines are generally working well. However, in the context of this broad review, the Government of Canada is seeking views as to whether there could be improvements to the dispute settlement mechanism under the PBSA.

The Government of Canada is seeking views on whether the dispute settlement mechanism for surplus distribution contained in the PBSA requires improvement or clarification.

Distribution on Partial Termination

On July 29, 2004, the Supreme Court of Canada upheld the decision of the Ontario Court of Appeal in the *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Institutions)*(the "Monsanto case"). The decision of the Supreme Court involves the interpretation of Ontario's *Pension Benefits Act* (PBA), and sets out certain rights that members of pension plans registered under that legislation have in the event that they are affected by a partial wind up of their plan. Specifically, where pension plan members are entitled to a distribution of surplus on full wind up of their plan, Ontario's PBA requires the distribution of a pro rata share of surplus to members affected by a partial plan wind up, as if the plan was being fully wound up on the date of the partial wind up.

Until the Monsanto case, the approach taken by most regulators in Canada was not to require a wind up or distribution of assets, including surplus assets, in respect of a private plan that was otherwise ongoing. It has been argued that surplus is a notional amount and that surplus is subject to actuarial assumptions, which will lead to actuarial surpluses at different times. In addition, a distribution of a surplus could have potential impacts on the ability of a plan sponsor to meet future pension obligations. On the other hand, plan members argue that they have contributed to the surplus and are therefore entitled to share in it rather than having the surplus used for other reasons (e.g. benefit improvements), over which the former members would have no say, and which

they may not benefit from.

Although the decision applies to Ontario legislation, questions have been raised about its application to the PBSA. Currently, private pension plan sponsors must file a report for approval by OSFI when they partially terminate a federally registered pension plan. Consistent with the provisions of the PBSA dealing with partial plan terminations, OSFI requires that these reports respect the rights that the PBSA provides to plan members affected by partial plan terminations. Consistent with most other jurisdictions, there has been no requirement to distribute a surplus on partial termination. Instead, OSFI has required that pension benefits of members affected by a partial plan termination be vested (regardless of whether the plan's normal vesting requirements have been met) and that the affected members receive their share of surplus, if and when there is a distribution of surplus to members on the full termination of the plan.

One approach for addressing the surplus distribution issue is to confirm OSFI's current interpretation of the PBSA that the rights assigned to persons affected by a partial plan termination do not include the distribution of surpluses at the time of the partial termination.

Another approach would be not to permit partial terminations. An example of this approach is adopted under the Quebec *Supplemental Pension Plan Act*, which instead of providing for partial terminations, requires immediate vesting of pension benefits for all plan members. By doing so, the Quebec approach ensures that the more generous treatment, which is provided under the PBSA to affected members of partial plan terminations, is given to all plan members that terminate employment.

The Government of Canada is seeking views on whether the PBSA should allow partial plan termination or should incorporate an approach similar to Quebec pension legislation. If the PBSA should allow partial plan termination, the Government of Canada is seeking views on whether the surplus should be distributed at the time of the partial plan termination or whether the Government of Canada should adopt a different approach.

The Government of Canada is seeking views on whether there should be partial plan terminations under the PBSA and if so, should there be a requirement to distribute surplus at the time of the partial termination.

B. Funding

The PBSA requires that defined benefit pension plans be funded based on both "solvency valuations" and "going-concern valuations" of plan assets and liabilities. Solvency valuations use assumptions consistent with the plan being terminated, while going-concern valuations are based on the plan continuing. Solvency funding requirements are meant to reduce the risk of a loss of benefits in the event that a plan is terminated, including as a result of the failure of the plan sponsor. If a solvency valuation reveals a shortfall of plan assets to plan liabilities, the *Pensions Benefits Standards Regulations, 1985* (PBSR) require the plan sponsor to make equal special payments into the plan sufficient to eliminate the deficiency over 5 years.

In recent years, the significant decline in long-term interest rates has resulted in increased pension liabilities and poor investment returns have led to lower pension assets, which have resulted in significant solvency deficits. As the PBSR requires that these solvency deficits be funded, this has raised concerns that excessive levels of cash flow are being driven to pension funding rather than to expenditures that could benefit the growth of companies and the economy more generally. For financially vulnerable companies, these cash demands could have significant implications for their viability. There is also a concern that funding solvency deficits over a short period of time, if long-term interest rates increase and/or investment returns continue to improve, could lead to significant surpluses that could be too large to effectively use.

To address these issues, some plan sponsors have suggested relaxing the solvency funding requirements. They argue that the best security for pensioners is a financially viable sponsor, and that for some companies pension demands potentially affect their viability. However, it is important that any funding flexibility be balanced against benefit security for plan members.

It should be noted that similar funding challenges are being experienced internationally, where a significant number of pension funds in Japan, the U.K., and the U.S. were underfunded at the end of 2002.[10] In response, legislative proposals have been developed to address these challenges. For example, the U.S. has proposed changes to its disclosure and solvency funding requirements, and has proposed increasing its maximum allowable surplus limit under tax and pension rules. In the U.K., a Pension Protection Fund has been established and a Pension Commission has been created to make recommendations regarding potential changes.

This section raises a number of questions to address these issues with the objective of providing more flexibility for plan sponsors to fund their plans, while at the same time protecting the benefits of plan members.

Letters of Credit

One proposal to help address solvency funding issues is to amend the PBSR to permit letters of credit with certain characteristics to be recognized as pension assets in solvency valuations. Currently, a letter of credit would not be recognized as an asset in solvency valuations, and therefore it would not reduce the contributions required to fund any deficit in the plan.

There are a number of issues to consider in deciding whether letters of credit should be recognized as pension assets in solvency valuations. For instance, it would be important that each letter of credit used for solvency funding contain appropriate terms and conditions to ensure the protection of pension benefits. Another consideration would be to determine what limits, if any, should be placed on the use of letters of credit as a proportion of total assets required for solvency funding purposes.

It would also be important to consider how long a letter of credit would remain in effect. For instance, the rules could permit a letter of credit to be withdrawn by the plan sponsor if a solvency surplus emerged, or could treat a letter of credit like other plan assets. If letters of credit could be withdrawn, this could provide additional flexibility to plan sponsors to respond in the event that market conditions continue to improve and long-term interest rates increase.

The Government of Canada is seeking views on whether there are alternative financial vehicles, such as letters of credit, that could allow for greater funding flexibility.

What types of conditions or rules should be required if greater funding flexibility is given to plan sponsors, to ensure that the risk to benefit security is minimized?

Extending Solvency Funding Period to 10 Years

Historically, federally regulated pension plans have generally not had significant solvency deficits and the 5-year funding requirement has not been of concern for most plans; going concern deficits, which must be funded over a 15-year period, have been more significant.

In April 2003, Air Canada filed for protection from its creditors under the *Companies' Creditors Arrangement Act* (CCAA). As part of the restructuring plan, changes to the pension regulations were made to permit Air Canada to fund the solvency deficiencies in its pension plans over a 10-year period rather than the maximum 5 years permitted by the PBSR. In putting forward the regulations, the Minister of Finance asked the Department and OSFI to develop proposals to apply this type of funding flexibility more broadly to other companies that are restructuring under the protection of the CCAA or the *Bankruptcy and Insolvency Act* (BIA).

For the sponsor of an underfunded defined benefit pension plan in serious financial difficulty, extending the solvency funding period can reduce the company's annual pension payments to a level that facilitates its emergence from bankruptcy protection. Facilitating the company's restructuring in this way may be in the best interest of plan beneficiaries. However, extending the funding period also entails certain risks.

Changes in funding rules to provide extended solvency funding flexibility for plans that file under the CCAA or BIA would need to recognize the risk that the plan sponsor could fail before the plan's solvency deficiency has been eliminated. In the case of Air Canada, a number of terms and conditions were placed on the funding relief. These included a requirement to disclose appropriate information to plan beneficiaries, proper representation of different beneficiary groups, and an indication of beneficiaries' consent. Certain restrictions, such as controls on benefit improvements, were also imposed to mitigate the risk of plan beneficiaries receiving less than the full value of promised benefits. Consideration could also be given to mechanisms that would provide additional protection for plan beneficiaries in the event of default by a plan sponsor that has been granted funding relief.

