IN THE MATTER OF
***THE PENSION BENEFITS ACT, 1992*, SECTION 1992, C. P-6.001, AS AMENDED**

AND

A DECISION OF THE SUPERINTENDENT OF PENSIONS PURSUANT TO SECTION 17 OF *THE PENSION BENEFITS ACT, 1992* (THE "PBA") RELATING TO THE REGISTRATION OF AMENDMENT P-23 TO THE CCRL PETROLEUM EMPLOYEES' PENSION PLAN (THE "PLAN"), PLAN REGISTRATION NUMBER 0358986

Superintendent of Pensions:	**Roger Sobotkiewicz**
Date of decision:	**December 30, 2020**
Date of written reasons:	**February 24, 2021**

Reasons and Decision of the Superintendent:

1. On October 19, 2020, Consumers' Co-operative Refineries Limited ("CCRL") filed an amendment which CCRL labeled No. P-23 ("Amendment P-23") to the Plan in accordance with section 17(1) of the PBA. Unifor Local 94 ("the Union") consented in writing to Amendment P-23. Amendment P-23 is intended, among other things, to put into effect the collective agreement made June 22, 2020 between CCRL and the Union which appears to be principally aimed at reducing the cost of the Plan to CCRL. The key outcomes arising from that collective agreement for our purposes here are:

    - going forward from the date of the collective agreement members would be required to make contributions towards the funding of the Plan;
    - active members in the Plan as of December 31, 2020 would be provided the choice to opt-out of the Plan effective December 31, 2020 ("Opt-Out Members") or to remain in the Plan ("Opt-In Members"). After December 31, 2020, the Plan would be partially terminated in respect of the Opt-Out Members;
    - the indexation benefits are changed both for past and future service, including complete elimination of indexation for Opt-In Members after December 31, 2020.

2. Amendment P-23 also puts into effect an agreement between CCRL and the Union to resolve a grievance made by the Union regarding the administration of a provision of the Plan. Effective January 1, 2017, Amendment P-23 removes the option for members to elect to receive an annuity from an insurance company in lieu of the retirement benefit provided under the Plan. It also provides members who commenced the payment of a retirement benefit under the Plan between February 1, 2007 and December 31, 2016 a one-time option to elect to receive in lieu of the remainder of that retirement benefit an annuity from an insurance company.

3. A number of stakeholders, including retirees and Union members of the Plan, made submissions to me concerning the registration of Amendment P-23. Some of the submissions opposed the registration of Amendment P-23. After reviewing the PBA and the Plan, and considering the submissions of the stakeholders concerning the registration of Amendment P-23, I notified CCRL and other stakeholders on December 30, 2020 that I had decided to register Amendment P-23. I indicated that written reasons for my decision would follow.

4. As indicated in the notice on December 30, 2020 regarding my registration decision, I have registered Amendment P-23. However, one aspect of the amendments, the lowering of the indexation cap from 5% to 2% for service prior to 2021 provided for in clause 3(h), cannot be registered as I am not satisfied it is in compliance with the PBA. Accordingly, that aspect has been severed from Amendment P-23 as registered. These are the reasons for my December 30, 2020 decision.

Background:

5. The Plan was originally registered under the predecessor to the PBA effective as of January 1, 1971 and has been amended on a number of occasions since that time. Prior to the making of Amendment P-23, the Plan was a non-contributory defined benefit plan, meaning only the employer contributes to the funding of the Plan. The Plan was closed to new management employees effective December 31, 2007 and closed to new unionized employees effective April 3, 2017.

6. In or about February 2007 the Plan was amended as a result of collective bargaining between CCRL and the Union to include a provision that the Plan may not be amended, modified or terminated without the mutual agreement between CCRL and the Union. A subsequent amendment was made to the Plan modifying this provision so that

amendments, modifications or terminations of the Plan that solely affect management members of the Plan do not require mutual agreement between CCRL and the Union. The net result of these two modifications of the Plan is that the Union must agree to any amendment, modification or termination of the Plan that affects Union members.

7. In 2019 CCRL made an amendment to the Plan they labeled Amendment P-22 ("Amendment P-22"). Amendment P-22 was filed for registration on September 4, 2019, and was registered by me on December 12, 2019. On December 19, 2019, I issued reasons for my decision to register Amendment P-22 in A DECISION OF THE SUPERINTENDENT OF PENSIONS PURSUANT TO SECTION 17 OF *THE PENSION BENEFITS ACT, 1992* RELATING TO THE REGISTRATION OF THE AMENDMENT P-22 TO THE CCRL PETROLEUM EMPLOYEES' PENSION PLAN (THE "PLAN"), PLAN REGISTRATION NUMBER 0358986 (the "2019 Decision").

8. Amendment P-22 made nine key changes to the Plan with respect to management members who were employees of CCRL on December 31, 2019. It:

- froze their earnings and highest average earnings;
- froze their continuous service;
- froze their pensionable service;
- provided that those members ceased eligibility for membership in the Plan;
- amended the manner in which indexing is determined for those members;
- established certain benefit entitlements for those members;
- provided the terms under which annuities would be purchased for those members by CCRL;
- partially terminated the Plan in respect of those members; and
- established a requirement that CCRL make an extra contribution to the Plan to ensure that the solvency ratio of the Plan was not adversely affected when money was transferred out of the Plan with respect to the management members subject of the partial termination.

9. On October 19, 2020, Amendment P-23 was filed for registration with my office. On the same day that Amendment P-23 was filed for registration, CCRL's Pension Manager advised the President of the Union that it was filed.

Amendment P-23:

10. A more detailed summary of the various amendments that comprise Amendment P-23 is set out below. The amendments come into effect on different dates, depending on the specific amendment in question. Some amendments are made effective prior to the date

Amendment P-23 was made, others are made effective subsequent to the making of Amendment P-23. The amendments will be grouped according to their effective date.

Amendment Effective January 1, 2017

Retroactive Removal of Option to Receive Annuity in Lieu of Retirement Benefit

11. Clause 1 of Amendment P-23 adds to section 6.09 of the Plan to provide that, effective January 1, 2017, there will no longer be an option to elect to receive an annuity in lieu of the retirement benefit provided under the Plan. The newly added portion of section 6.09 then goes on to add that, if a member commenced the payment of a retirement benefit under the Plan between February 1, 2007 and December 31, 2016, inclusive, CCRL shall give the member a one-time option to elect to receive in lieu of the remainder of that retirement benefit a life annuity from an insurance company licensed to transact business in Saskatchewan. The annuity must be payable in the same amount and on the same terms and conditions as the member's retirement benefit under the Plan, and it must be payable in accordance with all applicable requirements of the PBA. Within 90 days of receiving an election from a member, CCRL will cause an annuity to be issued to the member, and when the group annuity policy is purchased, it will contribute to the Plan the amount necessary to ensure that the solvency ratio of the Plan is not adversely affected by that purchase.

Amendments Effective June 22, 2020

Updates Definition of Union to Reflect Current Union

12. Clause 2(a) of Amendment P-23 amends the definition of "Union" in the Plan to reflect that the Union representing unionized members is now Unifor Canada.

Requires Member Contributions

13. Clause 2(b) of Amendment P-23 deletes and replaces section 4.01 of the Plan.

    The new section 4.01 states that from each payment of earnings to a member, CCRL must deduct and pay to the pension fund, as a contribution from the member:

    i. 4% of the members' earnings after June 21, 2020 and before February 1, 2021;
    ii. 8% of the members' earnings after January 31, 2021 and before February 1, 2022;

iii. After January 31, 2022, 50% of the Plan's current service costs, as a minimum and a maximum, based on the most recent actuarial valuation report of the Plan filed in accordance with the PBA.

The new section 4.01 goes on to state that the member contribution rate shall change whenever an actuarial valuation report is filed, and that CCRL will determine the frequency of filing an actuarial valuation report, subject to the requirements of the PBA.

Confirms CCRL Responsible for Funding Amounts Required in Excess of Member Contributions

14. Clause 2(c) of Amendment P-23 deletes and replaces section 4.02 of the Plan.

The new section 4.02 states that CCRL will, on the advice of the actuary, contribute to the pension fund such amounts in excess of member contributions made pursuant to section 4.01 as are required to maintain the pension fund at a level to meet the solvency requirements prescribed by the PBA. The new section 4.02 then states that, for greater certainty, it is confirmed that CCRL is responsible for the portion of the current service costs in excess of the member contributions made pursuant to section 4.01.

Confirms Contributions can be Refunded to Avoid Revocation under the Income Tax Act

15. Clause 2(d) of Amendment P-23 deletes and replaces section 4.03 of the Plan.

The new section 4.03 states that contributions made by CCRL or by a member may be refunded to CCRL or the member, as applicable, where required to avoid revocation of registration of the Plan under the *Income Tax Act*, subject to the approval of the Superintendent of Pensions for Saskatchewan.

Confirms Contributions in Excess of 50% of Commuted Value May be Returned to Member

16. Clause 2(e) adds a new section 15.05 to the Plan.

The new section 15.05 states that, if a member terminates employment with CCRL, dies before commencing a pension from the Plan or commences a pension from the Plan, the portion of the member's total contributions under section 4.01 with interest, if any, that exceeds 50% of the commuted value of the pension earned by the member with respect to all of the member's pensionable service, must, at the option of the member or, if appropriate, the member's surviving spouse or beneficiary, be returned in cash or transferred to a registered retirement savings plan or other vehicle permitted by the PBA.

Amendments Effective December 31, 2020

Adds Definition for Opt-Out Members

17. Clause 3(a) of Amendment P-23 adds a new section 1.01A to the Plan that defines "2020 Opt-Out Member" to mean a member that elects in accordance with the collective agreement made June 22, 2020 between CCRL and the Union to terminate participation in the Plan effective December 31, 2020.

Freezes Continuous Service for Opt-Out Members

18. Clause 3(b) of Amendment P-23 amends the definition of "Continuous Service" in section 1.05 of the Plan to provide that if an Opt-Out Member is an employee on December 31, 2020, no period of employment, paid sick leave or accident leave, approved unpaid absence or disability while in receipt of benefit payments under CCRL's insured long term disability plan by that person after that date shall be recognized as continuous service of that person.

Freezes Earnings for Opt-Out Members

19. Clause 3(c) of Amendment P-23 amends the definition of "Earnings" in section 1.08 of the Plan to provide that if an Opt-Out Member is an employee on December 31, 2020, no form of compensation paid after that date to that person shall be recognized as earnings of that person.

Freezes Highest Average Earnings for Opt-Out Members

20. Clause 3(d) of Amendment P-23 amends the definition of "Highest Average Earnings" in section 1.11 of the Plan to provide that if an Opt-Out Member is an employee on December 31, 2020, that person's highest average earnings shall be determined having regard solely to the person's earnings to that date. This amendment goes on to provide that if an Opt-Out Member who is an employee on December 31, 2020 has less than 36 months of employment with CCRL at that date, that person's highest average earnings shall equal the person's average annual earnings during the person's period of employment with the company to December 31, 2020.

Freezes Pensionable Service for Opt-Out Members

21. Clause 3(e) of Amendment P-23 amends the definition of "Pensionable Service" in section 1.21 of the Plan to provide that if an Opt-Out Member is an employee on December 31, 2020, no period of employment, paid sick or accident leave, approved unpaid absence or

disability while in receipt of benefit payments under CCRL's insured long term disability plan by that person after that date shall be recognized as pensionable service of that person.

Ensures Opt-Out Members Still Considered to be Union Members on Partial Termination.

22. Clause 3(f) of Amendment P-23 amends the definition of "Union Member" in section 1.28 of the Plan to provide that a member is also considered a Union member for the purposes of the Plan if that member is a member of the Union at the date of applicable plan termination.

Terminates Plan for Opt-Out Members

23. Clause 3(g) of Amendment P-23 adds a new section 2.10 to the Plan, which states that the Plan is terminated as at December 31, 2020 in respect of each Opt-Out Member who is an employee on December 31, 2020. This new section goes on to provide that each such individual shall become entitled to receive the individual's then existing entitlements under the Plan, being the benefits payable under the Plan calculated having regard to the individual's earnings, continuous service and pensionable service to and including December 31, 2020. It concludes by stating that each such individual member shall cease to accrue further benefits under the Plan on December 31, 2020, and shall accrue no further benefits under the Plan after that date.

Amends Past Service Indexing and Removes Future Service Indexing for Opt-In Members

24. Clause 3(h) deletes and replaces subsection 6.06(2) of the Plan.

    The new subsection 6.06(2) states that all retirement benefits in respect of pensionable service before 2021 shall be increased annually on January 1 by three-quarters of the percentage increase in the Consumer Price Index for the province of Saskatchewan for the previous calendar year to a maximum of 2% per year, pro-rated for a partial year, commencing on the member's retirement date, including the deferred retirement date of a terminated vested member. The new subsection 6.06(2) goes on to state that, despite the change to the maximum increase caused by that clause, if a member's pension commenced payment before 2021, the reference to 2% is deemed to be 5%. It then states that, for greater certainty, retirement benefits in respect of pensionable service after 2020 shall not be increased annually.

    Prior to Amendment P-23, for retirement on or after February 1, 2007, the maximum annual increase provided by the Plan was 5% per year, pro-rated for a partial year, commencing on the member's retirement date, including the deferred retirement date of a terminated vested member. This clause of Amendment P-23 in effect reduces the maximum cap on annual indexation with respect to past service of all Opt-In Members

from 5% to 2%. The sole exception is members whose pension has commenced payment before 2021, for whom the maximum cap on annual indexation with respect to past service remains at 5%.

