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SUBJECT: The 2017 OSFI Pension Industry Forum held on October 25, 2017 at Vantage Venues in Toronto, Ontario, Canada.

Tamara DeMos: My name is Tamara DeMos. I'm the Managing Director of the Private Pension Plans Division at the Office of the Superintendent of Financial Institutions, or OSFI. Thank you very much for joining us this morning at our pension industry forum. Just a couple of items with respect to the washroom. I guess when you first came in out of the elevators, there are two hallways there, and the washrooms are on the right and left, depending which direction. And Stephanie can direct you, or at the desk they can direct you which way for the women's and the men's. Second thing: you all have microphones on your tables. And so if you speak to ask questions, please turn your microphones off and then, after you're done speaking, turn them off – or turn them on, and then after you're done speaking, turn them off again. Thanks.

So we hope we picked a variety of topics for you this morning. We hope they're of interest to you. I will mention that, given the continued interest in the government's policy initiatives, we've asked Lynn Hemmings to join us again, and Lynn is the Senior Chief of the Financial Sector Policy Branch at the Department of Finance. I'm sure that Lynn – she has her presentation later on – will share some very interesting topics and information with you. And I'm sure she'll wish that she could answer all your questions, but I'm sure you can appreciate that, given the confidential nature of the work that Lynn does, she may not be able to answer all your questions. We also asked Tara Berish, our OSFI Senior Legal Counsel, to join us today to provide an overview of some recent court activity that OSFI has been involved in. Our presentation will run till around 11:30. We'll have a break around 10:15. As the presentations continue, after each presentation, we'll have a little bit of time hopefully for questions, and we also have some time set aside at the end. We'll be around during breaks and after the session as well for questions.

So you should have the agenda in front of you on the tables, and I won't go through every item but instead I'll go through our org chart, our organizational structure. The management team is here today of the Private Pension Plans Division, and I'll introduce the management team. On the left-hand side we have John Grace who is the Director of Policy Approvals and Corporate Reporting, and he's right there. And on his team he has Sylvia Bartlett, the Manager of Policy, as well as Krista McAlister, who is the Manager of Approvals. John and Sylvia will be talking about recent policy initiatives, and Krista will be talking about regulatory approvals. And then we have Benoit Briere, who's right here. Benoit is the Director of Supervision. And the two managers he has on his team are Paul Rozon is the Manager of Supervision, and Kim Page, Manager of Supervision. And they, on their teams, have the nine relationship managers that you may be familiar with. These relationship managers have the direct contact with plan administrators and others. Kim will be talking about some supervisory topics. Finally, Marc Sauvé is the Senior Manager of Actuarial and Systems, and he was going to be presenting the actuarial slides. He wasn't able to join us today, so I'll be going through those slides today.

I mentioned Tara Berish—Tara works for the Department of Justice, and she replaced Anthony McIntyre who has moved over and is working with the financial institutions – the banks and insurance companies – at OSFI. And Tara has actually joined us from working as legal counsel for the Department of Finance. And as I mentioned as well, Lynn Hemmings from the Department of Finance, right here beside Tara, will be speaking about changes they are possibly contemplating to the federal pension legislative framework.

The goal of OSFI's risk assessment framework is to evaluate the level of risk to plan members' and beneficiaries' pensions. So after the relationship manager analyzes the level of risk that a pension plan is exposed to, they may, depending on the level of risk that they identify – depending, for instance, on the financial condition of the plan or the management of the plan and many other reasons – they may put that plan on a watch list. These plans are generally the target of increased or higher level of monitoring.

At March 31, 2017, you can see that there were 30 pension plans on the watch list: 23 defined benefit and seven defined contribution pension plans, much the same as the – exactly the same, I should say, as last year at March 31, 2016. If you look at March 31, 2013 – I thought it'd be interesting to show you that one of the reasons plans get on the watch list is based on the financial condition of a defined benefit pension plan. I'll talk a little bit more later on when I'm presenting the actuarial slides on the exercise that OSFI does in estimating the solvency ratio of the defined benefit pension plans, and then we average those solvency ratios out. Looking back at the beginning of 2013, end of 2012, the ESR – estimated solvency ratio – at that time was 0.83. And compare that to the end of last year, end of 2016, beginning of 2017, where the estimated solvency ratio was 0.97. And you can see that it kind of demonstrates the number of pension plans on the defined benefit side that are on our watch list.

For the defined contribution side, the main reason that these pension plans get on this watch list is basically when their required contributions are not being made on time. And many times we have plan administrators asking if their pension plan is on the watch list, but OSFI does not disclose the plans that are on our watch list.

And just a slide on what we're hearing from certain stakeholders, pension plan stakeholders. OSFI is a member of CAPSA, the Canadian Association of Pension Supervisory Authorities. Every year we invite, or CAPSA invites, stakeholders to share ideas and discuss emerging trends and challenges in the pension sector. And we provide a list here of what CAPSA has heard from certain stakeholders on their concerns. The list here is not exhaustive. And you'll also note that for many of these concerns, the solutions would involve legislative change. And I know that Lynn Hemmings will be discussing some of those later on as well.

So going through the list, it's probably not surprising to you that we heard from many stakeholders that those jurisdictions who still provide for solvency funding – there's a request to review the solvency funding, requesting whether it should be eliminated or restrictions provided. It's much like Quebec has recently done and introduced, and Ontario has proposed. Also, looking at other pension plan models, such as the target benefit plan framework that's recently proposed federally – under Bill C-27. John's going to be speaking a little bit about those proposals. And the shared risk plans already adopted and in place in New Brunswick was another popular discussion item.

Also, we recognize that finding unlocatables—we call them unlocatables, and I don't think it's a word in the dictionary, but members that can't be found – that's a big administrative hassle for pension plan administrators. OSFI has provided guidance on ways to try and find these people that can't be located, and CRA also has a mechanism to find them using a social insurance number. But we still recognize that it's still difficult to find certain people. And so the stakeholders have been asking for a certain kind of a repository, so where they can put the funds associated with those members who can't be located into this repository. The federal framework already has a provision for a repository, and I think Lynn's going to be discussing that a little bit later.

Defined benefit pension plans are looking for affordable ways to manage their risk. They are considering winding up the plan or converting. They're also looking at their investments and investing in assets that hedge risk to the pension plan, either on the asset side or the liability side. There's also much discussion regarding defined contribution plans. Certainly better decumulation optionsis a hot topic, as well as disclosure of fees. And one final item that was asked was to provide assistance in providing guidance on the underlying assumptions and methods with defined contribution plans in providing an estimate of the underlying pension benefit that would be provided from the DC plan, and additional assistance on disclosure with respect to how these estimated pensions should be communicated.