Given that the particulars of each pension plan and plan sponsor seeking this form of funding relief will differ, one option may be to set out certain parameters in legislation and/or regulations while providing the Superintendent of Financial Institutions with the authority to approve applications for relief as terms and conditions would need to be applied to each case.

Some plan sponsors that are financially strong have also argued that, as in other jurisdictions, similar solvency

funding relief should be available to them because they are at a lower risk of not meeting their pension obligations. For example, plan sponsors have noted that New Brunswick has provided temporary relief by extending the amortization period until December 31, 2018 for plans that apply for such relief. In addition, Quebec has recently proposed to provide temporary funding relief by extending its amortization period to 10 years under certain conditions. The Government of Canada is seeking views on whether a temporary measure that would extend the amortization period should be granted more generally to other pension plans, as has been done in other jurisdictions. Any relaxation of funding requirements must have conditions attached to recognize the potential increase in risk. The Government of Canada is seeking views on what these conditions could be.

The Government of Canada is seeking views on what the appropriate amortization period is and whether it is different for financially vulnerable and financially strong companies.

The Government of Canada is seeking views on what types of conditions or rules should be attached to any extended amortization period for solvency funding for companies under CCAA or BIA.

Alternatives to Relaxing Funding Requirements

In order to address the funding challenges facing plan sponsors, some experts have suggested alternatives to relaxing funding requirements. For example, one option proposed is to continue to require plan sponsors to make solvency payments based on a 5-year amortization of a plan's solvency deficiency, but to provide a mechanism so that, on plan termination, solvency payments that are in excess of what is needed to pay promised benefits would be returned to the employer. A special notional account into which solvency payments could be made by a plan sponsor may be one way of achieving this objective and may make it more attractive for plan sponsors to make solvency funding payments. Another proposal is to create a special account that would include the amounts paid in excess of the minimum funding requirement that could be returned to sponsors if they are no longer needed to fund the plans.

The Government of Canada is seeking views on whether there are alternatives to address funding issues other than relaxing funding requirements. For example, would special accounts for pension plans be feasible?

Disclosure of Funding Information

The PBSA currently requires that, on an annual basis, a plan member receive a statement outlining the member's individual contributions, the benefits to which the member is entitled, the solvency ratio of the plan where applicable and other prescribed information. In addition, members have authority under the PBSA to see the administrator's copy of certain regulatory information filed with OSFI. The PBSA also requires that plan members be advised of any amendments to their plan within six months of the amendment becoming effective.

The Government of Canada believes that plan members should have timely and accurate information regarding the funded status of their pension plan and the financial condition of the plan sponsor. This could include knowing when their plan is underfunded and when the sponsor's financial condition may impair the ability of the company to fund or maintain the plan. Consideration could be given to requiring plan sponsors to adopt a statement of funding policy available to all members, which would document the sponsor's approach with respect to funding the plan. This could also include a policy statement on contribution holidays of the plan sponsors.

The Government of Canada is seeking views on whether there should be greater disclosure provided to plan members regarding a plan sponsor's financial condition, funding decisions and contribution holidays and how this may be done.

C. Void Amendments

While pension regulations require that pension plans make special payments to fund solvency deficiencies over 5 years, they do not restrict even significantly underfunded plans from making plan improvements that would further weaken the plan's funded status.

In 1998, a provision was added to the PBSA[11] that would, subject to the necessary regulations being made, void plan amendments that reduce a plan's solvency ratio below a prescribed level. Consultations were conducted prior to this provision being added and again in 2000, but regulations implementing the provision have not been made.

The Government of Canada is proposing to develop regulations to implement paragraph 10.1(2)(b) of the void amendments provision of the PBSA in order to reduce the risk that the underfunding of defined benefit pension plans could lead to less than the full pay-out of promised benefits. The Government of Canada is seeking stakeholders' views on a proposal to set the prescribed solvency ratio at 85 per cent. A solvency ratio threshold of 85 per cent is proposed on the basis that plans with solvency ratios below this level could generally be considered significantly underfunded, and it is reasonable to apply restrictions and conditions on benefits improvements by such plans.

The Government of Canada would also like to consult stakeholders on a complementary proposal to amend pension regulations to give lower priority to recent plan improvements. In situations where a pension plan has a deficit at plan termination, benefits that result from plan amendments that came into effect less than 5 years before a plan terminates would have a lower priority claim on pension plan assets than other benefits, based on the extent to which these recent benefits have been funded. This measure would enhance the security of longer established benefits.

The Government of Canada is seeking views on its proposal to implement the void amendments of the PBSA based on a prescribed solvency ratio level of 85 per cent, and to reduce the priority of claims against pension plan assets for recent benefit improvements that have not been fully funded. Specifically:

- Is an 85 per cent solvency ratio an appropriate threshold for applying the proposed controls and conditions on plan improvements?
- Should pension plans with solvency ratios below 85 per cent be permitted to make plan improvements provided that offsetting funding is provided at the time that the improvement comes into effect?
- Would the proposed priority scheme improve security of longer-established benefits?

D. Full Funding on Plan Termination

Under current pension regulations, if a defined benefit pension plan is terminated for any reason, the plan sponsor is required to pay any outstanding payments to the plan - such as contributions that have been deducted from employees but not yet paid into the plan, and/or employer contributions owing but not yet remitted.

Public consultations were conducted in 2001 on a proposal to strengthen pension funding requirements so that, on plan termination, plan sponsors would have an obligation to pay into the plan the amount necessary to provide the full benefits promised to plan members at the date of termination of the plan. There was broad support for the concept at that time. This requirement would mean that plan sponsors would not be able to terminate an underfunded defined benefit plan without addressing the plan's funding shortfall. For financially vulnerable plan sponsors, the obligation to make up a funding shortfall on plan termination could impact the ability of these plan sponsors to secure financing. The Government of Canada is therefore interested in stakeholders' views on whether this obligation should be different for financially vulnerable plan sponsors.

The Government of Canada is seeking views on full funding on plan termination, and in particular how it should be applied to financially vulnerable sponsors.

E. Pension Benefit Guarantee Fund

Given the recent difficulties facing defined benefit plans, providing greater benefit security for employees is currently an issue for several countries. While some countries, such as the Netherlands, have chosen to focus on strengthening funding rules and ensuring strong regulatory regimes, other countries such as the U.K., have recently chosen to operate a pension benefit guarantee fund (PBGF). While other countries such as the U.S. have a PBGF, Ontario is currently the only jurisdiction in Canada to have one.

The attraction of a PBGF is that it provides pension compensation to employees, retirees, and beneficiaries if an employer becomes bankrupt or insolvent and its pension plan is underfunded. A PBGF may also reduce the propensity of employees from leaving companies experiencing financial difficulty because employees have greater confidence that the PBGF will provide them with benefits in the event that their employer becomes bankrupt.

While there are potentially a number of benefits to a PBGF, there are also potential drawbacks. One major consideration is that a PBGF could provide a disincentive for employers in financial difficulty to properly manage their pension plans to control risks if their pension liabilities will be covered. It may also be difficult to efficiently spread the insurance risk in a PBGF at the federal level because federally registered pension plans account for

only 10 per cent of pension plan assets in Canada, with 10 plans accounting for about 63 per cent of the assets. Moreover, there would be an increase in cost to plan sponsors through insurance premiums. This additional cost could contribute to the shift to defined contribution plans. There is also a risk the PBGF has insufficient funds to cover its pension liabilities. This could lead to pressure for government funding, the extent of which could have broader implications for government policies and the economy. Indeed, the PBGFs in Ontario and the U.S. are experiencing significant deficits.[12]

The Government of Canada is seeking views on the viability of a federal pension guarantee fund including any comments on its possible design, operation, and powers.

NEXT STEPS

Written comments regarding any element of this paper are invited and should be forwarded by September 15, 2005, to:

Diane Lafleur
Financial Sector Policy Branch
Department of Finance
L'Esplanade Laurier
20th Floor, East Tower
140 O'Connor Street
Ottawa, Canada
K1A 0G5

Comments can also be emailed to pension@fin.gc.ca.