Amends Past Service Indexing for Opt-Out Members

25. Clause 3(i) adds a new subsection 6.06(4) to the Plan.

The new subsection 6.06(4) states that, despite subsection 6.06(2), for any Opt-Out Member, retirement benefits shall be increased annually on each January 1 after pension commencement by the lesser of: (1) three-quarters of the implied percentage increases in the Consumer Price Index that would be used to determine an Opt-Out Member's commuted value as at December 31, 2020, and (2) 2.0%. The new subsection goes further to state the annual increase so determined will be pro-rated for a partial year and adds for greater certainty that the implied percentage increases in the Consumer Price Index referred to are the increases in the Consumer Price Index for the applicable years determined by the actuary in accordance with paragraph 3540.10 of the Standards of Practice of the Canadian Institute of Actuaries when calculating the commuted values payable to the Opt-Out Members.

This clause of Amendment P-23 in effect reduces the annual indexation cap for Opt-Out Members from 5% to 2% for past service and converts the method of calculating the indexation from a value that floats based on a formulaic relationship with actual CPI experience to pre-determined fixed amounts calculated using the same formulaic relationship to the CPI, but based on the current actuarially predicted future CPI.

Provides Benefit Entitlement Options for Opt-Out Members

26. Clause 3(j) adds a new section 14.08 to the Plan.

The new section 14.08 provides that Opt-Out Members will be given the following options in terms of benefit entitlements:

1(a) If an Opt-Out Member has, as of December 31, 2020, either: (1) attained age 65, (2) attained age 60 and completed 10 years of continuous service, or (3) attained age 55 and completed 30 years of continuous service, they will be given the choice between:

- an immediate unreduced pension calculated in accordance with the provisions in the Plan, adjusted to take into account the revised definitions of earnings, highest average earnings, continuous service, and pensionable service, and to reflect the changes to the manner in which indexing is calculated; and

- the transfer of the commuted value of that immediate unreduced pension in accordance with the portability provisions in the Plan.

2(a) If an Opt-Out Member has, as of December 31, 2020, attained age 55 but is not eligible for an immediate unreduced pension in accordance with option 1, they will be given the choice between:

- an immediate reduced pension calculated in accordance with the provisions in the Plan, adjusted to take into account the revised definitions of earnings, highest average earnings, continuous service, and pensionable service, and to reflect the changes to the manner in which indexing is calculated; and

- the transfer of the commuted value of that immediate reduced pension in accordance with the portability provisions in the Plan.

3(a) If an Opt-Out Member has, as of December 31, 2020, not attained age 55, they will be given the choice between:

- a deferred pension calculated in accordance with the provisions in the Plan, adjusted to take into account the revised definitions of earnings, highest average earnings, continuous service, and pensionable service, and to reflect the changes to the manner in which indexing is calculated; and

- the transfer of the commuted value of that deferred pension in accordance with the portability provisions in the Plan.

The Opt-Out Member may elect to have their deferred pension commence payment on the first day of any month after the Opt-Out Member attains age 55. If the Opt-Out Member elects to commence the payment of the deferred pension before the Opt-Out Member's normal retirement date, the deferred pension will be reduced in the manner described in the Plan, adjusted to take into account the revised definitions of earnings, highest average earnings, continuous service, and pensionable service.

The new section 14.08 further provides that if an Opt-Out Member does not elect within the time limit specified in the Plan, or such later time limit as is required to comply with the PBA, to transfer the commuted value of the Opt-Out Member's immediate or deferred pension to one of the vehicles described in the portability provisions of the Plan, such pension will, after giving notice to the Opt-Out Member in accordance with the rules established in the PBA, be provided through the purchase of an immediate or deferred life annuity.

<u>Provides Default Benefit Entitlement Option for Opt-Out Members</u>

27. Clause 3(k) of Amendment P-23 adds a new section 14.09 to the Plan.

The new section 14.09 provides that if an Opt-Out Member elects to receive an immediate or deferred pension, or fails to elect to transfer the commuted value of such pension within the time limit, such pension will be provided through the purchase of an immediate or deferred life annuity from an insurance company. The new section 14.09 further provides that such annuity must be payable in the same amount and on the same terms and conditions as the Opt-Out Member's retirement benefit under the Plan and it must also be payable in accordance with all applicable requirements of the PBA, including the requirements relating to non-assignment and non-commutation of benefits and division of benefits upon breakdown of a spousal relationship.

Requires CCRL Top-Up Funding as Required to Preserve Solvency Ratio

28. Clause 3(l) of Amendment P-23 adds a new section 14.10 to the Plan.

    The new section 14.10 provides that whenever CCRL purchases a group annuity policy or transfers a commuted value for the Opt-Out Members affected by the partial termination, it shall contribute to the pension fund the amount necessary to ensure that the solvency ratio for the remaining members of the Plan is not adversely affected by that purchase or commuted value transfer.

Opportunity to be Heard Process:

29. The process followed in arriving at my decision to register Amendment P-23 was different than the process followed when I made the 2019 Decision and from the process followed in many other registration decisions we have made in our office. I believe it is important for me to describe the registration decision-making process set out in the PBA and why the specific approach taken in making this decision was taken.

30. The PBA does not contemplate a formal hearing process or that the plan administrator or any other stakeholders be provided with an opportunity to be heard prior to the Superintendent making a decision with respect to registration of a plan amendment. The only right to be heard contemplated in the PBA in connection with the registration of a plan amendment is the right of a plan administrator to be heard after the Superintendent refuses to register an amendment filed by that administrator. This is set out in section 22 of the PBA, which provides:

> **Objection to certain actions of superintendent**
> **22**(1) If the superintendent refuses to register a plan or a plan amendment, cancels a registration pursuant to subsection 21(1) or directs an administrator to amend an

actuarial valuation report or cost certificate pursuant to subsection 11(5), the superintendent shall give the administrator notice in writing of that fact and set out the reasons for the decision in the notice.
(2) In the case of a cancellation of registration, the superintendent shall specify the effective date of cancellation in the notice.
(3) Within 60 days after receiving a notice pursuant to subsection (1), the administrator may deliver to the superintendent a notice of objection setting out the reasons for the objection and all relevant facts.
(4) On receipt of a notice of objection, the superintendent shall:
(a) reconsider the refusal, cancellation or direction to amend;
(b) provide the administrator with an opportunity to make representations, if the administrator has requested the opportunity to do so;
(c) rescind, vary or confirm the previous decision; and
(d) give a notice in writing to the administrator that states the decision and the reasons for the decision.
(5) Where an administrator delivers a notice of objection pursuant to subsection (3), the administrator may, notwithstanding the decision of the superintendent mentioned in subsection (1), administer the plan in a manner that reflects the amendment or report or cost certificate until the matter is dealt with pursuant to subsection (4).

31. Plan administrators have the right to appeal a decision of the Superintendent to refuse registration of a plan amendment to the Court of Queen's Bench. This appeal provision is notable in that it requires the administrator to only provide notice of the appeal to the Superintendent and not to any other plan stakeholders, such as members and former members. The appeal provision is found in section 23 of the PBA, which provides:

Appeal to court
23(1) Where the superintendent has confirmed a decision pursuant to subsection 22(4), the administrator may appeal to the court by notice of motion for an order requiring the superintendent to register the plan or amendment, reinstate the registration or rescind the direction to amend, as the case may require.
(2) A copy of the notice of motion must be filed with a local registrar of the court and served on the superintendent within 30 days after delivery of the notice pursuant to subsection 22(4) or any longer period that the court allows.
(3) Where an administrator serves a notice of motion pursuant to subsection (2), the administrator may, notwithstanding the superintendent's decision, administer the plan in a manner that reflects the amendment, actuarial valuation report or cost certificate until the court disposes of the matter.

32. The plan administrator is not required under the PBA to provide notice to plan members of amendments filed for registration until 90 days after the amendment has been registered by the Superintendent. This post-registration right to notice is not expressly extended under the PBA to former members, such as retirees. The right to notice of

amendments is set out in subsection 13(1) of the PBA and subsection 11(2) of *The Pension Benefits Regulations, 1993* (the "PBR"), which provides:

> **Administrator to provide information**
> **11…**
>
> (2) The administrator shall, pursuant to clause 13(1)(a) of the Act, provide to each member of a plan an explanation or summary of an amendment to the plan and of the relevant entitlements and obligations under that amendment within 90 days after the registration of the amendment.

33. This registration framework in the PBA may seem unusual in that it does not provide for participation in the amendment registration or hearing process by parties who may be significantly impacted by the amendment and for whom the PBA establishes certain rights and protections. It is beyond question that one of the main objectives of the PBA is to protect the interests of plan members and former members. This is made evident by the protections set out in sections 9(1)(a)(ii), 9(3), 11(2), 19(3), 19(5), 41 and 43 of the PBA, to name just a few.

34. While the registration framework in the PBA does not contemplate direct member or former member involvement in the registration process or hearings arising out of that process, it does contain mechanisms to ensure member and former member rights and interests are protected. The sections listed in the paragraph above are prime examples. Much of the onus of protecting the rights and interests of members and former members rests with the Superintendent, to be exercised through the Superintendent's discretionary decision–making responsibilities under the PBA. Indeed, this solemn responsibility has been recognized in court decisions such as *Huus v. Ontario (Superintendent of Pensions)*, [2002] 58 O.R. (3d) 380 (Ontario Court of Appeal) ("*Huus*") and *Hawker Siddeley Canada Inc. v Nova Scotia (Superintendent of Pensions)*, [1993] NSJ No 407 (Nova Scotia Supreme Court) affirmed by the Nova Scotia Court of Appeal in [1994] NSJ No 102 ("*Hawker*")

35. The Superintendent is not the only source of protection for members and former members in the regulatory framework established in the PBA. For example, section 12 of the PBA establishes the concept of pension advisory committees, including the right in some circumstances for members and former members to have such a committee in their workplace and participate in the committee. That section provides:

> **Pension advisory committee**
> **12**(1) Where the employer is the administrator of a plan:

(a) the employer may establish a pension advisory committee; and
(b) if the plan has 50 or more members and a majority of the members so requests, the employer shall establish a pension advisory committee.

(2) A pension advisory committee established pursuant to subsection (1):
(a) must include representatives of the members, chosen directly or indirectly by the members in accordance with the provisions of the plan; and
(b) if the plan has 50 or more former members who have commenced receiving a pension and a majority of those former members so requests, must include a representative of those former members, chosen directly or indirectly by those former members in accordance with the provisions of the plan.

(3) A pension advisory committee established pursuant to subsection (1) shall:
(a) promote awareness and understanding of the plan among members and potential members;
(b) advise the administrator with respect to matters of concern to the members and former members;
(c) review periodically the financial, actuarial and administrative aspects of the plan;
(d) carry out any other duties that are specified by the plan or the employer.

(4) The employer shall provide the pension advisory committee with any information that is required by the committee for the purpose of enabling it to perform its duties.

36. This unique framework in the PBA is a product of the nature of pension plans and the objectives behind the PBA. Pension plans are more than just complex contracts that have very serious ramifications for the parties to those contracts, they are the backbone of the Canadian retirement income system. While there are alternative retirement savings vehicles to pension plans, pension plans remain a core part of the broader system. This recognition that pension plans serve an important social good is infused throughout the PBA and is the reason the PBA is structured the way it is. As I noted in paragraph 148 of the 2019 Decision, embedded in the PBA is a delicate balance best described by the Supreme Court of Canada in *Monsanto Canada v Ontario (Superintendent of Financial Services)*, 2004 SCC 54, where the Court said the following about the objectives of the pension benefits legislation of Ontario:

> 14 On the one hand, the protection of the rights of vulnerable groups is a central and long-standing function of the courts. The protectionist aim of the legislation is especially evident in s. 70(6), which seeks to preserve the equal treatment and benefits between situations of partial wind-up and full wind-up. **On the other hand, pension standards legislation is a complex administrative scheme, which seeks to strike a delicate balance between the interests of employers and employees, while advancing the public interest in a thriving private pension system…**
>
> [Emphasis added]

37. This registration decision is one of the key mechanisms through which this delicate balance is maintained and the Superintendent is the point person the PBA charges with the responsibility of ensuring this balance is adhered to. At the end of the day, the framework in the PBA demands that the Superintendent make the 'right' decision that strikes this balance as guided by the specific provisions of the PBA registration framework, including subsection 19(3). The nature of this decision is very different than a decision in which the decision-maker is charged with settling a dispute between two opposing parties or the sanctioning or punishment of an individual or individuals. For one, the decision-maker in those other types of decisions is typically expected to be a stranger to the parties, without any substantive knowledge of the facts of the issue in question, in order to ensure not only impartiality of the decision-maker, but the perception of impartiality by the parties and the public. In registration decisions under the PBA, the Superintendent is not going to be a stranger to the parties, nor to the substantive factual framework against which the decision must be made. The registration framework established in the PBA expects the exact opposite: a decision-maker who is not a stranger to the parties and who has a diligent understanding of the plan in question and the respective interests of the parties affected by the decision. How else is the Superintendent to effectively protect the interests of members and former members as dictated by sections 9(1)(a)(ii) and 19(3) of the PBA and noted in court decisions such as *Huus* and *Hawker*.

38. It for this very reason that the typical practice in our office is to encourage plan administrators to provide advance notice to our office of any intended amendments, other than simple, non-contentious amendments, before they are made. Once that initial notice is provided to our office, we engage in what is often a series of communications over a period of time with the plan administrator to ask questions and get the information we need to identify obvious concerns we might have with the planned amendments and their impact on the funded status of the plan or their compliance with the PBA or the terms of the plan. All of this is done in advance of the actual filing of the amendment for registration. The result of these advanced communications is frequently that problems with the amendments, such as unintended reductions of member accrued benefits, are identified and remedied by the plan administrator before the filing of the amendment. For a number of reasons, including that amendments have the potential to materially alter the funded status of a plan and the cost to administer a plan in the future, the planning and drafting of most plan amendments are significant undertakings for plan administrators requiring technical assistance from professional advisors, including actuaries and lawyers well-versed in pension law. In some cases, our advanced discussions identify more significant issues with intended amendments and cause the plan administrator to scrap the planned amendments and go back to the 'drawing board'. If the registration decision-making process set out in the PBA was drawn up to resemble the process used by courts,

these advanced reviews would not be possible and the rate of refused registrations would increase, causing increased cost and delay to all parties involved.