So that's just a high-level description of what we and our policy-making colleagues have been hearing from stakeholders, and from you and your concerns about your pension plans. CAPSA is looking at many of these issues as part of their work plan. John's going to be speaking about some of those items. And I'll now turn the discussion over to John Grace and Sylvia Bartlett to discuss pension policy developments.

John Grace: Thank you, Tamara. And thank you, everyone, for joining us here today. Just a couple of things I want to mention before I turn to my slides. And the first thing I just wanted to say is that when we get together and plan this event, we try to come up with topics that we think you will find interesting and useful in your work. But I have to say that a big part of why we do this is to meet in person with you all, and we very much value that opportunity for some dialogue, to make new connections with people, and to renew existing relationships that we have. So I encourage everyone during the break– and after the session's over - to approach us with any issues and concerns you want to raise with us, and even just to say hello.

The second thing I wanted to do is that, while we've chosen sort of a small list of topics to talk about, I just want to give you a bit of context in terms of what the pension policy team at OSFI does. So the pension policy team is five individuals, including Sylvia Bartlett and myself, and we keep busy mainly with three activities. The first really would be to provide interpretation of existing legislation and regulations, often in response to questions that we receive from various stakeholders, from individual members, plan administrators, lawyers and actuaries, and other advisors. So that'd be the first activity that occupies us. Secondly, we develop guidance that helps to explain the legislative requirements, and also to communicate OSFI's expectations, mostly of plan administrators. And then thirdly, we assist the government in developing proposals for new pension policy areas, which may result in revisions to existing legislation, or in new legislation in some cases.

So with that, I'll just turn to the focus of my comments today. I'm going to talk about Bill C-27, which includes amendments to the Pension Benefits Standards Act, really to do mainly two things. The first – mostly what it contains is amendments to the PBSA to allow for the establishment and operation of target benefit pension plans at the federal level. And I will go into some detail on that. The second thing, which is the key element of Bill C-27, is that it includes amendments that would allow plan administrators to purchase life annuities for retired members that will fully satisfy the pension plan's obligation to those members. So that's a new initiative that some other provinces have moved in that direction as well.

So turning now to the target benefit pension plan proposals in Bill C-27, the move follows similar moves in – first in New Brunswick and BC and Alberta to allow target benefit plans to be established and operate. And the details of each approach in the different jurisdictions differ to a certain degree. But what they all have in common is they're trying to capture some of the benefits of defined benefit plans, principally more stable, more predictable retirement income than you would typically have in a DC plan, but without the kind of open-ended funding requirement or commitment by employers that would be associated with a defined benefit plan.

Now, features of the federal proposal that are laid out in the bill and that I will go over are: the bill's approach to benefit stability and funding; the requirements with respect to governance of these pension plans; also the provisions in the bill dealing with the ability to convert benefits that have been accrued in another plan into target benefits to be provided in a target benefit plan under the legislation; and then finally, I will just touch on OSFI's role with respect to target benefit plans.

So by definition, target benefit plans aim to provide benefits at a target level, rather than at a level that's defined or promised under the terms of the plan. And so when I talk about benefit stability or benefit security, I think what it really comes down to is the likelihood that the plan will be able to pay benefits at the target level on an ongoing basis. And this really depends on the kind of funding buffers that are put in place. And so with the legislation, you would have to look at what the legislation requires in terms of funding buffers that would allow the plan to deal with unexpected events such as, you know, improvements in longevity or weaker investment performance, let's say, than the assumptions built into the benefits provided by the plan.

Now, the approach in the federal legislation is not – at least in the legislation itself, not to prescribe a specific level of benefit stability, but rather to leave a lot of flexibility in the plan design to establish that level of benefit stability. And so the legislation gives each plan flexibility to establish its own funding policy, and the funding policy includes the plan's benefit stability objectives. Now, while there is that flexibility, there's also some rigour built in in terms of the requirements in legislation, and that includes that the pension plan must have actuarial modelling done with respect to the pension plan's chosen benefit stability objectives. And this must happen before the plan is established.

With respect to plan governance, there are rules that are in the bill that are specific to target benefit plans, and I think this reflects the fact that governance is particularly important with target benefit plans because of the nature of the risk that members and retirees face in a target benefit plan. They're different from what they face in a defined benefit plan or a DC plan. And also, just the challenges of operating a target benefit plan, the challenge of delivering stable and predictable benefits in a plan where you don't have the sort of open-ended funding requirements, as I mentioned, or funding commitment of the employer that you have with a defined benefit plan.

So the federal rules in the bill establish very specific requirements with respect to governance – dealing both with the participation of different stakeholders and also transparency around how the plan operates. With respect to representation, target benefit plans are to be administered by boards of trustees or a similar body, and the body must include at least one representative chosen by members and employees, and at least one person chosen jointly by former members and other beneficiaries. And that's similar to the current legislation, that's if the numbers warrant. In other words, there's room to specify in regulations a minimum number of retirees and other members in order to trigger that requirement for a representative on the board of trustees.

With respect to transparency, the federal framework requires all target benefit plans to establish a written governance policy and to have a funding policy that must be approved by the administrator. Required elements of the funding policy are listed in Bill C-27, and they include: the target benefit – pension benefit formula; employee and employer contributions; the plan's benefit stability objectives; and, both a deficit recovery plan and a surplus utilization plan which describes how the plan will make adjustments to contributions and benefits in the event that a surplus or a deficit arises. And these are all elements of the funding policy which must be approved by the plan administrator when the plan is established.

Bill C-27 also addresses the issue of conversion of existing benefits into target benefits. The proposals allow an employer to propose to plan members and other beneficiaries that benefits earned in another plan, in another form, be converted to target benefits to be offered by a target benefit pension plan. Now, the conversion is referred to as surrender and exchange in the bill, so you're surrendering one form of benefit that you have accrued in exchange for a target benefit to be paid by the target benefit plan. And it can only happen, that conversion or surrender and exchange, can only happen with the consent of individual members and former members. And it's understood that unions can consent on behalf of their members under their existing decision making processes.

Now, to obtain consent, the employer must provide members and former members with a written explanation of the terms of the target benefit plan that will be providing these target benefits, as well as information that's yet to be prescribed in regulations. And the legislation sets out that the written explanation and other information provided must be understandable to a person who does not have technical or specialized knowledge of pensions.

Now, with respect to OSFI's role, our role in supervising target benefit plans as set out in the proposed legislation is very similar to our role with respect to defined benefit pension plans today. We would be receiving annual filings from the pension plan. And more generally, we would be supervising pension plans to ensure that they comply with the funding rules and with the requirements of the legislation more generally. We would review actuarial reports that would describe the plan's funded status and how it's performing relative to its funding policy. Now, a new role for OSFI will be to review that written explanation that I mentioned, the explanation that an employer would need to provide to members to seek their consent for conversion. So OSFI would review that written material before it's provided to members and former members.