Subject to the consent of the submitting party, comments will be posted on the Department of Finance Web site to add to the transparency and interactivity of the process. Once received by the Department of Finance, all submissions will be subject to the *Access to Information Act* and may be disclosed in accordance with its provisions. Should you express an intention that your submission be considered confidential, the Department will make all efforts to protect this information within the legal requirements of the law.

ANNEX

Statistics of Federally Regulated Pension Plans[13]

Table 1
Number of Defined Benefit and Defined Contribution Plans

	2001-02	2002-03	2003-04	2004-05
Total Plans	1,195	1,205	1,256	1,283
Defined Benefit	422	416	420	428
Defined Contribution	773	789	836	855

Source: OSFI

Table 2
Number of Members Covered by Plan Type

	2001-02	2002-03	2003-04	2004-05
Total Membership	557,000	579,000	547,000	569,111
Defined Benefit	477,000	485,000	463,000	482,605
Defined Contribution	80,000	94,000	84,000	86,506

Source: OSFI

Table 3
Total Assets by Plan Type ($ Billions)

	2001-02	2002-03	2003-04	2004-05
Total Assets	91	85	91	92
Defined Benefit	89	83	89	89
Defined Contribution	2	2	2	2

Source: OSFI

Table 4
Assets and Membership of the 10 Largest Defined Benefit Plans, 2004-05

	Assets ($ billions)	Membership
Total Defined Benefit Pension Plans	89	482,605
10 Largest Defined Benefit Pension Plans	56	246,592

Source: OSFI

1. In 1996, the Office of the Superintendent of Financial Institutions released a discussion paper, *Enhancing the Supervision of Pension Plans under the Pension Benefits Standards Act, 1985*, which dealt with changes to the prudential and supervisory framework for federally regulated private pension plans. Following this consultation, Bill S-3, *an Act to amend the Pension Benefits Standards Act* (1985) *and the Office of the Superintendent of Financial Institutions Act*, received Royal Assent on June 11,1998. [Return]

2. Budget 2005 reinforced the Government of Canada's commitment to the three pillars by (1) strengthening income assistance through an increase in the Guaranteed Income Supplement of the Old Age Security Program, (2) providing additional investment flexibility to the Canada Pension Plan Investment Board, and (3) enhancing private savings plans by increasing the RRSP and registered pension plan limits. [Return]

3. See Annex for further statistics on federally registered pension plans. [Return]

4. Other reasons can also explain this potential shift from defined benefit to defined contribution pension plans. For example, in the 1990s, with the mobility of workers and the relatively high market returns, many employees put pressure on their employers to change their pension plans to defined contribution pension plans. [Return]

5. OSFI is responsible for supervising federally registered pension plans to monitor compliance with funding and requirements, and takes a range of actions aimed at enhancing the security of pension benefits. [Return]

6. Estimated solvency ratios calculated by OSFI as at December 31, 2003, and December 31, 2004, showed that approximately 53 per cent and 54 per cent, respectively, of all defined benefit pension plans supervised by OSFI were underfunded (solvency ratio less than one). A solvency ratio compares the assets of the plan to the liabilities of the plan using assumptions consistent with the plan being terminated. [Return]

7. The tax rules generally permit pension plans to hold surplus assets equal to at least 10 per cent of going-concern liabilities (or 2 times current service cost up to 20 per cent of liabilities, if greater) before requiring that employer contributions be suspended. [Return]

8. Subsection 2(1) of the PBSA and subsection 16(1) of the *Pensions Benefits Standard Regulations, 1985* (PBSR) define surplus as the amount by which assets of the plan exceed the liabilities of the plan, as shown in an actuarial report filed with the Superintendent. [Return]

9. Sections 16, 16(1) and 16(2) of the PBSR set out the requirements that must be satisfied for a surplus to be refunded including that the administrator must give notice to plan beneficiaries that the employer believes it has entitlement to the plan's surplus and is requesting the Superintendent's consent for a refund of the surplus. [Return]

10. International Monetary Fund (2004). "Risk Management and the Pension Fund Industry", *Global Financial Stability Report*, September. [Return]

11. Section 10.1(1) requires the administrator to file with the Superintendent an amendment to any plan document referred to in subsection 10(1). Unless the Superintendent authorizes the amendment, an amendment is void under 10.1(2)(b) "if the solvency ratio of the pension plan would fall below the prescribed ratio level." [Return]

12. In 2004, the deficit of the U.S. Pension Benefit Guarantee Corporation reached US$ 23 billion. The deficit of the Ontario Pension Benefit Guarantee Fund was $107 million. [Return]

13. Data for 2004-05 is based on figures as at March 31, 2005. [Return]

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Date Modified: 2008-11-04

January 9 2009

STRENGTHENING THE LEGISLATIVE AND REGULATORY FRAMEWORK FOR PRIVATE PENSION PLANS SUBJECT TO THE *PENSION BENEFITS STANDARDS ACT, 1985*

Consultations Responses: Please note that the Department of Finance publishes consultation responses in PDF format and language of submission only.

- List of responses

Consultations Documents:

- Minister of Finance Releases Discussion Paper on Private Pensions (News Release (2009-005)
- Strengthening the Legislative and Regulatory Framework for Private Pension Plans Subject to the Pension Benefits Standards Act, 1985

Note: A consultation is not a poll. Please do not send multiple or duplicate submissions.

Closing date: May 31, 2009

Who may respond:

These consultations are open to anybody interested in participating.

Written comments regarding any element of this paper are invited and should be forwarded by May 31, 2009, to:

Diane Lafleur
Financial Sector Policy Branch
Department of Finance
L'Esplanade Laurier
20th Floor, East Tower
140 O'Connor Street
Ottawa, Canada K1A 0G5

Comments can also be emailed to pensions@fin.gc.ca.

Subject to the consent of the submitting party, comments will be posted on the Department of Finance Web site to add to the transparency and interactivity of the process. Once received by the Department of Finance, all submissions will be subject to the *Access to Information Act* and may be disclosed in accordance with its provisions. Should you express an intention that your submission be considered confidential, the Department will make all efforts to protect this information within the requirements of the law.

STRENGTHENING THE LEGISLATIVE AND REGULATORY FRAMEWORK FOR PRIVATE PENSION PLANS SUBJECT TO THE *PENSION BENEFITS STANDARDS ACT, 1985*

Financial Sector Division,
Department of Finance, Consultation Paper

January 2009

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1. INTRODUCTION

Private employment-related registered pension plans form one component of Canada's retirement income system. Many of these plans are regulated under federal or provincial pension standards legislation and are registered pension plans (RPPs) under the *Income Tax Act*. To qualify as RPPs, pension plans must be registered with the Canada Revenue Agency and meet the requirements of the *Income Tax Act*. As an RPP, a pension plan receives tax-deferred treatment, which assists Canadians to save for retirement and permits employers to offer cost-effective compensation packages. Employers may also sponsor pension plans that are not registered plans, typically to provide benefits in excess of the maximum limits under the income tax rules (these non-registered plans do not receive tax-deferred treatment).

Registered pension plans must also follow the standards set out in the pension legislation, which typically involves minimum standards for funding, investment, membership eligibility, vesting, locking-in, portability of benefits, death benefits and members' rights to information. For pension standards purposes, plans can be registered under federal or provincial jurisdiction. Plans sponsored by employers in federally regulated industries, which include banking, inter-provincial transportation and telecommunications, are considered part of the federal jurisdiction, and along with plans located in Nunavut, the Yukon and the Northwest Territories, are regulated under the federal *Pension Benefits Standards Act, 1985*. All employees of federally regulated employers are subject to this Act regardless of their place of employment. The plans of other employers are regulated at the provincial level. This paper is designed to specifically address the federal *Pension Benefits Standards Act, 1985* and its associated Regulations.

Canada's Retirement Income System

Promoting the retirement income security of Canadians is an important goal of the Government of Canada. To this end, Canada has a three-pillar retirement income system based on a balanced mix of public-private responsibility and voluntary-compulsory programs.

First Pillar: The Old Age Security and Guaranteed Income Supplement programs provide a basic, minimum income guarantee for seniors who meet residence requirements.