39. Another reason why the regulatory framework of the PBA contemplates a different decision-making process than is typically used by the courts and other decision-making bodies is the large number of parties and potential conflicting interests that may be involved in a registration decision. Pension plans can be very large, often having hundreds or thousands of members and former members. It is not uncommon for active members and retirees to have conflicting positions with regard to the registration of an amendment, as the nature of their interests and concerns are different. It is also not unheard of for different cohorts within those two groups to have conflicting perspectives as well. Following a process where the only communication of evidence and submissions to the decision-maker occurs within an open forum in which all interested persons are present and have the opportunity to respond to all other submissions would be extremely cumbersome and impractical in the PBA registration context.

40. It is for these reasons that the PBA does not envision or contemplate that the Superintendent, in making a registration decision such as this one, is limited to deciding based only upon the submissions of interested or affected parties. The PBA contemplates the very opposite, that the Superintendent make a registration decision without any submissions.

41. However, while the PBA does not contemplate the involvement of members or former members in the plan amendment registration process or any hearings arising out of the process, it is my view that in many circumstances providing the opportunity for members and former members to make submissions regarding an amendment prior to its registration is not only appropriate, but better ensures that their interests are understood and that the 'right' decision is made by the Superintendent. I am also aware of court decisions in other provinces determining that the pension regulator in those jurisdictions is required by the common law duty of fairness to provide members or former members in certain circumstances with an opportunity to be heard.

42. With respect to the present decision regarding registration of Amendment P-23, originally the Deputy Superintendent of Pensions (the "Deputy Superintendent") was scheduled to make the registration decision. Due to the fact that the amendment involves a reduction of member benefits, including in relation to past service, and because the Deputy Superintendent was aware of at least one member who opposed the amendment, the Deputy Superintendent asked the plan administrator to provide notice to members and former members that they may provide submissions to her regarding registration of Amendment P-23. She set a deadline of December 18th for submissions to be received. This notice that included the first request for submissions was sent out by CCRL on

November 27, 2020 (the "November 27th Request for Submissions") After that notice was sent out, it came to the attention of the Deputy Superintendent that facts existed that might lead some to perceive the Deputy Superintendent was in a conflict of interest with respect to making the registration decision. As a result, notice was provided to CCRL, and CCRL was asked to provide notice to members and former members, that I would be making the registration decision.

43. I received a total of eleven submissions (the "December 18th Submissions") from members and former members in response to the November 27th Request for Submissions, with one submission being a joint submission sent on behalf of five former members of the Plan who identify themselves as the CCRL Retirees Pension Committee. Seven of the December 18th Submissions, including the joint submission, were opposed to the registration of Amendment P-23 on various grounds. One of the December 18th Submissions raises no concerns and I would characterize it as generally supportive of the registration of Amendment P-23. The other three December 18th Submissions are neither expressly supportive nor opposed to the registration of Amendment P-23. Seeing as the November 27th Request for Submissions expressly invited submissions regarding concerns about the registration of Amendment P-23 and no concerns were set out in these three submissions, I view these submitters to be not opposed to the registration of Amendment P-23.

44. A Plan member who provided one of the December 18th Submissions provided a subsequent email on December 22, 2020 attaching a letter dated December 21, 2020 from an actuary, Mr. K. Paul Duxbury, F.C.I.A., C.F.P. (the "Duxbury Letter"). This letter was provided in support of the submitter's contention that Amendment P-23 results in a reduction of members' accrued benefits. In the Duxbury Letter, Mr. Duxbury speaks to actuarial standards and practice as they apply to Amendment P-23 and I found his letter to be very helpful. I also considered the Duxbury Letter to be actuarial evidence as opposed to a statement of position or description of concerns.

45. In light of the fact that I had received new actuarial evidence that was relevant to the registration decision that had not been seen by any of the other stakeholders of the Plan, I decided to share it with CCRL and those members and former members who made a submission included in the December 18th Submissions (the "December 18th Submission Providers"). The December 22nd notice from our office to CCRL and the December 18th Submission Providers enclosed a copy of the Duxbury Letter and asked for submissions concerning the actuarial opinion of Mr. Duxbury (the "December 22nd Request for Submissions"). In particular, this notice sought submissions on the actuarial methodology to be applied in the present circumstances and the appropriateness of certain actuarial assumptions Mr. Duxbury suggested could be used and lead to a finding that the reduction in the maximum indexation cap for past service resulted in a reduction of accrued

benefits. I set a December 28, 2020 deadline for submission responses with respect to the Duxbury Letter.

46. I received a total of four submissions in response to the December 22nd Request for Submissions. They consisted of three submissions from December 18th Submission Providers and a submission from CCRL's legal counsel (the "December 28th Submissions"). The three December 28th Submissions provided by December 18th Submission Providers all reiterated their objections to the registration of Amendment P-23, and in some cases provided general support for Mr. Duxbury's views. The CCRL submission enclosed a copy of a letter dated December 24, 2020 from Mr. Ryan Welsh, F.S.A., F.C.I.A. and Mr. Nathan Conway, F.S.A., F.C.I.A., actuaries with Aon, to the Chair of the CCRL Pension Committee (the "Aon Letter"). The Aon Letter responded to the actuarial evidence provided by Mr. Duxbury and provided their views on the appropriateness of the actuarial methodology applied by CCRL when determining whether Amendment P-23 reduces accrued benefits. In light of the fact that the Aon Letter was new actuarial evidence much like Mr. Duxbury's, I considered whether to provide a copy of the Aon Letter to the December 18th Submission Providers to allow them an opportunity to speak to this evidence. I concluded for the reasons set out in further detail below that seeking further submissions on the Aon Letter would not provide any additional evidence that could affect the outcome of my decision and for that reason was unnecessary.

The Submissions:

47. Both the December 18th Submissions and the December 28th Submissions (together, the "Submissions") shed important light on the concerns and perspectives of some of the Plan's members and former members. I have summarized the Submissions below, organized by topic.

Change to reduce the indexing cap from 5% to 2% per year for past service

Submissions from active members:

48. Five active plan members made submissions regarding the change from the 5% maximum indexation cap to the 2% maximum indexation cap for benefits earned prior to the date of the amendment.

49. Essentially, these members submit that the change to the maximum indexing from the 5% cap to the 2% cap for past service reduces benefits that the members have already accrued in contravention of subsection 19(3) of the PBA and subsection 14.02(1) of the Plan text.

For example, one of these members ("Submitter A1") stated in his submission dated December 13, 2020:

> My concern is how the company can get away with changing the equation retroactively in regards to the indexing. I believe they should only be able to make the changes going forward.

Similarly, another member ("Submitter A2") stated in her submission:

> The retroactive reduction in indexing is an accrued benefit that I have already earned with my previous years of pensionable service.

Another member ("Submitter A3") pointed out in his submission that:

> . . .
>
> In a prior 76 page ruling regarding management and the company in regards to the same pension plan, the Superintendent of Pensions has already ruled at length that indexing is an accrued benefit that cannot be reduced for past service. Part of the indexing benefit was the 5% maximum, reducing that maximum to 2% may affect that earned benefit should ¾ of CPI exceed the 2% maximum in any year in retirement.

50. Another active member ("Submitter A4") who indicated he was within a few months from reaching his early retirement date expressed concern that he would be "greatly affected by the indexing cap reduction as proposed". He summarized his concerns as follows:

> My concerns about the amendment specifically relate to the change from 5% maximum indexation to 2% maximum indexation, for benefits earned prior to the date of the amendment. This aspect of the amendment violates section 19(3) of the Saskatchewan Pension Benefits Act ("PBA") and 14.02(1) of the pension plan text, insofar as it purports to reduce benefits earned prior to the date of the amendment.
>
> On a related note I have lived my entire working career, making all my financial decisions that I did not have to save or worry about funds into retirement. It was secure with an indexed pension. Why would you have to worry or save? It was protected by law and held in trust. It was indexed to inflation. And having lived the tail end of high inflation and interest rates in the 90's but having heard stories about the 80's with Gerald Bouey, fighting inflation. I thought having an indexed pension was all I needed. I trusted my indexing would be there to protect me when I retired, just like all the older members had done before me.
>
> I have been accruing a pension for 32 years. The value of this pension has always been inextricably tied to the inflation protection provided under the Plan. To the extent that the amendments removes part of that inflation protection, it has altered my accrued

benefit and is therefore in violation of section 19(3) of the Act as well as section 14.02(1) of the pension plan text.

51. Submitter A4 then goes on to refer to several court decisions on the issue of accrued benefits and makes extensive submissions in support of his position that the proper interpretation based on subsection 19(3) of the PBA and the Plan is that indexing does not accrue only upon retirement, members accrued indexing benefits as they earn service. Following this, he refers to the Manitoba Court of Appeal's decision in *Dinney v. Great-West Life Assurance Co et al.*, 2005 MBCA 36 ("*Dinney*"), and in particular to the reference in paragraph 22 of that decision to the Supreme Court of Canada's decision in *Schmidt v. Air Products Canada Ltd*., 1994 CanLII 104 (SCC), [1994] 2 S.C.R. 611 ("*Schmidt*"), and appears to go on to suggest that the nature of the benefit that has accrued is the indexing formula itself. In this regard he states:

> The first sentence by Cory J. gives great clarity once again to the fact that "*Once funds are contributed to the pension plan"*, on the members behalf are accrued benefits… I also contend that the *"fixed amount according to the formula"* includes indexing. In my view Cory J. was making no distinction in regards to referencing the formula.
>
> In my case my formula is 30 years x 2% x base wage (including shift differential and stat hours) with a CPP offset at age 65, and indexed at date of retirement to 75% of CPI for the province of Sask to a max of 5% for all years worked before 2021. If the formula is all inclusive to describe the benefit then it all should by extension be afforded the same protection under 19(3) of the Sask Act.

52. Later in his submission after referring to the use of the word "entitlements" in subsection 14.02(1) of the Plan text and referring to section 1.15 for the definition of "locked in", Submitter A4 noted:

> So, 1.15 has defined entitlements to include indexing with regards to the definition of Locked In. Would it not be correct to use the same premise when defining entitlements with regards to protection of entitlements from an amendment reduction as well in 14.02 (1). Here we have the same word used to describe funds so the same criteria should be applied as well.
>
> Further on this train of thought, the word entitlements are used in 14.02 (1) and it is again used in 1.15 in the context that the entitlements that are locked in, provided one of the provisions are met are the one and the same. To reinforce the point, should a member have provision #2 applied, which is retirement, there suddenly is not a sudden influx of monies to the members standing to cover off indexing as opposed to should the member have used provision #5, two years of service. I contend that the language,

> when looked at in it's whole, to convey the meaning that No Amendment was allowed to reduce one's pension on a retroactive basis, including indexing as was later added and the related cap.

53. Submitter A4 also referred to the decision of the Alberta Court of Appeal in *Halliburton Group Canada Inc. v. Alberta*, 2010 ABCA 254 and states:

> The *Halliburton* decision contains a clear articulation of the argument that I am making here, and as an appellate decision from another jurisdiction, it should be afforded considerable weight in your deliberations.

Submitter A4 also took the position that the information relied upon by members as set out in the annual pension statements provided to members by the Plan administrator should be taken into account for the purposes of the pending decision. He pointed out that his annual pension statement, "a statute mandated document", included a statement that all retirement benefits would be indexed annually by 75% of the percentage increase in the CPI for Saskatchewan up to a maximum of 5%.

54. After referring to the treatment in the 2019 Decision of subsections 6.06(1) and (2) of the Plan text, Submitter A4 notes that subsection 6.06(2) was "earned in respect of Pensionable Service" and then states:

> . . . I then refer to paragraph 144 where the Superintendent again affirmed that *"This wording is even more express that members accrue the value of the indexing as they earn service." ……." otherwise it would have been a reduction to amend the plan to include s.6.06(2) in the first place…."* This clearly establishes the point that the indexing as it presently stands, including the 5% cap, is an accrued benefit and to reduce it as proposed by amendment P-23 is a reduction in a member benefits and contravenes section 19 (3) of the *Saskatchewan Pension Benefits Act* and therefore should not be approved but rejected.
>
> I would even go further in pointing out in paragraph 143, last sentence that since the normal practice of the company has been to include the indexing benefit in the commuted values constitutes an accrued benefit as well. And if I may point out that section 11 (2) (d) of the Sask PBA requires administrators to not prefer the interests of one member over another. Therefore, the members who have elected to take a commuted value vs those who have elected to stay in the pension to age of unreduced retirement, and take a pension would be at a disadvantage if the proposed P-23 amendment were approved as is.
>
> …

In this instance the value is defined as being an accrued benefit applied to the commuted value. I contend that value should also be likewise applied to a member still active in the pension plan. Also, since the definition of an accrued benefit, in this case past service indexing, has been defined with the authority of the Superintendents' office, I feel it meets the standards of 19(3) of the Sask Act to be protected from reduction for all past service before 2021.

With regards to the possibility that since present bond rates and inflation rates are extremely low, that the change in cap may be perceived as inconsequential, I contend that if the difference is insignificant then why would the company request the change. There must be some value to the change, even if miniscule in the present financial environment. With regards to insurance providers providing annuity's for indexed pensions, clearly there is a premium for the higher the indexed cap that is provided. This premium is likely as a result of increased risk which is difficult to quantify but quantifiable none the less by the additional cost for a 5% cap as opposed to a 2% cap.
. . .

Here a change was made from the norm of 6.02(2) to 6.03(2) which the Superintendent approved based on his decision that the form of indexing had not accrued since a triggering event had not occurred yet. However, of note the value of the indexing was preserved since it had accrued but paid out in a different form. With regards to the underlined sentence, my point is bolstered that there often is a value to a change, in this case significantly enough that the company choose to provide the benefit in a differing manner.

