

**The COMPAS Business Panel vs. the Supreme Court  
Decision on Employers' Rights to Transfer Monies between  
DB and DC Pension Plans—  
The Court Was Strongly Favourable in the Kerry Canada  
Case but Panelists Are Divided about Such Rights in General**

**BDO Dunwoody Weekly CEO/Business Leader Poll  
By COMPAS in *Canadian Business*  
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**COMPAS Inc.  
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## 1.0. Overview

CEOs and business leaders on the COMPAS business panel were consulted for their *general* views about employers' rights to re-allocate monies between Defined Benefits (DB) and Defined Contributions (DC) plans in the wake of the Supreme Court's decisions in the Kerry Canada case.

The company had retained its DB plan for existing employees while creating a DC plan for new employees. As DB plan assets exceeded actuarial requirements, the company stopped making DB contributions and withdrew DB monies to support the DC plan. Employees on the DB plan sued. By a large margin, the Court sided with the employer on the basis of contract law.

Without making any reference to the specificities of this particular case, members of the COMPAS business panel were asked for their views on the rights and wrongs of such situations in general. They were also asked what should be done, if anything, about the situation whereby public sector employees are on DB plans that are far more generous than the benefits available to the private and not-for-profit sectors.

Most but not all panelists called for rectification of the inequality between the public and other sectors. They were unhappy with that situation. Yet, on the issue of transferring resources between a DB and DC plan, they tended to have mixed views:

- ❑ On the one hand, a majority embraced one argument of the employees' counsel, that "companies should not be allowed to stop making contributions to a Defined Benefits plan or to withdraw funds because doing so weakens the ability of the plan to weather economic storms in the future";
- ❑ On the other hand, a majority agreed that "when a Defined Benefits plan has enough money to meet its obligations, the company should be allowed to stop making contributions to it."



These are the key findings from this past week’s Internet survey of CEOs and business leaders on the COMPAS panel. The weekly business survey is undertaken for *Canadian Business* magazine under sponsorship of BDO Dunwoody LLP.

## 2.0. Basic Findings on the Rights and Wrongs of Transferring Monies between Plans

*Table 2: (Q1) Pensions are emerging as a huge issue. There have been some Supreme Court-related controversies involving the rights of companies to take money out of a Defined Contribution Plan. On a 7 point agreement scale where 1 means disagree strongly and 7, agree strongly, please score your agreement with each of the following opinions: RANDOMIZE*

	Mean	7	6	5	4	3	2	1	DNK
Companies should not be allowed to stop making contributions to a Defined Benefits plan or to withdraw funds because doing so weakens the ability of the plan to weather economic storms in the future.	4.6	23	20	12	6	14	13	9	3
When a Defined Benefits plan has enough money to meet its obligations, the company should be allowed to stop making contributions to it.	4.6	18	20	22	10	5	10	12	3



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	Mean	7	6	5	4	3	2	1	DNK
When a Defined Benefits plan has enough money to meet its obligations, the company should be allowed to take money from it to defray the administrative costs of an associated Defined Contributions plan.	4.2	13	20	18	9	6	13	17	5
When a Defined Benefits plan has enough money to meet its obligations, the company should be allowed to transfer money from it to a Defined Contributions plan for other employees.	4.0	11	17	19	9	7	14	16	7

### 3.0. Volunteered Opinions about Pension Inequalities across Sectors

*Table 3: (Q2) On a slightly different topic, it is generally accepted that public sector pension plans are more generous or even far more generous than what is made available to employees in the private or not-for-profit sectors. What in your judgment should be done about such differences if anything?*

Stop this [from] happening in the future; nothing can be done about past agreements!
Consultants should help the government strategize a way to modify the bloated plans involved with public sector. They should stay, but be trimmed back to realistic levels.
Public pension plans should not give greater benefit than private plans; public employees have extensive protection through an economic downturn. Pension plans offered by governments, private sectors and municipalities should all be forced to keep pace with needs and not be manipulated at the cost of the retiree.



