

# **Stel Salaried Pensioners Organization (SSPO)**

2-558 Upper Gage Ave., Suite 146  
Hamilton, ON L8V 4J6

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## STEL SALARIED PENSIONERS ORGANIZATION SUBMISSION TO ONTARIO EXPERT COMMISSION ON PENSIONS INTRODUCTION

The Stel Salaried Pensioners Organization is a group of over 4000 Stelco Salaried Pensioners. These people are the clerks, secretaries, accountants, supervisors, etc. who have traditionally not had representation in the workplace and are overlooked by politicians and the media during the Stelco crisis. When it appeared Stelco would declare bankruptcy protection under the Federal Companies Creditor Arrangement Act, we organized, collected fees and hired legal counsel to protect our pensions and benefits. The CCAA court accepted us as the representatives of all the Stelco Salaried Pensioners during the Stelco CCAA proceedings.

The salaried pensioners are different from other Stelco pensioners in that we contributed to the plan by monthly payroll deduction until 1987 when Stelco changed the plan to non-contributory. We also differ in that the Stelco Salary Pension Plans are not indexed to the cost-of-living and most pensioners have never had a pension increase. Our pensions are not large. At the end of 2002 the core members of the plans had a weighted average annual pension of \$19,387, so any decrease will have serious implications.

Also under threat was our 'Other Post Employment Benefits' Package, which includes coverage for medical, dental, drugs and life insurance. Many pensioners are very dependent on these benefits and any reductions will have a detrimental effect on them and their families. Most never purchased additional life insurance and some cancelled policies because Stelco provided this benefit. The purchase of such insurance at an advanced age would be cost prohibitive if available at all. In 2006 the current owners of Stelco made 7 reductions to the Stelco Salaried retirees OPEB package which placed more reliance on our Pension income.

In the case of companies reorganizing under CCAA, we believe pensioners should not have their pensions or benefits reduced. Pensioners are the most vulnerable people amongst the creditors. It is highly unlikely that at this stage of their lives that they can find employment to meaningfully supplement their income. Pensioners are also under a stricter budget than a working person. The Stelco Salary Pensions have already fallen behind because of inflation and due to their age, pensioners and their spouses are more likely to need their medical benefits.

### **The Root of Stelco's Pension Plan Problem**

It was during CCAA that SSPO was surprised to learn that Stelco had not been making regular contributions or solvency deficiency contributions in the Salary Pension Plans. No communication regarding this major financial issue was ever sent to the Salary Pension Plan members!

The root of Stelco's pension plan problem derives from Regulation 5.1 of the Ontario Pension Benefits Act also known as the 'Too Big to Fail' regulation. This 1992 regulation

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allowed companies that had pension funds in excess of \$500 million to elect to be treated as a “qualifying plan”. Starting in 1996 Stelco elected to “qualify” its Pension Plans and was thus exempted from making un-funded liability payments with respect to any solvency deficiencies applicable to the plans.

Regulation 5.1 was amended in 2002 so that employers are no longer allowed to take the “qualifying plan” election. However, Stelco was grandfathered in and allowed to retain “qualifying plan” status and continued to make no solvency deficiency payments. The result is that the pension plans continued to deteriorate financially until they are now at the point that there are insufficient assets to pay for the full pensions of the plan members.

The threat posed by Regulation 5.1 and CCAA caused us to look at the Ontario Pension Benefits Guarantee Fund. We quickly learned that the payout was outdated and inadequate but also the fund had no balance on hand. That was just the first of a number of shortcomings we found in the laws, acts and regulations that govern Defined Benefit Plans. Many of the ‘pension guarantees’ that retirees thought were in place are either partial guarantees or don’t exist at all.

After Stelco emerged from CCAA we decided to stay together as a group and incorporated into SSPO Inc. with a board of eight directors. We did this to continue to represent Stelco Salaried Retirees and to lobby for much needed pension reform and in particular Defined Benefit Pension Plans.

Given our experiences, SSPO was delighted when the Ontario Provincial Government set up the Ontario Expert Commission on Pensions to study all aspects for pension reform. The OECP has agreed to accept input from pensioners and accordingly we have assisted the Canadian Federation of Pensioners to complete their submission and are pleased to make an SSPO presentation in November.

