

August 14, 2014

Standing Committee on Alberta's Economic Future
801 Legislature Annex, 9718 - 107 Street
Edmonton, Alberta, T5K 1E4

Dear Members of the Standing Committee on Alberta's Economic Future,

On behalf of the Confederation of Alberta Faculty Associations (CAFA), which represents the academic staff associations of the University of Alberta, the University of Calgary, the University of Lethbridge, and Athabasca University, I am pleased to provide you with the attached submission to the Standing Committee's review of Bills 9 and 10 (Pension Reform).

CAFA is grateful for the opportunity to participate in this review. Please do not hesitate to contact me if CAFA can be of further assistance to you.

Yours sincerely,



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The Confederation of Alberta Faculty Associations (CAFA) is making this submission to the Standing Committee's review of Bills 9 and 10 on behalf of its member associations: the Association of Academic Staff of the University of Alberta, the University of Calgary Faculty Association, the University of Lethbridge Faculty Association, and the Athabasca University Faculty Association. The Universities Academic Pension Plan (UAPP) is a jointly sponsored, jointly trustee, defined benefit pension plan registered under the Alberta Employment Pension Plans Act (EPPA). Eligible academic and professional staff of the four universities and Banff Centre participate in the UAPP

CAFA COMMENTARY ON BILLS 9 AND 10

EXECUTIVE SUMMARY

Both Bills 9 and 10 suffer from unclear language, which creates problems in interpreting portions of each Bill. However, of greater concern in the Bills are:

Bill 9: Section 16 appears to grant unspecified powers to cabinet to intervene in the affairs of the UAPP, even though it is no longer regulated under the PSPPA; and

Bill 10: Section 20 provides for the trustees (i.e., plan administrator) with the consent of the Superintendent of Pensions to unilaterally reduce benefits and/or convert a defined benefit plan (such as the UAPP) into a targeted benefit plan.

There is no restriction in the exercise of this power to consult and obtain the consent of the plan sponsors or members, nor is there any limitation of such draconian change to be only prospective: retirees' and active members' accrued benefits could be reduced in a manner outside their control.

These two sections of the Bills need to be significantly revised to correct these flaws, and further, Bill 10 should undertake the removal of section 20(2)(a) from the EPPA (2012). We must ensure that legislation only enables prospective changes to pension plans.

SOME BACKGROUND ON THE UAPP

The UAPP goes back to the late 70s, with the provincial treasurer responsible for it until January of 2001 at which point the pension plan was sponsored by the faculty associations of the U of A, U of C, U of L and Athabasca U and their corresponding Boards of Governors, and the Board of the Banff Centre. Governance of the plan is split between sponsors and trustees, each with different responsibilities and duties, as set out in the Sponsorship and Trust Agreement (STA) agreed to by all parties. Presently, the UAPP has over 13,000 members, including nearly 8,000 active members, and over 4,000 retirees, making it one of the largest pension plans governed by the Employment Pension Plans Act (EPPA).

A major watershed moment occurred in 1991 when, under the Public Service Pension Plans Act (PSPPA), government, employers and "participants" were obliged to make payments to ensure that pension service earned to December 31, 1991 (the pre-92 unfunded liability) were eliminated before December 31, 2043. Separate provisions were made with each plan to address their pre-92 pension obligations.

Academic staff (and others) hired at the four research-intensive universities and the Banff Centre automatically become members of the UAPP, with contributions to the plan being shared 50-50 between employers and employees at the U of A, U of C and U of L, and nearly 50-50 at the Banff Centre and Athabasca U. The contributions represent foregone income being set aside to the future and forms part of the freely contracted package of salary and benefits between the universities and their staff. A defined benefit pension plan is an important element in recruiting highly valuable staff to the universities.

The UAPP has been keenly aware of the burden of both our pre-92 and post-91 unfunded liabilities (UFLs) and has been actively pursuing strategies to reduce the most worrying of these, our pre-92 UFL. This pre-92 UFL is of such concern as the current employee-employer-government arrangement in place to pay for the pre-92 UFL represents an intergenerational transfer of assets that will continue until 2043.

Several years ago, the UAPP sponsors had designed plan changes that would have seen a significant reduction in pensions taken by those retiring early, and proposed it to government in late 2007/early 2008 only to be frustrated by the dropping of an election writ and a subsequent lack of interest on the part of government in pursuing this. Had this been successful, the UAPP would have been able to gain some room in managing our contribution rates, which are presently quite high.

After regrouping, the sponsors of the UAPP decided to continue without the support of government, and proposed plan design changes trading a modest COLA improvement for a dramatic reduction in early retirement subsidies. These changes were prospective in the sense that they would apply only to service earned after a certain point in time (in the proposal at the time in 2013, the change would have occurred Jan 1, 2015). The proposed design changes were approved by the majority of faculty association groups, but unfortunately, the sponsors for the Boards of the two largest universities did not vote in favour of the proposed changes. Because of the nature of the governance mechanism for the UAPP, this effectively killed the plan design change, and suspended this second attempt to improve the equity of the plan by reducing the subsidy for those retiring early.

The point of this last item in the UAPP's recent history is to emphasise that the sponsors of the UAPP recognise the serious problems represented by growing plan costs, and that we have been active in addressing it. It also underscores our willingness to consider benefit reductions in achieving these ends.