And just the final note here is that currently for defined benefit plans the Superintendent's authorization is required for a pension plan to reduce accrued benefits. That's not the case under the proposed legislation with respect to target benefit plans because, by their nature, they operate by being able to adjust benefits in accordance with their deficit recovery plan. So it would lay out in advance how the plan would adjust benefits and contributions when certain triggers are struck. So those reductions in accordance with their deficit recovery plan could happen without the Superintendent's authorization.

And with that, I'm going to hand it off to Sylvia, who is going to talk about a couple of things: the other part of Bill C-27, the life annuities; and also the most recently enacted pension regulations.

Sylvia Bartlett: Good morning, everybody, and thanks, John. Recently there has been an increased interest in annuitizing benefits as a way to de-risk defined benefit pension plans. And I think most administrators would certainly prefer that annuitized benefit would eliminate any further liability that they would have for that. However, which may have been a surprise to some, the PBSA doesn't treat annuitized benefits any differently than any other pension benefit that's provided under the plan. So what that effectively means is that, in the unlikely event that an insurer who they've annuitized with, fails to pay, either through insolvency or something, and Assuris, which is the guarantee system, doesn't cover the full amount, then the difference would come back to the pension plan to pay. it would come back as a liability of the plan. This is often referred to as the boomerang risk, and it has been a deterrent to some plan administrators from annuitizing those liabilities.

Most government policy makers are not necessarily opposed to annuitizing these benefits as a way to de-risk a plan. I mean, they're provided by regulated insurers who are, as you know, subject to some pretty stringent capital requirements, so, usually not seen as a bad thing. These policy makers are looking at ways to address the concerns of the administrators and employers. Now, BC and Quebec have already brought in legislation that specifically eliminates this boomerang risk, and many other jurisdictions are looking at the same. Federally, Bill C-27 is the Canadian government's response to that.

The proposed provisions in Bill C-27 will effectively give employers what they're looking for, which is a statutory release from their obligation to provide a pension benefit if the annuity is purchased in accordance with the specific conditions that are set out in the legislation and that will be set out later in the regulations. So this set of rules will apply to immediate and deferred annuities purchased for retirees or former members or survivors.

The conditions that I mentioned will, well most of them will, be set out in regulations, but there are a few general rules that are provided in the legislation itself, which is Bill C-27. First off, the annuity must be authorized, or the annuity purchase must be authorized, by the terms of the plan. And secondly, the annuity must be equivalent in form and amount to what they would have received under the plan. This is intended to ensure that that an annuity purchase doesn't decrease what would be paid to that person, the retiree or former member, in any way. They wouldn't get a lesser benefit in any way.

So for example, if you had a plan that had full CPI indexing, you wouldn't be able to purchase an annuity that had a cap or that had a set amount. However, what the legislation does provide for is that you can split it, so that y, for instance, the basic benefit could be paid by the annuity, and then the indexing portion could be retained by the plan and be paid from the plan. Might be a cheaper way to do it. There are other combinations, of course, but that's probably the one that most often would come to mind.

Another provision is that the Superintendent would have to approve the insurer if they're not a life company as defined under the Insurance Companies Act. And life companies would include branches of foreign companies, as long as they were licensed in Canada, but it would not include provincially licensed insurers. At this stage we certainly haven't developed any criteria or anything like that for how we would approve an insurer that wasn't a life company under the Insurance Companies Act, but it will probably involve some kind of an assessment of the company pretty similar to what we do for the pooled registered pension plan administrators when they come to us for a license. Anyway, I'm sure in the end we'll end up with a list of approved insurers so you won't be coming to us all the time.

And like the current annuity purchases, these will require the Superintendent's consent if it impairs the solvency of the plan. Currently the directives provide for a general rule, and there are a few details around it, but it's generally as long as the solvency ratio doesn't drop below 0.85, then the annuity purchase can proceed. And we expect there wouldn't be any change to that rule for these annuity purchases.

The only other condition mentioned specifically in the legislation relates to prescribed notice requirements. So I guess that means there will be notice requirements; we're just not sure exactly what will be in that. That will be prescribed in the regulations.

So that's it for Bill C-27, between what John described and mine. I'm going to briefly go over some recent changes to the regulations that came into effect in June of 2017. And the first one only affects defined benefit plans, and it relates to letters of credit, or LOCs. Currently single-employer defined benefit plans can use letters of credit to reduce some of their required solvency special payments. The LOCs are held in trust, and they are triggered under certain circumstances, including if they're not renewed or if the plan terminates, that kind of thing. So the new regulations change the maximum cumulative limit from 15 percent of the plan assets to 15 percent of the plan's solvency liabilities. This in effect gives a little bit more room to those who are using the LOCs, the underfunded plans, and it also harmonizes that limit with other jurisdictions that allow LOCs. Similar changes were also made to the provisions in the legislation that allow agent Crown corporations to reduce their solvency special payments by an equivalent amount. It's just a slightly different set-up for them.

Some small changes were also made to the rules for the locked-in vehicles that are provided under the regulations, like locked-in RRSPs and LIFs and those sorts of things. And as these vehicles are very similar under the PBSA and the Pooled Registered Pension Plans Act, then amendments – pretty much exactly the same amendments, were made to both sets of regulations. They were mostly technical. And in fact, for the most part, they just clarify some of the rules that were currently in place, rather than adding anything new. I won't go through them all here, but all of these changes and the other ones we mentioned about the LOCs will be set out in our next edition of InfoPensions, which will come out next month, in November.

And at this point I'm going to hand it back to John, who's going to go through a couple of CAPSA initiatives for you.

John Grace: In her opening remarks, Tamara referred to CAPSA. CASPSA is the Canadian Association of Pension Supervisory Authorities. It includes the pension regulators of all the provinces that have pension legislation as well as OSFI. It also includes a Canada Revenue Agency representative and a Stats Canada representative, and I think that's it. It’s really the main forum for regulators to get together and discuss issues of common concern. And it has as its mandate to facilitate an efficient and effective pension regulatory system. It attempts to seek harmonization of rules and approaches where possible, which is often difficult, but that's certainly part of what it tries to do.

CAPSA has two in-person meetings each year, and as Tamara mentioned, for the last two years we've spent a full day of those meetings in stakeholder consultations. And that's a very important day for CAPSA to hear from stakeholders. We get input on projects and initiatives we're already working on, as well as suggestions from stakeholders as to things that we should be working on. And Tamara talked about some of the messages we heard from stakeholders recently. What I wanted to do is just touch briefly on some of the initiatives currently underway by CAPSA, the first being the agreement respecting multi-jurisdictional plans, so I will turn to that.