55. In concluding his submission, Submitter A4 argued:

In the proposal of P-23 with the cap being reduced from 5% to 2%, it is our opinion that the amendment reduces the commuted value and is a reduction in an accrued benefit. In July for example the inflation assumption in the commuted value calculations is less then 2% so the commuted values may not change. However, some plans look at future inflation in terms of a distribution over the years, rather than a fixed rate for all years in the future. They do this to produce lower commuted values. In this case the 2% cap would lower the commuted values more than the 5% cap.

For example, July has the non-indexed interest assumptions at 1.30% for ten years and 2.20% thereafter and the indexed interest assumptions at 0.90% for ten years and 0.90% thereafter. So, inflation is implicitly approximately 0.4% for ten years and 1.3% thereafter. So, the cap is not hit in either case so the commuted values won't change. But some use the assumption, more accurately, that these inflation rates will fluctuate over time, sometimes exceeding the cap. With this method one may assume that the cap will be hit 20% of the time at the 2% level and 5% of the time at the 5% level, which in turn would produce lower commuted values for the 2% cap.

> It certainly seems pretty obvious that reducing the cap from 5% to 2% for past service constitutes a reduction in the accrued benefit. A more precise calculation would show a reduction due to the change. Insurance companies offering annuities have very much factored in the amount of the cap and reflect this risk in higher premiums. The range of those premiums may change in differing markets and at times may even be near negligible, however the judgment on this change must be made in light of all possible market possibilities.
>
> I contend that if benefits are only minimally differing resulting from amendments, and are allowed regarding 19(3) of the PBA in times of low bond rates and low inflation, then many administrators would change their plans for their favor in the current market climate. The higher indexing cap is in effect insurance for the future unknown and may or may not be used. Who knows the future of our money markets as there is unbridled debt accumulation by governments. Inflation may easily return. However, it gives comfort to the other party in the equation, namely the member for whom the plan was originally established for and the member who fulfilled their part of the bargain by working the required years to exercise their right to an indexed pension.

Submissions from retirees:

56. The CCRL Retirees Pension Committee expressed concern in their submission regarding the change to the indexing cap. In their submission dated December 18, 2020, the retirees indicate that they "wholeheartedly agree with the submission" provided by Submitter A4 and that they "agree that the indexing cap of 5% for past years of service would fall under the definition of a protected accrued benefit as it applies to section 19(3) of the PBA".

    In particular, they note in their submission that:

> As it presently stands and as many of us have played a part in negotiating this benefit, we feel there is no question that the past service is accrued, including the cap. We also agree with your interpretation in the P-22 Decision on paragraph 144 that *"The wording of s.6.06(2) is very similar and the words omitted in that subsection are readily implied, otherwise it would have been a reduction of an accrued benefit to amend the plan to include s.6.06(2) in the first place,…"*
>
> We also refer and all agree to your paragraph 146 which states *"In this sense, the right to have the value of the indexing benefit applied to pre-amendment earned service is an accrued benefit and cannot be reduced"* As such by extension with the indexing described, the cap would also be included as an accrued benefit in our opinion.

57. The retirees also raised a further concern regarding the wording used in the proposed amendment to s. 6.06(2) as it relates to retirees. In their submission, they indicated that:

> We have concerns with the first sentence proposed wording change in 6.06(2) in that by your P-22 Decision you stated, that wording from 6.06(1) was "readily implied". However, we point out that the exact wording has not been used in the proposed initial part of 6.06(2). Instead new wording has been introduced that omits a key word "earned". We strongly feel that a further amendment should be applied to 6.06(2) that reads *"All retirement benefits earned in respect of Pensionable Service before 2021 shall be increased…"* Our concerns stem from the fact that this clause refers to us as retirees since the heading is "Retirement on or after February 1, 2007" and also the fact that in the later portion of 6.06(2) our indexing cap of 5% is defined. We feel removing this single word lowers our bar of protection. Even though there is an argument that the "earned" concept is implied, we would appreciate the change.

2. Change in indexing from floating formulaic relationship with CPI to pre-determined fixed rate for Opt-Out Members

Submissions from active members:

58. No submissions were received from active members regarding this change.

Submissions from retirees:

59. In their submission dated December 18, 2020, the CCRL Retirees Pension Committee raised concerns as to how this change to implied CPI would impact retired members who elect to receive an annuity in accordance with the amended section 6.09 in Amendment P-23. In light of the nature of their concern, it would presumably apply to Opt-Out Members affected by the new subsection 6.06(4) and I have accordingly included it under this aspect of Amendment P-23. The nature of their concern is stated as follows:

> On the issue of the P-23 amendment with regards to point #1 and the purchase of annuities for those from 2007 to 2016. We have some concern that the indexing provided will not float in a formulaic relationship with the CPI as was provided in 6.06(2), should the members elect to have an annuity purchased on their behalf. It is our contention that there should be no change in the way indexing would be applied to these members, should they elect an annuity option.

3. Amendment to allow Plan Members who retired between February 1, 2007 and December 31, 2016 a one-time option to purchase an annuity from an insurance company

Submissions from active members:

60. No submissions were received from active members regarding this amendment.

Submissions from retirees:

61. One retiree ("Submitter R1") raised concerns regarding the amendment to section 6.09 to allow Plan members who retired between Feb 1, 2007 and December 31, 2016 a one-time option to purchase an annuity from an insurance company.

62. More specifically, the concern raised by Submitter R1 relates to the time frame chosen to allow retiring members the option of receiving an annuity and that the date chosen was arbitrary and unfair, because it did not coincide with the expiration of the collective bargaining agreement in effect at the time.

63. In his submission dated December 17, 2020, Submitter R1 expressed his concern regarding this amendment as follows:

> My concern is that the collective bargaining agreement in effect at that time did not expire until January 31, 2017. I do not understand the rationale for the December 31, 2016 date which did not coincide with the end date of the CBA. My effective retirement date was January 31, 2017 so I was excluded from the option of buying an annuity. The decision to choose a date outside the time period covered by the contract that was in effect at that time seems arbitrary and unfair as historically any pension changes followed the collective bargaining cycle. Generally contract terms are in effect for the duration of the agreement and this was a factor in my choice of retirement date. At the time I retired there was a grievance in progress related to this issue and negotiations for the new contract had begun which would have been effective February 1, 2017.
>
> I would appreciate some clarity on whether or not the choice of an arbitrary date for the amendment is within the boundaries of acceptable practice.

64. As noted in paragraph 59 above, the CCRL Retirees Pension Committee also raised concerns about the amendment to section 6.09. As I understand it, the nature of their concern related to their belief that the amended indexation right in the new subsection 6.06(4) would apply to annuities purchased for retirees pursuant to the new section 6.09.

Summary of the Actuarial Evidence Provided

65. In the Duxbury Letter, Mr. Duxbury addresses only the reduction of the indexation cap in clause 3(h) of Amendment P-23. He begins by acknowledging that at the time of his writing the letter, the inflation assumption in the commuted value calculations is less than 2% and it follows that commuted values may not change due to the change in the cap. While Mr. Duxbury appears to acknowledge that such an approach is in accordance with generally accepted actuarial practice, he goes on to note that some plans look at future inflation in terms of a probability distribution over the years rather than a fixed rate for all years in the future and this would result in lower commuted values if the indexation cap is lowered from 5% to 2%. In this regard he states:

> Some actuaries may adjust the interest assumption to reflect the fact that inflation rates will fluctuate over time and will sometimes exceed the cap. So, for example, they may assume that the cap will be hit 20% of the time at the 2% level and 5% of the time at the 5% level, which would produce lower commuted values for the 2% cap.

Based on his support for this "probability distribution" approach, I take Mr. Duxbury to be suggesting it is also in accordance with generally accepted actuarial practice.

66. Mr. Duxbury then goes on to comment that it is "pretty obvious" that reducing the cap from 5% to 2% for past service constitutes a reduction in the accrued benefit, because even if the plan administrator is ignoring the cap for the purpose of calculating commuted values, it is "…extremely likely that inflation will exceed 2.67% (the rate needed to hit the cap) in some years in the future."

67. Mr. Duxbury goes on in his letter to quote the applicable provisions of the standards established by the Canadian Institute of Actuaries for the computation of commuted values (the "CIA Standards") and notes that either a stochastic or deterministic analysis may be used to determine pension escalation rates. Mr. Duxbury then examines the historical pattern of cost of living increases, noting that "using arithmetic averages over the 40 years, CPI increased on average 3.2% per year. Indexing would have averaged 2.19% per year with the 5% cap and 1.63% per year with the 2% cap."

68. Mr. Duxbury concludes his letter by citing current pricing of 40-year term certain annuities that show the price for an annuity indexed to 75% of CPI with a 2% cap is lower than the price for an annuity indexed to 75% of CPI with a 5% cap. He ends the substantive portion of his letter with the statement:

> Note the actual impact on the commuted value will depend upon the actual inflation rates in the future, the member's age and how the actuary determines the adjustment but, regardless of how the commuted value is calculated, the payments over the lifetimes of members who retain their pension will be lower with the 2% cap rather than the 5% cap.

69. In the Aon Letter, Mr. Ryan Welsh and Mr. Nathan Conway ("Messrs. Welsh and Conway") start by noting their letter is in response to a request by the Chair of the CCRL Petroleum Employees' Pension Plan Pension Committee to review Mr. Duxbury's letter.

70. Messrs. Welsh and Conway agree with Mr. Duxbury's assertion that the CIA Standards permit either a stochastic or deterministic approach to assessing the impact of a cap on indexation, and further state that the deterministic method is, in their experience, more widely and commonly used. Messrs. Welsh and Conway note that they understand the Plan's commuted values are and always have been calculated using the deterministic approach to assess the impact of the cap on indexation. They conclude on the issue of the most appropriate approach to be used in this case by saying:

> Consequently, Mr. Duxbury's comments regarding the stochastic approach and that "some plans look at future inflation in terms of a probability distribution over the years" are not relevant to the Plan.

71. Messrs. Welsh and Conway then walk through their assessment of the impact of the lower 2% cap on indexation as follows:

> Based on the deterministic approach for applying the cap on indexation, commuted values calculated as at December 31, 2020 (or any other date in December) would not be impacted by either a 2% cap or a 5% cap. Specifically, for the month of December 2020, the non-indexed interest rate assumptions are 1.40% for 10 years and 2.90% thereafter. The implied inflation rates are 0.70% for 10 years and 1.98% thereafter. After applying the Plan's indexation formula (i.e. 75% of CPI), the rates of indexing would be 0.53% for 10 years and 1.49% thereafter…

72. Messrs. Welsh and Conway note that there are several acceptable rounding methods that can be used to determine the final rates of indexation, but regardless of the rounding method used, the commuted values paid from the Plan in December 2020 will not be impacted differently if either a 2% cap or 5% cap are used. They conclude their letter by stating that changing the cap will not reduce the commuted value of the pension of any affected members as of the effective date of Amendment P-23, December 31, 2020.

Summary of responses received from individual Plan members regarding Mr. Duxbury's actuarial opinion

73. The following three individual Plan members provided a further submission in response to the December 22nd Request for Submissions with respect to the actuarial evidence provided by Mr. Duxbury:

1. Submitter A3

74. The response provided by Submitter A3 on December 28, 2020 is a duplicate of the earlier response he provided as part of the December 18th Submissions and did not expressly address Mr. Duxbury's evidence.

2. Submitter A2

75. In her additional submission, Submitter A2 indicated that subsection 19(3) of the PBA clearly says that the retroactive change to indexing is not allowed. She stated:

> The Pensions PBA of Sask is clearly worded regarding changes to the past accrued value of my pension. It's not allowed. Changes can be made going forward but Mr. Duxbury's shows that the lowering of the cap constitutes a decrease in value of my pension.
>
> Amendment P23 should not be allowed to include retroactive decreases to indexing, as per the Acts clear language and the analysis done by Paul Duxbury.
>
> Looking at the past Sask CPI, there would be years that my past accrued indexing would be limited. Section 19 (3) clearly says this reduction in accrued benefit is not allowed. It is clear, even to a lay person, that reducing a benefit like indexing retroactively on years of service I have already accrued constitutes a reduction in an accrued benefit.

3. Submitter A4

76. In his additional submission dated December 28, 2020, Submitter A4 indicates:

> With regards to Paul Duxbury's expert professional opinion, I find he was accurate and fair in removing the years of high interest rate policy used by the Bank of Canada prior to 1992, with regard to the Sask CPI. He took a realistic 28-year snapshot of the past to guide his projections into the future. Of those past years included, a whopping 30% of them would have been impacted by the proposed 2% inflation cap, the most recent being 8 years ago. If that is not enough indication of a contradiction of 19(3) of the PBA of an accrued benefit, I don't know what might be.

77. He concludes his additional submission by summarizing his position as follows:

> In conclusion, the Saskatchewan PBA 19(3) gives accrued benefit protection for exactly situations like this presented. No matter what inflation projections are presented by the plan administrator or hired consultants. The question boils down to this: Is it realistic to assume that inflation will never go above 2.67% in the lifetimes of example plan members, 30 to 45 years in duration into the future? My contention to that answer is no, realistically inflation will go above 2.67% at some time in the future. Therefore, this small portion of the P-23 amendment (change to past service inflation cap from 5% to 2%) should not be approved by your office. However, the balance of the amendment should be approved.

The Pension Benefits Act, 1992:

78. The PBA provides the regulatory framework for employer sponsored pension plans in Saskatchewan. In addition to establishing a registration requirement for plans governed by the legislation, the PBA also imposes a number of minimum requirements or obligations that all plans governed by the legislation must comply with. The relevant provisions of the PBA for the purposes of this registration decision are:

PART III
Administration of Plans

Duties of Administrator
11(1) The administrator of a plan is responsible for administering and shall administer the plan in accordance with this Act, the regulations and the terms and conditions of the plan.

