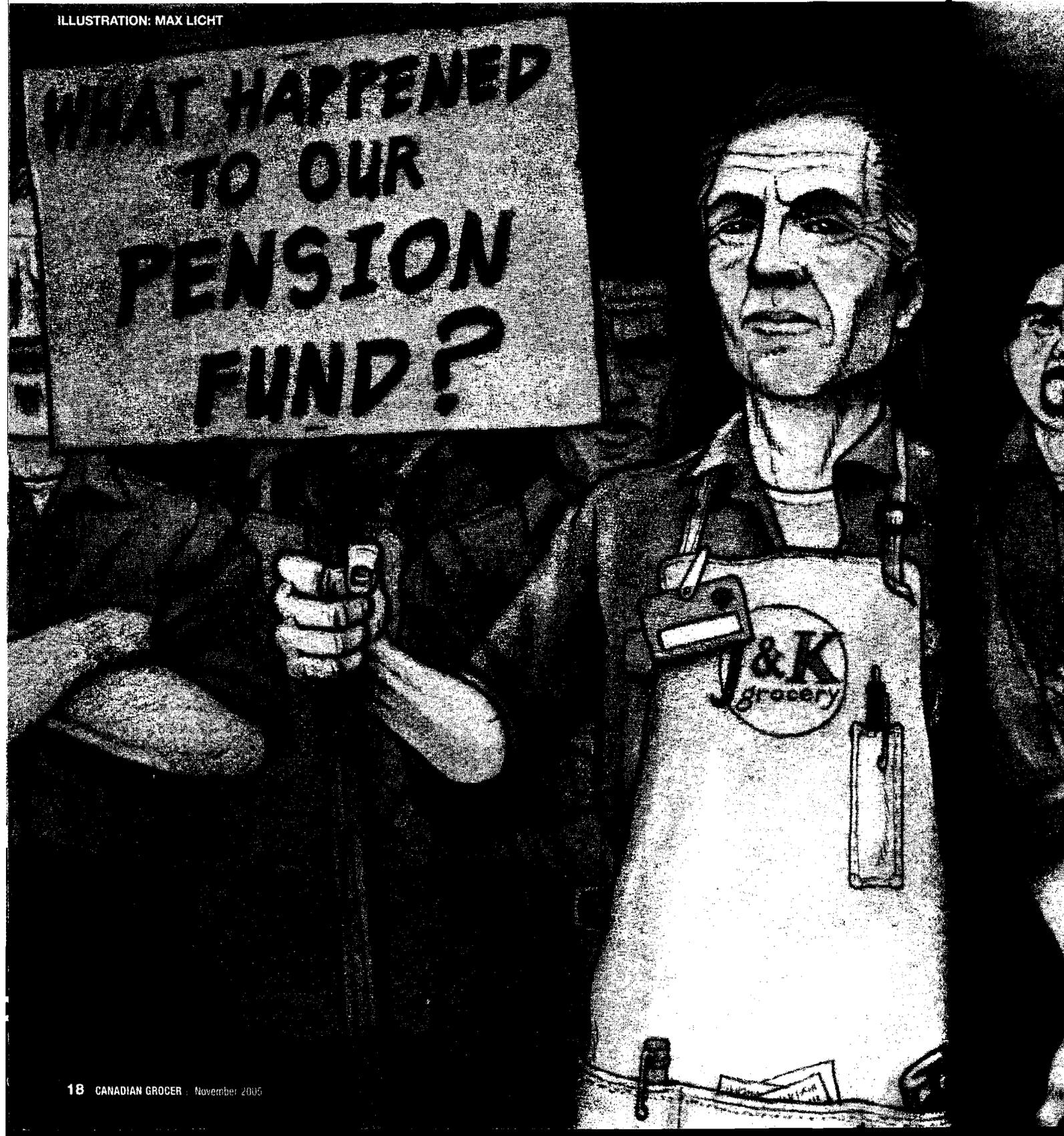


Pension Fund Debacle

A sorry tale of dubious investments that shrank grocery workers' pension fund

ILLUSTRATION: MAX LICHT





The story behind the story of the Canadian Commercial Workers Industry Pension Plan (CCWIPP) has all the intrigue of a John Grisham novel blended with the unreality of a Monty Python sketch. The cast includes an ex-priest; a group of union leaders whose mantra to anxious rank and file members in the face of numerous pension plan improprieties is, "Don't worry, be happy"; a provincial regulator reluctant to use its powers (be it demanding the surrender of key documents or issuing fines); and then there are the potential victims: The Canadian grocery store workers who are members of the United Food and Commercial Workers union and who pay contributions to CCWIPP, a pension plan many fear may be insolvent once they hit retirement age.