So this has been one of CAPSA's main focuses over the last few years. It requires a lot of work, and progress has been slow, but there has been progress. There's currently an agreement in place that was signed in 2016 by British Columbia, Nova Scotia, Ontario, Quebec, and Saskatchewan. A key feature of that agreement that differentiates it from the previous approach is that the agreement provides legal clarity regarding that the rules applicable to a multi-jurisdictional plan. I should say that a multi-jurisdictional plan is a plan that has members from more than one jurisdiction. And therefore it's technically subject to the laws of each jurisdiction that has members in the plan. But under the agreement, it specifies that, with respect to sort of the core operation of the plan -- its governance, the investments, and various responsibilities of administrator -- the plan needs only to meet the rules of the jurisdiction that has the most members in the plan. So that streamlines the application of law to that plan.

Now, this approach was adopted at a time when the rules, and particularly the funding rules, were very similar across jurisdictions. Now, in early 2016 Quebec moved away from solvency funding, and Ontario has currently announced some modifications they're considering or proposing to make to solvency funding. As a result of Quebec's move, CAPSA members and governments needed to look at the agreement. There were some short-term tweaks they needed to make, and that resulted in the 2016 agreement. But they also took on the task of looking at the agreement more fundamentally to see whether the approach was still valid, given more divergence, particularly in funding approaches. And I should say too that the agreement includes a set of asset allocation rules for allocating assets among different jurisdictions in the case that the plan terminates. And those asset allocation rules also triggered on there being solvency funding requirements in place. So that was also kind of put into play.

So CAPSA consulted, and as I say, has been working on a new approach to the agreement, and really landed on two possible approaches that they decided they wanted to consult stakeholders on. The first approach is to continue to fund the entire plan by applying the rules of what we call the “major authority”, the jurisdiction with the most members in the plan. So effectively, the status quo of the 2016 agreement, notwithstanding that rules are diverging to some degree; the idea being that for the efficiency of the operation or ease of administration of the plan, that approach be considered. And the second option is really to recognize that, with the differences in funding rules across different jurisdictions, to put in place a mechanism that would provide additional funding in respect of those jurisdictions who have maybe higher funding requirements than the jurisdiction where the plan is registered.

So those two approaches were put out for comment. Many stakeholders provided their comments to CAPSA. And it's really now in the hands of governments to consider the input that was received and decide on a way forward for the agreement.

Other CAPSA initiatives I will touch on just very briefly. The first is defined benefit plan funding. So as I mentioned, though Quebec has moved away from solvency funding and developed a kind of enhanced going-concern approach, and Ontario has made its announcement, CAPSA has sort of taken on the challenge of stepping back, looking at the funding rules, looking at the challenges facing defined benefit plans, and seeing if it can come up with approaches and give some direction and maybe best practices that would seek to balance benefit security, sustainability, and affordability. And it's hoped that this will help provide other jurisdictions, who haven't made a move yet, some input, some ideas and guidance on possible approaches that they might consider.

With respect to a defined contribution pension plan guideline, CAPSA is in the process of reviewing its guideline, and Kim Page is going to speak to that after I'm finished. And then also note that CAPSA has, as part of its strategic plan, included the identification of emerging issues. And currently on that list are the longevity risk transfer, so tracking activity in that area and looking at implications for pension plans and for the sector generally, and then also the use of leverage by pension plans. That's an issue we're reading more about, and an issue regulators want to know more about and consider the supervisory or regulatory implications of it.

Kim Page: Good morning. I have a number of topics today that I would like to discuss, and I will start with an update on DC projects. In 2015 we conducted a study on defined contribution plans to help us get a better sense of the administrative and oversight practices that were currently in place for these plans with DC components. Since that time, we've continued to examine how OSFI's supervision of plans with DC components could be improved in line with our Risk Assessment Framework. In light of these efforts, over the next few years we've decided that we would pay particular attention with plans with DC components by way of examinations. What we're trying to get is information to be able to identify trends or best practices, or even sometimes deficiencies, with our supervisory process. Our focus will be on the default investment options that are offered and the adequacy of disclosure related to fees.

In addition, like John mentioned, OSFI participates in a CAPSA initiative, and we are collaborating with them on the DC Plans Committee. It was established back in 2016. The mandate of the committee is to review Guideline Number 8, which is the defined contribution pension plan guideline. And as a result of feedback that was already obtained, the committee is focusing on four areas: the availability of new retirement income options that would better provide lifetime income to members that have accumulated DC funds; best practices for DC plan sponsors that wish to offer variable benefits from the plan; guidelines for the industry on setting assumptions for retirement income projections; as well as guidelines on disclosure for fees and expenses in annual statements. As part of this review, the committee established an industry working group to be able to get guidance and recommendations from experts. At this stage, the works of the committee and the industry working group are still underway. And in the event that Guideline Number 8 is amended or updated, CAPSA plans to allow stakeholders to provide input on the amended draft guideline sometime in 2018.

Now I will move on to examinations. As part of our supervisory process, we examine approximately between nine and 12 pension plans each year. In the past we conducted mostly on-site examinations, that consisted of us going to the offices of the plan administrator to have in-person meetings and interviews with anybody who's involved with the administration of the plan. Since 2016 we've included a mix of on-site examinations and internal desk reviews. A desk review takes a bit less time for the plan administrator because what we do is we review the documents that have already been filed with us, as well as we require documents in advance to be filed with us for our review. It doesn't include any in-person meetings or us going on site.

For both the desk reviews and the on-site examinations, we start by requesting documents to review in our offices. These documents can include things like the governance documents of the plan, administrative practices and policies, member communication, minutes of meetings of the pension committee, things like that. Once the documentation has been reviewed, a desk review would usually terminate by a conference call with the plan administrator to discuss any findings or recommendations we would have. If we feel that we want to see more documents, or we really want to meet some specific people involved in the administration, then we would maybe convert the desk review into an on-site examination and go meet the people in person. Some plans from the start are selected for an on-site examination, depending on the risks that are involved or specific characteristics of the plan.

This year we've selected ten plans to examine. It's based on a risk-based approach. But like I mentioned in my prior slide, we have a focus on plans that have DC components in them. We're looking to gather more specific information to identify trends or areas of concern. The things we're asking plan administrators to provide when we examine a plan with a DC component are: the administrative processes that are applicable to new enrolments, including what type of follow-up the plan administrator would be doing if members don't make any investment choices; the default investment option, of course, and the proportion of members that are currently enrolled in that option; the process that the plan administrator is using to select, to review, to remove all the investment options that are offered; ongoing education programs that are offered to members; and, if there are any, we're interested in any benchmarking exercises that plan administrators would have done regarding investment management fees and expenses, as well as what the disclosure is to members.

Next I will talk about pooled registered pension plans, or PRPPs. There are currently five federally registered PRPPs, with only one of them having participating employers and members at this time. Our latest stats as of the end of September told us that there were 11 participating employers and a hundred members. Comparatively, as you can see on the slide, in Quebec there are nine registered voluntary retirement savings plans, their version of the PRPPs, with 5,300 participating employers and 32,000 members. I think it's important to note here a bit of the difference is that businesses in Quebec that don't already offer a pension plan, and have at least 20 employees, were required to offer a VRSP by the end of 2016. And this requirement will go to businesses with at least ten employees by the end of 2017.

