GENMO SALARIED PENSION ORGANIZATION

Your Pension

A Reference Document:
Issues Affecting the GM Canada Salaried Pension Plan

Version 2

2013_10_07

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Introduction

As much as people tend to think their pension is simple; you retire, you get your pension; it is in fact extremely complex. Particularly when the pension plan is in trouble. The GM Canada Salaried Pension Plan is in trouble.

Pensions are impacted by many different Provincial and Federal laws and regulations. In addition there is much precedent that, while not specifically in the laws and regulations, are enforced in court.

This reference guide was created by the GENMO Salaried Pension Organization executive to assist GENMO members in understanding their pension and the dangers it faces.

Section 1: Issues that are common to all pensions regulated in Ontario

Our pension falls under the Province of Ontario's Pension Benefit Act (PBA). Should GMCL experience financial problems, as happened in 2009, and were to seek restructuring protection or bankruptcy it is also impacted by the Federal Government's Business Insolvency Act (BIA) and the Companies' Creditors Arrangement Act (CCAA).

Pension Benefits Act (PBA)

This Act deals with all of the regulations associated with establishing, maintaining and operating a pension. The Act is administered by the Financial Services Commission of Ontario (FSCO). The PBA defines what the funding levels need to be, the minimum pension contributions plan sponsors (the companies) need to make, the roles and rights for plan members (us)/plan sponsors/FSCO, and all other aspects.

There are five key problems with the PBA from the plan members' perspective. These are in line with the Canadian Federation of Pensioners (CFP) position:

1. The required funding level is only 85%. This compares to the Federal PBA (which covers transportation, communication, and financial industries) which is 105%. If there is a downturn in the economy as experienced in 2009, the 85% can quickly become 75/65/55%; as a result there is too little cushion for unforeseen economic changes.
2. There are no incentives for a plan sponsor to fully fund the pension. When a pension reaches 85% funded, the plan sponsor can direct available funds to the bottom line rather than improve pension funding. Improved bottom lines can directly lead to higher executive bonuses. Even when a pension plan is significantly underfunded, companies can still pay dividends, raise pay, and pay bonuses.
3. There is no provision in the PBA to provide plan members a meaningful voice in the management of their pensions. FSCO will negotiate with the plan sponsor to make changes to a pension plan with no representation from those most impacted; the plan members.
4. If a plan is 85%+ funded, the plan sponsor only has to report on the health of the pension every three years. A lot can change in three years. Reporting should be required annually so the plan members can see the health of their pension.
5. FSCO has very little power to compel the plan's sponsor to redress any shortcomings or infractions. FSCO needs more enforcement power.

Bankruptcy Insolvency Act (BIA)/ Companies' Creditors Arrangement Act (CCAA)

Regulations covering insolvency in Canada are Federal; however, this part is complicated because in Canada companies can deal with insolvency under many different Federal laws. The most common approaches for large companies are to apply for restructuring under the CCAA, and bankruptcy under the BIA. Restructuring is possible under the BIA; however, CCAA is more flexible making a restructuring deal easier.

The overriding concern for plan members in a bankruptcy is the order of settlement of claims. In a bankruptcy, claims are settled in a pre-established order. That order is in part defined in the BIA and in part based on precedence set in previous bankruptcies. There are a lot of claims that come before pension underfunding: the lawyers, accountants, governments, those that lent money to the company to allow it to operate after insolvency (these lenders are called Debtor in Possession or DIP) and banks to name some. Usually, when the order of settlement reaches pensions, which are generally considered with the unsecured creditors, there are no assets left.

Pensions are earned as an employee works, and are in fact considered by many as deferred compensation[1]. Pensions should have a higher priority.