Second Pillar: The Canada and Quebec Pension Plans ensure a basic level of earnings replacement in retirement for all workers in Canada.

Third Pillar: The system of voluntary tax-deferred savings in RPPs and Registered Retirement Savings Plans (RRSPs) encourages and assists Canadians to save for retirement to help bridge the gap between public pension benefits and their retirement income goals.

Canada's retirement income system is internationally recognized for its adequacy, affordability and sustainability. The two public pillars of the retirement income system are strong. The Old Age Security and Guaranteed Income Supplement programs are funded out of general tax revenues, and are thus supported by the strong fiscal position of the government. Recent estimates by the Chief Actuary show that the Canada Pension Plan is

expected to be sustainable at current contribution rates for at least the next 75 years.

The third pillar is a key component of the retirement income system. This pillar provides Canadians with incentives to save for retirement and help bridge the gap between public pension benefits and their retirement income goals. In 2007, assets in RPPs and RRSPs amounted to almost $2 trillion, or about 130 per cent of GDP. The third pillar provides almost $40 billion in annual income to those aged 65 and older, representing 44 per cent of retirement income system payments received by seniors.

Over the past several years, a number of improvements have been made to the third pillar to support private retirement savings. Increases to the RPP and RRSP dollar limits were announced in both 2003 and 2005 to support savings, investment and economic growth and allow Canadians to better meet their retirement savings needs. In 2009, the RRSP dollar contribution limit is $21,000 and the RPP dollar contribution limit is $22,000. These increases continue to be implemented. More recently, the government has acted to improve the third pillar by increasing the RPP/RRSP maturation age to 71 from 69, permitting more flexible phased retirement arrangements under defined benefit RPPs, allowing pension income splitting, and doubling the pension income tax credit amount. The government has also acted to improve savings opportunities for Canadians by introducing the new Tax-Free Savings Account, starting in 2009.

One of the key challenges facing Canada is an ageing population. In 2005, approximately 13 per cent of the population was older than 65. By 2031, this percentage is expected to exceed 25 per cent. In light of the growing retiree population, ensuring that Canada's retirement income system is effective in enabling Canadians to achieve sufficient means in retirement is an essential goal.

The objective of this paper is to seek views on the most appropriate means of enhancing the legislative and regulatory framework for registered pension plans subject to the *Pension Benefits Standards Act, 1985* (the Act). It covers both defined benefit and defined contribution plans, and includes: i) issues on which there has been widespread consultation and support from most stakeholders; ii) issues where there is less consensus and where there is a need for further consultation; and iii) new topics for discussion. The paper also discusses issues pertaining to multi-employer pension plans and other elements of the pension framework. In addition, the paper is seeking the views of Canadians on the investment regulations applying to pension plans governed by the Act. Any structural changes arising from this consultation will need to consider the Act and the framework as a whole.

In May 2005, the Department released a consultation paper on federally-regulated defined benefit pension plans. During this consultation, many stakeholders indicated that solvency funding requirements were a pressing concern requiring immediate attention. In response, the government brought into force the temporary *Solvency Funding Relief Regulations* (the Regulations)[1]. Solvency funding requirements are again a concern, and the government has responded with the announcement of funding relief in the November 27 Economic and Fiscal Statement. As a result, a key component of this consultation is the examination of elements of the solvency framework to ensure that the rules respecting solvency funding are appropriate.

The government is looking to improve the legislative and regulatory framework to respond to concerns that have been raised by stakeholders. While the list of issues raised herein is not exhaustive, this paper identifies a number of key questions related to these goals and how to balance the interests and incentives of plan sponsors and plan members in advancing them.

Following the receipt of written comments, the Parliamentary Secretary will initiate a series of public meetings across Canada with key stakeholder groups, including those representing sponsors, labour, retirees, and pension professionals to more directly explore specific proposals, and encourage a discussion on the potential tradeoffs, such as between enhancing safeguards for plan members' benefits and allowing more funding flexibility to plan sponsors. In addition, we are exploring other opportunities to engage stakeholders, such as the Parliamentary Secretary participating in various pension fora, some of which are set to take place as early as January, 2009. In order to address structural issues in legislation and give greater certainty before next year's pension filing deadline, the government intends to issue a final report recommending measures and summarizing comments received during the consultation in early June, 2009 so that legislative and regulatory amendments could be drafted by the Fall of 2009.

2. CONTEXT

Pension plans registered under the Act include defined contribution and defined benefit pension plans. Under defined contribution plans, contributions are made to an individual account for each member, with benefits on retirement based on the amount contributed to the account plus any investment income, expenses, gains and losses; benefits paid are therefore subject to the return on investment. Defined benefit pension plans provide

members with benefits related to their earnings and years of service. As a result, defined benefit plans are designed to provide more predictable retirement income for plan members because the sponsor commits to delivering a certain level of benefits and incurs the risk associated with delivering on that promise. The risk associated with the increased funds required due to reduced investment returns and unanticipated increases in longevity is principally, but not entirely, borne by the sponsor in the case of defined benefit plans, while it largely rests with the plan member in defined contribution arrangements.

While private pension plans are voluntary, they must generally be registered with the Canada Revenue Agency for tax purposes, and either the federal or provincial regulator, depending on the business line of the sponsoring employer. Private pension plans established for employees working in areas that fall under federal jurisdiction are subject to the Act. The Act covers some 1,350 pension plans or close to 10 per cent of the asset value of all registered plans in Canada; 351 of the federal plans are defined benefit pension plans, 904 are defined contribution arrangements, and 95 are combination plans offering both defined benefit and defined contribution components[2]. One of the main purposes of the Act is to set out minimum standards for federally registered pension plans to ensure that the rights and interests of pension plan members, retirees, and their beneficiaries are protected. Private pension plans, however, represent an agreement between stakeholders and the Government of Canada's role is to ensure that the framework is appropriate and enables all parties to make informed decisions.

While each jurisdiction in Canada has its own legislative and regulatory framework, in many respects the major provisions are similar. Pension plans in all jurisdictions are facing similar issues, and some provinces, including Quebec, Ontario, Nova Scotia, British Columbia and Alberta having conducted public consultations. In certain cases, changes have been made to legislative frameworks.

Improvements in the legislative and regulatory framework should be aimed at improving the security of pension plan benefits and ensure that the federal legislative and regulatory framework is balanced and appropriate in its incentives to establish and/or maintain pension plans. Considering these objectives, changes to the framework should be approached with the following principles in mind:

1. The rules governing private pensions should be reflective of the voluntary and contractual nature of the arrangement;
2. Employees and retirees should have the information to make informed decisions; and
3. The legislative and regulatory framework should ensure that certain minimum standards are met in order to ensure a level of benefit security for plan members.

Pension Surplus Threshold

One issue that falls outside the purview of the federal pension benefits standards rules is the current 10-per-cent pension surplus threshold over which employer contributions to a defined benefit pension plan must generally be suspended. The pension surplus threshold falls under the income tax rules which apply to all pension plans, whether federally or provincially regulated. These rules allow employers to make whatever contributions are necessary to ensure that pension benefits are fully funded. However, if plans have going-concern surpluses over a specified threshold (generally 10 per cent of liabilities), employer contributions must generally be suspended (employee contributions may continue regardless of the amount of surplus). The purpose of the pension surplus tax rules is to limit the tax deferrals associated with funds over and above those required to finance the benefits promised under the plan.

A number of pension experts and commentators have suggested that the 10-per-cent surplus threshold be increased to permit plans to maintain a larger surplus cushion to protect against market downturns and thereby reduce the risk of funding deficiencies. The Government of Canada will review the level of the pension surplus threshold with a view to ensuring that it provides adequate funding flexibility for defined benefit pension plans while appropriately controlling excess tax deferrals.

Temporary Funding Relief

The global credit crisis has led to a sharp decline in global equity markets that has reduced the funded status of federally regulated private pension plans; the effect of the decline in plan assets is to require sponsors to increase their payments to the plan to ensure it is funded on a solvency basis (see below). The magnitude of these special payments could damage the financial condition of the companies that sponsor these pension plans and divert available funds away from investment in the growth of those companies. These problems would be especially pronounced given current conditions in credit markets.