BY DAVID MENZIES

ALAS, THE WORST PART OF THE STORY IS THE LACK OF RESOLUTION: AFTER YEARS of investigation and a damning report, amazingly, little has changed. No heads have rolled, no fines have been levied, no apparent reforms have been made. And as they ponder their few remaining options, it is the worst of both worlds for UFCW workers: not only has their union let them down, so too has a government regulator many hoped would be their champion. As to how the sordid story will end remains anyone's guess.

Paul Whiteway cringes when people refer to him as a "whistleblower" - even when it's meant as a heartfelt compliment.

In fact, it is hard to come up with a more appropriate descriptor for the 55-year-old grocery store employee-cum-pension plan crusader. After all, it was Whiteway's suspicions and constant queries regarding his union-run pension plan that eventually triggered an investigation by the Financial Services Commission of Ontario (FSCO). And it was FSCO's two-year investigation of the aforementioned pension plan that resulted in a recently-released report proving that Whiteway's concerns were indeed well-founded. If anything, Whiteway had no idea just how bad things were. The FSCO report serves up a shopping list of numerous irregularities, ranging from conflicts of interest and a lack of proper accounting to a dearth of due diligence and noncompliance with federal regulations.

Simply put, over the years, hundreds of millions in union pension plan money were sunk into risky businesses and inexplicable investments, ranging from tracts of undeveloped land and a failed Bahamian resort to a pair of food processing plants that quickly went into receivership.

Whiteway works at Garden Province Meats in Charlottetown, P.E.I. He's long been a member of UFCW. For years, Whiteway-along with some 240,000 other UFCW members - contributed to CCWIPP. (There are approximately 443 employers involved with CCWIPP, which has assets of about \$1.2 billion.)

Several years ago, Whiteway began to think more seriously about his retirement plans. That's when he started examining his pension plan's annual statements a little more closely. He noticed returns were declining. Even more troubling was the

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lack of reasonable explanations for the expanding red ink.

“Over the years they [UFCW] never gave us any information about the pension plan - they always told us the pension plan was in good shape, [CCWIPP was] the best pension fund in Canada, and don't worry,” says Whiteway.

Whiteway didn't believe the word emanating from UFCW's Toronto headquarters. His suspicions further intensified the day he received a letter from the UFCW concerning amendments to the pension plan. The changes would essentially reduce the eligibility of upcoming retirees to qualify for full pension benefits. That letter prompted Whiteway to ask even more detailed questions. But the more pointed his queries, the more resistance he encountered from UFCW officials. “It [getting answers] was like pulling teeth,” he recalls.

By 1999, Whiteway was fed up with the stonewalling and decided to launch a formal complaint with pension fund regulators in Alberta (where CCWIPP was registered at the time.) The Alberta regulator identified problems with investments and expressed concern over a lack of policies. CCWIPP officials were told to make changes.

Three years later, Whiteway-concerned over the lack of changes made to CCWIPP-launched a formal complaint with FSCO (the plan is currently registered in Ontario.) The Ontario regulator, which oversees pension plans in the province, proceeded with an investigation, the main focus of the review confined to the approximately 45% (later reduced to 31%) of pension fund assets that were directed toward certain real estate investments and investment corporations.

After two years of sifting through pension plan documents FSCO released its report earlier this year. Entitled, “Financial Services Commission of Ontario Pension Examination Report of the Canadian Commercial Workers Industry Pension Plan” the document is an

indictment of a pension plan that is festooned with botched bookkeeping, anemic accounting, potential conflicts of interest, and several questionable investment procedures.

For starters, FSCO confirmed Whiteway's suspicions - and then some - that CCWIPP's employer and union trustees poured millions of their members' pension dollars into high-risk real estate investments and other ventures without due diligence, without regard to the creditworthiness of the borrowers, and without proper valuations of the properties involved. As well, FSCO determined there was no process for reviewing such investments or tracking the performance of the pension plan's investment committee.

In some cases, large sums were invested in businesses in which pension trustees were directors and held stock options. Meanwhile, some money was invested in businesses controlled by CCWIPP advisors and other associates. In some instances, loans from the pension plan actually exceeded the value of the properties they were used to purchase.

In addition, more than \$40 million was poured into a couple of dubious business ventures - including a shrimp-processing plant in Newfoundland and a potato-processing plant in Idaho - that were either bankrupt or on the verge of bankruptcy. In other cases, loans went unpaid, even though their accrued interest was recorded as additional “investment” (a bookkeeping practice now generally referred to as “Enron Accounting.”)