Section 2: A brief history of GMCL's pension

1992

In 1992, the Provincial Government of the day (Bob Rae's NDP) passed the "Too Big to Fail" legislation (PBA regulation 5.1). It allowed companies with pension funds in excess of $500 million to elect to be treated as a "qualifying plan". This allowed these companies to fund the pension plan on an ongoing basis permitting these companies to significantly reduce their pension plan contributions and as a result their wind up[2] ratios declined. Along with GMCL, other companies such as STELCO and Algoma Steel elected to take advantage of this same offer. STELCO and Algoma both went bankrupt; GMCL claims it nearly went bankrupt in 2009. All of these pension plans were/are underfunded.

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1 "The defined-benefit plan is a form of deferred compensation that helps bind employees to the company," said Paul Halpern, professor of finance at the University of Toronto's Rotman School of Management Toronto Sun 2011_06_14 " Air Canada unions face headwind on defined pension benefits?"
2 Wind up ratio is plan solvency assets divided by plan wind up liabilities assuming the plan ceases operation as in the case of a bankruptcy

GMCL salaried plan members were not allowed to take part in these negotiations nor were they informed of the impact on their pension.

1992 - 2009

Successive Ontario Governments, both Liberal and Progressive Conservative, continued to allow GMCL to underfund the pension, while meeting the requirements of the "Too Big to Fail" legislation. There was no provision in 5.1 to address pension shortfalls if the companies were profitable. In the period from 1992 to 2009 GMCL had many very profitable years, but was not compelled or encouraged to fully fund the pension.

In 2002, finally recognizing the train wreck 5.1 was, the Ontario government changed the regulation such that no additional companies could use 5.1, but grandfathered GMCL. This allowed the legacy of underfunding to continue.

Again, GMCL salaried plan members were not allowed to take part in these negotiations.

2009

As part of the 2009 Bailout deal, changes were made to the GMCL pension. These changes were documented in regulation 321/09 which was implemented by the government of the day (Dalton McGuintys' Liberals). The negotiations were between the Canadian Governments, FSCO and GMCL.

Once again, GMCL salaried plan members were not allowed to participate.

321/09 provided great benefit to GMCL and negatively impacted the salaried plan members; just like "Too Big to Fail" as follows.

321/09 GMCL Benefits

- GMCL was allowed to contribute $4 billion of the bailout funds to the pension plans ($720 million to the salaried plan and the rest to the hourly plan) as a Prior Year Credit Balance (PYCB), in other words, a prepayment. GMCL could use the $4 billion over the five year term to "help" make its pension obligations. Deft accounting that eliminated $4 billion of charges to operations[3] over the five years; from an accounting perspective it's like a $4 billion cost savings. GMCL was able to take the $4 billion directly to the bottom line to improve financial performance. Higher profits that can be used to pay dividends, performance bonuses, and executive bonuses.
- GMCL retirees were negotiated out of the Pension Benefits Guarantee Fund (PBGF). The PBGF is insurance for defined benefit pension plan members to assist in case the plan sponsor goes bankrupt. It is sponsor funded; it works a little bit like Workers Compensation. By negotiating GMCL retirees out of the PBGF, GMCL no longer had to pay PBGF premiums. Another cost savings for GMCL.
- 321/09 commits GMCL to making only the minimum contribution to the pension plan. The past year, 2012/2013, the minimum contribution for the salaried plan was $191 million.

3 Operations refers to the annual operating budget; annual sales, expenses ultimately profit/loss for the particular year

With this minimum contribution the wind up ratio of the salaried pension plan declined by 3%. In fact, this agreement has seen a steady degradation of the wind up ratio since 2009[4].

- 321/09 includes pension contribution limits from operations for GMCL. GMCL's pension contributions for both plans (salaried and hourly) from operations are capped at $200 million per year. The rest comes from the PYCB. To put this in perspective, this year, 2013/2014 GMCL's minimum contribution to the salaried plan will be $175 million. GMCL will only contribute $39.2 million from operations; $135.8 million will come from the PYCB. The hourly pension, which is four to five times the size of the salaried pension plan, is treated the same way. GMCL's minimum pension contribution (resulting in a declining wind up ratio; underfunding getting worse) to the two pensions is about $1 billion per year; of which only $200 million is coming from operations[5].
- 321/09 allowed GMCL to choose "Option 3" to address the underfunding. Option 3 allows GMCL to spread the pension shortfall repayment over ten years. In essence, divide the shortfall by ten and make that payment each year. In reality, it's more complicated than that, but that's the idea. Normally a company is allowed five years to address the shortfall but under certain conditions may apply for a ten year plan. If 30%+ plan members object, the company has to use the five year schedule. GMCL's salaried employees were never asked to approve this.

