Written Submission

of the

Canadian Labour Congress

to

the Department of Finance Consultation on Federally Regulated Pension Plans (30 Per Cent Rule)

September 2016

The CLC is the voice on national issues for 3.3 million working men and women in Canada. The Congress brings together Canada's national and international unions, along with the provincial and territorial federations of labour and over 100 district labour councils. Members of CLC-affiliated unions work in all regions and virtually all sectors of the Canadian economy.

The Congress welcomes the opportunity to participate in the Department of Finance's consultation concerning pension plan investment in Canada and the review of the 30 per cent rule. Currently, section 11 of Schedule III of the *Pension Benefits Standards Regulations, 1985* restricts federally-regulated pension plans from holding more than 30 per cent of the voting shares for electing directors of a corporation. This constraint was imposed historically for prudential reasons (limiting exposure to risk in the event of a bankruptcy or insolvency), and as a reflection of the perception that pension funds should properly be passive investors, rather than seeking a controlling stake in traded firms. As the consultation document points out, many provinces have previously harmonized their pension standards legislation to reflect the federal 30 per cent rule.

This rule touches on several issues that are of central concern to the labour movement, including pensions and investments, and public ownership. As the Department of Finance's backgrounder to this consultation also makes clear in its reference to Ontario and Quebec, the current initiative to relax the 30 per cent rule is tied to the interest of many governments in facilitating greater pension fund investment in public infrastructure projects.

The federal consultation is the latest in a string of initiatives to address and relax this constraint. The April 2015 Conservative federal budget promised a review of the rule restricting federal pension funds from holding more than 30 per cent of a company's voting shares. Prior to that, the Ontario government in 2013 had expressed an interest in reviewing the 30 per cent rule as it pertained to infrastructure investments. In early 2015, the Ontario government received comments on a proposed regulation exempting pension investments from the application of the 30 per cent rule in respect of infrastructure. Subsequently, the 2015 Ontario Economic Outlook and Fiscal Review indicated the government's intention to eliminate the rule restricting Ontario pension funds from owning more than 30 per cent of the voting shares of a listed corporation.

In addition, large Canadian pension funds have urged a relaxation of the rules limiting their involvement in infrastructure projects. Having pioneered the model of direct investing in large infrastructure projects, Canadian pension funds are renowned worldwide as leading infrastructure investors. These same funds have been champions of privatization abroad and critics of Canadian governments that have been slow to take up "asset recycling" and comparable

privatization schemes. Canada's ten largest public-sector pension fund managers control over $1 trillion in assets, and compete globally for investment opportunities that offer scale and stable, secure and attractive long-term returns.[1]

However, structuring public infrastructure projects to provide attractive investment vehicles for pension funds is a fundamentally different objective, at odds with the goal of expanding and revitalizing public infrastructure to serve Canadians. The Canadian Labour Congress is opposed to facilitating privatization as a matter of principle, and as a practical matter. From long experience, our view is that the public is commonly shortchanged when public assets operated for public benefit are handed to private interests in the service of private gain. Under public ownership, the public is the beneficiary and the controlling party, and governments and public managers are accountable to the public. Private ownership blurs these clear lines of control, benefit, and accountability. For these reasons, several resolutions brought before the May 2014 Canadian Labour Congress convention and adopted recommitted the Congress and the labour movement to oppose and resist privatization of public services and assets.

The CLC is opposed to the use of public and private pension funds for privatization of public infrastructure. Pension plans, and the funds they invest, have a fiduciary obligation to plan members, much as private firms have legal obligations to shareholders, not to the public as a whole. We question whether the proposed change to the 30 per cent rule is about delivering retirement security to Canadians, or facilitating access to investment opportunities for private pension plans. We emphasize that many pension funds are already delivering high and enviable investment returns, without governments needing to facilitate the transfer of public assets for the investment purposes of pension funds. We think there are significant risks, both from facilitating greater privatization and exposing the specific tax status of pension funds to challenge, which make the proposed rule change unwise.

Facilitating Private Ownership and Control of Public Assets

In the view of the Congress, the government's decision to review the 30 per cent rule signals the intention to facilitate the privatization of public infrastructure, including public transportation infrastructure. The Emerson report reviewing the *Canada Transportation Act* makes numerous far-reaching recommendations for privatizing federal transportation infrastructure assets, including marine ports, small and large airports, and other transportation

[1] Boston Consulting Group, *Measuring Impact of Canadian Pension Funds*, October 2015.

infrastructure. The report specifically references the 30 per cent rule as an impediment to pension fund participation in this program of privatization.[2]

The Department of Finance consultation document references Quebec's decision in 2015 to permit the Caisse de dépôt et placement du Quebec (CPDQ) to construct and operate light rail transit for private gain. The agreement between the Caisse and Quebec contains several objectionable provisions, including the requirement that the government must not exercise control over the assets of the project, and that it must not assume any risks and derive any benefit inherent to the ownership of such assets.[3] By making public transit lines available to the Caisse with these restrictions, the Government of Quebec could lose control over an important public asset and service sector, despite the fact that the government will invest public money.