Dennis M. Wright  
Director – Political Action  
Stel Salaried Pensioners Organization Inc.

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### PROVINCIAL ISSUES

#### 1/ REGULATION 5.1

Regulation 5.1 of the Ontario Pension Benefit Act also known as the 'Too Big To Fail' regulation was enacted in 1992. It allows companies with pension funds in excess of \$500 million to be treated as a "qualifying plan" therefore take pension fund contribution holidays. Starting in 1996 Stelco elected to "qualify" 4 of its' large pension plans and was thus exempted from making any Solvency Deficiency liability payments to those under-funded plans.

They were allowed to do that without notifying any of the members or former members of those plans.

In 2002 Regulation 5.1 was amended so that employers are no longer allowed to take the "qualifying plan" election. However, Stelco was grand fathered in and allowed to retain "qualifying plan" status and continued to make no Solvency Deficiency payments.

In 2004 Stelco declared CCAA bankruptcy protection and threatened to wind up the pension plans, which would have caused 20% to 50% reductions in the 4 pension plans.

In 2005 during Stelco's CCAA, SSPO, along with others, embarked on a political action campaign with the result that the Province of Ontario withdrew Stelco's 5.1 election, imposed a special 10 year Stelco/Provincial pension regulation and loaned Stelco \$150 million to be paid into the pension funds.

#### RECOMMENDATIONS

- 1.1 Remove Regulation 5.1 from the Ontario Pension Benefits Act since no one has been allowed to qualify for the election since 2002.
- 1.2 Or, amend the Regulation to provide a time frame at which a company must exit 5.1 and a plan to fully fund their pension plans.
- 1.3 Companies currently using Regulation 5.1 should provide Financial Services Commission of Ontario with a reasonable time frame to exit and a plan to fully fund their pension plans.

#### 2/ ONTARIO PENSION BENEFITS GUARANTEE FUND

Although current thinking is that guarantee funds may encourage windups in some jurisdictions, the OPBGF in combination with the OPBA has provided a level of protection for many pensioners in Ontario. However, the maximum payout is inadequate because it has not been revised since 1980. In addition, the balance on hand is zero causing the Province of Ontario to support it with hundreds of millions of dollars.

#### RECOMMENDATIONS

- 2.1 Adjust the maximum payout of \$1000 up to a level aligned with cost of living in Canada. We estimate that to be approximately \$2500.
- 2.2 Index the maximum payout annually to allow for inflation using an accepted scale like the CPI.

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2.3 Build up the fund balance on hand increasing premiums a fair amount.

2.4 Assess a PBGF premium to all Ontario companies that have defined benefit type pension plans. That would increase the PBGF balance on hand and would provide some protection for more defined benefit pension plan members in Ontario.

### **3/ INDEXING**

In 2004 SSPO did a survey of the overall average of Stelco salaried pensioners and were surprised to learn that the weighted average annual pension was \$19,387. This low average income is caused by the advanced age of many Hilton Works pensioners but also by the lack of indexing. SSPO believes that the province of Ontario could prevent its' retired citizens from dropping below the poverty line by instituting an indexing regulation in the PBA.

In 1990 Stelco added an indexing feature to its' salaried pension plans. They paid out an indexing increase for 3 or 4 years but in 1997 simply stopped paying out any indexing increases to salary pensioners. At the same time Stelco continues to pay indexing increases to its' bargaining unit employees. We feel there should be a method of restoring 'lost' pension benefits without the need to engage in an expensive legal action.

### **RECOMMENDATIONS**

3.1 Add an Indexing clause to the PBA that has reasonable upper and lower limits, is tied to the funding level or surplus of the pension plan fund and has an indexing scale like the CPI.

3.2 Provide a mechanism through FSCO and/or the PBA to oversee or mediate issues of 'lost' pension benefit features between pensioners and sponsors.

### **4/ PENSIONERS AS 'FORMER MEMBERS'**

The Ontario Pension Benefits Act in several sections refers to Pensioners as "former members". That implies that pensioners are not members and do not have the rights of a "member" of a Registered Pension Plan. The dictionary definition of "former" member is someone who once was a member but was removed or opted out of membership. Pensioners are in fact more deeply involved than active employees because they rely on the pension plan for their income and they immediately are affected by any changes to the plan or its' fund.