321/09 Negative Impact on Plan Members

- The combination of the $4 billion PYCB and GMCL making minimum contributions will result in an underfunded pension at the end of the 2009 Bailout deal in 2014. The wind up ratio is declining every year and the funding deficit is increasing. A funding deficit that will have to be addressed in 2014/2015.
- Exclusion from the PBGF means GMCL salaried plan members are not eligible for support should GMCL fail. This is significant. GMCL's wind up ratio is currently 75.4%. If GMCL were to enter bankruptcy there could be additional costs that could consume another 5-10% (costs to set up annuities, manage the wind up, etc.). The PBGF addresses losses to the first $1,000 per month. So, if a worker has a pension benefit of $2,000/month and the funding level is at 65% (75.4% - 10%), there is a shortfall of $350/month on the first $1,000/month. The PGBF adds the $350 to the company's payment of $1,300 (65% of $2,000/month) and the retiree ends up with a pension of $1,650/month. Without PBGF protection, the retiree will end up with $1,300 a month; $350 less.
- There are neither provisions to address pension shortfall if financial performance improved nor any incentive to move towards fully funding the pension. In 2009, based on GMCL press releases, GMCL was on the verge of bankruptcy. A significant amount of government assistance was required to stave off bankruptcy. The governments negotiated a deal with

4 All figures from GMCLs' "Update to Members regarding Plan Funding" distributed to salaried plan members

5 All figures from GMCLs' "Update to Members regarding Plan Funding" distributed to salaried and hourly plan members

GMCL, to provide $10.6 billion[6]. One would hope that the governments were reasonably assured that GMCL would survive and prosper to make that kind of investment. That the governments, with their look inside GMCLs financials, believed GMCL would survive. Then why were there no performance provisions? The government could have provided GMCL pension relief initially, but with a proviso that if GMCL's performance improved the pension funding shortfall would be addressed. Why were there no incentives built in to encourage GMCL to address the pension funding issue? Jim Flaherty gave Air Canada pension relief, and to encourage Air Canada to address their pension problem here's what he built into the deal:

> "In exchange, executive compensation will be frozen at the rate of inflation, special bonuses will be prohibited and limits will be imposed on other executive incentive plans. The airline will also be prohibited from issuing dividends and initiating share repurchase programs"[7]

Section 3: Why should people not covered by defined benefit (DB) pensions support us or care?

This is one of the more difficult arguments. There is lots of emotion around this issue, and when there is lots of emotion there tends to be a lot of half truths. There are strong, logical reasons for everyone to support DB pension plan members receiving what they were promised.

The economic argument

Make the companies pay now or let your tax dollars pay later.

Is it a good solution to let the companies off the hook and add the 30 - 40% of Canadians who have pensions to the 60 - 70%[8] who have no pensions? That just exacerbates an already serious senior poverty issue.

The 60 -70% of Canadians with no pension will put a significant strain on government services. Through their latter years they will require more support for housing, healthcare, even food as they will not have the financial ability to fully support themselves. These government services, at all three levels of government are funded by tax dollars; everyone's tax dollars. These costs are rising

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6 Globe and Mail 2009_06_08 "Apocalyptic rhetoric aside, GM bailout is a bad idea"

7 The Financial Post 3013_03_13 " Ottawa gives Air Canada pension break, demands near freeze on executive compensation"

8 CA Magazine 2012_10 " Confronting a perfect pension storm"

and will continue to rise as the population ages and more and more of the 60 - 70% without pensions reach their retirement years.