PART IV
Registration and Amendment of Plans

Registration
16(1) The administrator of a plan shall apply for registration of the plan by filing with the superintendent, not later than 60 days after the establishment of the plan, an application accompanied by:

(a) a certified copy of:

(i) the plan;

(ii) any document that creates the plan or pursuant to which the plan is constituted;

(iii) any trust deed or agreement, insurance contract, bylaw or resolution that relates to the plan;

(iv) any agreement that relates to the investment of the pension fund of the plan; and

(v) any other prescribed document; and

(b) a copy of:

(i) the valuation report and cost certificate mentioned in clause 11(4)(b); and

(ii) the explanation or summary mentioned in subclause 13(1)(a)(i).

(2) An application for registration of a plan must be in the form required by the superintendent and must contain the information mentioned in clause 11(4)(a).

(3) The superintendent shall register and issue to the administrator a certificate of registration with respect to the plan if, in the opinion of the superintendent, the plan meets the requirements of this Act.

Amendments

17(1) Where an amendment is made to a plan that is registered or with respect to which an application for registration is pending or to any document mentioned in subclauses 16(1)(a)(ii) to (v), the administrator shall file a certified copy of the amendment with the superintendent within 60 days after the amendment is made.

(2) Where a new document mentioned in subclauses 16(1)(a)(ii) to (v) is executed, the document is deemed to be an amendment to the plan for the purposes of this Act.

(3) Where the superintendent is **satisfied that the amendment complies with this Act**, the superintendent may issue to the administrator a notice of registration with respect to the amendment.

Administration pending registration or amendment

18(1) An administrator shall not administer a plan unless:

(a) the plan is registered; or

(b) subject to subsections 22(5) and 23(3), the application for registration has been duly made and the superintendent has not notified the administrator in writing that the superintendent refuses to register the plan.

(2) An administrator shall not administer a plan in a manner that reflects an amendment to it unless:

(a) the amendment is registered; or

(b) subject to subsections 22(5) and 23(3), the amendment has been duly filed for registration and the superintendent has not notified the

administrator in writing that the superintendent refuses to register the amendment.

Retroactivity of plan or amendment
19(1) Subject to subsections (2) to (5), a plan or an amendment to a plan may be made effective from a date before its registration or the application for its registration.
(2) No amendment to a plan that reduces pensions or benefits is effective until the amendment has been registered by the superintendent.
(3) **No amendment to a plan shall reduce a person's benefits that accrued before the effective date of the amendment.**
(4) Subject to the approval of the superintendent, subsection (3) does not apply where the amendment is required for the purpose of maintaining registration as a registered pension plan pursuant to the Income Tax Act (Canada).
(5) Where an amendment that confers on an employer any ownership or entitlement to the benefit of any surplus assets of a plan is made to a plan, the amendment is not effective unless it has been approved in the prescribed manner by the persons entitled to benefits pursuant to the plan.

[emphasis added]

Issues:

79. As with the 2019 Decision, the question to be decided here is whether Amendment P-23 should be registered pursuant to section 17(3) of the PBA. There are two main issues. The first is whether any of the amendments encompassed within Amendment P-23 reduce accrued benefits in contravention of subsection 19(3) of the PBA. The second is whether any of the amendments result in CCRL contravening subsection 11(1) of the PBA, due to the amendments reducing then existing entitlements in contravention of subsection 14.02(1) of the Plan. The specific amendments in Amendment P-23 that need to be considered are:

    1. The reduction of the indexation cap from 5% to 2% with respect to past service of Opt-In Members pursuant to clause 3(h);

    2. The new indexation formula for past service of Opt-Out Members based on implied CPI and a 2% cap pursuant to clause 3(i); and

3. The retroactive elimination of the right to receive an annuity in lieu of a retirement benefit pursuant to clause 1.

Analysis:

80. Before delving into the specific issues raised in this matter, I will touch upon the concept of "accrued benefits" as used in subsection 19(3) of the PBA and the concept of "then existing entitlements" as used in subsection 14.02(1) of the Plan. They are key phrases that will play a decisive role in deciding all of the issues that must be dealt with in this decision.

Accrued Benefits

81. In the 2019 Decision I dealt with the question of whether Amendment P-22 to the Plan reduced accrued benefits. I undertook a fairly comprehensive review of the case law in Canada relating to accrued benefits and searched through the PBA for any identifiable indicators of the intended meaning of the phrase "accrued benefits" in subsection 19(3). I ultimately concluded for the reasons set out in that decision that "accrued benefits" as used in subsection 19(3) means benefits of members or former members that have become certain or non-contingent. In other words, upon ascertaining the exact nature of the benefit provided by a plan, a benefit accrues to a member when all of the criteria that must be met before the member becomes irrevocably entitled to that benefit, either immediately or sometime in the future, have been met.

82. Some of the Submission providers advanced views as to the proper interpretation of "accrued benefits" in subsection 19(3) of the PBA. In some cases, they echoed my finding in the 2019 Decision. Submitter A4 appeared to go further to suggest either that another essential ingredient of accrued benefits is that the benefits have been funded or that the funded criteria is an alternate criterion which by itself would determine that benefits have been accrued. He refers to Justice Cory's decision in *Schmidt*, a decision of the Supreme Court of Canada. In that decision, Justice Cory did say:

> Once funds are contributed to the pension plan, they are "accrued benefits" of the employees…

83. However, Justice Cory did go on to say later in that same paragraph:

> …The other benefit to which the employees may be entitled is the surplus remaining upon termination. This amount is never certain during the continuation of the plan. Rather, the surplus exists only on paper. It results from actuarial calculations and is a

function of the assumptions used by the actuary. **Employees can claim no entitlement to surplus in an ongoing plan because it is not definite. The right to any surplus is crystalized only when the surplus becomes ascertainable upon termination of the plan. Therefore, the taking of a contribution holiday represents neither** an encroachment upon the trust **nor a reduction of accrued benefits**.

[emphasis added]

84. It is my view that Justice Cory's reference to funds contributed to the Plan being 'accrued' was to highlight the distinction between an actuarial surplus, which he held was not sufficient to cause a member's right to the surplus on plan termination to accrue, and an actual surplus upon plan termination, which he held would have resulted in the member's right to the surplus accruing. Actuarial surplus results from plan experience, not because it was intentionally funded. Justice Cory's conclusion later in the same paragraph that the benefit in question had not accrued because it had not yet crystalized was, in my view, the true test set down by Justice Cory in the *Schmidt* decision to determine whether benefits have accrued.

85. I would also note that if the funding of benefits was a necessary criterion for determining whether benefits had accrued, it would work against the position of Submitter A4. The PBA, as with all pension benefits legislation in Canada, recognizes that plans will not always be fully funded. When a valuation shows a plan is in a deficit, the PBA does not require the funder(s) of a plan to immediately contribute sufficient funds to extinguish the deficit in full. The PBA provides for special payments to be made over the course of several years by the funder(s) of the plan to amortize or erase the deficit. Plans can be pushed into deficit situations by factors beyond anybody's control, such as market returns. If benefits were only accrued when they were funded, then benefits would be considered to not be accrued even when all of the criteria in the plan for the member to receive those benefits had been met, but due to poor market returns the plan is in a deficit. It would also result in anomalous situations where benefits could be accrued one week and not the next, due to a shift in the markets pushing a plan into a deficit. I don't think that can possibly be the proper interpretation of 'accrued benefits' in subsection 19(3).

86. Upon reviewing all of the Submissions, I have not seen anything to lead me to alter my conclusion from the 2019 Decision that 'accrued benefits' means benefits which have become certain and no longer contingent due to all criteria provided in the plan to obtain the benefit having been fully met. This definition is consistent with the *Schmidt* decision and all other court decisions I have reviewed on this issue.

Then Existing Entitlements

87. I also considered the meaning of the phrase 'then existing entitlements' as used in subsection 14.02(1) of the Plan in the 2019 Decision. In that decision, I found:

> 160. Having reviewed s.14.02(1) of the Plan, as well as the other provisions of the Plan, and having regard to the context and the common meaning of the words, I am of the view that "entitlements" in s.14.02(1) of the Plan was intended to refer to benefits.
>
> 161. The remaining question is what does "then existing" mean? "As indicated above, 'entitlements' is used extensively throughout the other provisions of the Plan. Sometimes there is other wording to qualify the reference to 'entitlements' to limit its scope. For example, s.1.15 refers to "…the entitlements that a Member has accrued…". In s.1.04 it speaks of "...benefits that a person has a present or future entitlement to receive…" Sometimes there is no express qualifier and the reader must imply the meaning of 'entitlements' from the context. What resonates with me on reviewing the Plan is that in some instances the drafter(s) of the Plan very intentionally chose to qualify the scope of entitlements being dealt with. Those deliberate word choices should be given effect.
>
> 162. Subsection 14.02(1) of the Plan uses the phrase "then existing" in front of 'entitlements' as a qualifier. Clearly, it was intended to restrict or narrow the broader scope of 'entitlements' to a smaller subset with the distinguishing feature being the time of existence. In *Schmidt*, Justice Cory interpreted "then existing" to exclude contingent or only potential interests, the same meaning he gave to "accrued" earlier in his judgment.
>
> 163. Everything considered, I am of the view that "then existing" was referring to non-contingent entitlements. In other words, "then existing entitlements" was intended to mean "accrued benefits", in the same way as those words are used in s.19(3) of the PBA…

88. Submitter A4 made a number of arguments relating to the meaning that should be given to the phrase "then existing entitlements", which led to Submitter A4 concluding that the reduction in the indexation cap in clause 3(h) of Amendment P-23 reduced his then existing entitlements in contravention of subsection 14.02(1) of the Plan.

89. After considering the submissions received, I remain of the view that "then exiting entitlements" referred to in subsection 14.02(1) of the Plan has the same meaning as accrued benefits in subsection 19(3) of the PBA.

1. The reduction of the indexation cap from 5% to 2% with respect to past service of Opt-In Members pursuant to clause 3(h)

90. Several of the Submission providers took the position that the reduction in the indexing cap from 5% to 2% for past service was a clear reduction of accrued benefits. Some referred to the 2019 Decision in which I found that the right of a Plan member to the specific indexing formula did not accrue until they retired, but members had an accrued right to have the value of the indexing added to their retirement benefit as they earned service.

91. Beginning at paragraph 143 of the 2019 Decision, I said:

> As s.6.06(2) currently reads, the final trigger that must occur before actual indexing starts, in the sense of a member having their periodic pension payments adjusted annually by the amount specified in that section, is the member commencing retirement. There is nothing currently in s.6.06(2) or elsewhere in the Plan that would override that result. Therefore, it is my view that the indexing benefit contemplated in the current s.6.06(2) of the Plan to have pension payments adjusted annually in accordance with the specific formula prescribed therein has not accrued until a member retires. However, I do not view the right to indexation to be an "on-off switch" at retirement. I read s.6.06(2) to provide members with a certain (non-contingent) right to have the retirement benefits generated by their service while the provision is in effect to be adjusted in accordance with the indexing formula set out in the provision, with the actual annual adjustments to their periodic pension payments to begin occurring on their retirement date. This is because they are promised indexing of their retirement benefits and the only qualification is it is "to commence" on their retirement date. There is no specific age or service criteria required to gain the benefit, or the meeting of any other eligibility criteria, other than the two-year service vesting requirement that applies to all benefits. I would note that CCRL has been in practice including the value of the indexing benefit in calculating the commuted values of terminated vested members, which is consistent with my interpretation of the provision.
>
> …
>
> While affected management members do not have an accrued right to have their pension payments annually adjusted in accordance with the formula in s.6.06(2), they are unconditionally entitled to have **the value** of the indexing benefit based on the formula set out in the current s.6.06(2) applied to their retirement benefits earned prior to the amendment included in their commuted values. In this sense, the right to have **the value** of the indexing benefit applied to pre-amendment earned service is an accrued benefit and cannot be reduced…
>
> [emphasis added]

92. In interpreting the nature of the indexation right in the Plan for the 2019 Decision, I came to the conclusion that the indexation right in the Plan as it then read had two separate components to it, almost like two separate rights, that accrued at different times. First, it accrued with respect to earned service as the service was earned. In other words, it accrued in real time. However, the nature of the indexing benefit accrued prior to retirement did not entitle the member to the actual adjustment of periodic pension payments in accordance with the formula, nor did it entitle the member to continue earning indexing with respect to future service. The member was solely entitled to have the value of this indexing benefit earned prior to retirement included in the retirement benefit earned. This is because members were not even guaranteed to receive a pension in the sense of periodic pension payments from the plan or in the form of an annuity, for example if they died before reaching the earliest age of retirement, and therefore those aspects of the indexation right had not yet accrued. For lack of a better descriptor, I will refer to this component as the indexing benefit accrued prior to retirement, or "IBAPR". The value associated with the IBAPR was included in the commuted values or replacement annuities provided to the management members affected by Amendment P-22 and the partial Plan termination brought about by that amendment.

93. To be clear, I held that the benefit accrued by members in respect of the IBAPR was to have the value added to their retirement benefits earned. I did not find that the accrued benefit was specifically limited to the impact of the IBAPR on the commuted values of the members. My reference to the value being added to the commuted values of the members was due to the fact that Amendment P-22 applied only to active management members who were all being terminated from the Plan as a result of the amendment, and thus all were going to have their earned retirement benefits transferred out of the Plan either in the form of a commuted value or a replacement annuity. Considering that the management members were entitled to either a replacement annuity or a commuted value transfer, my reference to them having the right to have the value added to their commuted values was an imprecise statement on my part, but that aspect was not central to my holding.

94. The other component of the indexation right in the Plan kicks in at retirement. At the point when a member retires and satisfies the final criteria for post-retirement indexing provided for in the Plan, the member accrues or locks in the right to receive annual indexing until the member's retirement benefit is fully satisfied or extinguished. The Plan cannot be amended after the member's retirement to remove indexing or change the formula to reduce the indexation for that member. This conclusion is consistent with the decisions in *Dinney* and in *McGrath v. Ontario (Superintendent Financial Services)* 2010 ONFST 5 ["*McGrath*"], both of which I discussed in detail in the 2019 Decision.

