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| DATE: | November 28, 2013 |
| TO: | OCUFA |
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| subject: | Pension Governance and Collective Bargaining – Alternative Structures |

Trade unions and associations generally have several important objectives in regard to pensions, including the quality of retirement income benefits their plans generate (plan design), the relationship between the assets in their plans and the benefits those plans provide over time (funding policy, especially regarding contribution rates, surpluses and deficiencies), the administration of the plan and the investment of plan assets (participation in administrative and investment decision-making, including choice of actuary and oversight of actuarial assumptions, asset allocation and choice of investment managers).

These objectives are achieved, or not, through one or other governance process. Over the past decade, governance options have evolved and become more complex, but, in the context of Ontario’s University sector, four governance options stand out as descriptive of the status quo or as viable alternatives to it. Of course, each option entails a number of elements which can vary quite a bit, but, for purposes of this discussion, it is useful to present the four options in a simplified state. The four options are:

1. Collective bargaining, within the current regulatory paradigm[[1]](#footnote-1) for single employer plans in the public sector (with or without a pension committee);
2. Joint sponsorship of a single employer pension plan (either on a faculty-only or a multi-union basis);
3. Merger of a University pension plan with an existing jointly sponsored pension plan such as the Colleges of Arts and Technology Pension Plan (“CAAT”);
4. Joint sponsorship of a University sector-wide plan (either on a faculty-only or a multi-union basis), which of course presumes the consolidation of some or all existing University pension plans into a single sector-wide arrangement.

Each of these options may be usefully evaluated in terms of the ability of a trade union or employee association to achieve its critical objectives. Those objectives, in greater detail, typically concern the following:

* **Plan Design:** Is the plan a defined benefit (“DB”), defined contribution (“DC”) or “hybrid” plan? What benefits does it provide, both in terms of eligibility and amount? What contributions are required to fund the annual accrual of benefits (current service costs) and how is that current service cost divided between employers and members? Are any benefits contingent on investment performance or funding levels (“Target Benefits”). For DC plans, what are the contribution rates and the accumulation and decumulation options? Hybrid plans may engage both sets of questions.
* **Funding Policy - Surplus Utilization:** If a plan has an actuarial surplus, how is it dealt with? Surpluses may, in principle, be used to build a buffer against future adverse experience, or they be applied to improve benefits or reduce contributions (“Contribution Holidays”). Which parties have legal rights to any surplus, and what processes may be invoked by either a faculty association or a University to determine surplus outcomes?
* **Funding Policy - Deficiencies:** If a plan has a funding deficiency, how is it addressed? In a DB plan, in the normal course, deficiencies are resolved through increased contributions (employer or member or both), or reduced future benefits (generally, accrued benefits are protected). Deficiencies in DB plans are the responsibility of the employer sponsor, but the real economic burden of a deficiency may fall on the plan’s members if the employer is able to adjust wages to offset its increased pension contributions. What institutional arrangements determine the real economic allocation of a funding deficiency?
* **Plan Administration/Investment:** How are plan agents and advisors selected, and to whom are they accountable? How are they paid? Which entity sets the plan’s investment policies, and selects and monitors its investment managers? Which entity selects the plan actuary and oversees the actuarial valuation process including the assumption-setting process?

This memo explores how these issues might be addressed in single employer sponsored collectively bargained context, under a single employer jointly sponsored plan, by way of a merger of a University plan with an existing jointly sponsored plan and with a sector wide jointly sponsored pension plan.

While the first governance model remains a single employer defined benefit plan for purposes of the Pension Benefits Act (“PBA”), the latter three options all imply a change of pension type to a ‘jointly sponsored pension plan’ (“JSPP”). JSPPs are defined terms under the PBA, and there are some significant differences between them and the better known employer sponsored pension plan. While the governance differences are discussed in greater detail below, it is also important to note that JSPPs all involve some explicit sharing of deficiency costs and joint responsibility for administration and investment decisions. While accrued benefits cannot be reduced while a JSPP is ongoing, they can be reduced on wind-up. The PBA does not require that the employer make up any deficiency on the wind-up of a JSPP, although this term can be bargained contractually. As well, while the Pension Benefits Guarantee Fund applies to single employer sponsored plans, it does not apply to JSPPs.

# Single Employer Sponsored Collectively Bargained Plan

The single employer sponsored collectively bargained plan is the model currently in place in the University sector. In some cases, pension terms are determined, under this model, at the same time by the same parties through collective bargaining (subject or not to the Labour Relations Act, as the case may be) as other financial and non-financial terms and conditions of employment. Significantly, trade-offs between pension and salary terms are to be expected under this arrangement. In other cases, other mechanisms may be in place (pension committees, all union committees) to negotiate pension changes, in which case trade-offs between pension and other financial terms may be more difficult.

