Justice

5

Main points

Under *The Pension Benefits Act, 1992*, the Superintendent of Pensions regulates and supervises pension plans in Saskatchewan. The Superintendent does so to reduce the risk of financial loss or inequities to pension plan members.

In 2004, we assessed the adequacy of the processes the Superintendent of Pensions used to supervise pension plans. We found that the Superintendent had adequate processes except as reflected in our following four recommendations. We recommend that the Superintendent:

- expand its analysis of pension plan risks to consider the key risks faced by all pension plans
- prepare a risk-based work plan to supervise pension plans
- provide staff with written guidance regarding information to document when registering and amending pension plans
- develop alternative ways to obtain information from pension plan administrators or seek legislative changes to expand its enforcement powers to obtain required information

Glossary

Beneficiary – a person who receives or is entitled to receive benefits.

Defined benefit pension plan – a pension plan that specifies the pension that members of the plan receive on retirement or the method of determining the pension.

Defined contribution pension plan – a pension plan in which the members' contributions are fixed, usually as a percentage of pay (except for the Saskatchewan Pension Plan, whose members can contribute up to $600 each per year). A member's pension is based on the member's and the employer's contributions made on behalf of the member and investment earnings on those contributions.

Fiduciary responsibility – duty of loyalty to those whose interest a person protects.

Pension liability – the present value of pension benefits earned by plan members as determined by an actuary using the pension plan's best estimates about future events and an appropriate actuarial method as recommended by The Canadian Institute of Chartered Accountants for accounting purposes.

Pension plan administrator – employer or trustees or an agency that administer the pension plan, i.e., who arrange for pension payments and funding of the plan, etc.

Pension plan board – a group of individuals, identified in the pension plan's act or plan document, that is ultimately responsible for managing the plan. Some people refer to this group as committee, commission, or trustees.

Unfunded liability – the amount by which the pension liability exceeds the assets of the pension plan.

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Department of Justice

The Department of Justice is responsible for upholding the rule of law, protecting basic legal rights of citizens, and ensuring good and proper administration of justice.[1] We reported our audit of the Department for the year ended March 31, 2004 in our 2004 Report – Volume 3.

Part of the Department's mandate involves regulating the marketplace to safeguard consumer and public interests and support economic well-being. This includes regulating pensions. The Department does this through the Superintendent of Pensions. In 2004 we assessed the adequacy of processes the Superintendent used to supervise pension plans. In this chapter, we report the work we did and our conclusions, findings, and recommendations.

Superintendent of Pensions

About 49% of paid workers in Saskatchewan participate in registered pension plans.[2] When a pension promise is made, this is the first step in the creation of a complex arrangement known as a pension plan. The appropriate management and oversight of this complex arrangement is critical to the fulfillment of the pension promise.

Regulatory framework

To help ensure that pension plans are well managed, the Government needs an adequate regulatory and supervisory framework. *The Pension Benefits Act, 1992* (Act) provides a framework. The Act sets out requirements for registration, amendments, and termination of pension plans.

The Minister of Justice appoints a Superintendent of Pensions (Superintendent) to administer and enforce the Act. The Superintendent is responsible to reduce the risk of financial loss or inequities to pension plan members. The Superintendent carries out this responsibility by supervising pension plans. In 2003, the Superintendent supervised 378 pension plans (230 defined contribution and 148 defined benefit) with a

[1] 2005-2006 Provincial Budget Performance Plan, Saskatchewan Justice.
[2] Financial Services Commission. (2003). *A statistical perspective on pension plans registered in Saskatchewan*, p.1.

market value of assets totalling $14.5 billion. We describe the scope of the Superintendent's responsibilities in the Exhibit. The Superintendent has two staff members.

In 2002, the Legislative Assembly passed *The Saskatchewan Financial Services Commission Act* establishing the Financial Services Commission. The Commission is responsible to co-ordinate financial services regulators in Saskatchewan. The Act also allows the Government to assign the duties of the Superintendent to the Commission. The Government has not yet done so.

