



Bill 186: An Act to establish the Ontario Retirement Pension Plan

Standing Committee on Social Policy

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Introduction

The Canadian Union of Public Employees (CUPE) Ontario is the largest union in the province with more than 250,000 members in virtually every community and every riding in Ontario. CUPE members provide services that help make Ontario a great place to live. We are employed in five basic sectors of our economy to deliver public services. Many of our members have successfully negotiated workplace pensions, including large multi-employer plans like OMERS and HOOPP, as well as single employer plans, such as those in the university sector. However, we also represent many members in precarious work, including part-time, seasonal, and short-term contract work, many of whom have not yet been able to negotiate for a workplace based pension. Ensuring income security in retirement has always been an important goal of ours, which is why CUPE has long advocated for a universal expansion of the CPP that would double the benefit of the public pension for all workers in Canada.

It will come as no surprise that CUPE Ontario does not support certain elements of the current design of the ORPP. We are absolutely supportive of the fact that the ORPP is a defined benefit plan, which provides the greatest income security for workers. The most significant problem, however, is the fact that the ORPP is not universal. Expanding public pensions for all workers, including those workers who do not yet have a workplace plan is of utmost importance. There is absolutely no question about it, the public pension system needs to be improved. The appropriate form, in fact the one that will provide for the most stable and administratively efficient model of a public pension plan, is one that is universal. Our proposal for a universal ORPP will be based on three lines of argument: a principled defense of universality, an analysis of the administrative problems caused by carving some workers out of the ORPP, and an actuarial analysis of existing public sector pension plans.

Expanding the CPP is our preferred approach to improving public pensions— a preference shared by the Ontario government. An Ontario-only solution would leave behind millions of fellow Canadians. Future Ontarians will still bear a burden for future seniors in Saskatchewan, for example, who retire in poverty. We need a universal, national solution. Getting there will require political leadership and will require Ontario to push the federal government and other provincial governments toward a universal expansion of CPP. Time is short. Ontario should start making this a major priority.

Principled stand on universality:

In the absence of an expanded CPP there is room for a provincially based program, with the important proviso that it be possible to fully and seamlessly integrate a provincial pension with the existing CPP if and when the national public pension is eventually expanded. CPP expansion was stymied by the Stephen Harper government for years, a position that was based in no small part on an ideological opposition to universal public programs. That particular obstacle to an expansion of the CPP has been removed, however certain pockets of opposition remain.

Attempts to make improvements in the national public pension plan will continue. Supporters of CPP expansion must continue our efforts. In the absence of immediate plans to expand the CPP, the ORPP is appropriate, as long as it is modeled on principles that are identical to the CPP. The ORPP should not be created in a way that would prevent universal expansion of the CPP. Nor should the ORPP be used as a tool to shape a CPP expansion that has non-universal elements to it.

The principle of universality is part of what makes the CPP such a valued social program. Studies of social programs, and the welfare state more generally¹, find that universal access to programs is a fundamental characteristic of the best developed systems. A survey of literature on social programs draws the conclusion that universal programs garner the widest possible public support. Non-universal plans, in the long run, are susceptible to erosions of support from those who do not gain immediate benefit from them, and are thus vulnerable to political movements to eliminate those plans. The development of common support for universal plans adds to the administrative efficiencies that come along with universality.²

Universality is the single most effective way to build long-term, broadly based support for a social program like a public pension. It also reduces the potential for opposition to such programs, because everyone is seen to gain a benefit from them. Universality is also the most viable model for a public pension. It provides the largest pool of resources and the simplest structure. Carving some workers out of the ORPP will mean a less efficient plan, with more resources dedicated to administration costs, including the cost of enforcement. The universality of the CPP bears this out. It was virtually the only contributory pension plan not subject to political attack since the most recent financial crisis.