The federal PRPPs, as you can see, have been just a little slower getting off the ground. One of the reasons is that they're not mandatory. And also, it's really challenging to launch a product that's only offered to members whose employment falls within federal jurisdiction. Fortunately, the federal and provincial PRPP legislations allowed the governments to enter in an agreement, the PRPP Multilateral Agreement, to try and streamline the regulation and supervision of PRPPs and make it much easier for administrators to offer their plans to employers and individuals across the country. Under the agreement, a federally registered PRPP can operate in any jurisdiction without having to register that PRPP in each jurisdiction. So far, five provinces have signed the agreement: BC, Nova Scotia, Ontario, Quebec, and Saskatchewan. And effective on November 15th, Manitoba will also be a party to the agreement.

Like I said, the agreement really streamlines the licensing, the registration, the supervision, as well as the laws applicable to PRPPs, with limited application for Quebec VRSPs. Under the agreement, OSFI is the one responsible for supervising all federally registered PRPPs that include members in jurisdictions that are subject to the agreement.

Since 2016 we've been busy trying to provide guidance to assist corporations with their PRPPs. We've already published a licensing guide, a registration guide, and in July of this year we published a guidance note providing OSFI's interpretation and expectations regarding the requirements of the default investment option. We're also currently preparing member guides for federal as well as the participating provincial members. These guides will describe the rights and interest of the members under the PRPP legislation, and will include any applicable provincial provisions. These guides should be published in the near future.

So changing topics again, I will go on to talk about inquiries. Some of you may remember at last year's industry forum we discussed the recent implementation of service standards for responding to general inquiries that we receive. This was based on the results of our previous pension plans survey, which indicated this area as needing a little bit of improvement. Our current objective is to respond to written inquiries within 15 business days. In October 2015, before the implementation of our service standards, the average response time was approximately 17 days. While it varies from month to month a little bit, our response time is now just under 11 days, and with the benchmark being obtained about 80 percent of the time. We've also made significant progress in trying to address the complex questions a bit faster.

We've been looking at how long it takes to answer. We've also been looking at what people are asking. And here I'm just going to talk about the top three questions we receive. One that might surprise you, our most common, is that people don't know who their plan administrator contact is. So that's an easy one for us. We provide the information, and for any question that is plan specific, we usually direct the people back to the plan administrator. With the new requirements to provide annual statements to all members and former members, we're hoping that these types of questions will decrease, but it might be a good idea to be sure that member communication includes this information and people can easily find it.

We also receive many questions with respect to circumstances where members can unlock their pension funds. Because of this, we have a specific section on our website called Unlocking. It provides all the options that are available, links to forms that may be required, and answers to frequently asked questions. Also, our Pension Members Guide is a very good resource, and it indicates the options that are available if the funds are still in the pension plan versus if the funds have been transferred out to a locked-in account. On this topic, unlocking for financial hardship is the most common question we receive.

Just one last thing here on unlocking. For multi-jurisdictional plans, one concept that's not always clearly understood is that the unlocking provisions, vary by province. So regardless of the fact that the pension plan is registered with OSFI, some members may be subject to different unlocking rules, depending on the provincial legislation. When the funds are transferred out of the plan, it's very important to specify to the financial institution which locking-in provisions do apply for that particular member.

Rounding out the top three is marriage breakdown questions. They're very complicated, so I'm not going to go into the details today. But I just wanted to note a few little points. For marriage breakdown and common law partnership breakdown, the PBSA recognizes that these are subject to the provincial property law, and they allow the division of the pension benefits in accordance with a court order or a written agreement between the parties. One interesting fact is that the PBSA allows a federal member to assign up to a hundred percent of their benefits, even in cases where the provincial law would only limit it to, say, 50 percent, for example.

We do track our inquiries, and what we try to do is address the most complicated ones, like marriage breakdown, or the most common ones, by putting articles in our InfoPensions newsletter or updating our FAQs or providing guidance on our website.

And my last slide is a bit of a mishmash of a whole bunch of things. And what would be a supervision presentation without talking about RRS, so here's my first point. We all want to recognize all the effort and time that everybody's been spending to learn and to file your things through RRS. I think we've come a long way since June 2014, when it was first implemented. There's just one little thing that I'd like to mention, is that we've noticed that pension plans are not updating the Organization Profile in RRS. So what is the Organization Profile? That is where we have all the contact information, the name, the address, the e-mail, the telephone number of anybody who's involved with the administration of the plan. That would be the plan administrator, pension fund custodian, plan actuary – you get the picture.

This information, first of all, should be there, and should be updated anytime there are changes. And not just looking at it once a year when everybody's filing their annual filings. If you're here today, I'm assuming it's because we had your contact information, so maybe this doesn't apply to you. But just in case, we do have guides on line on our website that explain exactly how to update the Organization Profile. And we have a team dedicated to this, our Returns Admin Support Team. They can walk you through the process of updating the Organization Profile and any other filing in RRS. All this information is on our website on the Pension Plan main page. On the right-hand side there's a little section on RRS, and you have all the links there for the training material and contact information.

My second point here relates to our triennial pension plans survey. It will be launched in a few weeks. We do appreciate everybody's input. So if you do get an invitation, please provide your feedback. Many concrete actions are taken as a result of these surveys, such as the implementation of our service standards last time. And we really try to include questions to help us help you. One example is this year is that we've added a question to try and figure out why the Organization Profile doesn't get updated in RRS.

Also, most things get filed through RRS, but there are other things that cannot, such as plan amendments and anything related to an approvals case. But we do encourage you to submit anything else electronically through our pensions e-mail address, and I've put the address on the slide there.

And last but not least, we encourage everybody to subscribe to Pension News. Again, you can find that on our website. What that does is that, every time we update guidance, we publish our InfoPensions newsletter, we add training material, you would get an e-mail notification to keep you up to speed on those things.

Krista McAlister: Good morning. This morning I will be discussing the transactions that my team is responsible for reviewing, changes to the asset transfer guidance, and also, I will be sharing a few statistics on the work that my team has been performing.

The Approvals Team is made up of three people: myself and two approvals officers. And we are responsible for reviewing applications that require the Superintendent's authorization under the Pension Benefits Standards Act or under the Pooled Registered Pension Plans Act. And then we provide a recommendation to the Superintendent or to his delegates, and this slide lists the types of transactions that my team reviews. Instruction guides for most of these transactions are available on OSFI's website, and they are there under each topic. For instance, asset transfers would be found under the topic Asset Transfers.