In the current and foreseeable environment, most DB plans in Canada are suffering from funding deficiencies. These are most often solvency deficiencies, but may also be going concern deficiencies. In both cases, deficiencies have been triggered by historically low interest rates (the effect of low interest rates is more immediate and more severe in the solvency as opposed to the going concern context), and, to a lesser extent, by the anticipation of longer life spans.

The current regulatory environment offers solvency relief where University sector plans can establish progress towards ‘sustainability’ through meeting ‘savings targets’ and reviewing governance structures. Savings targets may be reached, under the Province’s Guidelines, by a combination of increased member contributions and decreased future benefits that effectively mean that the economic burden of increased solvency funding is borne, in one of these ways, by the plan’s members. While the future is unknowable, it is reasonable to expect that the current regulatory regime will continue in place, and that regulatory rules will continue to emphasize shifting the burden of incremental funding costs to members. Future changes of government or economic circumstances could, of course, change the regulatory environment.

Under the single employer sponsored collectively bargained model, we observe the following:

* **Funding Policy - Deficiencies:** Funding deficiencies and regulatory incentives that offer solvency relief in exchange for increased member contributions and/or lower future benefits, have created a highly concessionary environment. Acute pressures to increase member contributions and/or decrease member benefits characterized the last round of bargaining and may be expected to dominate the 2014 round as well. Bargaining strategies to mitigate these pressures are possible, but difficult. Trade-offs between wages and pension concessions are theoretically possible – i.e. higher pension contributions may be completely offset by a commensurate wage increase. This is more likely at some institutions, and for some bargaining units, than others.
* **Funding Policy - Surpluses:** Surpluses are rare in DB plans at this time. Historic, and presumably future surpluses, may be addressed through collective bargaining. Collective bargaining provisions may, for example, restrict Contribution Holidays, or may require the employer to expend surpluses on benefit improvements. Such clauses require the expenditure of bargaining power, as the baseline is typically a management rights clause that provides the employer with a full set of rights vis-à-vis plan surpluses, subject only to pension standards legislation and trust law constraints. Emerging regulatory trends suggest that a mandatory first call on future surpluses will likely be to establish a reserve against future losses, and that such a reserve will be available neither for benefit improvements nor for Contribution Holidays – this will likely constrain surplus utilization under any governance model. Access to surplus depends, as does success in collective bargaining generally, on the bargaining power of the bargaining agent.
* **Plan Design:** Changes to plan design (positive and negative) may also be achieved through collective bargaining. Improvements are possible with or without plan surpluses, but have been easier to achieve in a surplus environment. On the other hand, the current regulatory environment expressly restricts benefit improvements in underfunded pension plans[[2]](#footnote-2) by requiring an immediate lump sum payment to bring the funded status of the plan, post-amendment, up to 90%, and, in addition, special payments must be made to bring the post-amendment plan up to 100% funded over 5 years. It is also important to note that, depending on collective bargaining and plan text language, the employer may be able to unilaterally change plan provisions outside of collective bargaining.
* **Plan administration/investment:** In general, under the employer sponsored collectively bargained model, it is the employer that is responsible for all administrative and investment functions. Typically, the employer will establish the plan’s investment policy, and select and monitor the plan’s investment managers. In the University sector, however, pension committees often play an important role in these respects. In general, the employer is responsible for selecting the plan actuary and overseeing the actuarial valuation process.

Most University pension plans include an important role for a pension committee. We have not reviewed each committee at each institution, but rather base the following observations on our experience with specific committees and on Appendix B (Pension Plan Governance Structure) to the Final Report of the Working Group on University Pension Plans, prepared by the CoU in February 2010.

Pension committees are typically created by a University’s Governing Council, Board of Trustees or Board of Governors. If they are created by a University, their mandates may be unilaterally altered by the University as well. In some but few instances, they are created by collective bargaining parties, or their mandates are negotiated and reflected in a collective agreement. If their mandates form part of the collective agreement, then, to the extent that those mandates confer decision-making authority with respect to plan design, surpluses and deficiencies, pension committees may change the single employer collectively bargained plan dynamics with respect to these issues. Otherwise, to the extent that a pension committee is created by a University rather than pursuant to a collective agreement, pension committees are typically not decisive with respect to plan design, surplus and deficiency issues.