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<p>There should be no "free lunch". If public sector pension plans do not rely on the public purse. If the plan is self sustaining based on the agreed employee/employer contributions and are actuarially sound, no one should have a problem with the arrangement. If this is not the case then contributions should be adjusted or future benefits should be reduced.</p>
<p>Since most of these plans were negotiated under collective bargaining, there is probably little that can be done. In future, perhaps someone from the private sector should negotiate on behalf of government. That would work for most government negotiations.</p>
<p>Government employees are paid by our dollars and therefore should be equal and no more than the private sector.</p>
<p>Public sector pension plans should match more closely what is done in the private sector.</p>
<p>Nothing. It's a point of employment negotiations</p>
<p>They should be on a level playing field, and be brought down to private sector. Businesses are competing with the public sector on wages and pension and it is not right.</p>
<p>Public sector employees have job security and high pensions. They should receive lower salaries.</p>
<p>Improve private sector pensions.</p>
<p>Government pension plans should be defined contribution and not be defined benefit. They should also not be indexed.</p>
<p>People in public service almost always take less salary during their working life than their corporate counterparts so a larger payout at the end should not be an issue.</p>
<p>They should be amended to come into line with private sector plans.</p>
<p>First, what happens in one sector should not affect the decisions about another sector. Second, pensions in the public sector whether it be employees, management or politicians should never have been allowed to become as lucrative as they have. The only final control over the public sector decisions on pensions comes down to the vote and on these issues; it is a very blunt instrument. It would seem that most decisions are all too self serving and as such, will never be fair to the taxpayer.</p>
<p>Increase private plans.</p>
<p>RRSP rules (e.g. contribution limits) for private sector workers should be more generous than for those with a public sector pension plan.</p>
<p>Increase employer and employee contributions to private sector pension plans.</p>
<p>Nothing should be done.</p>
<p>Public sector plans must be brought back into line with or lower than private sector standards. Non-productive sector salaries and benefits should be set so as to recognize a risk premium that should apply to productive sector workers.</p>
<p>Bring the public sector plans more in line with private sector plans. There should be no double dipping. For an example, there are government employees who will resign and be rehired as a "consultant", therefore getting both a pension and a salary.</p>
<p>There should be a beneficial tax allowance for all pension contributions up to a level considered to be reasonable. Excessive pensions should be discouraged by taxation.</p>



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They should be scaled back.
The original concept of the generous pension was to reward public servants for long service at wages that were less than could be earned for the same work in the private sector. This is no longer the case. With the sole exception of the Armed Forces new entrants into the public service, who are now in many cases earning more than their private enterprise counterparts, should be put on exactly the same footing as those counterparts.
Public sector pensions should be reduced somewhat and incentives from government given to assist private companies to have pensions that are equitable.
Nothing, it's a negotiation.
Governments need to negotiate for reductions in benefits for new hire that are compatible with the private sector.
Cut public sector plans or get a government job.
Public sector plans should be reduced to mirror the average private or not-for-profit plans.
Lower the public plans to meet the average of the private plans.
Nothing.
The public sector often pays less than the private sector for similar jobs so if someone sticks it out long enough to get a pension in the public sector they probably have earned it.
Reduce public service pensions; I am guessing that there is no lack of applicants for the jobs so they should be subjected to the same market place as the rest of us. If they don't like a smaller pension - don't take the job.
Limit public sector pension plans and in excessive situations roll them back. Put excess funds into the Canada Pension Plan as it is already taxpayers money and should be used for the benefit of all.
Lower the pay of public sector employees.
Benchmark to private.
Put them onto Defined Contribution Plans like the rest of us!
Leave things as they are; there are bigger fish to fry!
Public sector needs to cut back on the generosity since it is the taxpayers money.
We get what we vote for.
Yes the government plans are exceptionally rich. They should be changed to defined contributions; such as matching employees' RRSP contribution.
Pool funds where and when requested with the public sector.
Public sector plans should be frozen until such time as private plans catch up.
The power of the unions should be broken and such benefits should be brought back in line with the private sector.
Nothing. However, governments should institute a mandate that government plans fit into general market parameters.
Move to the average or lower common denominator. The press conveys on a daily basis the government's ongoing ineptness in conducting their job, and being well rewarded. Tax payer



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are tiered of it, but can do nothing to fix it.
It should be reflected through lower payroll costs, but it is not. If the benefits are greater, the base pay should be less. At present they have best of both worlds which is wrong.
Not much that can be done. Take the value of the pensions into account when dealing with compensation issues in the public sector.
Decrease the public sector pensions and benefits.
A standard for all plans, public and private should be established to equalize the playing field. Public sector plans are funded by the general public who may not have as generous plan at the place they work.
Nothing.
I think it's true but don't know what you can do about it.
Nothing. You cannot change the rules in the middle of the game. Is it a myth that public service pensions are better? Seems some of the union negotiated pensions are better. Example, auto workers do not pay into their pensions but public sector do.
Remove tax shelter for Public Sector Pension plans if they invest as anything but as a third party.
Close the defined benefits plans to new public servants and place them into defined contribution alternatives.
Public plans should always be defined contribution plans with industry standard contributions.
Public pension plans, like so many other "Public" costs, indicates to me that the "Public Servants" are forgetting where their money is coming from. Taxpayers can only continue to fund this burden if they continue to have enough money to meet their commitments. With more government intervention and the Public Services Union's attitude that there is always more in the taxpayers pocket makes it very difficult to continue to generate sufficient funds to service this monster that we have allowed to grow. Not only in Ottawa but every city, town and municipality in Canada. Perhaps it is time for the tax payer to "go on strike."
Public sector wages should be adjusted to reflect the generous pension benefits.
Guidelines for pensions in terms of previous earnings should be established and adopted by industry and the public sector.
Over a period of say 3-5 years there should be an alignment of public with private plans taking into account total remuneration comparisons.
It doesn't seem fair that taxes are paid by one class of employees to provide greater support to another class of employees. Why should a government employee receive greater pension benefits at the expense of others?
You would have to consider the whole strategy for attracting and retaining employees. To be competitive in attracting good people to public service, the TOTAL compensation package would need to be considered and has to be competitive. However, accountability (and job security related to performance) in public sector should also be the same as the private sector. If changes are made, they would have to be done over a period of time. For example, long term public sector employees would have planned retirement based on the rules that they had to