95. Clause 3(h) of Amendment P-23 includes an exception to the lowering of the indexation cap for members whose pension commenced payment prior to 2021. This exception was provided because the Plan could not be amended to lower the cap for members who had retired and fully accrued the post-retirement indexing benefit at the formula in effect prior to clause 3(h) of Amendment P-23 taking effect on December 31, 2020. Any attempt to change the indexation formula for retired members that might reduce their pension payments would have been a reduction of an accrued benefit in contravention of subsection 19(3) of the PBA. Prior to making my decision on December 30, 2020 my office sought clarification from CCRL regarding the application of the exception to members who elect to retire prior to 2021, but whose pension would not commence payment prior to 2021. CCRL, through its legal counsel, confirmed that the exception would be interpreted and applied by CCRL such that it applied to all members otherwise falling within subsection 6.06(2) of the Plan and who reached the age to be eligible for early retirement under the Plan (55 years old) and who were no longer earning service after 2020. In other words, all 55+ deferred members would be exempted from the lowering of the indexation cap, regardless of whether their pension had commenced payment. As the amendments to the Plan's indexation right in Amendment P-23 only apply to members who have not retired as of the effective date of the amendments, the post-retirement indexing benefit is not in issue for the purposes of this decision and I will hereafter focus my attention solely on the IBAPR.

96. In clause 3(h) of Amendment P-23, the Opt-In Members' right to the IBAPR that accrued prior to the effective date of the amendment is purported to be amended to revise the indexing formula by lowering the cap from 5% to 2%. No one, including CCRL, has disputed that the right to the indexing (or at least its value) accrues for each period of service earned as it is earned. The key issue in dispute is whether this lowering of the indexation cap reduces the IBAPR accrued for past service or merely changes it.

97. CCRL takes the position that the lowering of the indexation cap for past service is not a reduction of the accrued IBAPR, because the value of the accrued indexing benefit is unchanged immediately after the amendment is effective. CCRL submitted that the commuted values of members immediately before this lowering of the indexation cap becomes effective are not impacted or changed after the amendment takes effect. This is due to the unusually low long term bond rates currently established by the Bank of Canada. There is no question that the CIA Standards instruct actuaries to use these long term bond rates to predict future expected CPI for the purposes of calculating commuted values.

98. Several Submission providers took the position that lowering the indexation cap is a clear reduction on its face of the accrued IBAPR. Submitter A4 took the position that the commuted values would be changed if calculated properly or that other means that could

be used to measure the value of the benefit, such as annuity premiums, indicate the lowering of the cap results in a reduction in value of the accrued IBAPR. Submitter A4 argued that the decision on whether there has been a reduction in value "…must be made in light of all possible market possibilities."

99. Submitter A4 also made a number of other arguments based on wording used in cases to describe what the phrase 'accrued benefits' means and what role other documents provided to members should play in determining the scope of the right to indexing. However, those other points all spoke primarily to whether the right to indexing was an accrued benefit and not in any meaningful way about how to value that accrued IBAPR to determine if it had been reduced.

100. The key question to decide in respect of this issue is what is the appropriate method to determine if the IBAPR with respect to past service will be reduced by clause 3(h) of Amendment P-23, and specifically the lowering of the indexation cap from 5% to 2%. CCRL argues that comparing the commuted values of a member's retirement benefits immediately before the amendment and then after the amendment to determine if the amendment reduces the commuted value is the appropriate method.

101. There are two main ways under the PBA in which a member's retirement benefits can be paid out of a pension plan. One is in the form of a pension, whether paid from the plan or by way of a purchased annuity. The other is in the form of a lump sum representing the member's commuted value. If a member has not met the requirements to receive a pension in the sense of periodic payments from the plan or in the form of an annuity, the only other way to transfer the member's retirement benefits out of the plan, when the PBA allows it, is by way of commuted value transfer.

102. A commuted value is the sum arrived at by an actuary using actuarial assumptions and methodology set out in the CIA Standards. It represents the net present value of the sum of funds required as of the member's assumed date of retirement to provide for the stream of expected monthly pension payments to the member and the member's beneficiaries for the entire duration that pension payments are expected to be required to be made, all based on the terms of the plan. If the member has a right under the plan to have their pension payments indexed based on CPI increases, the actuary, in determining the stream of predicted monthly pension payments, will increase those payments at the times and in the amounts provided by the indexation formula using future predicted CPI rates determined in accordance with the CIA Standards. This results in an increased total sum of funds required on the member's estimated retirement date. After applying the discount rate to determine, as of the time the commuted value is calculated, the net present value of that total sum required to fund the expected pension, the resulting amount is the member's current commuted value.

103. A key decision on this point for our purposes is *McGrath*, a decision of the Ontario Financial Services Tribunal. In that case, it was proposed to amend the plan to change the method of calculating the indexation benefit, including for retirees. The issue was whether the amendment contravened s.14(1) of Ontario's *Pension Benefits Act* (the "PBAO").

104. The facts of the case were that the pre-amendment method of calculating the indexing was highly volatile. This method was referred to in the decision as the Old Method (the "OM"). The post amendment method of calculating the indexing was an averaging method based on the approach followed by the Canada Pension Plan (the "CPP" or the "NM"). The intention behind the amendment to the method of calculating the indexing was to provide an actuarially equivalent indexation, but with less volatility.

105. The comparative evidence presented at the hearing demonstrated the two methods produced very similar results over time. In 6 of the 16 years compared, the OM produced a larger increase. In 8 of the 16 years, the CPP produced a larger increase. In the remaining 2 years, the result would have been the same. Overall, the CPP method would have produced slightly better results over the entire period considered. The actuarial experts of the parties to the hearing agreed that over time, the two methods were actuarially equivalent. The applicant retiree opposed the amendment on the ground that it was intentionally being implemented at a time when the volatile OM would be expected to produce a larger increase.

106. In considering whether the amendment contravened s.14(1)(b) of the PBAO by reducing both the amount and commuted value of the applicant retiree's pension, the Tribunal noted that the parties agreed that the applicant retiree did have a vested right to a pension with 100% Consumer Price Index indexation, which both the OM and the NM met. However, the parties disagreed whether the applicant retiree had a vested right to indexation in accordance with the formula built into the plan when she retired.

107. Based on the evidence of the actuarial experts who testified, the Tribunal made the following findings with regard to the impact of the implementation of the NM:

> We have identified above a number of differences of opinion in the evidence of the expert witnesses. On a number of very key points, however, the expert witnesses were in substantial agreement. They both agreed that:
>
> - The OM and the NM are "actuarially equivalent". It is not possible to speculate on whether the OM or the NM will produce higher indexation rates in future years, but it is expected over time that the two methods will produce the same result.

- The change from the OM to the NM did not affect either the amount or the commuted value of pension benefits for active members because both methods would be treated by actuaries as formulae providing 100% indexation to the CPI.

- On October 3, 2007, the date of the SC's decision to change the method effective January 1, 2008, an actuary calculating the commuted value of an OMERS pension in pay would come up with the same value regardless of which method was employed because the formulae are actuarially equivalent and the future impact of the change in method would not be known.

- On January 1, 2008, the actual pension of an OMERS pensioner for 2008 would be lower under the NM than it would have been if the OM had still been in effect.

- On January 1, 2008, an actuary determining the commuted value of an OMERS pension in pay on that date would find that the commuted value was lower under the NM than it would have been under the OM because the impact of the change would now be known for that year.

108. The Tribunal noted the key issue to decide is:

> In our view, there is no doubt that Ms McGrath has a vested or "accrued" right to pension indexing based on the OM. **However, s. 14(1) of the *PBA* does not "carve in stone" all accrued benefits. What it does is protect those benefits from *reduction*.** Accordingly, the crucial question before us is whether the impugned amendment *reduces* the amount or commuted value of the Applicant's pension, within the meaning of s.14(1)(b).
>
> [emphasis added]

109. The Tribunal went on to decide that it is the effect of the amendment on the pension (the accrued right) that should be the focus of the determination and not the purpose of the amendment, and then dismisses two of the applicant retiree's arguments based on disputes concerning the appropriate actuarial approach to determine the effect of the amendment on the pension. With one argument advanced by the applicant retiree remaining, the Tribunal notes:

> The Applicant is asking us to decide the case based solely on a single narrow snapshot that is unlikely, based on all the evidence, to be representative. **In our view, s.14(1) does not dictate so arbitrary a result. We are persuaded that for amendments such as the one before us, the statute does not gauge whether or not the amount of a pension has been reduced based only on its immediate impact on the first periodic payment after it comes into effect (or indeed, only on its impact on periodic payments during the period between the date of implementation and the date of hearing). It instructs**

us to take a longer view… Indeed, it appears quite probable that the relatively minor deviations between the OM and the NM will be ironed out very soon… The persuasive evidence on the long-term (i.e. "aggregate") impact of the amendment is the evidence of both actuaries, that the OM and the NM, are actuarially equivalent, and that "over time" they are expected to produce the same level of protection, 100% inflation protection as indexed to the CPI. On the basis of the overall evidence, then, the Applicant has failed to persuade us that the amendment has the effect of reducing the amount of her accrued pension within the meaning of s.14(1)(b).

[emphasis added]

110. The position advanced by CCRL's counsel, simply stated, was that I should follow the principle set down in *McGrath* and that "…so long as CCRL can demonstrate that the reduction in the cap to 2% does not reduce the value of the indexing benefit as of December 31, 2020, that demonstrates that there has been compliance with s.19(3)." He then described how CCRL has demonstrated that reducing the cap does not reduce the value of the IBAPR as follows:

I refer to the attached response to Mr. Duxbury's letter from CCRL's actuaries, Messrs. Welsh and Conway of Aon. They confirm that there are two accepted actuarial methodologies for calculating the value of indexing, but that the predominant method in Canada is the one used by CCRL, the deterministic method. Each method is endorsed by the Canadian Institute of Actuaries in its Standards of Practice. Therefore commuted values calculated using the deterministic method are the product of accepted actuarial practice, as required by s. 2(1)(e)(i)(A) of the PBA, and are valid commuted values for all purposes of Saskatchewan law. This is significant because Messrs. Welsh and Conway also note that changing the cap in the manner proposed "will not reduce the commuted value of the pension of any affected member as of the effective date of Amendment P-23, December 31, 2020." If there has been no reduction to the total commuted value, it necessarily follows that there has been no reduction in the value of the affected indexing benefits.

I submit that so long as we can demonstrate that using an accepted actuarial methodology there has been no reduction in the value of the indexing benefits, the fact that a different methodology might produce a different result is beside the point. Indeed, s. 2(1)(e) of the PBA contemplates that there are a multitude of actuarial methods, and it follows that this multitude of methods will produce a multitude of commuted value results. But the PBA simply requires that commuted values be calculated in accordance with one set of "actuarial assumptions and methods that are adequate and appropriate and in accordance with accepted actuarial practice". It does not require that they be calculated in accordance with every set of actuarial assumptions and methods known to accepted actuarial practice. By extension, s. 19(3) does not require that it be demonstrated that using every possible actuarial method

there is no decrease in the value of the indexing benefits. Rather, so long as we can show that using one actuarial method (in this case the predominant method used in Canada) there is no loss in value, we have demonstrated compliance with s. 19(3).

The attached opinion from Messrs. Welsh and Conway confirms there is no loss in value. Therefore, the proposed amendment to the indexing cap does not contravene s. 19(3), and should be registered by your office on that basis.

111. I agree that the PBA contemplates there are multiple suitable methods to calculate commuted values in accordance with accepted actuarial practice. I also agree that, when the PBA requires a commuted value be determined, as a starting point it only requires that the commuted values be calculated in accordance with one acceptable method, notwithstanding that using other acceptable methods may result in different commuted value amounts. I say as a starting point, because the definition of commuted value set out in clause 2(1)(e) of the PBA makes it clear that the method used to determine commuted values, in addition to being adequate and appropriate and in accordance with accepted actuarial practice and any prescribed conditions, must be in a manner that is acceptable to me. Section 24 of the PBR prescribes that commuted values must be determined in accordance with the recommendations for the computation of transfer values of pensions issued by the CIA, as amended from time to time, but this does not override the discretion provided to me to require that the manner of determination must be acceptable to me. I am of the view that this discretion would allow me to conclude that, notwithstanding the method used in a particular case to determine commuted values is in accordance with the CIA Standards, the method used is not acceptable and to direct a different approach be used.

112. However, before I turn my mind to whether the method used by Messrs. Welsh and Conway to calculate the commuted values in the Aon letter is acceptable to me, there is a broader question that must be answered first. Subsection 19(3) of the PBA does not refer to commuted values being used to determine if an accrued benefit has been reduced. It does not speak to the test or method to be used whatsoever. In light of the fact that the phrase “commuted value” is expressly referred to in the PBA no less than 34 times as the chosen method to determine the value of benefits in specific circumstances suggests that the PBA did not contemplate comparing commuted values would be the test to determine whether an accrued benefit was reduced for the purposes of subsection 19(3), or at least not the only test. If it did, it surely would have said so.

113. There is another problem I have with the argument advanced by CCRL on this issue. CCRL says the approach taken in *McGrath* is appropriate here and should be followed, but reference is only made to one aspect of the decision in *McGrath*, the fact that the Tribunal compared the commuted values of the members’ pensions before and after the

amendment to determine if there had been a reduction in the accrued indexing benefit. The equivalent of our subsection 19(3) in the Ontario Act specifically prohibited the reduction in the amount or commuted value of the pension. As I just mentioned above, subsection 19(3) of the PBA does not refer to commuted values, it prohibits reductions in "accrued benefits". And comparing commuted values was not the only test applied by the Tribunal in *McGrath*, it also considered whether the new method would result in lower pension amounts over the long term. When other key aspects of the Tribunal's holding in *McGrath* are taken into account, additional important distinctions in the two fact scenarios become apparent.