If you're contemplating a transaction and you have questions that aren't answered in the guides, I would suggest that you contact us prior to submitting an application so that we can start a dialogue and answer any questions or clarify any expectations prior to the submission. Our comprehensive review of an application starts when we receive a complete application, and by that I mean when we receive all the required documents that are listed in the guidance.

We will be posting revisions to the DB Asset Transfer Guide in the next few months, and to the form as well. These revisions will replace the 2010 documents that are currently posted to our website. This morning I will give you a sneak peek on some of the changes that you may see in the revision that will soon be posted. The first one, it's really important for us to know when we receive a submission who is impacted by the asset transfer. And by that I mean we need to know if there are members from other jurisdictions registered in a plan that are impacted by the asset transfer. And where there's an agreement in place between the federal government and the provincial government, OSFI may authorize an approval on behalf of the provincial regulator.

Because of that, we need to make sure that the documentation that is submitted with the application complies not only with OSFI's requirements but also with the provincial requirements. As a result, in the revisions, the new asset transfer form will ask for a breakdown of membership by deferreds, actives, and retired members, and also by jurisdiction. The revised guide will also clarify where a receiving plan is not registered federally, we may request that the receiving plan's actuarial report be prepared in accordance with the federal requirements where the federal requirements are different from the provincial requirements. The guide also mentions that if the receiving plan is registered provincially, we may request periodic updates to an actuarial report or to a regularly prepared report, or we could ask for periodic updates to a report that has been prepared in accordance with our requirements while the review is ongoing.

The 2017 guide will clarify that after the effective date of the asset transfer, that the terms of the plan should reflect where the transferring members are accruing their benefits, so in the receiving plan. And as such, the normal cost payments for those members after the effective date of the asset transfer where they're accruing should be remitted to that receiving plan. And unless notified by OSFI, special payments to both plans can be made based on the assumption that our approval will be granted. Any minimum funding requirement payments owing to either plan will be due with interest immediately following notification of the Superintendent's decision.

The revision to the guide will also address letters of credit. Submissions to OSFI for permission to transfer assets should address how the letters of credit are being handled for purposes of determining the asset transfer amount. If all the letters of credit will remain in the transferring plan, the report will need to demonstrate that. Or if some are moving to the receiving plan, likewise it will have to demonstrate that.

OSFI considers the impact of the asset transfer on the receiving plan members. We may require additional information, or we may refuse to permit the transfer if the transfer would materially negatively impact the receiving – the security of the receiving plan's members and beneficiaries. The 2010 guide did not define what we meant by material negative impact. The 2017 guide gives clarification that we generally consider a decrease in the solvency ratio of ten percentage points or more, assuming a maximum solvency ratio of the receiving plan as one, to be a material negative impact. And this is really in line to how we see the impact on transferring members going to the receiving plan. So it's a clarification.

We're also, at the same time as updating the DB asset transfer, we're updating the DC guidance note. And you may recall that in 2011 the legislation was amended to remove the requirement for the Superintendent to approve asset transfers that affected federal members. Similar to the DB asset transfers, the DC standardized approval request form has been updated to request a breakdown of individuals by jurisdiction. And remember, the form is only required to be filled out if there are provincial members, because we don't approve federal transfers.

The other change to the DC guidance is that it clarifies documentation requirements. Plan administrators seeking permission to transfer assets pertaining to provincial members must again ensure that all the requirements of the provincial jurisdictions are met, and we expect those requirements, or that additional documentation to be submitted with the form when you're applying for the approval. And if you've subscribed to our website, you'll receive alerts when the two guidance notes are updated on our website.

This slide shows what we've been busy doing during the 2016/17 fiscal year. And it includes four cases that were withdrawn during the year. So we received 29 applications for plan registration, and 19 of those were for defined contribution plans. We also registered 29 plans. And again, the majority were for defined contribution plans. We received 14 applications for the Superintendent's approval of a termination report, and 11 of those were for defined benefit plans. And we also approved 14 termination reports. Fourteen were for defined benefit plans, and 11 of the 14 were for defined benefit plans, and five of those 11 were for individual pension plans. And again this year, the reasons given for the plan terminations were either that there were no active members remaining in the plan or that the company ceased operations or amalgamated with another company, and that company had its own benefit program.

In 2016/17 we continued to see an increase in requests for asset transfers, hence revisions to our asset transfer guidance. Fourteen of the 16 asset transfer applications that we received were from plan sponsors who have multiple plans and they want to amalgamate to save on administrative costs.

You may be wondering how these numbers compare to the previous year. In 2015/16 we received a few more applications. We received 73, compared to the 64 in 2016/17, and we processed – we processed 60 applications, compared to the 64 that we did in 2016/17. And I would just like to say, if you have an application with us under review right now, we have a high volume of transactions, so we really are trying to get through them as quickly as possible.

Tamara DeMos: OK, so moving on to the actuarial session – and I apologize to those who administer only the defined contribution component or defined contribution plans. This may be a little boring for you, but bear with me. Maybe if you administer defined benefit plans, too. But bear with me for about ten minutes. We'll get through these actuarial slides.

So I'm going to spend the next few minutes talking about the actuarial activities of the actuarial team and the Private Pension Plans Division. First one is looking at the estimated solvency ratio. I mentioned this a little bit earlier, about how every year OSFI does this exercise where we try and determine very early in the year what the solvency ratio is for our defined benefit pension plans. So we look at this every year. This year we calculated the estimated solvency ratio for approximately 370 defined or federally regulated defined benefit pension plans. We do this, and this assists OSFI, the relationship managers in fact, with the early identification of potential solvency issues so they can determine whether they need to intervene earlier in the year.

How this is calculated: we take the information that's filed with OSFI, and on the asset side we project the assets using the investment return that's filed with us under the solvency information return that's filed with us middle of February every year, and we project the liabilities using the commuted value and annuity proxy discount rates as determined under the provisions of guidance and standards of the Canadian Institute of Actuaries.

Here's a line graph showing the estimated solvency ratio. So this is the average estimated solvency ratio. It's actually a weighted average based on liabilities of all the federally defined benefit pension plans. And I think I noted earlier that at the end of 2016, beginning of 2017, it was 0.97. And that hasn't increased very much since last year, December 31st, 2015, when it was 0.95. Now, it increased during 2016 based on special payments, based on investment returns, but that was somewhat offset because discount rates last year actually reduced somewhat. The results of the ESR, as mentioned, is shared with the relationship managers.

This very colourful graph shows for the last ten years, same as the last graph, the last ten years of a distribution of the estimated solvency ratios for the defined benefit pension plans. Some observations on this: Iyou can see that we estimate that 80 percent of federally regulated defined benefit plans still were underfunded – had solvency ratios less than one – at the end of last year. And this is roughly the same as last – or the previous year. Looking at the red area at the bottom, there was some improvement there. That's the estimated solvency ratios of less than 0.8. That actually reduced from 19 percent to 16 percent. But all in all, there was not a lot of change in the exercise between looking at last year versus this year, or versus the end of last year and the end of the year before.