Pension committee mandates, by their terms, generally refer to advisory and monitoring functions, particularly in regard to some or all of a plan’s investment policies, pension provisions, plan interpretation, funded status, legal compliance, plan member communications, actuarial assumptions, selection and monitoring of service providers and governance oversight. In some cases, the pension committee has been delegated decision-making authority in regard to some of these matters. It is very rare, however, for pension committees to have decision-making authority as opposed to advisory functions in regard to plan design, surpluses and deficiencies.

Pension committees are very useful mechanisms to obtain information about the plan and its administration and investment. They also provide an important mechanism to influence pension decision-making. But, unless their mandates are created or at least protected by a collective agreement, they do not fundamentally alter the single employer sponsored collectively bargained plan model.

One strategy might be to seek to enhance the decision-making powers of joint pension committees in regard to plan design and actuarial assumptions, for example, while leaving the University with the legal responsibility to fund deficiencies. However, one would not expect Universities to embrace such a strategy, since it could leave them with deficiency funding responsibilities for pension committee decisions over which they would lack control. As discussed further below, it is difficult to divorce control over actuarial and investment decisions from responsibility for deficiency funding.

# Jointly Sponsored Plan at a University

In principle, while a jointly sponsored pension plan at a single university would likely continue to be integrated, to some degree, with collective bargaining, it would differ from the single employer sponsored collectively bargained model in some important respects. Most significantly, a jointly sponsored plan would typically have an explicit mechanism to address both deficiencies and surplus. As well, jointly sponsored plans are also typically jointly *administered* – existing administrative and investment decision making functions would typically be under the authority of a joint board (perhaps a 50/50 pension committee, with an equal number of University and member appointees). Collective bargaining could continue to play a significant role where the surplus/deficiency mechanisms expressly allow scope for collective bargaining, or where the collective bargaining parties wish to modify the joint sponsorship arrangement. Significantly, there are also indications from Government that a jointly sponsored plan at the University level could obtain full exemption from solvency funding rules, thereby relieving the most significant source of pressure on member benefits and contribution rates.

In particular:

* **Funding Policies - Deficiencies:** Jointly sponsored plans typically have an up-front arrangement for the sharing of deficiencies between members and the employer. Most often, the arrangement requires that deficiencies be funded 50/50 by members and the employer, but the sharing can be on a different basis. In principle, however, deficiency sharing is no longer bargained each time a collective agreement expires; rather, the upfront agreement on funding is expected to remain in place over the long term. Collective bargaining may continue to play an important role, however, if deficiencies are addressed, in whole or in part, through benefit reductions rather than exclusively through increased contributions. The questions of how much of a deficiency is resolved through benefit reductions as opposed to contribution increases, and which benefits are reduced to offset a deficiency, may remain questions for the bargaining table.
* **Funding Policies - Surpluses:** As with deficiencies, jointly sponsored arrangements typically have an up-front arrangement for the sharing of surpluses as between the employer and the members. Surplus sharing generally mirrors deficiency sharing and is most often 50/50, although provision is now commonly made for the accumulation of a surplus buffer before surpluses may be used either for benefit improvements or contribution reductions. Once again, surplus utilization may be more or less independent of collective bargaining (each side can do as it wishes with its share of the surplus) or it may be integrated with collective bargaining (the collective bargaining parties negotiate the application of any surplus).
* **Plan Design:** Plan design changes, in the absence of any surplus, would typically be left to the collective bargaining parties. Plan improvements entail additional costs, and these would ordinarily be bargained. Plan improvements that are funded through surplus would generally be dealt with differently, either unilaterally by the party having ownership of the surplus, or bilaterally through a mechanism that could be collective bargaining or could be different from collective bargaining (i.e. an enhanced pension committee).
* **Plan Administration/Investment:** In a jointly sponsored plan, all plan agents and advisors are selected by a board of trustees (or equivalent) that is comprised of an equal number of member and employee appointees. The board of trustees is a fiduciary board, and is obliged to discharge its functions in the best interests of the plan’s active, deferred and retired members and their beneficiaries. The joint board typically sets the plan’s investment policy and selects and monitors its investment managers. The joint board also typically retains the plan actuary and legal counsel, and oversees the plan valuation process.