Administrative Complications of a Non-universal ORPP:

Aside from the general importance of universality in design, as a measure to build public support and provide benefits to all workers, there are very practical reasons for making the ORPP universal. The non-universal design of the plan, as it stands in Bill 186, creates a wide variety of unnecessary complications that will undermine the effectiveness and stability of the ORPP. Carving out those workers who have “comparable workplace plans” will inevitably lead to significant administrative problems. It is hard to imagine a more complicated administrative model than the one that is currently proposed, including the rules used to determine comparable defined benefit, defined contribution, and pooled registered pension plans.

Compliance with the ORPP will be difficult and costly to enforce, a problem that is not found with the universal CPP. The complex rules for determining if a workplace plan is comparable will create confusion (real or feigned) within the business community. The education that will need to go into informing employers and employees of their rights and obligations will not come without cost, and a significant investment of time. There is also the risk that these educational efforts will fail in some cases, leading to

¹ See for example, Gosta Esping-Andersen, *The Three Worlds of Welfare Capitalism*, Princeton University Press, 1990.

² Tim Horton, “The fight for universalism: Cuts, targeting and the future of welfare”, *Public Policy Research*, June 2011.

non-compliance. There is no such risk if employers were to follow the same rules as the universal CPP, with which they are already familiar.

The rules for determining if an employee has a comparable pension plan are made all the more complex when access to a workplace pension is conditional, for example when it is dependent on working a minimum number of hours in a year. The rise in part-time, casual, seasonal, and other forms of precarious work puts greater numbers of workers in categories in which their enrolment in a workplace plan is contingent on factors beyond their control. When it is not readily apparent if an employee is in, or out, of the workplace pension, it will not be clear if they should be in, or out, of the ORPP. Confusion of this kind will inevitably lead to compliance problems. Tracking such compliance issues will not be without a significant cost, and more importantly will further jeopardize vulnerable workers' access to secure pensions.

Enforcement will also prove to be a significant cost, and will be plagued with administrative difficulties. During inspection blitzes on the Employment Standards Act it is not uncommon to find that three-quarters of employers who are inspected are in violation of the Act.³ Lack of compliance with existing employment legislation is a persistent problem, which has been identified through the government's Changing Workplaces Review. There are concerns that some employers will not be any more capable of following the rules set out in the ORPP legislation.

It is our understanding that enforcement will include a combination of targeting employers at higher risk of offending, and self-reporting by employees who believe their employers to be in violation of the act. Targeting of high risk employers will require long-term data collection and analysis, assessment of risk, and regular compliance audits. This seems to be an inefficient system, which could easily be avoided by making the ORPP universal. Requiring employees to report violations by their employers, through "snitch lines" or other means, is premised on employees knowing enough about the complex rules to be able to suspect their employers are in violation of the act. Moreover, it will require that employees will not fear reprisals for reporting their employers. When employees fear that their employer will know that they filed a report, and believe that there will be adverse consequences, they are unlikely to report violations. We know from experience with ESA and LRA violations that when employees fear reprisals, they are less inclined to attempt to enforce their rights.⁴

All of the necessary enforcement and compliance pieces will eventually fall to the Administration Corporation, diverting its resources from managing revenues and delivering benefits to a wide array of secondary tasks. Universality avoids such costs, and avoids the administrative complexity that will make workers more vulnerable to further exclusion from a pension plan.

Actuarial analysis:

Existing public sector pension plans, notably OMERS, have made much of the potential implications they face in the event of a universal pension expansion. Claims that a universal public pension plan would create risk, or somehow do damage to existing plans is not new. The same kinds of concerns were raised

³ See for example Sara Mojtehdzadeh, "Inspection blitz finds three-quarters of bosses breaking the law", *Toronto Star*, January 20, 2016, <https://www.thestar.com/news/gta/2016/01/20/inspection-blitz-finds-three-quarters-of-bosses-breaking-law.html>

⁴ See for example, Workers Action Centre, *Unpaid Wages, Unprotected Workers: A Survey of Employment Standards Violations*, May 2011.

when the CPP was created 50 years ago. The concerns were unfounded then, and they are unfounded now.