The Government's regulatory framework helps ensure that pension plans subject to the Act meet their pension promises. The Act helps safeguard the pension benefits that members have earned. However, the Act does not require employers to establish or continue pension plans. Nor does the Act guarantee that pension plans will make promised pension payments because there is no specific government guarantee or insurance scheme to cover losses in a terminated pension plan.

People rely on their pension plans to meet their retirement needs. To maintain the confidence of the public and plan members, pension plans must meet pension promises. Because of recent pension failures, funding issues, and legal actions, pension plan supervision and governance have become highly visible and sensitive issues. Plan members are more likely to make demands on public resources if pension plans fail to meet pension promises. Where plans have surpluses, the Superintendent must also work to ensure that all stakeholders are treated equitably.

Exhibit

The Pension Benefits Act, 1992 applies to all private sector pension plans and some public sector pension plans. Some government pension plans such as the Saskatchewan Research Council Employees' Pension Plan, Capital Pension Plan, and Saskatchewan Telecommunications Pension Plan are also subjected to supervision under the Act. Pursuant to *The Pension Benefits Regulations, 1993*, the Act does not apply to the following:

- registered retirement savings plans
- employees profit sharing plans
- deferred profit sharing plans
- arrangements for retiring allowances and supplemental plans
- plans that provide benefits issued under a contract issued pursuant to the *Government Annuities Act* (Canada)
- federally regulated pension plans
- pension plans for employees of the Federal Government.

Audit objective

The objective of our audit was to determine if the Superintendent of Pensions had adequate processes at September 30, 2004 to supervise pension plans.

Our audit did not include the Superintendent's reciprocal arrangements with other pension regulators in Canada. Nor did we examine the Financial Services Commission's processes to co-ordinate financial services regulators in Saskatchewan.

Criteria

Auditors use criteria to evaluate the matters they examine. Criteria are reasonable and attainable standards against which auditors assess the adequacy of processes. We outline the criteria that we used below.

To adequately supervise pensions, the Superintendent should have processes to:

- identify and evaluate the risks of pension plans
- align work processes with the risk assessment
- evaluate pension plan information
- register, amend, and deregister plans
- provide sound direction
- follow-up and enforce compliance

We described these criteria in more detail in our 2004 Report – Volume 1. The Superintendent agreed with the criteria. To do this work, we followed *The Standards for Assurance Engagements* established by The Canadian Institute of Chartered Accountants.

Conclusion and recommendations

At September 30, 2004, the Superintendent of Pensions had adequate processes to supervise pension plans except as reflected in the following recommendations.

1. **We recommend that the Superintendent of Pensions expand its analysis of pension plan risks to include the key risks faced by all pension plans.**

2. **We recommend that the Superintendent of Pensions prepare a risk-based work plan to supervise pension plans.**

3. **We recommend that the Superintendent of Pensions provide staff with written guidance regarding information to document for the registration and amendment of pension plans.**

4. **We recommend that the Superintendent of Pensions develop alternative ways to obtain information from pension plan administrators or seek legislative changes to expand its enforcement powers to obtain the required information.**

Key findings

Supervise based on risk

To supervise pension plans effectively, the Superintendent needs to adopt a risk-based approach. A risk-based approach would require the Superintendent to identify the significant risks that pension plans face and to design its processes and set its work priorities based on this analysis. The Superintendent would also specify actions (e.g., review, analysis, on-site examinations) to reduce risks to an acceptable level. More risky pension plans would need closer supervision.

The Superintendent currently focuses on one type of risk—funding risk—that defined benefit plans face. It ranks defined benefit pension plans based on funding risk. The Superintendent does not systematically assess risk for other plans. Generally, it considers plans to be higher risk if the Superintendent receives complaints from plan members, sees evidence of delayed contributions from sponsors, or receives inaccurate or late annual information returns. The Superintendent needs to expand its analysis of pension plan risks to include the key risks faced by all pension plans.