To recognise the impact of present extraordinary circumstances on defined benefit pension plans, temporary solvency funding relief was proposed in the 2008 Economic and Fiscal Statement for defined benefit pension plans under federal regulation. The proposed funding relief would allow plans to extend their solvency funding payment schedule to 10 years from 5 in respect of solvency deficiencies that emerged in 2008, subject to certain conditions. In particular, both members and retirees would need to agree to the extended schedule, or the difference between the 5- and 10-year payment schedules would need to be secured by a letter of credit. One of these two conditions would need to be met by December 31, 2009. If agreement by plan members and retirees or a letter of credit were not secured by the end of 2009, the plan would be required to fund the deficiency over the following 5 years. Draft regulations to enact this proposal will be made available in Part I of the Canada Gazette for public comment at an early opportunity.

3. ISSUES FOR DISCUSSION PERTAINING TO DEFINED BENEFIT PLANS

The following outlines issues on which the Government of Canada is seeking views. Many of these issues were raised during the consultation in 2005; as a result, the items below reflect the broad range of views received at that time.

A. Solvency Measurement and Funding Rules

Defined benefit pension plans are subject to stringent funding rules, both on a going concern basis, which values the plan's liabilities using assumptions consistent with the plan's continued existence, and a solvency basis, which uses assumptions consistent with the plan's immediate termination. Deficiencies on a going concern basis must be funded over a period of no more than 15 years, solvency deficiencies over no more than five years. Plan valuations are determined using standards and practices set by the Canadian Institute of Actuaries, the actuarial industry body, in order to ensure that the standards reflect appropriate industry practice. When a plan is in a surplus position, the administrator is generally required to file a valuation report with the Office of the Superintendent of Financial Institutions (OSFI), the regulator, every three years. If the plan is in deficit, OSFI generally requires a valuation report to be filed annually. The regulator has the power to request valuation reports at a more frequent basis if necessary.

Solvency funding is intended to protect the benefits of members and retirees in the event that a plan terminates. Because they are based on the values needed to fully discharge a pension plan's obligations in a termination scenario, solvency valuations and the associated funding requirements aim to ensure that pension plan assets are adequate to provide members with promised benefits, should the plan sponsor fail or terminate the plan. The government believes that the requirement to fund on a solvency basis is important in enhancing benefit security for plan members. However, the requirement can, under certain economic and financial conditions, put significant strain on plan sponsors' resources. Solvency funding requirements are also relatively sensitive to changes in interest rates and the market value of pension assets, which can make it difficult for plan sponsors to establish a stable level of funding for their pension plans, in relation to their other cash requirements.

In recent years, volatility in the funded status on a solvency basis has increased significantly. As a result of the market downturn that began in mid-2008, many pension plans now expect that a solvency valuation of their plan will reveal a significant solvency deficiency for the end of their respective plan years. This would result in substantial financial pressure on many sponsors, as pension contributions would increase to comprise a significant portion of operating expenses. In response, the government has recently offered temporary solvency funding relief, for the second time in as many years. This suggests that the current requirements should be reviewed. In particular, the government is interested in examining whether adjustments should be made that would be consistent with the objective of enhancing benefit security, but also provide a more stable funding framework.

A common suggestion in this regard has been to change the funding period (both extensions and contractions in the funding period were suggested in the 2005 consultation, as well as linking the period to the financial strength of the sponsor). Letters of credit have been put forward as a means of satisfying solvency payments, and indeed, were used in the 2006 *Solvency Funding Relief Regulations,* and adopted for this purpose by other jurisdictions, including Quebec, Alberta and British Columbia.

The advantage of properly structured letters of credit is that they permit employers to provide increased security to plan members in the event of, for example, insolvency, while providing greater funding flexibility to plan sponsors. The key issue in permitting letters of credit, as an alternative or complement to solvency funding, is to ensure that a letter of credit would provide a level of security generally comparable to the payment of money into the pension fund. Letters of credit also respond to the 'trapped capital' issue that has been raised by sponsors: in situations of volatility – particularly in discount rate levels – funded positions can change dramatically in a short period of time. In such cases, sponsors have expressed concern that payments to the

fund immediately prior to a rapid improvement in funded position would lead to capital being 'trapped' in the pension fund. Letters of credit, on the other hand, can be released if the pension returns to a fully funded position

An important component of the solvency funding framework is the discount rate used in the determination of a plan's liabilities. The Act calls for valuation reports to be prepared in accordance with the standards developed by the Canadian Institute of Actuaries (CIA), except as specified by the Superintendent. The Regulation prescribes that commuted values offered to plan members electing portability options must be determined in accordance with CIA standards. The Superintendent's authority to issue specifications with respect to valuation reports does not extend to the determination of commuted values, which is a key element of the solvency calculation. The authority of issuing a specification would be used in a case-specific situation where there is a need to supplement standards or narrow the range of accepted practice. While the specific rates used in the preparation of the valuation follow the industry standards, questions have been raised about the appropriateness of the current requirement that bases the discount rate on a long-term Government of Canada bond plus an adjustment factor.

The ongoing uncertainty as to the ownership of surplus in a plan has also been identified as an impediment to the appropriate funding of plans. Many plan sponsors and pension experts have argued in the absence of contractual clarity, the Act has the effect of requiring the plan sponsors to share any surplus while remaining fully responsible for pension plan deficits. There is also the uncertainty of surplus distribution during partial termination, where the surplus is notional until the full termination of the plan. As a result, plan sponsors claim that they are discouraged from contributing more than the required minimum.

On the other hand, some members of plans registered under the Act have argued that pension benefits are deferred compensation, paid as a consequence of contract negotiations that would otherwise have been paid in another form. Plan members bear some risk of not obtaining fully promised benefits and may be exposed to increased contributions, reduced benefits, or wage concessions as a result of the sponsor being forced to fund its pension deficits. In this context, it is argued that plan members ought to have a claim to the surplus.

The government is seeking views from stakeholders on the ongoing appropriateness of solvency valuations and solvency funding requirements in their current form. In assessing any suggestions put forward, the government will consider the goal of reducing volatility in funding requirements, while ensuring the protection of pension benefits.

The Government of Canada is interested in stakeholders' views regarding the rules for funding solvency deficiencies and the solvency calculation itself.

B. Requiring Full Funding on Voluntary Plan Termination

Pension regulations permit defined benefit pension plans to be less than fully funded provided that they are making payments required to amortize funding deficits over specified periods. This provides reasonable benefit security for plan members while providing plan sponsors with flexibility to address any funding shortfall over a manageable period. There is, however, the possibility under existing rules that a pension plan will be voluntarily terminated by the sponsor at a time when plan assets are not sufficient to pay the full amount of promised benefits.

Amending the regulations to require full funding of pension benefits on plan termination would enhance benefits security for plan members. It would also improve incentives for plan sponsors to fund their pension plans because it would remove the possibility of terminating a defined benefit pension plan as a way of not addressing a funding deficit.

Specific rules would need to be put in place in order to provide an appropriate time period over which to fund the outstanding deficit at the time of voluntary termination. One means of providing plan sponsors with an appropriate period to fund solvency deficits on plan termination is to specify that the deficit must be paid according to the payment schedule in place at the time of the termination, and any new solvency deficit identified at the time of termination must be amortized over no more than five years. The obligations of the employer determined following the termination would be considered unsecured debt of the company. The payments when due would still be governed by the Act; consequently, when due, they would fall under the deemed trust provisions of the Act.[3]

However, in certain situations, it may be appropriate to have the final settlement of the plan subject to some negotiated agreement between the sponsor and plan members. This agreement may provide that the plan would

not be fully funded at termination, so long as appropriate consideration was given in place of full funding, subject to certain minimum standards.

The Government of Canada is seeking views on whether to require that plan sponsors fully fund pension benefits when a plan is fully terminated, but provide that payments can be made over a period of five years, and treat the outstanding obligation as an unsecured debt of the company. In addition, the Government is seeking views on conditions, if any, where a plan could be terminated in an underfunded position by virtue of an agreement between the sponsor and plan members.