114. In *McGrath*, it was found the new method of calculating indexing was intended to be actuarially equivalent to the old method and while it was likely that the results would vary frequently, the new formula would produce better results in some years and poorer results in others such that over time they would even out. Here, the reduction in the indexation cap for past service is not intended to be, and isn't, actuarially equivalent. The reduction in the cap was intended to be just that, a reduction. It is to control future costs by placing a new, lower glass ceiling which the indexing in any particular year cannot rise above. While the reduction in the cap may result in no drop in commuted values when calculated using certain otherwise acceptable approaches such as the one taken by Messrs. Welsh and Conway, that is not because they are actuarially equivalent. It is because of the current state of the financial markets and corresponding depressed long term bond rates due to a once in a century pandemic. There is no possibility that the lowering of the indexing cap can produce better indexing results in some years than the higher cap, it is a one-way only amendment that at best would be neutral, and otherwise would result in poorer indexing for members. The result would only be neutral so long as the CPI stayed below 2.67%, and that can't be expected to last forever.

115. Commuted values determined in accordance with CIA Standards are the gold standard method for determining the transfer value of retirement benefits at any point in time. That is why the PBA calls for commuted value calculations to be used in so many circumstances. I am not suggesting commuted value calculations determined in accordance with CIA Standards are unreliable, they are the best means available to determine the transfer value of retirement benefits when that value must be ascertained. However, they are at the end of the day predictions. A number of assumptions are involved, including expected retirement date and mortality, all of which means the likelihood of commuted values being precisely accurate to the dollar is very low. However, it is the best option we have when existing benefit entitlements must be calculated for transfers out of a pension fund, such as upon termination or death of a member or conversion of a plan from defined benefit to defined contribution.

116. It stands to reason that the greater the number of assumptions used and the longer the time horizon involved, the greater the likelihood that the commuted value will differ from the retirement benefits ultimately earned and paid. When predicting future indexation based on the rate of inflation over a time horizon that could stretch for many decades, the prediction is inherently uncertain. Looking back at actual Saskatchewan CPI compared to predicted CPI based on calculations in accordance with CIA Standards from 2005 to 2020, in none of those years was the predicted CPI precisely accurate. That's not surprising since actual inflation is influenced by a multitude of world events that haven't happed yet when the prediction is made. Looking only at the CIA select rates (predicted for the first 1-10 years), in 5 of the 16 years the predicted CPI was higher than actual CPI, but that would not benefit members who had an indexation cap lowered as contemplated by clause 3(h). The cap only imposes a ceiling on actual CPI experience. Actual CPI was higher than the predicted select rate CPI in 11 of the 16 years. In 3 of those years (2007, 2008 and 2011), actual CPI was such that the 2% cap would have been exceeded for indexation at 75% of CPI (75% of CPI = 2.10%, 2.48% and 2.10%, respectively). The predicted values for 75% of select rate CPI for those three years was 1.68%, 1.01% and 0.98%, respectively. This means that in the last 16 years, on 3 occasions the actual CPI exceeded predicted select rate CPI and the actual CPI was such that, where indexing was based on 75% of CPI, it would have exceeded a 2% cap.

117. It should be pointed out that the CIA Standards were revised in 2005, 2009, 2011 and again in 2020. This of course means that predicted CPI using the 2020 version of the CIA Standards could vary from predicted CPI using prior versions of the CIA Standards. The past experience I referred to is not evidence as to what the current version of the CIA Standards will predict in terms of future CPI. It does, however, amply demonstrate that predicted CPI using the CIA Standards is only a prediction that will most likely not be accurate in any particular year. On this point, I note the following passage from *McGrath* on page 24:

> …Both actuaries agree, however, that while the pace and behaviour of future inflation is unpredictable, it *can* be predicted with confidence that it will *not* behave in the uniform fashion postulated by Mr. Duxbury….

118. It is my view that CCRL's position downplays the level of confidence or certainty required by subsection 19(3) of the PBA in order to conclude that an amendment does not reduce accrued benefits. They stress that so long as one actuarial commuted value calculation that complies with the requirements relating to commuted value calculations in the PBA shows no drop in value immediately after the amendment takes effect, that is sufficient by itself even if other accepted commuted value calculations that meet the criteria in the PBA find there is a drop in value. I disagree. I view the absolute prohibition in subsection 19(3) as requiring of me a fairly high level of confidence that accrued benefits are not reduced

by an amendment. That is why I believe subsection 19(3) of the PBA did not refer to a commuted value comparison, or to any other specific test to determine the value of accrued benefits for that matter. It recognizes that the question as to whether accrued benefits have been reduced is a very fact specific determination that must take into account the nature of the accrued benefits in question and the nature of the amendment to those benefits, all as described in the specific plan text and amendments thereto. It is my view that the case law has identified the principled approach that should be taken to determine if accrued benefits have been reduced by an amendment, but how that approach is applied to a particular amendment will vary depending on the specific facts involved.

119. In terms of the basic principled approach to determine the value of accrued benefits for the purposes of determining whether those benefits have been reduced in contravention of subsection 19(3) of the PBA, it is my view that the approach taken in *C.A.S.A.W. v. Alcan Smelters and Chemicals Ltd.*, 2001 BCCA 303 ["*Alcan*"] and in *The Royal Ontario Museum Curatorial Association v. Ontario (Superintendent Financial Services)*, 2013 ONFST 9 ["*ROM*"], both of which I discussed in detail in the 2019 Decision, is the correct approach. In those decisions, the approach adopted was to determine what the members would have been entitled to if they had retired immediately prior to the amendment coming into effect. With the accrued benefits determined in this manner, they can be compared against what the members would be entitled to after the amendment took effect. When that approach is applied here, we have to look to the Plan provisions to see what the members would have been entitled to if they retired prior to clause 3(h) taking effect and then compare that to what the members would be entitled to if they retired after clause 3(h) takes effect pursuant to the amended Plan. Before I proceed to consider this test in the present case, I would note that the reference to "retired" in the test applied in *Alcan* and *ROM* cannot be referring to the technical concept of retirement, as many of the members would not actually have been entitled to retire in accordance with the plan or legislation in question. I understand the reference in those cases and the test set down in them to refer to "retire" in a generic sense, meaning leaving employment of the employer and terminating membership in the plan.

120. Applying this test to the facts of this registration application, the members would be entitled if they retired immediately before the effective date of the amendment in clause 3(h) to a deferred annuity in accordance with section 8.01 of the Plan. Section 8.01 of the Plan provides that the deferred annuity will be calculated in accordance with section 6.01 of the Plan, which means that the deferred annuity is a replacement annuity providing for the payment of the actual monthly pension amounts the member would have been entitled to, based on the formula applicable to their circumstances. It is not the same as an annuity which does not guarantee payment of the same monthly amounts the member

would have received as their pension and which is determined solely based on what the member, armed only with their lump sum commuted value, can afford to purchase.

121. What would a deferred replacement annuity provide for in terms of the indexation right provided in subsection 6.06(2) of the Plan immediately prior to clause 3(h) taking effect? It would provide for annual indexing of the monthly amount payable pursuant to the annuity at 75% of Saskatchewan CPI to a maximum of 5%. Does this represent more value than the same indexation, but with a 2% cap instead? The evidence provided by Mr. Duxbury is that the premium to purchase a term certain annuity with the same indexation formula as in subsection 6.06(2) of the Plan and a 5% cap was higher than the premium for the same annuity with a 2% indexation cap. This demonstrates to me that there is a reduction in the value of the accrued IBAPR when the cap is lowered to 2%. If a member were to be provided on his or her deemed retirement immediately preceding clause 3(h) becoming effective with a cash sum sufficient to purchase the replacement annuity with indexation subject to a 2% cap, they would not be able to afford the premium to purchase the replacement annuity with indexation subject to a 5% cap. This provides fairly strong evidence that the impact of clause 3(h) on the accrued IBAPR is a reduction.

122. I am not suggesting that annuity premiums will always be determinative as to whether an accrued indexation benefit has been reduced. For example, where the amendment to an indexing formula is intended to be actuarially equivalent and the impact of the amendment on indexation received in any particular year in the future can be either positive or negative for the members depending on future experience. The *McGrath* case is one example, as was the amendment to the Plan's indexing that was the subject, in part, of the 2019 Decision. In those situations, replacement annuity premiums will often be lower after the amendment, due to the reduction in the uncertainty and potential volatility of the indexation amounts and corresponding reduction in risk assumed by the insurance company providing the annuity. The expectation for actuarially equivalent indexation formulae is that over time the results will even out. Switching to an actuarially equivalent indexation formula that reduces volatility and uncertainty, such as the new subsection 6.06(3) added to the Plan and considered in the 2019 Decision, also can have indirect benefits for members. It generally makes annuities purchased by the pension fund less costly, making the plan more affordable, which improves benefit security. It also means less volatile and more predictable funding requirements, which translates into less volatile and more predictable member contribution rates for plans in which the members contribute to funding.

123. However, those are very different situations than the one facing us here. This is not comparing two formulae where they are intended to be actuarially equivalent or where it is likely or even possible the new formula will result in improvements in the accrued benefits. There is zero chance that lowering the cap can directly benefit members in any

years in the future. After considering all of the evidence provided, including the actuarial evidence, and the submissions received, I am inclined to view the reduction in the indexation cap with respect to past service to be a reduction in the accrued indexation benefit and a contravention of subsection 19(3) of the PBA.

124. Subsection 17(3) of the PBA provides that I may issue to an administrator a notice of registration with respect to an amendment where I am satisfied that the amendment complies with the PBA. It follows that I am unable to register an amendment if I am not satisfied the amendment complies with the PBA. Accordingly, pursuant to subsection 17(3) of the PBA, I am unable to register clause 3(h) of Amendment P-23 to the extent that it purports to reduce the indexation cap from 5% to 2% with respect to service prior to the effective date of the amendment.

125. It must be kept in mind that the problematic aspect of the amendment to reduce the indexation cap from 5% to 2% is with respect to past service for which the IBAPR accrued. Clause 3(h) is essentially re-writing the bargain reflected in the Plan for benefits already unconditionally earned by the members. I want to be clear, I am not saying that members of the Plan accrued the indexing formula such that it could not be changed in the future, or accrued the unconditional right to receive pension payments indexed in the future. Those rights would only have accrued to a member on retirement of the member. CCRL is free to amend or even remove the indexation formula for future service as it has also done in clause 3(h) of Amendment P-23.

126. I also want to be clear that I am not suggesting that the value of the IBAPR cannot be determined now. I agree with the principle set down in *McGrath* and in *Alcan* that the test for whether accrued benefits have been reduced must be such that it can be determined at the time of the amendment. Just because the actual post-retirement indexing will by necessity happen in the future (if it does at all) for these members does not mean that we must put off assigning a value to the IBAPR until they have retired and we know the actual indexation amounts that are applied to their pensions. However, it is my view the comparison of commuted values approach to valuing accrued indexation benefits is not an appropriate valuation method on these facts for the purposes of subsection 19(3). In my view, comparing premiums for replacement annuities with the 5% indexation cap and 2% indexation cap is the proper test in these specific circumstances, because it tracks very closely what the members would actually have received if they retired immediately before clause 3(h) came into effect and in a way that can be directly compared to what they would have received if they retired immediately after the amendment. As per the current provisions of the Plan, members would be entitled to replacement annuities on termination or retirement, not commuted values.

127. I am aware that Amendment P-23 was collectively bargained and the Union has consented to it. I also have no reason to doubt that CCRL was and is acting in good faith in bargaining for Amendment P-23, amending the Plan in accordance with Amendment P-23 and applying to my office for registration of the amendment. It is clear CCRL acted with the sincere belief that Amendment P-23 was lawful and fully in compliance with the PBA. However, none of those reasons is sufficient to require or justify that I issue a notice of registration with respect to the reduction of the indexation cap for past service. Subsection 19(3) of the PBA is an absolute prohibition on amendments that reduce accrued benefits. I have no authority to overlook non-compliance with that prohibition when performing my registration duty under section 17. Reading in an override of the prohibition where members consent would open the door to the possibility of uninformed consent or consent under duress, and undermine the intention behind the prohibition.

128. It is worth noting that if the comparison of commuted values test advocated for by CCRL is accepted as the correct test in these circumstances, no indexing cap with respect to past service would ever be secure. This would be the case no matter how long it had been in effect for or how long the members had earned service with that cap in place. Plan sponsors could bide their time and wait for the next market crash, recession or other calamity that depresses long term bond rates and then move in and slash the indexing cap for past service, all because the commuted value calculations taken at that precise time say there is no additional value in respect of the higher cap. In recent history, Canada has fallen into recession at least once every approximately 10 to 15 years, and while they are becoming less frequent than previously in history, they are becoming more severe. Periods of lower inflation in the immediate aftermath of a recession or other rattling of the economy are not a rare phenomenon. And neither is inflation above 2.67% when the economy recovers and surges in between. In 1993, three years following the 1990 recession, Saskatchewan CPI was 3.10%. In 2011, two years following the recession of 2008/2009, Saskatchewan CPI was 2.80%. When the tech bubble burst over the period from 2000-2002, Saskatchewan CPI didn't even drop, coming in at 3.00% and 2.90% in 2001 and 2002, respectively. The CPI in 2001 was actually an increase of 0.40% from 2000. The CIA select rate predicted a drop of 0.54% in 2001 to 1.95%.

129. Would members have understood this was a possibility that an amendment to the Plan could reduce their indexing cap accrued for past service by 60%, merely because the economy has hit a rough patch? Indexing is akin to insurance for pensioners that protects the buying power of their monthly pension payments from being eaten away by inflation. The indexation cap, along with the indexation formula, determines the extent of this 'insurance coverage'. Consider a situation where a member of a pension plan has worked for the employer for 30 years and has been accruing the value of an indexing benefit linked to CPI with a 5% cap all along. Just months from retirement, due to depressed long term bond rates because of a stalled economy ravaged by a pandemic, the plan

administrator amends the plan to reduce the indexation cap with respect to past service to, like here, 2%. That insurance coverage the member had been 'paying the premium on' by earning service all of those years and accruing the value of the indexing is summarily reduced, potentially by as much as 60% in some years. I struggle to see how that gives effect to the true value of the indexation cap to members or how it respects the bargain set out in the pension plan contract.