Require more information

The Superintendent collects information about pension plan risks by examining pension plan text, actuarial valuation reports, and annual information returns. The information collected is not sufficient to identify key risks other than funding risk. These additional risks could include, for example, risks related to governance, investment, compliance, and member education. To adequately identify and assess key risks, the Superintendent needs to gather more information. This information could be collected from the minutes of pension plan boards, strategic plans, governance information, annual reports, statements of investment policies and goals, and investment management and compliance reports.

The Superintendent should also obtain more information to register and amend pension plans. Procedures for registering pension plans should ensure that the Superintendent receives all necessary plan information before approving a plan for registration. Currently, the Superintendent's processes for registering plans do not require new pension plans to provide information on their investment policies and goals, or on their governance practices.

Pension plans usually set out investment policies and goals in a document called a statement of investment policies and goals. This statement sets out the investment risk acceptable to the plan and its members. It also sets out guidelines and restrictions that the plan's investment manager must follow. This information could assist the Superintendent to assess whether investment policies and goals for plans are adequate to reduce investment risk to an acceptable level for plan members.

Also, the Superintendent could use information on plan governance practices to help it assess whether pension plans use sound oversight practices to reduce the risk of loss to members.

Verify and examine

The Superintendent requires pension plans to submit annual information returns. The Superintendent relies on the plan administrators who submit the returns to confirm that the information is accurate. The Superintendent should require supporting documentation, such as audited financial statements, statements of investment policies and goals, and governance information to help ensure the information received is accurate. In reviewing this information, the Superintendent should focus on the plans it has identified as high risk. The Superintendent could consider obtaining assurance from the auditors of high-risk pension plans that plans have complied with their plan documents and with legislative authorities.

The Act gives the Superintendent the right to carry out audits and inspections. The Superintendent needs to base its audits and inspections on its assessment of risks. Focusing its audits and inspections on high-risk plans would assist the Superintendent to efficiently carry out its duties.

During the last year, the Superintendent completed its first on-site examination of a defined contribution plan. The on-site examination identified significant control deficiencies in the plan administration and resulted in useful recommendations for the administrator. The Superintendent's normal review practices would not have detected those control deficiencies. The Superintendent could consider doing more on-site examinations for high-risk plans.

Guide staff

The Superintendent should improve its processes by clearly setting out steps staff must follow to register and amend pension plans. The Act and Regulations are detailed and complex. The Superintendent needs to provide guidelines to staff on what a pension plan document must include—at a minimum—for registration or amendment. The Superintendent should require staff to document their assessment of whether plans seeking registration or amendments have met the requirements of the Act and Regulations. This would help to ensure the Superintendent registers and amends pension plans in accordance with the law. Clear assessment and documentation would also help the Superintendent to evaluate its quality control processes.

Direct and enforce

The Superintendent gives written guidance to pension plan administrators. The guidance generally relates to improving plan administration, meeting expectations set out in plan documents, and improving compliance with the Act. The Superintendent also provides information to pension plans through its web site, by mailing special bulletins and rulings to plan administrators, and by participating in pension seminars.

The Superintendent makes a range of decisions when supervising pension plans. The Superintendent must ensure that plan administrators comply with those decisions. The Superintendent has an adequate system to signal when it must request information or when administrators do not submit requested information. The Superintendent follows up with letters seeking clarification or additional information. However, this process is not always effective. We noted many examples where administrators had not provided information requested over a year earlier. In such cases, the Superintendent needs to consider other ways to get the information, such as staff visits.

The Superintendent has limited enforcement powers under the Act and Regulations to compel administrators to respond in a timely manner. The Superintendent can deregister a plan, but that would punish the plan members who have no control over the plan administrator's actions. The Superintendent needs to develop other ways to obtain the information it requires to carry out its responsibilities. Alternatively, the Superintendent should seek legislative changes to expand its enforcement power to obtain the required information.

Future work

During 2005, we plan to assess the progress of government pension plans in addressing our past recommendations to improve their governance processes. We plan to report the results of our work in future reports.

During 2006, we plan to examine how the Government addresses its future cash requirements for government pensions promised. We will also reassess the progress of government pension plans in improving their annual reports to address our past recommendations.

In the future, we will also assess the progress of the Superintendent of Pensions in addressing the recommendations we make in this chapter.

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