C. Partial Termination and Immediate Vesting

A partial termination of a pension plan may be declared by the employer or by the Superintendent of Financial Institutions and is usually a result of downsizing or reorganization causing layoffs. Upon a partial plan termination, affected employees cease to be members of the plan, with their accrued benefits fully vested – meaning that they have full rights to their accrued benefits – as of the effective date of partial termination.

Recently, the Court of Appeal found in the case *Cousins et al. v. Attorney General of Canada and Marine Atlantic Inc.* (Marine Atlantic) that the Act does not require distribution of surplus on a partial termination.[4] To confirm the decision of the Court of Appeal in the legislation, the legislation could be modified to either explicitly clarify that surplus distribution is not required on partial plan terminations, or to eliminate the concept of partial terminations altogether. There is precedent for the latter option as recent changes to Quebec's legislative framework eliminated the concept of partial terminations.

As illustrated in the 2005 consultation paper, there are a number of downsides to distributing surplus from an ongoing plan when there is a partial termination. It has been argued that surplus is a notional amount and that surplus is subject to actuarial assumptions, which will lead to actuarial surpluses at different times. In addition, a distribution of a surplus could have potential impacts on the ability of a plan sponsor to meet future pension obligations. Furthermore, it can be argued that from a fairness standpoint, members leaving the plan in one way should not receive greater benefits than those leaving in another. On the other hand, some argue that members have contributed to the surplus and are therefore entitled to share in it rather than having the surplus used for other reasons (e.g. benefit improvements), over which the former members would have no say, and from which they may not benefit.

One major purpose of partial terminations is to ensure that plan members affected by an event that could result in a decision to partially terminate a plan, such as a discontinuance of business operations, who did not meet the maximum two-year vesting period, would not see a loss in their accrued benefits. Under the current framework, employees who leave the plan prior to completion of a vesting period are entitled to a return of their contributions plus interest. If the employee's service is longer than the vesting period, he or she is entitled to receive the pension benefits accumulated when he or she ceases to be a member of the plan. Accordingly, providing for immediate vesting would remove the need for partial terminations in respect of this purpose.

The maximum period for vesting is currently two years. If a plan terminates, immediate vesting would protect the rights of plan members who have less than two years of service. Immediate vesting would apply to members of both defined benefit and defined contribution plans.

The Government of Canada is seeking views on whether to eliminate the concept of partial termination from the Act but require immediate vesting of pension benefits for all members.

D. Disclosure of Information

Given that pension plans are established to provide benefits for employees and their beneficiaries, it is important that they receive information regarding the plans and their benefits. As a result, the Act currently requires that, on an annual basis, plan members receive a statement outlining certain personal and plan information, which includes the member's individual contributions and benefits and the solvency ratio of the plan, where applicable. Moreover, members, former members, retirees, beneficiaries, spouses and common-law partners have the right to examine at the administrator's offices most plan information filed with the Office of the Superintendent of Financial Institutions.

The Statement of Funding Policy is a document that outlines a plan's activities in regard to funding. This includes funding objectives, contribution strategy and policies for the management of funding risks. It also includes information on contribution holidays. It has received wide support from sponsors, plan members, and industry experts.

Better disclosure of plan information provides plan members and beneficiaries with a sense of the plan's health and improves their ability to raise concerns in an informed and timely manner. Moreover, should the plan be in either a strong surplus or deficit situation, it may explain to members and beneficiaries why certain actions are being taken, such as contribution holidays or denying benefit improvements.

Under the Act, an annual statement of information regarding both member-specific and plan-specific information is to be sent to members and their spouses. This information includes details such as the member's contributions and benefits, and details on the plan's solvency ratio. This information is not provided, however, to former members of the plan (i.e. deferred vested members) or retirees. As both of these groups are beneficiaries of the plan, principles of fairness would suggest that they should receive similar information as active members and spouses. For retirees that have been annuitised with a third party, no such disclosure requirements would be necessary or required.

Enhancing disclosure adds another layer of compliance requirements. Therefore, to facilitate the provision of additional information, one consideration would be to provide members with greater access, possibly through electronic means, to information that may be important to members. This provision, routine in many areas, has not yet been provided for under the Act. Electronic provision of plan information would be permitted on a consent basis.

An additional piece of information that could be disclosed to members and beneficiaries is whether the sponsor has missed a payment. Imposing this requirement ensures that the parties affected by the sponsor's missed payment are duly informed so that they are able to raise concerns in a timely manner.

The Government of Canada is seeking views on whether to:

- *require administrators to establish a Statement of Funding Policy (SFP) in a similar fashion as the Statement of Investment Policies & Procedures (SIP&P). The SFP would be examinable upon request, like the SIP&P.*
- *allow required disclosure items to be disseminated by electronic means, at the option of the receiving member or beneficiary.*
- *expand the categories of members required to receive plan information to include former members and retirees, where it is appropriate.*

E. Contribution Holidays

Generally, an employer is required to remit to a pension fund an annual amount in order to fund the amount of pension benefits accrued in a plan year. Where the fund has sufficient surplus, the employer is not required under the Act to remit all or part of this amount. In addition, the *Income Tax Act* requires that sponsors take a contribution holiday when the plan surplus reaches a certain level, generally 10 per cent on a going concern basis.

Some observers argue that contribution holidays leave pension plans exposed to unexpected deficiencies if they subsequently experience declining revenues or asset values. However, similar criticisms could also be applied to situations where surplus is utilised for the purposes of benefit improvements or reductions in employee contribution rates.

The ability of plan sponsors to be able to take contribution holidays based on valuation reports that are not current (i.e., value the plan based on a date greater than a year earlier) has also been raised. Accordingly, it may be prudent to require that a plan sponsor can only take a contribution holiday in the year in which a valuation report is filed with the Superintendent. This requirement would not otherwise affect plans that are required to suspend employer contributions under the tax rules. OSFI has a number of effective tools and has enhanced its early warning capacity to discourage a plan from imprudently taking contribution holidays.

Some stakeholders have also suggested that plan sponsors should be required to develop a formal policy with respect to their approach to contribution holidays and that it should be disclosed to plan members. This would increase transparency and also encourage sponsors to develop a formal approach for contribution holidays. This

could be incorporated as part of the Statement of Funding Policy proposed above.

The Government of Canada is seeking views on whether:

- *plan sponsors be required to develop a formal policy on contribution holidays for inclusion in a Statement of Funding Policy; and*
- *to the extent that employer contributions are permitted under the tax rules, plan sponsors only be permitted to take a contribution holiday in the year in which a valuation report, filed with OSFI, shows a surplus in the plan on a solvency basis.*

F. Void Amendments

Section 10.1(2) of the Act voids any plan amendment that would have the effect of reducing pension benefits accrued before the date of the amendment, or if the solvency ratio of the pension plan would fall below a prescribed solvency ratio level set out in the regulations. The latter provision, which was added to the Act in 1998, aims at preventing significantly underfunded plans from implementing amendments if they would further reduce the plan's funded position. However, regulations have not been made to set out a prescribed solvency ratio level.

After reviewing submissions from the 2005 consultation, it is proposed that a solvency ratio threshold of 0.85 be used for the purpose of implementing the void amendment provision. A solvency ratio of 0.85 is proposed on the basis that, while a single measure does not fully describe the financial position of a plan, plans with solvency ratios below this level could generally be considered significantly underfunded to a degree that justifies placing restrictions on benefit improvements by such plans.

The Government of Canada is seeking views on whether to amend the regulations to prescribe a solvency ratio level of 0.85 for the purpose of implementing the void amendment provision in the Act.

4. ISSUES FOR DISCUSSION PERTAINING TO DEFINED CONTRIBUTION PLANS

In recent years, defined contribution pension plans have garnered increased attention as an alternative to defined benefit pension plans. These arrangements are growing in popularity, given changing workplace dynamics. Evolving employment habits, along with the challenges facing defined benefit plans, have, in part, led to a gradual shift to defined contribution plans. There are several examples where sponsors have closed their defined benefit plans to new members, instead offering defined contribution plans to those individuals. Indeed, the shift from defined benefit to defined contribution pension plans was noted by many stakeholders in the course of the 2005 consultation. Accordingly, it is important to ensure that the framework governing these arrangements be current. As such, stakeholders are invited to provide comments on the practicality and the desirability of the following policy options pertaining to defined contribution plans.