In contrast, those with pensions present a much smaller drain on the public purse at all three levels of government. They have their pension which provides financial independence and many with pensions also have post retirement healthcare plans. The combination of pension and healthcare coverage makes these retirees virtually self-sufficient, not requiring anywhere near the amount of support from government services.

Pensioners being fiscally independent are much more able to participate in the economy as consumers. They have money and spend money which is good for the economy. Allowing the companies to avoid their obligation effectively takes these people out of the economy.

Making companies deliver on their commitments of pensions, and post retirement benefits, reduces future government spending and everyone's tax burden.

DB pensioners were not able to take advantage of RRSPs/Subsidized those that did

A common discussion point is "DB pension plan members should have saved for their own retirement".

In context, what should DB pension plan members have done? Should they have thought that their company was not going to meet its' commitments, that the government regulations would be ineffective to require the companies deliver their commitments? If so, what would they do?

First, most if not all, GMCL salaried retirees did save for their retirement in addition to their pension. As reasonable people, most developed savings plans based on needing to top up the pension they were promised.

Why would they believe their pension was assured?

There were many reasons.

- GMCL provided many documents, booklets, and meetings where salaried employees were assured that planning for their financial future should be based on their pension plan and post retirement benefit coverage.
- The FSCO regulations were in place to ensure pensions would be properly managed, well funded and in place for retirees.
- The tax code clearly demonstrated the provincial and federal governments had no doubt DB pension plans were secure. While technically a savings plan, RRSPs are seen as a different form of pension by the governments. DB pension plan members were allowed to contribute a pittance as the tax code places a very high value on DB plans. Briefly (and these are only <u>representative</u> numbers), the math was the RRSP contribution limit for the year might be $14,000, your DB pension plan was "valued" at $13,000 leaving the DB pension plan member an RRSP limit of $1,000. Clearly the governments were assuring DB pension plan members that government regulations were in place to protect them.

The tax breaks for those able to take full advantage of RRSPs came from the tax dollars everyone paid. GMCL pensioners paid their taxes and were not allowed to take full advantage of the RRSP program; subsidizing those that did.

Section 4: The fallacy of the argument that GMCL can't afford the high pension and benefit costs.

Unfortunately, GMCL stopped publishing financial results so it is not possible to determine GMCL's specific financial performance. However, GMCL's "parent" GM Company LLC (and "old" GM) does publish financial reports and GMCL does issue many statements relating to its financial performance.

Current Situation

GM Company LLC is doing very well. $4.9[9] billion profit for 2012, share price at $36.84 (2013/07/19) vs. $33.00 when issued, and over $20 billion in cash[10]. In 2011, GM recorded its, best annual earnings ever; $7.6 billion[11].

GMCL has issued many press releases stating the GMCL is both viable and profitable; that the focus is on profitability not market share.

> “We are focused on building a profitable business which has long-term viability, which is in the best interest of all of GM’s stakeholders, including shareholders, employees, retirees, dealers and suppliers.”[12]

GMCL choose to contribute the $4 billion to the salaried and hourly pensions as a PYCB instead of a top up, directly and negatively impacting the solvency of the pension. Topping up the salaried pension plan with the $720 million "share" of the $4 billion, would have nearly fully funded the pension.

9 USA Today 2013_02_14 " GM finishes 2012 with $4.9 billion profit"

10 Daily Finance 2013_07_15 "Why GM Hasn't Repaid Taxpayers"

11 CNNMoney 2012_02_16 "GM posts record profit 2 years after bankruptcy"

12 Globe and Mail 2013_06_23 " Angst in Oshawa: The foggy road ahead for GM Canada" Kevin Williams quote.

Past Situation

2009 was not a good year for GM or GMCL. It is important to remember that while GM Corp (old GM) went bankrupt GMCL did not. Neither did GMCL file for restructuring. Lacking any disclosure of financial information about GMCL, there is no way to validate whether GMCL faced imminent bankruptcy or not. There are only GMCL's press releases.