Many pensioners as "former members" find it very difficult to get information and communication from sponsors as opposed to active employees who are termed "members" of a pension plan.

SSPO found, in attempting to establish a Pension Advisory Committee under the PBA, that pensioners, as "former members", have very minimum rights to participate in a pension advisory committee.

There may be a legal or accounting reason to differentiate active employee members from retired employee members but we feel a better definition is required.

### **RECOMMENDATIONS**

4.1 Change the term 'former member' in the PBA to 'pensioned member' or 'retired member'.

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### 5/ OTHER POST EMPLOYMENT BENEFITS

When an employee retires, the continuing compensation agreement includes pension benefits and usually Other Post Employment Benefits (OPEB) which includes a range of Health Benefits like major medical, drugs, eyeglasses, dental, orthopaedic shoes, etc. and also life insurance. To many retirees with small pensions and some health problems, these OPEB are more important than their pensions.

In Ontario it is generally accepted that a retirement agreement on the retirement date is a contract and the pension and benefits become 'crystallized' and cannot change. Ed Canning, an employment lawyer wrote in the Hamilton Spectator on December 9, 2006 – "If you can't change your mind about retiring, why would they get to change their minds about the benefits they promised?". That was part of his answer to a question from a pensioner who had his OPEB reduced.

Unfortunately for non-union retirees, the PBA does not cover OPEB and most companies do not have a reserve fund from which to pay those benefits. That leads companies to believe they can reduce retiree's OPEB (Stelco) or completely eliminate them (Slater Steel).

We believe Ontario should have an Act or Regulation that gives Other Post Employment Benefits equal or better protection than Pension Benefits.

### RECOMMENDATIONS

5.1 Amend the Pension Benefits Act to include Other Post Employment Benefits with equal or better protection than Pension Benefits.

5.2 Or create a new Ontario Act that gives Other Post Employment Benefits equal or better protection than Pension Benefits.

### 6/ FINANCIAL SERVICES COMMISSION OF ONTARIO

SSPO and other pensioner groups have found that the recently developed Financial Services Commission of Ontario overseeing four major financial divisions appear to be overwhelmed by the many requests for information from its' Pension Division. Internally this reorganization may be efficient but externally there appear to be delays in the flow of information by the additional level of management and perhaps staffing reductions in the Pension Division.

We believe that the Pension Division of FSCO is important enough to stand alone as an organization and report directly to the Finance Ministry of Ontario and directly to the public.

### RECOMMENDATIONS

6.1 Return to the former concept of a Pension Commission of Ontario reporting directly to the Ontario Finance Ministry and directly to the public.

6.2 Ensure the PCO has a mandate to monitor and protect the pension plans and pension funds for the citizens of the Province of Ontario.

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#### FEDERAL ISSUES

Although the following issues fall under the jurisdiction of the Canadian Federal Government, they impact hundreds of thousands of Ontario citizens with pension plans registered in the Province of Ontario. The Stel Salaried Pensioners Organization believes the Ontario Expert Commission on Pensions should understand those impacts and perhaps become an agent for pension reform at the Federal level.

#### 7/ COMPANIES CREDITORS ARRANGEMENT ACT

This bankruptcy protection act was written during the depression of the 1920s to protect farmers from losing all their possessions due to bank foreclosures. This Act has not been updated since that time and recent efforts to do so through Bills C55 and C47 have stalled in the House of Commons. Recently companies have declared insolvency using CCAA, paid their creditors pennies on the dollars owed, and resumed business with virtually no debt.

Pension plans are treated poorly in CCAA proceedings. Even though most pension funds are in trust, they are not considered secure creditors and in fact fall to the bottom of the unsecured creditors list and are virtually ignored.

Even worse, the CCAA supersedes the OPBA so companies are allowed to wind-up their pension plans with huge solvency deficiencies and no requirement to top them up to 100%. Pensioners lose large portions of their pension income and health benefits permanently with no recourse because companies are allowed to ignore Retirement Contracts and Agreements. In Stelco's CCAA, SSPO was fortunate to have experienced legal counsel, a compassionate judge and monetary assistance from the Ontario Finance Ministry. Slater Steel Salary Pensioners were not that lucky. They lost 40% of their wound-up pension and lost 100% of their Post Employment Benefits with no one coming to their aid.