A. Safe Harbour Protection for Qualified Default Investment Options

In most defined contribution plans, plan members are required to make an affirmative choice of the investment fund or product that they wish their contributions be directed. As the level of retirement benefit from a defined contribution plan depends on the value of the investment account at retirement, choices made by the members over their working life will significantly affect their standard of living in retirement. Proper investment choices are critical for members to meet their retirement goals.

There is legal uncertainty concerning the ability of the sponsor to provide investment advice to the plan members. Plan sponsors typically rely on outside providers, in accordance with the Capital Accumulation Plan (CAP) Guidelines, to provide plan members with investment advice. This is done as employers typically have a fiduciary responsibility to plan members, and therefore, risk legal liability should a particular piece of advice yield an unfavourable outcome. Citing legal liability concerns, many plans have chosen a money market mutual fund, or comparable investment vehicle, as the default option. While that investment choice may be appropriate for some members, some have argued that the risk-return profile of such funds does not adequately reflect the plan member's age and return needs.

To address this possible outcome, it has been suggested by many stakeholders that legislation provide safe harbour protection for plan administrators in setting a default investment option that meets certain criteria set

forth in regulation. Such a change would protect plan administrators from legal liability when they provide a default investment option, such as a balance or target date mutual fund, that is in accordance with the regulations. A similar approach has also been followed in the United States, under the 2006 *Pension Protection Act*. Introducing a qualified default investment option would not impair the ability of the plan member to have adequate choice to make alternative decisions.

In determining the criteria for the qualified default option, the government is not looking to describe specific funds or investment options. Rather, broad criteria are instead sought, so as to not artificially exclude any appropriate fund.

The Government of Canada is seeking views on the practicality and desirability of safe harbour protection, and what considerations should be made in the determination of the qualified default investment options.

B. Retirement Benefits Paid from the Pension Fund

Under the Act, members in defined contribution plans must opt for either a life annuity purchased for them by the pension plan or transfer their assets to an RRSP or Registered Retirement Income Fund (RRIF) upon retirement. Retiring members generally choose the transfer option because of the greater flexibility provided under an RRSP or RRIF in deciding how much is withdrawn as retirement income each year.

Certain plan members may prefer to leave their account as part of the plan and do not wish to have a new relationship with a financial institution. The Act does not permit this option. The payment of variable retirement benefits (in a similar fashion to the payouts from an RRSP or RRIF) from the fund is permitted by the *Income Tax Regulations* and allowed in the pension legislation of British Columbia, Saskatchewan and Manitoba.

To allow flexibility for both members and administrators, it has been proposed to allow variable payments to be made directly from the defined contribution plan fund, as permitted under the *Income Tax Regulations*. Such a change could entail additional administrative costs for the plan administrator; accordingly, both the plan and the members would be required to consent to such an arrangement before it could proceed.

The Government of Canada is seeking views on whether to allow the payment of variable retirement benefits directly from the defined contribution account.

C. Standard of Care Changes

Under the provisions of the Act, the administrator is subject to a fiduciary standard of care in respect of its actions regarding the pension plan. Through this fiduciary responsibility, plan members and other beneficiaries have redress through the courts to take action against the administrator if it breeches its responsibility. This standard of care is appropriate in the case of a defined benefit plan, where the administrator is given the responsibility in managing the plan's affairs to provide the member with a specific benefit.

Defined contribution plans impose a different set of responsibilities on plan administrators. Instead of having the responsibility to guarantee a plan member a specific retirement benefit, their obligations are limited to ensuring that contributions are made, and that the plan complies with the legislative and regulatory framework.

Employers may be hesitant to offer defined contribution plans – instead relying on Group RRSPs – given the potential for lawsuits arising out of perceived breaches of fiduciary responsibility. Given that defined contribution plans are subject to greater protection than Group RRSPs – for example, the Superintendent has the ability to require that the employer makes the necessary contributions – ensuring the legislative and regulatory framework does not impose unnecessary burdens on sponsors is important.

Recognising this difference in responsibilities, it may be more appropriate to have a 'good faith' standard of care apply in respect of the employer's role instead of a fiduciary standard. Such a change would not be expected to negatively impact plan members, as the employer would still be responsible for carrying out actions in accordance with the terms of the plan and the Act.

The Government of Canada is seeking views on whether it is appropriate to revise the standard of care for employers sponsoring defined contribution plans to 'good faith' rather

than 'fiduciary'.

D. Use of Surplus in Defined Contribution Plan Components

Certain pension plans incorporate both a defined benefit and a defined contribution component. This type of hybrid plan design can offer additional flexibility for plan members and sponsors, incorporating positive elements from both designs. In any hybrid plan design, a pension 'promise' (i.e. the defined benefit component) must be funded, and accordingly, from time to time, surplus monies may arise in this component.

Generally, sponsors are able to use a surplus to fund their defined benefit plan current service costs. To provide for greater clarity for these hybrid arrangements, the legislative framework could be amended to clarify that a hybrid plan in surplus may take a contribution holiday in respect of its required contributions for the defined contribution component of the plan.

The Government of Canada is seeking views on whether it is appropriate to clarify that defined benefit surplus can be used to offset employer's defined contribution current service costs for hybrid plans.

E. Administrative Procedures

The Act and associated regulations impose a number of administrative responsibilities on plans. While regulations of this nature are required to ensure the proper operation and regulation of pension plans, it is important that the specific administrative responsibilities imposed are appropriate.

One situation that has been raised in this regards relates to the responsibilities of former plan members. When an employee leaves a plan (i.e., terminates membership), the employee generally transfers the accumulated plan assets to a new fund or a locked-in tax deferred vehicle, such as a locked-in registered retirement savings plan. Should a terminating plan member be vested, and not transfer the assets to an alternative vehicle, the employer is still required to perform the requisite administrative tasks for this former member. As the former plan member is no longer employed by the employer, it may not be appropriate for these administrative costs to be borne by the employer. Accordingly, it has been suggested that former members of a defined contribution plan who are vested be required to have their assets transferred to a pre-determined alternative tax-deferred retirement savings account. This would only take place upon sufficient notice being given to the former member.

In Budget 2008, the Government announced regulatory changes to significantly enhance the flexibility to withdraw funds from federally-regulated Life Income Funds (LIFs). These enhancements included provisions for a one-time unlocking of up to 50 per cent of a LIF holdings by those individuals aged 55 and over, and for the closing-out of those LIFs with small balances by those aged 55 and over, as well as for the unlocking of federally regulated locked-in funds, by any individual, regardless of age, for reasons of financial hardship (for example, high medical or disability-related expenses).

The Government of Canada is seeking views on required administrative practices that may impede the proper and efficient administration of defined contribution plans.

5. OTHER ISSUES RESPECTING THE FRAMEWORK FOR PRIVATE PENSION PLANS

In addition to concerns raised specifically about defined benefit and defined contribution plans, the Government is seeking views on other elements respecting the legislative and regulatory framework for private pension plans. Views are sought to ensure that the private pension system remains relevant and sound.

A. Flexibility of the *Pension Benefits Standards Act, 1985*

The policy intent of the government is to allow employers and employees to come to their own agreements on pension matters, so long as these agreements conform to minimum standards for funding, investment, membership eligibility, vesting, locking-in, portability of benefits, death benefits and members' rights to information. The government respects the ability of employers and employees to determine the particulars of their plans, such as benefit levels and contribution rates.

While the Act was originally envisaged for single employer defined benefit plans, there is the capacity for alternative arrangements to be made. Included in these are hybrid plan designs, which incorporate elements from both the defined benefit and defined contribution style of plans. The current legislation is flexible enough to accommodate a range of hybrid pension designs. Examples include: giving plan members the choice between a defined benefit and a defined contribution formula; providing a defined benefit formula for some classes of members or some periods of service and a defined contribution formula for other groups or other periods; providing a defined contribution formula with a defined benefit minimum guarantee. Nonetheless, some have argued that there is not sufficient flexibility. To this end, the government is seeking views on whether employers and employees are interested in alternative plan designs that may not currently be accommodated by the legislative framework.