CUPE Ontario has enlisted the services of Smith Pension and Actuarial Consultants to conduct an analysis of the potential effects of a universal public pension expansion on OMERS. The report states that the OMERS Sponsors Corporation could choose to “stack” an expanded public system on top of OMERS, fully “integrate” OMERS with the expanded CPP (as it is with the current CPP), or something in between. Stacking would have no effect on OMERS. However, this analysis found that integration of an expanded universal pension with the existing OMERS plan will have no detrimental effect on OMERS. It will not delay OMERS ability to reach full funding, and it will not add risk to OMERS – in fact it would gradually reduce plan risks going forward.⁵ This analysis can be extended to all of the large public sector pension plans. Any go forward reductions in the growth rate of revenue that these plans would face would be offset by a proportional go-forward reduction in the growth rate of costs and an overall reduction of risk in the plan. Any claim by the managers of these plans to the contrary is, quite simply, false.

Hugh Mackenzie, writing for the Canadian Centre for Policy Alternatives, concurs with this analysis.

The exemption has been justified as a protection for existing adequate plans. But that argument is really a red herring. Current DB plans could easily be protected by integrating the ORPP into their benefit design. Or the DB plan could provide a payout to the ORPP on a member’s pre-retirement termination equal to the commuted value of the benefit they would have earned in the ORPP had they not been exempt. And for current DC plans, the exercise would be even simpler. Contributions to the DC could be reduced by the ORPP contribution. The employer’s cost would not go up, and the employees would be better off.⁶

There is no basis for an argument that existing pension plans would be at greater risk, or somehow damaged if the ORPP were to be universal. The decision is, ultimately, a political one.

Other Issues:

Bill 186 outlines the steps that will take in the event that the plan experiences as shortfall. Significantly, the first step is to reduce benefits by cutting indexation. In the event that a benefit reduction does not bring the plan out of shortfall there will be a rate increase. We believe that this order should be reversed – increase rates to make up for shortfalls first. If that does not work, then consider adjusting indexation if the plan is still in shortfall. Of course, the risk of shortfall is reduced if the ORPP is universal in design. The government has described ORPP as a “defined benefit” plan, and automatic funding increases to fully fund promised benefits is a staple of DB plan design. The funding mechanism proposed in Bill 186 turns certain plan benefits into “target” benefits first.

We would also like to propose that the ORPP Administration Corporation adopt a strict policy against investing in public infrastructure or the privatization of public assets. CUPE strongly

⁵ Independent analysis conducted by Smith Pension and Actuarial Consultants.

⁶ Hugh Mackenzie, “Zombie ideas on pension reform rise again”, *CCPA: Behind the Numbers*, May 5, 2016.

opposes privatization in all of its forms. Converting public assets into private property is contrary to the public interest and the public good. As we repeatedly note, and which has also been noted by the Auditor General and a plethora of research, privatization, P3s and other forms of alternative financing and procurement costs more. Under no circumstances would it be appropriate to use the ORPP to contribute to all of the problems caused by privatization. The most effective way to bind the Administration Corporation to this principle is to include the prohibition in the legislation itself.

Conclusions:

CUPE has always been supportive of expanding public pensions. The current discussion about ORPP and CPP is no doubt the result of 50+ years of lobbying from the labour movement for a bigger public pension system in Canada. All workers deserve to retire with income security, including those who have not yet been able to negotiate for workplace based plans. The most appropriate way to expand pensions for everyone is by doubling the CPP. We remain committed to that goal. While discussions about expanding the CPP continue, a provincially based pension plan can help to fill the void. Using the ORPP to fill that void must be done carefully. The ORPP must be universal, and designed on the same basis as the CPP. Universality makes sense in terms of building and maintaining political support for the plan. It makes sense in terms of administrative and enforcement efficiency and effectiveness. And it makes sense in terms of the stability and efficiency of the ORPP itself.