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work with, and you can't change that suddenly.
Cut the public service benefits (all) back to a level about commensurate with the average of the private sector.
Public plans need to be reduced to the norm as defined by an independent monitor.
The real question is how the total compensation package compares between the public and private sectors. I will leave aside for now the issue of productivity of unionized public sector employees, and deal with senior bureaucrats and politicians. If we want talented, highly qualified people to take these jobs, we need to respect them and pay them what they're worth. There must also be compensation for the unfair, unfounded and gratuitous public vilification they must endure. The pension plans must be part of an attractive compensation package to get the top-notch people we need to effectively run multi-billion dollar bureaucracies. If you pay peanuts, you get monkeys.
Public sector plans need to be scaled back to a more realistic level.
There is a disconnect between the private and public sectors when it comes to pensions and salaries/benefits for that matter. The level of benefits provided for in the private sector are heavily shaped by the competitive environment in which the business operates and, perhaps more importantly, the financial strength of the organization. No matter how big deficits seem to get in our country, there is little likelihood of a bankruptcy and the government never really has to worry about modifying public sector pension plans to take into account the financial health of the "organization". Until the public sector is held as accountable as a private business is, there will always be a large spread in compensation between public/private.
Public sector pension plans should over time be brought in line with market norms.
It may mean some lengthy strikes if a government has the backbone to deal with it as these pensions should be brought into line with private sector. The size of the public sector also needs to be reduced as we have let unions create a monster and once the economy becomes top-heavy in the public sector, it will cause serious consequences that we can ill afford.
One has to review the total compensation; private sector pays better and sometimes has over the top bonuses. It is difficult to compare one aspect of benefits.
A serious review should be undertaken to see if the public sector entity will be able to survive under the future burden. If they can be funded from a reasonable pay package then they survive, if not then adjustments should be made now, before the municipality or province is forced to go bankrupt.
It is my opinion that all plans should be similar in design.
Increase RRSP contribution limits for those without a company plan.
Public sector plans should follow with the private sector!
All private sector pension funds should be converted to defined contribution plans with no grandfathering. Going forward the particular inequities related to indexing and underfunding will be eliminated and the plans will more closely mirror the better plans in the private sector.
Certainly, at least for new hires the gap must close.
Public sector pension plans need to be contained/reduced as much as and where possible to



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better reflect pension benefits (or lack thereof) in other sectors. Plans funded by the public purse should be treated with no less regard than privately funded plans.

The following are supplementary verbatims that were provided but not specifically in response to the question about sector inequalities:

Pensions need to be secured by legislation to protect future government involvement as a fill gap if abused or economic climate changes.

Pensions for those who are able to collect them are a wonderful thing, but with the numbers of collectors going up and the contributors going down they won't be sustainable in the present form for much longer.

Defined Benefits pensions should never have been allowed and still shouldn't. All pension plans should be defined contribution only and remain vested and locked very quickly with the individual. All pensioners should be allowed within narrow parameters, to control investing decisions on their own pension funds. Pension contributions should be beyond union bargaining and outside the bounds of Union control. As well, any changes to pension controls or contributions should not be allowed to become political. Any changes made by government should be based on a free vote and require 66% majority. Unfortunately, and while I hate to suggest government involvement, I have not been able to come up with a better group or entity better able to provide all encompassing control of pensions. Pensions are too important to individuals to allow a private entity, open to greed, to have control over this money.

Individuals should be encouraged to look after their own pension requirements and given tax incentives to do so. In the modern world so many people change jobs it is important they manage their own requirements.



### **3.0 Methodology**

The COMPAS web-survey of CEOs and leaders of small, medium, and large corporations was conducted August 12 - 14, 2009. Respondents constitute an essentially hand-picked panel with a higher numerical representation of small and medium-sized firms.

Because of the small population of CEOs and business leaders from which the sample was drawn, the study can be considered more accurate than comparably sized general public studies. In studies of the general public, surveys of n=108 are deemed accurate to within approximate 9.5 percentage points 19 times out of 20. The principal and investigator on this study is Conrad Winn, Ph.D.