#### RECOMMENDATIONS

7.1 Amend the CCAA to declare Pension Plans and Funds to be guaranteed, in trust and totally exempt from CCAA proceedings.

7.2 Or amend CCAA to classify Pension Plans and Fund to be secure creditors and at the top of the secure creditor list.

7.3 Amend the CCAA to declare Other Post Employment Benefits to be guaranteed and totally exempt from CCAA proceedings.

7.4 Ensure that Bill C47 includes 7.1 and support its' passage through the House of Commons.

#### 8/ PENSION FUND SURPLUS LIMITS

In the early 1990's the Federal Government believed that companies were hiding profits from taxation by hiding them in their pension fund by over-contributing to their pension

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plan. To prevent that they passed an Income Tax Act regulation which limits private pension plan fund surpluses to 110% of the Solvency Ratio.

That discouraged companies from maintaining surpluses in their plans to help them ride through periods of economic downturn and low profits. It also hurts pension plan members because there are no extra funds to pay for potential benefit increases, the most common being indexing. The result is that private pension plans have become vulnerable to under-funding.

### **RECOMMENDATIONS**

8.1 Amend the Income Tax Act to remove the limit on Pension Plan Fund Surpluses.

### **9/ PENSION FUND SURPLUS OWNERSHIP**

The fact that there is no Act, Law or Regulation governing the ownership of pension fund surpluses and the Federal limit on surpluses discourages sponsors from over-contributing to pension plans. Also, the majority of court decisions on this subject favour members with the result that sponsors are reluctant to maintain a surplus in their pension plans. This leads to the logical conclusion that it is financially beneficial for the company (sponsor) to keep their pension funds in a deficit position.

There are many positive aspects to maintaining a surplus in a pension fund. Sponsors would have a financial cushion to ride out economic downturns or stop contributing when the surplus is high. Also if there was a sharing of funds over a certain limit then the company would have access to cash and members could gain improved pension benefits.

All of the surplus funds would be invested in the financial marketplace, which would improve the health of the economy in Ontario and Canada.

### **RECOMMENDATIONS**

9.1 Create a Law, Act or Regulation that clarifies the ownership of pension fund surpluses on an equitable sharing basis. For example, a surplus above 115% of solvency ratio would be shared 50% sponsor and 50% members.

### **10/ RRSP CONTRIBUTION LIMITS FOR DB PLAN MEMBERS**

Many Defined Benefit pensioners have had their pension income reduced due to a windup of their pension plan with a deficit in the fund. These are usually caused by plant closures and bankruptcy proceedings. The pensioners are then forced to fall back on their RRSP, which they find is too small to compensate for the pension loss. That is caused by the Federal Income Tax Act assuming that Defined Benefit Plans are guaranteed and therefore imposing a strict limit on RRSP contribution limits for members of DB pension plans. So when a pensioner was working and had the ability to improve their RRSP they are restricted and once they retire they are not allowed and have no money to contribute.

SSPO believes this is unfair to DB plan members and the RRSP contribution limits for DB plan members should be increased.

### **RECOMMENDATIONS**

10.1 Amend the Income Tax Act to increase the RRSP contribution limits for Defined Benefit Pension Plan members.

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## 11/ EMPLOYMENT INSURANCE AS A PENSION PLAN BRIDGE

In today's business world many companies have found it necessary to reduce their workforce in order to stay competitive in a global market. One of the ways to downsize a workforce is to offer early retirement packages to employees. That may be expedient for the company but places a huge burden on the pension plan which is usually already in a deficit position at that point.

SSPO believes that the Federal Government should allow companies to use Employment Insurance as a bridge to retirement age to relieve the burden on pension plans. The Employment Insurance Fund has a huge and growing surplus (\$46 billion as at February 23, 2005) and can easily accommodate the bridging requirements.

## RECOMMENDATIONS

11.1 Use Employment in the form of a bridge to allow for workforce downsizing so it does not place an extra burden on pension plans.

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