The design of a jointly sponsored plan at the institution-specific level also depends on whether the plan is faculty-only or all-employee. If there are multiple employee side bargaining agents involved, then integration with collective bargaining is more complicated. Either the plan will evolve different benefit levels and contribution rates for different groups, which will reflect the results of each group’s collective bargaining history, or, in some cases, an institutional arrangement that is separate and apart from collective bargaining may be established to deal with pension issues. Such arrangements may be established with more or less formality – precedents range from the creation of a committee with power to change plan design with unanimous agreement, to a committee with a pre-agreed decision-making protocol (50% plus 1, or 2/3 vote required for plan changes) to a more formal structure with mandatory mediation and arbitration procedures.

On balance, one would expect a jointly sponsored University-specific plan to differ from a single employer sponsored collectively bargained plan in the following respects:

* 1. with Government consent, a full exemption from solvency funding rules;
  2. more explicit deficiency and surplus sharing rules, intended to provide a long term framework for addressing funding issues in good times and bad, with explicit shares of both surpluses and deficiencies allocated to members and the employer;
  3. explicit consideration of the extent to which benefit reductions may form part of a deficiency reduction strategies – if benefit reductions do form any part of a deficiency mitigation strategy, then integration of the pension plan with collective bargaining is quite likely;
  4. pre-agreed manner of utilizing surpluses – surpluses may be divided into member and employer shares with each side able to use its share as it unilaterally determines, or surpluses may be collectively bargained or, in a multi-union setting, a separate institutional arrangement may be created, with its own deadlock breaking mechanism, to determine surplus utilization;
  5. joint control over all administrative and investment decisions, including choice of agents and advisors, oversight of the actuarial valuation process and investment asset allocation.

# Pension Provision through CAAT

This model involves an existing University plan delivering one or both of past service and future service benefits through an existing jointly sponsored plan, most likely CAAT. In this case, the major complexities are likely to involve the basis on which past service and corresponding assets are transferred to CAAT (if at all), the residual liability of a University with respect to those past service benefits after they are transferred to CAAT and the basis for a University to cease participating in CAAT.

On an ongoing basis, however, CAAT has an existing structure to address plan design and contributions, and the employees of a University participating in CAAT would presumably accrue the same benefits as other CAAT members. Similarly, CAAT has an existing funding policy to address both surpluses and deficiencies and that funding policy would apply to the participating University as well. CAAT has an existing Sponsors Committee, to address changes at the plan design level, and also has a Board of Trustees that is jointly appointed by the employers and trade unions currently participating in CAAT that has full authority over all administrative and investment matters.

If a sufficient number of University plans join CAAT, then it is anticipated that CAAT’s governance structures would change to incorporate representatives of Universities and of trade unions and employee associations representing faculty and non-faculty employees of participating Universities.

If a University plan joins CAAT, then there would be relatively little to do at the University level in regard to pension governance. Benefits and contributions would be set by CAAT, CAAT’s funding policy would address surpluses and deficiencies, CAAT’s existing Sponsors Committee would be responsible for plan design decisions and CAAT’s Board of Trustees would discharge all administrative and investment functions. Collective bargaining at the University level would likely determine whether the University participates in CAAT or withdraws from it, and would address the security of benefits and the future provision of benefits after any such withdrawal.

Finally, it is important to note that CAAT is exempt from solvency funding, and that this important source of pressure on benefits would be relieved if a University becomes a participating employer in CAAT.

# Jointly Sponsored Sector Wide Pension Plan

This model would entail more substantial differences from the status quo than an institution-specific jointly sponsored plan. A sector wide plan offers the possibility of investment and administrative efficiencies and cost savings due to the consolidation of multiple plans and the elimination of duplication. A jointly sponsored plan would almost certainly receive a full solvency funding exemption from the Province. As well, if all University plans were consolidated at the sectoral level, collective bargaining with respect to pensions at the institutional level would generally be quite limited. A parallel set of sectoral arrangements would typically be created to mimic collective bargaining, albeit subject to different rules and requirements.

The institutional configuration of a sector wide jointly sponsored plan would be open to design, but might look like this. A ‘sponsor group’, consisting of representatives of all stakeholders, would be constituted. It might have 10-16 members, one half being representatives of members and the other half being representatives of employers. It would be mandated to make decisions about deficiencies and surpluses and plan design. It would operate on the basis of majority or 2/3 vote. It should have dispute resolution procedures – mediation and/or arbitration – to address deadlocks. It would have power to appoint members to a second board that would be responsible for all administrative and investment decisions. The administrative/investment board would generally be a bit smaller – 8 to 12 members, and would be a fiduciary board. Among other things, the administrative/investment board would hire the plan’s actuary and oversee the valuation process, set the plan’s investment policy and hire all agents and advisors.

