

**Notes for Appearance
by
Nicholas Le Pan, Superintendent of Financial Institutions,
to
the House of Commons Standing Committee on Transport,
Regarding the Regulation and Supervision of Air Canada's Pension Plans,
Thursday, April 3, 2003**

It is unfortunate that this situation at Air Canada has occurred. I wanted to appear today because I believe it is important that this Committee be aware of my Office's responsibilities and because there appears to be some confusion about the pension aspects of the Air Canada situation. Because of confidentiality constraints, I am limited somewhat about what specifically I can talk about; however, given the Court filings made by Air Canada in this country and the United States, and the related disclosures it has made, I believe it is possible for me to describe the main elements of the situation from OSFI's vantage point.

Under the *Pension Benefits Standards Act (PBSA), 1985*, the Office of the Superintendent of Financial Institutions (OSFI) has the responsibility to supervise federal private pension plans to determine whether they are meeting regulatory requirements and, in doing so, to strive to protect the rights and interests of the plan members and beneficiaries.

The regulation and supervision of pension plans recognizes that pension funds are voluntary arrangements between employers and employees. They are affected by legislation and regulation but also by collective agreements. These parties establish acceptable benefit levels and promise to fund them accordingly. Plan administrators are responsible for the management of the plans. Further, pension plans or their sponsors can experience financial and funding difficulties resulting in a need to restructure the plan and potentially reduce benefits to members, particularly if the sponsoring company is in difficulty. The legislation and regulations do not guarantee that benefits will be met in all cases. Plans may be restructured or terminated, although how that would apply in a particular case depends on collective agreements and the terms of the plans in place.

Another key element of the legislation is that deficits in pension plans have to be funded by plan sponsors over five years. The legal requirement to fund a deficit is determined by the filing of a valuation report with my Office, which normally occurs every three years but which can be accelerated. These arrangements are longstanding and are similar to ones in other Canadian jurisdictions that regulate pension plans, as well as those in other countries.

This approach provides for a reasonable trade-off. It is important to protect members by having plans funded. It is also important to provide flexibility to plan

sponsors and their employees to negotiate and fund defined benefit plans. Our administration of the legislation also respects that trade-off.

Now to the Air Canada situation. OSFI began stress testing the Air Canada pension plans two years ago and, as a result of our analysis earlier this year, and subsequent discussions held with Air Canada, we became concerned that these plans might be operating in a significant deficit. We subsequently confirmed this with Air Canada. The company, in its Court filings, has referred to a deficit of approximately \$1.3 billion, as at January 2003, although the plans were in a surplus as of the filing of their most recent valuation reports during the course of 2001. My Office will only know the precise deficit once the valuation reports are filed and analyzed, but based on our current information, I have no reason to materially differ with that estimate. The actual deficit will depend on the timing of the valuations, future market performance, and the company's negotiations with employees and unions. Under the normal three-year approach, valuation reports for the large majority of the plans would only have had to be filed with my Office in June 2004.

Air Canada had also been taking a contribution holiday starting in 2001 and continuing in 2002 and 2003. This is permissible under the regulations and legislation. However, given OSFI's mandate, it is my responsibility to come to a judgement whether it is appropriate, taking all of the circumstances, including the plan arrangements, into account. I did not think so.

Our concerns were heightened because of the various other pressures widely reported on the company and the industry.

Accordingly, in order to enhance the position of pensioners, OSFI did three things. First, we approached the company to require them to stop taking contribution holidays and to remit approximately \$200 million, which represents contribution holidays taken in 2002 and normal current service costs to be paid during the remainder of 2003. There have been reports that OSFI required the company to immediately put \$1.3 billion into these plans. This is not the case.

Our approach in any regulatory action, including this one, is to provide an opportunity for companies to make representations and, if they wish, to provide us with alternate proposals to meet our general goals. Prior to the company deciding to seek protection under the CCAA, we had indicated to Air Canada that we accepted their proposal, provided it was subsequently documented, as to funding of the approximate \$200 million. I believe our acceptance of their proposal, as referenced in Air Canada's Court filings, removed immediate pension funding as a reason for the company to file for bankruptcy protection.

Secondly, in a separate communication, we requested that Air Canada accelerate filing of valuation reports with OSFI to later this month (April) to better ascertain the deficit position of the plan. I again emphasize that under the

legislation and regulations, any deficit formalized by these reports would only have to be funded over five years. By accelerating these valuations, we were accelerating the requirement to fund in order to enhance the position of plan members on an ongoing basis or if the company chose to seek bankruptcy protection for whatever reason. We also indicated to Air Canada that there was some flexibility in the precise timing of these reports. Also, we recognized the funding requirement would and will be affected by other negotiations, including ones the company indicated it planned to have with its unions to restructure the plans.

Thirdly, we also required the company to provide adequate disclosure to members about the situation.

We have indicated to the company that we remain open to work with them in the best interests of members to deal with current funding and any restructuring. Any restructuring of the plans would have to receive OSFI approval. We would consider the fairness of the proposal and its viability, as well as the fairness of the process used to determine the restructuring proposal.

Even with Air Canada's filing for CCAA, OSFI's requirements remain in place and I believe enhance the position of pension plan members.

Retired and active plan members will want to know what the impact of Air Canada's CCAA filing will be on their benefits. At this stage, it is very difficult to tell. Although pension plan assets remain separate and apart from the employer's assets, the ultimate impact on benefits may not be known for many months.

OSFI has been and will continue to work in accordance with its mandate in the interests of pension plan members and other beneficiaries.

I would be pleased to respond to your questions.