The Canadian Labour Congress is opposed to measures to transfer ownership and control of public assets to private interests through public-private partnerships (P3s). A wealth of research and long experience with P3s has documented their inefficiencies relative to public infrastructure.[4] Commonly, risk is not transferred to the private entity, but ultimately resides with the public purse, despite the fact that governments pay a premium to transfer the risk. The requirement to factor private profit and risk into the equation makes P3 projects more costly. The labour movement believes that these assets and services are delivered at greater cost-efficiency to taxpayers and with better long-term outcomes in terms of cost, risk, transparency, and accountability.

A 2014 report by the Auditor General in Ontario found systemic faults in the government's P3 investments. Examining 74 Infrastructure Ontario projects selected for private-sector delivery, the AG found that the costs of construction, financing, and project-related services were nearly $8 billion higher than they were estimated to be if the projects had been publicly financed and operated.[5] The report is particularly instructive with respect to the lack of evidence and empirical data for justifying alternative financing and procurement of infrastructure projects, and the dubious methodology employed to inflate the comparative cost of proceeding with public financing and operation.

[2] Minister of Transport, *Pathways: Connecting Canada's Transportation System to the World*, vol. 1, 2015, p. 26.
[3] Gouvernement du Québec and Caisse de dépôt et de placement du Québec, *Agreement respecting public infrastructures: Guiding principles*.
[4] For a recent review, see Anthony E. Boardman, Matti Siemiatycki and Aidan R. Vining, *The Theory and Evidence Concerning Public-Private Partnerships in Canada and Elsewhere*, SPP Research Paper, School of Public Policy, University of Calgary, volume 9, issue 12, March 2016.
[5] Auditor General of Ontario, *2014 Annual Report of the Office of the Auditor General of Ontario*, chapter 3.

Furthermore, we believe that the Government of Canada has ample fiscal capacity to expand infrastructure investments in Canada, and that the current government was elected on a popular platform of renewing Canada's infrastructure, not privatizing it.

The Congress does not agree that private pension plans are somehow precluded from making active investments in Canada under the current regulatory regime. Pension funds already actively invest in public equity markets and private equity opportunities. Pension funds, especially the large public-sector funds, already demonstrate superior returns and capacity to access sought-after investments with high returns. We also disagree that failing to relax the 30 per cent rule could lead to increased foreign takeovers of Canadian businesses or "negatively affect capital market efficiency by reducing liquidity, the availability of patient capital, and capital for large-scale projects in which only large institutional investors are active."[6] This would be a primary concern if the government was considering embarking on a program of fostering private involvement in public infrastructure projects, which the CLC and the Canadian labour movement would oppose.

In particular, the Congress disputes the notion, advanced by the Government of Quebec and other advocates, that transferring ownership and control of public assets to pension funds, even public-sector workplace pension funds, is somehow equivalent to retaining the asset in public control, with the public as beneficiaries. This confuses the issue, mixing up the notion of accountability to taxpayers and the public through democratic channels of government, with the fiduciary obligation pension plan trustees and stewards have toward plan members – who may be employed in the public sector, but who are not the same as the public.

Tax Implications

The Congress is concerned about the implications of the proposed changes for the special tax status of pension plans. As the discussion paper points out, Canadian workers' savings in registered pension plans now enjoy tax-exempt status, for sound public-policy reasons: encouraging the establishment and continuation of employer-sponsored pension plans that allow Canadian workers to defer wages and save for retirement. We are concerned that this particular strategy for bolstering the ability of pension funds to compete for investment opportunities will place this tax advantage at risk of attack from rival financial and investor interests, with consequent risks to the underlying public-policy goal. This could undermine the argument for special tax status for pension plans.

[6] Department of Finance, consultation document.

Conclusion

Canadians elected the Liberal government on a program of expanded infrastructure investment and badly-needed revitalization of Canadian infrastructure. What the electorate did not consent to was privatization of public assets. Indeed, the considerable opposition to Ontario's decision to privatize Hydro One is an example of deep skepticism in the public and strong opposition inside the labour movement, which has long supported the mandate for public ownership and control of vital infrastructure as fundamental to protecting the public interest. We therefore urge the government not to undertake the proposed changes that would facilitate greater pension fund financing and operation of public infrastructure projects, and instead to commit to public financing and management of these assets.

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