Collective bargaining at the institutional level would likely play little or no role in the governance of a sector wide jointly sponsored plan. It may be that individual bargaining units would be able to purchase additional early retirement or indexation benefits at a cost fixed by the administrative/investment board, but this would be a rare feature in a sector wide plan.

Under this model, deficiencies, surpluses and plan design issues would be determined as follows:

* **Funding Policy - Deficiencies:** A joint sponsorship arrangement would allocate responsibility for funding deficiencies to members and employers. Typically, the split is 50/50, though this can vary. If deficiencies are addressed through contribution increases, then the deficiency mechanism is quite straightforward – contributions would rise, in the event of a deficiency, equally for members and the employer in a sufficient amount to amortize the deficiency over the required period of time. If benefit reductions form part of a deficiency strategy, then more complex institutional arrangements would be required to determine the relative burdens of contribution increases and benefit reductions used to address a deficiency. In most cases, the sponsor group would make these decisions subject to mandatory arbitration in the event of impasse.
* **Funding Policy - Surpluses:** There are a number of mechanisms that are currently in use to allocate and utilize surpluses in jointly sponsored pension plans. Almost all mechanisms now require that the first application of surplus be to establish a surplus buffer to protect against future downturns. In principle, surplus mechanisms then consider the remaining surplus as a single pool of money the use of which is to be negotiated (or arbitrated) in accordance with allocation rules through the sponsors group, or the surplus mechanism allows each of the member and employer sides of the sponsor group to do as they wish with their share of any surplus, again within pre-agreed rules.
* **Plan Design:** Plan design issues are generally dealt with at the sponsor level of a jointly sponsored plan. Over the past decade, some employers have sought to restrain the use of surplus to achieve benefit improvements (in the absence of surplus) through the use of restrictive voting rules; the OMERS Act, 2006 enacted a requirement that 2/3 of the members of the 16 person Board of the OMERS Sponsors Corporation had to vote in favour of any changes to benefits, contributions or reserves in order for those changes to be adopted. A two thirds voting requirement has the effect of entrenching the status quo – both benefit improvements and benefit reductions are difficult within such a voting structure. Most sponsor arrangements require a simple majority in order to effect plan design changes. Many sponsor arrangements also have dispute resolution mechanisms that are designed to resolve deadlocks on plan design issues.
* **Plan Administration/Investment:** As with a single employer jointly sponsored plan, a sector-wide jointly sponsored plan would also have a fiduciary board consisting of an equal number of member and employer appointees with full authority to appoint plan agents and advisors, set and modify a plan’s investment policy and oversee the valuation process.

On balance, a sector wide jointly sponsored pension plan compares as follows to the current single employer sponsored collectively bargained model:

1. Full exemption from solvency funding requirements is very likely;
2. A sectoral jointly sponsored plan(s) would require the establishment of a sectoral sponsor entity with responsibility for plan design, surplus utilization and deficiency management, which would mimic collective bargaining over pensions at the sectoral level; issues pertaining to representation on such an entity, quorum and voting rules and dispute resolution mechanisms are key questions for a sectoral sponsor entity;
3. The role of University level collective bargaining is largely eliminated under this model; a residual role for collective bargaining may remain if the sectoral plan offers supplemental benefits at a price to bargaining units that select those supplemental benefits and pay the incremental costs for those benefits;
4. Jointly sponsored plans have explicit deficiency and surplus sharing rules, intended to provide a long term framework for addressing funding issues in good times and bad, with explicit shares of both surpluses and deficiencies allocated to members and the employer;
5. Jointly sponsored plan funding agreements must consider the extent to which benefit reductions may form part of a deficiency reduction strategies – if benefit reductions do form any part of a deficiency mitigation strategy, then deficiency mitigation is considerably more complex than if deficiencies are addressed only through contribution adjustments – in either case however, deficiency strategies are typically determined at the sponsor level in an institutional arrangement designed to govern plan design, surplus utilization and deficiency management;

A sectoral jointly sponsored plan would afford members joint control over all administrative and investment decisions, including choice of agents and advisors, oversight of the actuarial valuation process and investment asset allocation.

1. Most especially: Solvency Funding Relief for Certain Public Sector Pension Plans, O Reg 178/11. [↑](#footnote-ref-1)
2. Section 4(4) of the Regulation requires that, in the event of a benefit improvement, an immediate cash payment must be made to ensure that both the ratio of market assets to going concern liabilities and the transfer ratio are at least equal to 0.9. In addition, special payments are also required to fully fund (to 100%) the improvements within 5 years. [↑](#footnote-ref-2)