130. Based on the finding above, I also conclude that clause 3(h) of Amendment P-23 has the effect of reducing a then existing entitlement in contravention of subsection 14.02(1) of the Plan. A failure by the administrator to administer the Plan in accordance with its terms is a contravention of subsection 11(1) of the PBA, and accordingly, this is an additional ground upon which I am not able to issue a notice of registration with respect to this aspect of clause 3(h).

2. The new indexation formula for past service of Opt-Out Members based on implied CPI and a 2% cap pursuant to clause 3(i)

131. Clause 3(i) of Amendment P-23 adds a new subsection 6.06(4) to the Plan that changes the indexing benefit applicable to past service of Opt-Out Members in two key respects. It modifies the current method of determining indexing from a percentage of actual floating CPI to the equivalent percentage of currently predicted future CPI based on the approach established in the CIA Standards. The predicted future CPI percentages will be determined by the actuaries when calculating the commuted values for the Opt-Out Members who elect to receive a commuted value transfer on termination. The other change is that clause 3(i) effectively reduces the indexing cap from 5% to 2%, as clause 3(h) purported to do for past service of Opt-In Members.

132. The reduction in the cap from 5% to 2% gives rise to the same issues mentioned above when considering the amendment to the indexation formula for Opt-In Members in clause 3(h). If this was the entire amendment in clause 3(i), I would arrive at the same conclusion and find that I am not satisfied this amendment complies with subsection 19(3) of the PBA and therefore I am unable to register this aspect. However, it is not the only aspect of this amendment. The conversion of the indexation relationship to CPI, from a percentage of actual floating CPI to the same percentage of predicted CPI fixed in advance, in effect negates the impact of the reduction of the indexation cap.

133. As we see from the Aon letter, CCRL's actuaries will predict the future CPI to be 0.70% for the next ten years and 1.98% for all years thereafter. After applying the Plan's indexation formula of 75% (three quarters) of CPI, the actual indexation Opt-Out Members will receive in their commuted values or annuities, as the case may be, is 0.53% for the first

ten years from the effective date of the amendment and 1.49% thereafter. As such, a 2% cap will never be hit.

134. Like in the 2019 Decision, I find the conversion of the indexation formula from actual floating CPI to implied CPI to not be a reduction in accrued benefits. The change, as of the effective date of the amendment, is intended to be actuarially equivalent. Both formulae are intended, and are currently expected, to provide indexing at 75% of Saskatchewan CPI. Further, as of the effective date of the amendment, no one can say whether in any particular year in the future actual floating CPI will be higher or lower than the implied (predicted) CPI for that year. As I noted when discussing the amendment in clause 3(h) above, in 5 of the last 16 years, implied CPI exceeded actual floating CPI. While that might sound like it is less than equivalent, depending on world events impacting inflation in the future, the result could very well be reversed. It simply is impossible to predict with accuracy in advance.

135. If the amendment brought about by clause 3(i) was two distinct amendments that took effect in a temporal order with the reduction of the cap occurring first, I would conclude that the reduction of the cap was a reduction of accrued benefits. However, I am not able to view these two aspects as being separate and divisible or that they occur in a temporal order. The amendment is written as one indivisible amendment, a substitution of the old indexation benefit formula with a new one. Looking at the end result of the amendment in clause 3(i), the predetermined future indexation values are identical regardless of whether the cap is 5% or 2%, and therefore I am satisfied there has been no reduction in accrued benefits as a result of clause 3(i).

136. As I have concluded that clause 3(i) does not reduce accrued benefits pursuant to subsection 19(3) of the PBA, I also find that it does not have the effect of reducing then existing entitlements pursuant to subsection 14.02(1) of the Plan. Accordingly, I am not precluded from registering clause 3(i) of Amendment P-23.

137. I recognize that some might view my decision with respect to clause 3(i) to be inconsistent with my decision in regards to clause 3(h). The distinction with respect to the two amendments is justified when one considers that the test to determine whether accrued benefits will be reduced for the purposes of subsection 19(3) of the PBA must be objective and determinable as of the effective date of the proposed amendment. If that were not the case, plan administrators would not have any hope of knowing if a particular amendment will result in a reduction of accrued benefits and contravention of subsection 19(3). If the test was what individual plan members subjectively viewed the effect of the amendment to be, it may be impossible to make some amendments even if, objectively viewed, they were likely to turn out to be net positive for the members as a whole. Subsection 19(3) was not intended to stand in the way of and prevent amendments that,

objectively viewed, are likely to result in a net positive result for the members as a whole. As was noted in *McGrath* at page 30:

> We recognize that our decision leaves individual pensioners like the Applicant in a position in which they received indexation increases for 2008 and 2009 which were smaller than they would have received if OMERS had not decided to change the indexation formula. We also recognize that for some individual pensioners, events may unfold in a way in which the differences will not be made up to them over time. This is, however, the inevitable result of any change in the mechanics of an indexation formula. Furthermore, a DB pension plan cannot and does not produce identical results for all members. The value of DB benefits may well depend on individual lifespan. For example, members who die without a surviving spouse shortly after retirement will not get as good a 'return' on their contributions as members who live longer. The PBA recognizes that pension plans are collective instruments. It should not and does not force us to nullify an amendment of this type, designed to apply over time and passed in good faith for the benefit of all plan members, simply because it may have a modest negative impact in the short term.

138. With respect to clause 3(h), the change to the indexation formula being only a straight reduction of the cap is, objectively viewed, likely to result in lower cumulative indexing over time and prima facie represents a reduction in value. The annuity premium differential in respect of replacement annuities, which the members would be entitled to receive under the terms of the Plan if they retired or were terminated before the amendment took effect, provides the evidence as to monetary value pre and post amendment that confirms the reduction in value.

139. With respect to clause 3(i), the change to the manner of indexing from being based on floating CPI to being based on implied CPI is, objectively viewed, neutral. While the results from applying the two actuarially equivalent formulae are expected to be equal over the long term, it is impossible to predict which one will do better than the other in any given year in the future. While some members may subjectively view that switching to implied CPI at the present time will result in poorer long term indexation, there is no basis on the evidence before me on which to objectively come to that conclusion. Based on that objective assessment, there is no need to resort to referring to a comparison of annuity premiums or other methods to assign a monetary value to the indexation cap pre and post amendment. This is consistent with the principles established in *McGrath* in terms of actuarially equivalent indexation formulae. In the absence of evidence demonstrating that the method of calculating implied CPI in accordance with CIA Standards is somehow flawed or not actuarially equivalent to actual CPI experience, I am not able to objectively view clause 3(i) as resulting in a reduction of the accrued IBAPR for Opt-Out Members.

3. The retroactive elimination of the right to receive an annuity in lieu of a retirement benefit pursuant to clause 1

140. Clause 1 of Amendment P-23 amends section 6.09 of the Plan, effective as of January 1, 2017. The version of section 6.09 prior to this amendment provided all members with the right, upon their retirement, to elect to receive an annuity in lieu of the normal form of retirement benefit under the Plan, namely a pension in pay. That section was added to the Plan effective February 2007.

141. It is my understanding that at some point after that section became effective, the Plan administrator did not in fact provide that option to retiring members to receive an annuity in lieu of a pension in pay. At some point, a grievance was filed by the Union with respect to the failure of CCRL, as Plan administrator, to provide the option contemplated by section 6.09. In 2017 CCRL and the Union reached an agreement to resolve the grievance. On June 23, 2017, an amendment to Letter of Understanding 65 ("LOU 65") was made to reflect this resolution. This June 23, 2017 amendment to LOU 65 provided that, effective January 1, 2017, retiring members would no longer have the right to elect to receive an annuity in lieu of a pension in pay. It also provided that for members who had retired between February 1, 2007 and December 31, 2016, they would have a one-time option to elect to have an annuity purchased in respect and in lieu of their remaining retirement benefits.

142. This amendment in clause 1 of Amendment P-23 does not involve 'benefits' or 'accrued benefits' as contemplated in section 19 of the PBA. 'Benefits' in the PBA refers to monetary amounts capable of calculation, which would not include an option to select a particular vehicle to receive retirement benefits, such as an annuity.

143. Submitter R1 raised concerns about the end date selected for the exception period in which members who retired during the period have the one-time option to elect to receive an annuity in lieu of the remainder of their pension in pay. Based on Submitter R1's submission, I understand he specifically chose to retire on January 31, 2017, just prior to the expiry of the collective bargaining agreement in place at that time and which was scheduled to expire at the end of that day. The amendment to LOU 65 was not agreed to by CCRL and the Union and made until June 23, 2017, after Submitter R1 retired. It appears Submitter R1 chose his retirement date in the hope that the grievance would be resolved in a manner that would have allowed him to elect to obtain an annuity instead of his pension in pay, and that this option would be in effect for the duration of the collective bargaining agreement then in force, up to and including January 31, 2017. Ultimately the grievance was not resolved in this manner and the cut-off date chosen for the one-time option to obtain an annuity was one month prior to Submitter R1's retirement date.

144. There is nothing in the PBA that dictates that amendments to plans cannot be made effective during the period of an existing collective bargaining agreement. And as the option to elect to receive an annuity instead of a pension in pay is not a benefit for the purposes of the PBA, there is nothing in the legislation that prohibits the Plan from being amended in the manner it was.

145. With respect to compliance with subsection 14.02(1) of the Plan, that prohibition is not engaged by this amendment to section 6.09 of the Plan due to my finding in the 2019 Decision, and which I reaffirmed in this decision, that "then existing entitlements" has the same meaning as "accrued benefits" as used in subsection 19(3) of the PBA.

146. I specifically reviewed the entire Plan text again, focusing on whether "entitlements" could mean more than just monetary benefits and include non-monetary rights, such as the right to receive an annuity in lieu of a pension in pay. Whenever "entitled" was used, it was used to mean "a right" to something. When "entitlement" was used, sometimes it clearly referred to monetary benefits, sometimes it clearly referred to "a right" to something and sometimes it was unclear in that it could be used to mean either monetary benefits or a "right to" something. When the plural "entitlements" was used, it was used to mean a "right to" something just once, but in that instance it was used as part of the phrase "benefit entitlements". Everything considered, I find that when "entitlements" was used not in conjunction with "benefits" in subsection 14.02(1) of the Plan, it meant monetary benefits, as it unquestionably did in sections 1.15 and 2.09 of the Plan.

147. Accordingly, while the result is unfortunate for Submitter R1, there is nothing in the PBA or the Plan prohibiting the Plan from being amended in the manner purported by clause 1 of Amendment P-23.

148. The CCRL Retirees Pension Committee also raised a concern about the amendment to section 6.09 of the Plan. They suggest that the amendment to section 6.09, when considered along with the amendment in clause 3(i) of Amendment P-23, means that any retired members who elect to exercise their option to receive an annuity in lieu of their remaining retirement benefits will only be entitled to implied CPI and not floating CPI. This concern appears to be based on a misconstruing of the scope of the amendments to the indexing formula in clauses 3(h) and (i) in Amendment P-23. Those clauses will not apply to members retired prior to 2021 and therefore any retired member who retired in the eligible time period in the amended section 6.09 and now elects to receive their annuity will be entitled to have the annuity include the specific indexing formula that was accrued as part of their retirement benefits at the time of their retirement.

Conclusion

149. Subsection 17(3) of the PBA authorizes me to issue a notice of registration with respect to amendments that I am satisfied comply with the PBA. As I indicated above when discussing clause 3(h) of Amendment P-23, I am not satisfied that the reduction of the indexation cap with respect to past service is in compliance with subsection 19(3) of the PBA. As a result, I have no authority to register that aspect of clause 3(h). The prohibition in subsection 19(3) of the PBA is an absolute prohibition binding plan administrators directly, it is not a discretion provided to me in making a registration decision. I have no ability to cure a failure to comply with subsection 19(3) by registering an amendment that contravenes it.

150. On December 30, 2020, I informed CCRL and all submission providers that I had decided to register Amendment P-23. I have so registered the amendments that comprise Amendment P-23, including clause 3(h), provided however, that the aspect of that clause relating to past service is severed from the clause as I am without authority to register it. Accordingly, CCRL must amend the wording of clause 6.06(2), as amended by clause 3(h) of Amendment P-23, to ensure the reduction of the indexation cap does not apply to past service of the members to which that subsection 6.06(2) applies.

151. As I did not register all of the amendments that comprise Amendment P-23 in their entirety, the Plan administrator, CCRL, has the right to object to my registration decision pursuant to section 22 of the PBA. That section provides as follows:

> **Objection to certain actions of superintendent**
> **22**(1) If the superintendent refuses to register a plan or a plan amendment, cancels a registration pursuant to subsection 21(1) or directs an administrator to amend an actuarial valuation report or cost certificate pursuant to subsection 11(5), the superintendent shall give the administrator notice in writing of that fact and set out the reasons for the decision in the notice.
> (2) In the case of a cancellation of registration, the superintendent shall specify the effective date of cancellation in the notice.
> (3) Within 60 days after receiving a notice pursuant to subsection (1), the administrator may deliver to the superintendent a notice of objection setting out the reasons for the objection and all relevant facts.
> (4) On receipt of a notice of objection, the superintendent shall:
> (a) reconsider the refusal, cancellation or direction to amend;
> (b) provide the administrator with an opportunity to make representations, if the administrator has requested the opportunity to do so;
> (c) rescind, vary or confirm the previous decision; and
> (d) give a notice in writing to the administrator that states the decision and the reasons for the decision.

(5) Where an administrator delivers a notice of objection pursuant to subsection (3), the administrator may, notwithstanding the decision of the superintendent mentioned in subsection (1), administer the plan in a manner that reflects the amendment or report or cost certificate until the matter is dealt with pursuant to subsection (4).

Dated at Regina, Saskatchewan, this 24th day of February, 2021.

"ROGER SOBOTKIEWICZ"
Roger Sobotkiewicz
Superintendent of Pensions
Financial and Consumer Affairs Authority
of Saskatchewan