One alternative plan design that has been identified is the member funded pension plan. While there can be several variations in the concept, in general, such an arrangement would provide a defined benefit to plan members, but any funding deficiencies would have to be made up by the members rather than the employer. Quebec recently implemented such a design in its framework.

The Government of Canada is seeking views on whether there is interest in alternative plan designs that may not currently be accommodated by the legislative framework.

B. Multi-Employer Pension Plans

Multi-employer pension plans, commonly known as MEPPs, are registered pension plans that are sponsored by more than one non-affiliated employers. As such, these types of arrangements are popular in industries where firms tend to be smaller, and the employees tend to move between employers. Many MEPPs are administered by labour unions, rather than employers under traditional single employer plans.

MEPPs must follow similar funding rules as single-employer defined benefit plans. However, many MEPPs are negotiated contribution defined benefit plans, also known as NCDBs. In an NCDB plan, the contributions on the part of both employers and employees tend to be a fixed portion of payroll, typically negotiated in labour contracts.

MEPPs have been identified by many stakeholders as a pension plan design that should be encouraged. MEPPs have a number of advantages: they spread risk across a number of employers; they provide employees with benefit transferability when they switch employers within the plan; and, they allow employers to provide defined benefit coverage without the same administrative burden borne by a single employer defined benefit plan sponsor.

As noted above, much of the legislative framework was originally designed to apply to single employer defined benefit plans. As such, it has been suggested that the extension of this framework to multi-employer plans does not appropriately recognise the unique circumstances that apply to these arrangements.

Another related issue that has been receiving attention in recent months consists of establishing large, pooled defined contribution arrangements for employers and employees who do not already have a private pension plan, potentially with the involvement of the government. Proposals for such arrangements are typically advocated under the premise that investments could be managed professionally and efficiently, leveraging economies of scale due to pooling. Some of these proposals suggest that new annuitisation options could be offered.

The Government of Canada is seeking views on whether there are legislative impediments to the creation or operation of multi-employer pension plans, and if there are improvements that could usefully be made to the legislative framework for these arrangements.

C. Simplified Pension Plans

In 1998, the federal legislation was amended to provide for the adoption of the Simplified Pension Plan. Recognising that smaller employers may find the compliance cost and administrative responsibility burdensome, Simplified Pension Plans were designed to mitigate these concerns for such employers. Simplified Pension Plans are defined contribution plans with a financial institution acting as the administrator. These arrangements are similar to those allowed in Quebec and Manitoba.

To date, the adoption of Simplified Pension Plans has been very limited. The government is interesting in understanding why there has been limited uptake and whether improvements could be made that would make this type of plan more attractive.

The Government of Canada is seeking views on the relevance of Simplified Pension Plans, and whether there are any impediments in the legislation to the adoption of such arrangements.

D. Distinction between Defined Contribution and Defined Benefit Plans under the Act

In large measure, the Act was originally written with the traditional pension model of single employer defined benefit pension plans in mind. Some experts have expressed support for a clearer distinction in the Act between what is applicable to defined benefit plans and defined contribution plans. For example, in a defined benefit plan, employer contributions are not predetermined but are calculated on the basis of actuarial valuations. These valuations are not required for defined contribution plans, as both employers and employees are committed to a specified contribution rate. Indeed, the application of significant portions of the Act have no effect on defined contribution plans. Examples of such sections include 9 and 9.2 (but not 9.1) regarding funding and surplus, as neither exist under a defined contribution plan; or section 10.1(2), which refers to accrued pension benefits and credits and the solvency ratio of the pension plan, all of which are only applicable to defined benefit plans. Greater clarity could be provided to plan members and sponsors under the Act by creating separate sections applicable only to each specific type of registered retirement plan. Alternatively, greater guidance could be given by the Superintendent to provide clarity on what aspects of the Act and the associated regulations are to be followed for defined contribution compared to defined benefit plans.

The Government of Canada is seeking views on the appropriateness of reorganising the Act to provide greater clarity on the differing legislative provisions applicable to defined benefit and defined contribution plans. Specific examples of legislative impediments and uncertainties are particularly desired.

E. Investment Rules

The investment rules under Schedule III of the regulations to the Act, which most provinces have adopted by reference, have not been reviewed for some 15 years. In the early 1990s, the investment rules migrated from a "legal list" concept with many rules on investment to a more principles-based "prudent portfolio" approach. The surviving quantitative rules are as follows:

- A pension plan may not own more than 30 per cent of the voting shares of a single entity;
- A pension plan may hold no more than 10 per cent of its portfolio in a single investment;
- A pension plan may hold no more than 5 per cent of its portfolio in a single parcel of real estate or Canadian resource property;
- A pension plan is limited to having its total of Canadian resource properties be no more than 15 per cent of its portfolio; and,
- A pension plan is limited to having its total of Canadian resource properties and real estate be no more than 25 per cent limit of its portfolio.

The Government of Canada is seeking views on ways to improve the regulatory framework governing pension investment.

6. NEXT STEPS

Written comments regarding any element of this paper are invited and should be forwarded by March 16, 2009, to:

Diane Lafleur
Financial Sector Policy Branch
Department of Finance
L'Esplanade Laurier
20th Floor, East Tower
140 O'Connor Street

Ottawa, Canada K1A 0G5

Comments can also be emailed to pensions@fin.gc.ca.

Subject to the consent of the submitting party, comments will be posted on the Department of Finance Web site to add to the transparency and interactivity of the process. Once received by the Department of Finance, all submissions will be subject to the *Access to Information Act* and may be disclosed in accordance with its provisions. Should you express an intention that your submission be considered confidential, the Department will make all efforts to protect this information within the requirements of the law.

ANNEX – FEDERALLY REGISTERED PENSION PLAN STATISTICS

Table 1: Number of Plans by Plan Type

Registered Pension Plans	2002	2003	2004	2005	2006	2007	2008
Total Plans	**1195**	**1205**	**1256**	**1284**	**1304**	**1332**	**1350**
Defined Benefit	352	346	336	344	345	359	351
Combination	70	70	84	84	87	89	95
Defined Contribution	773	789	836	856	872	884	904

Table 2: Total Membership by Plan Type (000s)

Registered Pension Plans	2002	2003	2004	2005	-2006	2007	2008
Total Members	**557**	**579**	**547**	**572**	**576**	**582**	**594**
Defined Benefit	389	397	367	386	383	386	391
Combination	88	88	96	99	99	98	99
Defined Contribution	80	94	84	87	94	98	104

Table 3: Total Assets by Plan Type (Billions)

Registered Pension Plans	2002	2003	2004	2005	2006	2007	2008
Total Assets	**91**	**85**	**91**	**104**	**116**	**130**	**132**
Defined Benefit	75	70	78	85	95	108	109
Combination	14	13	11	16	18	19	18
Defined Contribution	2	2	2	3	3	3	4

Source: OSFI
The data are for the fiscal year ended March 31 of the indicated year.

[1] As of March 31, 2008, 75 plans availed themselves of the funding relief offered under these regulations. The regulations offered four forms of funding relief for private pension plans. Forty-four took advantage of the option allowing for the consolidation of all outstanding solvency payment schedules into a new five-year schedule. Eleven took advantage of the option that allowed the solvency funding period to be extended to 10 years with agreement from plan members and retirees. Seventeen plans took advantage of the option that allowed the solvency funding period to be extended to 10 years with the difference in payments secured with a letter of credit. Three plans availed themselves of the option for agent Crown corporations. [Return]

[2] See Annex for further statistics on federally registered pension plans.[Return]

[3] Under Sections 8(1) and 8(2) of the Act, contributions owing, but not yet remitted to the pension fund are deemed to be held separate from the employer's assets. Under bankruptcy, these monies do not form part of the employer's estate regardless of whether or not they were actually held separate. [Return]

[4] The plan members involved in this case have sought leave from the Supreme Court of Canada to appeal this ruling. The Supreme Court has not yet indicated whether it will hear the appeal. [Return]

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