With that background in place, we'd like to turn to our concerns regarding Bills 9 and 10 and the EPPA (2012).

BILL 9

First off, use is made of "Plan" in the early parts of Bill 9, but it is not clear what is meant by plan-with-a-capital-P in this setting. With the removal of Schedule 3 in Bill 9, the UAPP should be out of scope from Bill 9, apart from the content of Section 16. It would seem that a capitalised "Plan" would be referencing a specific pension plan, but there is no indication which plan is intended. This is an ambiguity that ought to be removed.

A similar ambiguity is present in section 7, where cabinet is granted powers to create regulations to deny or alter benefits or remedies to plan members. As the scope of this section applies to some or all of the plans mentioned in part I of the Bill, whether it applies to the UAPP is unclear.

Section 16 explicitly deals with the UAPP and is of greater concern to us.

Section 16(1) grants Cabinet unspecified powers stemming from the transition of the UAPP to the scope of the EPPA, and it is not clear to us why this should be the case. The UAPP has been operating for over 13 years after transitioning from the auspices of the PSPPA to a private pension plan. While 16(1)(a) addresses residual matters bound up with dealing with the pre-92 UFL referenced in the now excised Schedule 3, 16(1)(b) is open-ended and appears to place no limits on cabinet's ability to intervene in the UAPP. While it's probably the case that the Cabinet is not seeking wide-ranging powers here, the language in 16(1)(b) doesn't reflect this. The government's intent here needs to be clarified and its power to formulate new regulations suitably constrained, especially since 16(4) allows the government to continue changing regulations governing the pre-92 UFL.

There is another matter bound up in Section 16 of Bill 9 that is also of some concern. The language present in Section 16(2) and 16(3) lets the Minister determine for himself the discount rate in assigning a value of an UFL for a plan, presumably with an eye to retiring an UFL in a lump sum payment. The problem here is that many assumptions go into assigning a value to an UFL -- including the discount rate -- and this properly ought to be a matter of discussion between the Ministry and the plan, decided through negotiation rather than by government fiat.

BILL 10 AND THE EPPA (2012)

The EPPA (2012) section 1(1)(dd) introduces the notion of a "jointly sponsored pension plan" and it appears that the UAPP will fall under this definition. For such plans, section 20(2) now provides for a plan administrator to reduce benefits with the consent of the Superintendent of Pensions, and worse, under the provisions of Bill 10, change a defined benefit plan to a targeted benefit plan which can reduce accrued benefits.

At present, our STA empowers the sponsors with the general authority to modify the Plan text, and the STA itself, including decisions about how any unallocated surpluses might be used for carry-forward, reduction of contribution rates, funding UFLs and remedying solvency deficiencies. The trustees in the Plan have more limited powers when it comes to amending the Plan text and the STA, principally to ensure compliance with the EPPA and the Income Tax Act (Canada).

Section 20(2)(a) of the EPPA (2012), if approved by the Superintendent of Pensions, would provide powers to the trustees of the Plan to completely usurp the powers of the sponsors provided for in our STA and change the Plan text to unilaterally reduce benefits. Bill 10 further erodes the STA and the roles of the sponsors by granting the trustees the power to unilaterally convert a defined benefit provision into a target benefit provision (the proposed 20(2)(d)). An additional worrying feature of 20(2)(d) in Bill 10 is the fact that this conversion could be applied to accrued benefits, and represents a back-handed way of attacking the freely negotiated benefits earned by members of the UAPP.

Presently, conversion to a targeted benefit plan is a power conferred on the sponsors by our STA; section 20(2)(d) of the Bill would contravene this. The possibility of imposing retroactive benefit reductions runs afoul of parts of our STA (section 6.4 of our STA).

Section 14 of Bill 9 protects a number of parties from liability stemming from benefit reductions and contribution rate increases. Even though EPPA (2012) and Bill 10 increase the ease with which benefits may be reduced, with the consent of the Superintendent of Pensions, Bill 10 provides no counterpart to Bill 9's limitations in liability in the event of benefit reductions under their scope. This is a situation, which may expose the sponsors to risk for decisions outside their control, control that EPPA (2012) and Bill 10 places in the hands Page 4 of 4 of the trustees and the Superintendent of Pensions.

RECOMMENDATIONS

When we look at the changes bound up in both Bills, and in the EPPA (2012), we find grave cause for concern.

Bill 9 contains worrying ambiguities in its language, which make it uncertain whether the UAPP falls within the scope of some sections of the Bill. The part of the Bill that does appear to be applicable to the UAPP appears to grant unspecified powers to the cabinet and the Minister that need to be clearly delineated. In particular, the power of the Minister to determine a discount rate without the need to consult and negotiate with the Plan's trustees needs to be revisited.

Bill 10's proposed change to EPPA (2012) section 20(2) needs to be significantly revised. If benefit reductions are to be implemented, then not only must they be implemented on a strictly prospective basis, but they must be implemented with reasonable notice and with the consent of those affected. EPPA (2012) section 20(2)(a) already violates these principles and is an ethical affront. Bill 10's addition of 20(2)(d) represents a further degradation. Both 20(2)(a) and 20(2)(d) need to be excised from the EPPA.

Submitted on behalf of the ad hoc pensions committee of the
Confederation of Alberta Faculty Associations