So next thing I wanted to talk about is the update to the actuarial guide. OSFI regularly looks at our actuarial guide. We want to ensure that the guide continues to appropriately reflect our expectations with respect to the contents of actuarial reports. We just posted earlier an updated guide (earlier this month). But before I address the changes, I just wanted to mention that the maximum going concern discount rate has remained steady at six percent. It was changed last year from six and a quarter percent to six percent, but this year it's staying at six percent, and you'll see that in the actuarial guide.

A number of the key changes included in the actuarial guide, first of them – as Sylvia talked about – the change to the regulations with respect to the letters of credit, so that had to be updated in the guide. Also, we were looking at the defined contribution component. When defined benefit pension plans have a defined contribution component, we actually streamlined some of our expectations. And in the situations where the defined benefit component and the defined contribution component don't actually interact together, it's almost like you have two pension plans within a pension plan, we don't require disclosure in those situations. Examples of where they don't interact is where the DB component cannot be used to fund the DC component, or where liabilities and costs of the DB component cannot be impacted by the DC component. So those are some examples. There may be more examples. But if your DB plan does include a DC component and they interact together, we expect more disclosure, and that is included in the actuarial guide in the updates. It's clarified there.

Another update to the guide relates to expectations for plans using an adjusted mortality table or a unisex mortality table, more specifically for the solvency valuation disclosure and explanations to be included in the actuarial report for these situations have been expanded. And so the mortality table is adjusted compared to, like, the CPM 2014 provided by the Canadian Institute of Actuaries.

The last couple of points in the slide here: First of all, termination and wind-up dates should not be the same date for the purposes of determining termination expenses. And expenses expected to be paid by the employer should be disclosed. So if there's an expectation that the employer will pay some of the termination expenses, that needs to be disclosed in the actuarial report.

And with respect to the calculation of the average solvency ratio, just a minor point, that transfer deficiency payments cannot be included in that calculation for the prior year and the prior year before that. I know special payments can be; not transfer deficiency payments.

Now going on: the actuarial team regularly reviews valuation reports that are referred to them from the supervision team. The relationship managers actually look at all the defined benefit actuarial reports that come into OSFI. And for some of them that they may have concerns about, they refer them to the actuarial team.

So these are some of the items that the actuarial team have noticed that come up more often than not, or come up more often, I should say.

The first observation is with respect to the going concern discount rate. It relates to expenses included in the discount rate. So the provision for each expense item, such as administration and investment management expenses, these should be clearly and separately disclosed in the actuaria report. With this approach, the appropriateness of the expense provisions taken individually and as a whole may be assessed. In particular, where a plan buys units of an investment fund, where investment expenses might not all be paid directly from the pension plan, where they're kind of netted from investment income, these indirect expenses paid by the plan should be clearly and separately disclosed in the actuarial report, and taken into consideration in the determination of the discount rate.

Looking at PFADs, Provision for Adverse Deviations. Most of the time, actuaries, they usually use a best estimate assumption for all their actuarial assumptions, except the discount rate. And for the discount rate, they tend to use their provision for adverse deviation. And they disclose in the report the actuarial present value of the provision for adverse deviations included in this discount or interest rate. However, some reports actually include a PFAD, Provision for Adverse Deviation, in other assumptions: in economic assumptions, such as in the salary rate; or in demographic assumptions, such as in the mortality rate. And this approach is acceptable to us, provided that they're explicitly stated and the actuarial present value of the provision of this adverse deviation—it should be disclosed in the actuarial report, and it should include the present value of these margins as well.

With respect to the asset mix, it relates to the disclosure of the asset mix. The report should include information on the actual asset mix of the plan by major asset category at the valuation date. It should also include the target asset mix and the ranges of the asset mix as indicated under the statement of investment policies and procedures, the SIP&P.

Tara Berish: As mentioned, I will be talking about a recent case that we've been involved in, the Wabush Bloom Lake case. So I'll start by taking you through just a little bit of background about the entities in question here. So we're talking about the Wabush entities, made up of three sets of entities: the iron ore mine and processing facility in Newfoundland and Labrador; the Pointe-Noir port facilities and pellet production facilities in Quebec; and then the Arnaud Railway and Wabush Lake Railway, which ran between Newfoundland and Labrador and is subject to federal jurisdiction, which is why OSFI got involved in this case in the first place. So basically, the Wabush entities around 2015 found themselves in financial difficulties, lots of debt. Their operations discontinued, employees were laid off, and the debtors filed proceedings on the Company Creditors Arrangements Act, which provides a process for restructuring a business.

So now I'll take you through a little bit about the pension plans at stake here. So there were two pension plans, a union plan and a salaried plan. Both of them had DB components. Both plans had federal members, members working in Newfoundland and Labrador as well as members working in Quebec. And as you can see, the numbers at stake in this litigation are laid out here. To the extent that there was any dispute about the numbers, I – I took the ones that the court was talking about. So basically, the court said both plans had estimated wind-up deficiencies of approximately 27 million. In terms of the union plan, the court said about 3.1 million was owed in special payments, and 3.5 million in catch-up payments, and for the salaried plan, about 2.1 million in special payments. So that is really what is being argued about in this litigation, at least for our purposes. There was way more arguing throughout the litigation in general, but…

So let's get to the actual issue. So the issue here. We were trying to determine the effectiveness of provincial and federal pension deemed trusts in the Companies Creditors Arrangements Act context. I'm going to be calling it the CCAA because that's a mouthful. Alright. So if you are not sure what a deemed trust is, I'm going to tell you. A deemed trust is basically a protection created by statute. A good way of understanding it is to think about what we think of as a conventional trust. So you can think of the kind of thing that a parent might set up for their kids, a trust fund. Basically, you put money in an account, kids are bene—the beneficiaries, nobody else can touch it, and the terms and conditions are supposed to be generally laid out in an agreement that's written down and everybody can refer to. So that's a regular trust that we all think of.

A deemed trust exists because the administrator might not have actually put monies into the regular – into a real trust. So as an example, we'll talk about Section 8(1) of the PBSA that deals with the deemed trust, and we'll use this – we'll be referring to the PBSA pretty much throughout this presentation because that's what we're most familiar with at OSFI and most concerned with.

So 8(1) of the PBSA says an employer has to hold certain pension monies – for example, normal cost contributions and special payments – separate and apart from the rest of their money. And the employer is deemed, or considered, to hold those amounts in trust for pension plan members, former members, and other beneficiaries. Then we get to Section 8(2).

So 8(2). In the event of liquidation, bank assignment, or bankruptcy of the employer, the amounts that have been deemed to be held in trust are also deemed, even if they're not, to have been held separate and apart from the rest of the employer's or estate's assets. Again, even if in reality that isn't the case, the law says they have been. So that is the explanation of a deemed trust. Now let's talk about the CCAA, which is the other half of this equation.

