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A Regulator Speaks Out on the Future of the Pension Industry

By Eileen E. Gillese, Chair, Pension Commission of Ontario

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What is the future of private pension plans in 1995 and beyond? That depends upon the reason for their decline in recent years. If I accept even a fraction of the comments I hear and read daily, I would hazard the following prediction: if readers were polled right now, a majority of them would state that the biggest factor in the decline of private pension plan coverage is over-regulation. And the solution to over-regulation? Again, I predict that a majority would respond with the statement "*reform the legislation*".

Allow me to offer a different response. You and I have at least as much to contribute to the solution as do the legislatures - you as an active member in the pension industry and I as a regulator.

The cries of incredulity are audible already...how can those in the pension industry have anything to do with the problems of over-regulation?

The answer lies, in part, by what is meant by the word "over-regulation", for it apparently blankets a multitude of sins. Sometimes it is a shorthand description of a regulatory agency that is seen to be unresponsive, bureaucratic and inefficient. The merger policy created by the Pension Commission of Ontario ("PCO") springs to mind! At other times, it is the epithet used to describe particular aspects of a piece of legislation that is seen as overly burdensome. In still more cases, it refers to the numerous pieces of pension legislation in Canada, and the myriad of inconsistencies among them.

Where the allegation of over-regulation is directly tied to legislation, I think we can assume the best. The recent regulation

changes to the Ontario legislation have remedied the inconsistencies between the Act and the federal *Income Tax Act* and I would suggest, show that governments are not immune to pleas for rationality. Legislative action, while necessary, is not sufficient in itself to reverse the decline in plan coverage. And that is where you and I come into the picture. To begin, we must recognize our respective roles and responsibilities, and how they have changed since the passage of the 1987 Act.

Defining Roles

What is the role of the regulator? To administer the Act and regulations in an efficient, timely and fair manner. The types of criticisms levied against the PCO, which are seen as contributing to the problem of over-regulation, are linked to problems of efficiency and timeliness. I would be the first to admit that the stinging criticisms levied against the Commission in years gone by were warranted.

As a direct response to those criticisms, and in an effort to meet our responsibilities, the Commission was radically restructured, and the details of the restructuring were widely communicated. Some of the changes include:

- imposing deadlines for the turnaround of all routine processing
- streamlining the decision-making processes
- assigning one officer to each plan for better accountability and consistency
- establishing a more efficient inquiries line. Plan-specific "general" inquiries are answered by the officer or analyst for the plan
- establishing policies for major decision-making areas, such as mergers, surplus, withdrawal, partial wind-up and early retirement windows
- indexing policies and interpretations of smaller matters in the *PCO Bulletin* "Questions and Answers". These were made available internally and externally both in hard copy and electronic form
- hearing matters before the Commission more quickly and rendering decisions more promptly in accordance with established procedures

Are we now able to sit back and say that all is well? I would not suggest that. But this much is certain - the restructuring is pointless if the attitude in the industry continues to blame the Commission for all delays. Frankly, many of the causes for delay are attributable to factors over which you have direct control.

First, our staff spends much time working on inadequate or incomplete materials that have been filed. The assistance of staff on such matters as surplus applications and notices, adverse amendments notices, LIF documents, plan texts and early retirement windows is notorious, and it will lessen. It will lessen largely because it is not the role of the staff to ensure that filings are done correctly. That is the responsibility of the administrator.

It is understandable that consultants want comfort and/or pre-approval of documents, reports and applications. However, routine staff work suffers as a result of offering such assistance, and ultimately delays arise. For that reason and many others, the degree of support offered by our staff in the past cannot continue.

Overcoming Preconceptions

The second matter over which the industry has control is its perception and attitude toward the Commission. The idea of inefficiency results in inefficiency - it is a self fulfilling prophecy. Over the past several months, all complaints of which I, the Superintendent or senior staff have become aware of have been looked into. Seldom have the complaints been justified. In some cases, problems arose because the Commission responded to one member of the pension team, such as the

consultant, and the consultant failed to advise the other players on his or her team. Whose "fault" was it? Who cares? The problem was, in part, created because the perception that the Commission was inefficient meant that the administrator did not look into the matter for a number of months.

Let the Commission "grow up". It is a body which has gone through the growing pains associated with responding to the radical changes of the 1987 Act. It can be responsive, so give it a chance. It will not be perfect, but it is a far different organization than it was even three years ago. The roles of the regulator and those in the pension industry have undergone profound changes since the passage of the 1987 legislation, and we have to work at (re)establishing good lines of communication based on acceptable expectations of one another.

I write these thoughts with some misgivings. They can be dismissed as self serving, defensive or worse. I intend none of these. Instead, they are an invitation. Let us all concede that the goal of rationalizing the pension legislation is important, and that we must do everything in our power to achieve it. Then let us get on with improving those areas over which we have direct control. I believe that the PCO has the willingness and the ability to meet the responsibilities described above. I cannot guarantee speed, because to regulate in a fair way and fashion policies that are workable, we must consult, and consultation takes time. I can promise that we will continue to make progress and to be responsive to industry needs.

In turn, I would ask that the industry accept that it has primary responsibility for proper preparation of documents, compliance with the legislation and for adopting a "can do" attitude which recognizes the PCO for what it is, not what it was.

The combination of these attitudes, and a genuine belief in the social and economic need for private pension plans in Canada, is necessary for creating an environment in which private pension plans are viable. Legislative changes alone will not salvage the situation. The mind set of the regulator and the industry is equally vital.

In the end, what future do I see for private pension plans in Canada? I am guardedly optimistic. Once all the finger pointing ends, I believe that our collective commitment to the private pension system will cause us to face our respective roles and responsibilities and to meet them. After all, as the saying goes "If you are not part of the solution, you are part of the problem."

Eileen E. Gillese is Chair, Pension Commission of Ontario and Professor, Faculty of Law, The University of Western Ontario.

PCO Staff Comment in Summer 1996. Prof. Gillese resigned from the position of Chair effective May 17, 1996. See "Announcements" in the Winter-Spring 1996 PCO Bulletin 6/3. The current Acting Chair is Ms. Monica Townson.