Other than 2009, GMCL had a long and profitable run. Particularly in the era when the Truck Plant in Oshawa was running three shifts and significant overtime. Most other plants were running at or over capacity at that time and GMCL was the undisputed market share leader in Canada.

To claim that GMCL was unable to fully fund the pension prior to 2009 is simply not believable.

There are too few workers to support pensions and retirement benefits

This is a very common, well accepted and misdirected belief. It is based on the argument that the ratio of retirees to active workers is climbing. The claim is, this was unforeseen and now an untenable burden. This may be true for other companies; but not General Motors.

Has GMCL's active employment declined? Yes it has, but there is more to the story.

General Motors global sales have not decreased, they have increased. The chart below shows the growth in sales:

2012: 9.20 million units
2011: 9.03 million units
2010: 8.39 million units
2009: 7.48 million units
2008: 8.35 million units
2007: 9.37 million units
2006: 9.09 million units
2005: 9.17 million units
2004: 8.99 million units
2003: 8.62 million units
2002: 8.48 million units

In 2011 General Motors posted its' best earnings ever; $7.6 billion.

So clearly GM has not shrunk. Clearly GM is doing well financially.

What has happened is that GM has changed the way it builds and sells vehicles and components.

GM has embraced outsourcing. Outsourcing in many forms; selling divisions, off shoring, temporary workers in the plant and office, and traditional outsourcing.

And GM has done a shoddy job of the financial analysis.

To evaluate a business decision to outsource there are three components:

1. The cost of doing it the way it's done now where it is done now

2. The cost of doing it in the new location
3. The costs of moving the work

GM thoroughly analyzes the first two elements, and selectively the third. One cost element not included in the third is the costs of pensions and post retirement benefits.

Not including these costs makes outsourcing appear to be much more attractive. Not including these costs is irresponsible.

When the media, GM or GMCL claim that there are not enough active workers to support pensions and post retirement benefits they are misrepresenting the facts.

GM was irresponsible as it analyzed outsourcing, leaving out significant costs; and the governments let them.

Section 5: The Perfect Storm is approaching in 2014 - 2017

GMCL faces a perfect storm in 2014 - 2017. Three significant events are on the horizon; a dramatic increase in charges to operations, uncertain product allocation, and GMCL as a standalone financial entity.

Dramatic increase in charges to operations

There are a multitude of financial challenges looming on the horizon for GMCL.

GMCL is currently only contributing $200 million from operations of the approximately $1 billion required each year to the salary and hourly pension plans, the rest coming from the PYCB. This was negotiated as part of the 2009 Bailout Agreement between the Ontario Government, GMCL and FSCO dealing with the $4 billion allocated for the salaried and hourly pensions. At the end of the 2009 Bailout Agreement in 2014, GMCL will have to pay the full $1 billion per year from operations. This is an additional $800 million per year GMCL will have to find in its budget.

In addition to the annual contribution challenge, GMCL will have to start addressing the pension underfunding. It is difficult to forecast what the shortfall will be, but $4 billion between the two plans is a reasonable estimate. Regulations require that GMCL make up the shortfall in five years. There is an option that GMCL could, and likely would, request that the time allowed to make up the shortfall be extended to ten years. If more that 30% of plan members (the salaried and hourly plans are treated separately) are opposed, five years is enforced. Over five years this would another $800 million per year from operations.

GMCL will have to repay outstanding government $220 million loans related to Ste. Therese by 2017[13].

The Health Care Trust, negotiated with the CAW as part of the 2009 Bailout is due payments starting in 2014 totaling $1.54 billion over the five-years[14]. Media reports indicate that GM is planning to borrow $4.5 billion on the open market a portion of which will be used to make these payments early.[15] However, this simply means that GM will not owe the Health Care Trust; they will just owe somebody else at a different interest rate and different terms. Unfortunately, as GMCL does not publish financials the impact of this debt switch is not public, but the $1.54 billion is still debt being carried by GM.