So what is the CCAA? The CCAA is federal legislation. It provides procedures for a company in debt to restructure under the supervision of a court.

Companies or creditors can propose a plan of compromise or arrangement to the court, and the court can approve it if it meets the criteria of the Act. And that criteria generally has to do with certain protections for various kinds of creditors. So for us, the most important protections are the ones found at Section 6(6) of the CCAA, and those deal with pension protections. And 6(6) says that a court cannot agree to a plan of compromise or arrangement if it doesn't provide for the payment of the following unpaid amounts: employee pension deductions; normal cost payments; or DC contributions. And the whole reason that we get into this case is because these pension protections are less than what is provided under provincial and federal pension law, and so we're left to figure out how these two interact.

So on September 11th, 2017 we got a judgment from Justice Hamilton in the Quebec Superior Court, and I will take you through that judgment in the next few slides. OK. So let's start with which pension statutes apply to which members. This was actually a live issue in the court, even though it sounds maybe a little bit obvious. So basically, there were three pension statutes at play here: Newfoundland and Labrador's; federal; and Quebec's pension statutes. The representative of the salaried employees had been arguing that the deemed trust under the Newfoundland and Labrador statute should apply to all the members because it offered the highest protection. And in particular, the argument is that it covers the wind-up deficit, which was not being argued for the other legislation.

The court said no, that is not how this works. The PBSA covers the deemed trust for federal employees; the Quebec legislation deemed trust only applies to Quebec employees; and the Newfoundland and Labrador deemed trust only applies to employees in Newfoundland and Labrador. The court said each Act is clear about to whom it applies. Nothing that's in the plan documents can override that. Contributions are payable – they're not single amounts in respect of the whole plan, but done on a member-by-member basis, and as such, contributions can be divided into three portions, each of which is governed by a different statute. So that is the first issue.

Second issue: What do the statutes protect? Again, I'm going to focus on the PBSA here because, again, that is our focus at OSFI. So let us start with the good news for plan beneficiaries. The court said the deemed trust is only valid if property is identified and kept separate and apart. In this case it wasn't, but because the legislation says, even if it's not kept separate and apart, the deemed trust applies, the deemed trust is valid. So that's a starting point. It exists, basically. And in this case, it covers money in the pension fund, special payments due on termination or before the end of the plan year, and catch-up payments, and other amounts that are not relevant for these purposes. It doesn't cover the wind-up deficiency, but nobody – nobody was arguing that it was, so that wasn't an issue.

The other good news for pension beneficiaries in this case is the court found that liquidation is a trigger for the deemed trust to apply in the CCAA context. This is new and was kind of in question before. I'll talk more about this a little bit later on.

Now we will get to the bad news for pension beneficiaries. The court found that, because, even though it's a valid deemed trust, because it's not a real trust, the deemed trust under the PBSA is more like a floating charge. This means that plans have to get in line with other creditors to get money to put into the plan. The money basically still forms part of the estate of the employer, unlike in a real trust situation. The court didn't really get into where pensions fall into line because, based on other decisions, it didn't – later on in the decision about the deemed trust, it felt like it wasn't really necessary to enter into that discussion.

And that brings us to the next decision, which is why we don't have to enter into that discussion, which is that the PBSA deemed trust conflicts with the CCAA, and therefore is not operative in the CCAA context. So again, we will get further into that later on.

I'll take you very quickly through the Newfoundland and Labrador stuff. Basically, the decisions were pretty much the same as with the PBSA. One notable difference is that the court assumed for these purposes that the wind-up deficit is covered by the Newfoundland and Labrador deemed trust, but was – is open to arguments that that might not be the case after we hear a separate case that's happening in the Newfoundland and Labrador Court of Appeal, once we hear the – the outcome of that reference, which is specifically about these questions.

Finally, Quebec. The court said because of the very unique wording in the Quebec legislation, the deemed trust isn't even valid. So it didn't even get to all of the other questions with respect to that legislation, and we won't be talking about that again in this presentation.

Next issue. Has there been a liquidation that triggers the deemed trusts under federal and Newfoundland and Labrador legislation? The court said yes. Again, as I mentioned, there was an earlier decision that this court had made in a very specific context having to do with debtor in possession lenders, where the court questioned whether this might be a trigger under the CCAA. So this is no longer a question. The court has said yes, liquidation in the CCAA, that's a trigger for deemed trusts. The CCAA was not clearly set up to deal with liquidation proceedings. That's more traditionally been dealt with under the Bankruptcy and Insolvency Act. But the court said this has been happening more and more, and it's time that we started recognizing it. And it's important to recognize that because not recognizing it would allow the employer to avoid the deemed trust when liquidating by picking CCAA instead of the BIA. Also, creditors are supposed to have similar entitlements under either statute. So in this case, the court also found that the liquidation basically started from the beginning of the CCAA proceedings, so the deemed trust would have been triggered right from the beginning.

So this all sounds like good news for pension beneficiaries, but the court comes right out and says after that the deemed trusts are not valid in CCAA proceedings. So with respect to provincial legislation, and in this case specifically the Newfoundland and Labrador legislation, the court looked at this through the lens of the doctrine of paramountcy. So the doctrine of paramountcy says that when there's a conflict between federal law and provincial law, the federal law basically wins. And this can happen when there's an actual conflict, like one law says you must do this and the other law says you may not do this, but it can also happen where the provincial law undermines the purposes of the federal law.

So in this case, the court found that the deemed trust in the Newfoundland and Labrador Pension Benefits Act frustrated the purpose of the CCAA. It said that the CCAA does protect some pension liabilities. Parliament clearly considered giving more protection under the CCAA to pension plans, but it chose not to. It weighed competing interests, and it didn't leave room for provinces to insert their own priorities into the process. In this sense, it was looking a little bit at the case law on the Bankruptcy and Insolvency Act as a comparator, and it said there's lots of case law saying that provinces can't change the scheme of priorities in the Bankruptcy and Insolvency Act. The BIA's scheme of priorities should apply in the CCAA context because liquidation is liquidation, and companies shouldn't get a better deal under one statute than the other. So that is why the PBA, the Newfoundland and Labrador PBA does not apply in CCAA context, or the deemed trust in – in particular.

Now let's look at the federal deemed trust. The paramountcy doctrine doesn't apply here, but the reasoning of the court was still quite similar and came down to essentially the intention of Parliament when setting up the two schemes. The court found there's still conflict between the provisions of the PBSA deemed trust and the CCAA. And it said Parliament clearly considered giving greater protections under the CCAA and didn't. And that's all there is to it. The PBSA deemed trust does not apply in the CCAA context.

So that's where we're left right now with this case, but OSFI is appealing it, so there might be more updates next year for all of you.