There are several large lawsuits against GMCL that could settle in this time period. The suit raised by the salaried plan members could be $500 million; two separate dealer suits could total $1 to $1.5 billion[16].

Product Allocation

GMCL has traditionally been vague about product allocations coming into CAW contract years. However, this particular time period seems to be different and more threatening.

- In Ingersoll, a contract settlement was reached September 15, 2013[17]. It is puzzling that GMCL agreed to maintain hourly rates given that GMCL has been adamant that Canada's production costs are highest in the world. Even more puzzling is that the agreement moves some 300 supplemental workers up to the "regular' wage rate, another cost increase, and that this sets a precedent for the upcoming negotiations with the other manufacturing facilities in Canada. Noticeably absent was a product commitment, none was made. In 2008, GMCL announced the closing of the Oshawa Truck plant two weeks after signing a new contract. Even if the Equinox is allocated to Ingersoll it appears it will also be built in Spring Hill Tennessee, the former Saturn plant.
- In Oshawa, the only volume vehicle in the plant is the Impala. The Impala is also being built in Hamtramck. It is unknown what concessions GMCL may be seeking in the upcoming negotiations.

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13 Globe and Mail 2013_06_23 " Angst in Oshawa: The foggy road ahead for GM Canada"

14 Ontario Superior Court of Justice Court File Number CV-09-00393974-00CP July 4, 2011

15 MotorTrend.com 2013_09_24 " UPDATE: GM Repurchases 120 Million Shares from UAW VEBA Trust"

16 Globe and Mail 2013_06_23 " Angst in Oshawa: The foggy road ahead for GM Canada"

17 Globe and Mail 2013_09_15 "New contract averts potential strike at Cami plant"

- In St. Catharines, the recent announcement by GM to invest in Mexico looks like it involves St. Catharines products.

The best possible outcome would be that Ingersoll is allocated the new Equinox, Oshawa is allocated the bulk of Impala production, and St. Catharines is allocated the next generation of the products produced there. However, as all products will also be tooled elsewhere, transferring work out of Canada becomes very simple. Leaving the future uncertain.

GMCL as standalone entity

As part of the 2009 bankruptcy in the US, GM Company LLC (the "new" GM) restructured its' relationships with its' subsidiaries. A key point of the restructuring was to make each subsidiary financially independent. Each subsidiary must now deal with its' own costs and liabilities with its' own revenues. Leaving GMCL to manage all of the upcoming costs on its' own.

Appendices

Appendix A: Versions

Version	Date	Changes
1	2013_08_13	Version 1 released
2	2013_10_07	Updated CAMI contract settlement and GM's plan to switch CAW Health Care Trust debt

Appendix B: Glossary

321/09	The regulation that changed the GMCL pension plans as part of the 2009 Bailout agreement
BIA	Bankruptcy and Insolvency Act
CCAA	Companies' Creditors Arrangement Act
CFP	Canadian Federation of Pensioners
DB Plan	Defined Benefit Pension Plan
DC Plan	Defined Contribution Plan
DIP	Debtor in Possession
FSCO	Financial Services Commission of Ontario
GM Company LLC	The "new" GM
GM Corporation	The "old" GM
GMCL	General Motors of Canada
PBA	Pension Benefits Act There are Federal and Provincial PBAs. The GMCL salaried pension is regulated in Ontario
PBA Regulation 5.1	The "Too Big To Fail" regulation passed in 1992 that allowed GMCL to fund the pension on an ongoing basis
PBGF	Pension Benefits Guarantee Fund
Plan Member	Under the PBA the members of a registered pension plan: us
Plan Sponsor	Under the PBA the entity funding the pension, GMCL is our Plan Sponsor
PYCB	Prior Year Credit Balance
Wind Up Ratio	Ratio of Pension Plan Assets to Liabilities