By far, the most significant amounts (more than \$100 million) were invested in the ventures of Robert Hubert Kelly, the principal behind Toronto-based RHK Capital Inc. Kelly was employed as a cemetery consultant when he first hooked up with CCWIPP in 1992. Given his apparent lack of investment acumen, it's unclear why the CCWIPP trustees helped Kelly purchase his first hotel- and launch what amounted to a real estate empire. The UFCW now refuses to dis-

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cuss its business dealings with Kelly.

Still, if Kelly's lack of big-time investment experience was troublesome, what surely should have set off alarm bells was his checkered history as a Catholic priest. After leaving the priesthood in questionable circumstances, Kelly didn't serve time in jail; rather, he landed a job with the Roman Catholic Archdiocese of Toronto.

If Father Kelly was a failure as a clergyman, he was far from adroit as an investor, especially when it came to investing millions of CCWIPP pension plan money into failed Caribbean hospitality ventures.

According to FSCO's report, as of 2005, some \$166 million of union members' retirement money was invested in a number of financially troubled hotel properties in the Caribbean. A further \$120 million (approximately) is sloshing around in either troubled, bankrupt or high-risk businesses. At least \$800,000 is unaccounted for in relation to one investment alone. Records relating to some of these deals do not exist, are in draft form only or have yet to be surrendered — despite an order from the Superintendent of Pensions demanding full disclosure.

Kelly defaulted on millions of CCWIPP loans and was recently convicted on fraud-related charges in the Bahamas. While Kelly's RHK Capital still maintains a Toronto office, calls placed by *Canadian Grocer* were not returned. Kelly, meanwhile, is said to be living in Panama.

In addition to the AWOL Kelly, also unavailable for comment are Joan Tanaka, CCWIPP administrator and Clifford Evans, the retired national director of the UFCW (and the founder of the pension plan.)

UFCW national director Michael Fraser, meanwhile, deferred all CCWIPP queries to Winnipeg-based Bernard Christophe, president of UFCW Local 832 and the pension plan's chairman. In an interview with *Canadian Grocer*, Christophe blasted the FSCO report as being "full of inac-

curacies." Such as? "I couldn't begin to tell you what's wrong," he says.

Christophe promised a more detailed response once he had access to his records. However, he later changed his mind. "I don't want to discuss the [FSCO] errors at this time," says Christophe. "It wouldn't be in the best interests to discuss it publicly."

Still, if the FSCO report is indeed error-riddled and the CCWIPP pension plan is fine, why are there so many concerns raging amongst the UFCW rank and file? "Most [UFCW members] have been misguided by Internet reports that [are] putting out half-truths and totally false statements about the plan," says Christophe, again refusing to pinpoint a single half-truth or false statement.

Christophe won't discuss why the union decided to do business with Kelly. "I don't want to discuss it - I don't think it's relevant," he says.

In a July 22, 2005 internal memo to UFCW local presidents, Fraser refuted any pension plan wrongdoings. He wrote: "We were shocked to find the FSCO report is incomplete and riddled with dozens of factual inaccuracies that had previously been drawn to the attention of FSCO by legal counsel for the Pension Plan."

Conspicuously absent from Fraser's memo are tangible examples of FSCO's supposed factual errors. Fraser concluded his communique by writing "UFCW Canada will continue to investigate and report on apparent abuse of governmental authority and insist on a truly independent review of all the documentation. We will also demand a full explanation of FSCO's

irresponsible rush to judgement without consideration of the harm its careless action could cause UFCW Canada." (Of note, FSCO says it stands behind its report.)

Many rank and file UFCW members say Fraser doth protest too much. While FSCO has indeed judged CCWIPP severely, the question begs: what now? The answer, many grocery store workers fear, is nothing.

For example, FSCO has fining powers under the Pension Benefits Act. Corporations and individuals can face fines of \$100,000 for the first offence and \$200,000 for any additional offences. As well, if anyone or any entity is found guilty, FSCO can ask the courts to award restitution. Yet, to date, FSCO has not levied monetary penalties against the UFCW-despite the evidence of pension plan improprieties. As well, FSCO has the power to conduct a forensic audit of CCWIPP-again, something many feel should be an automatic response - yet, FSCO has declined to do so.

Wanda Pasz, a Toronto-based labour relations consultant who has taken an interest in the CCWIPP saga, shakes her head in disbelief. She doesn't know who she's more infuriated with: the people running CCWIPP or the bureaucrats employed by FSCO.

"If this [pension scandal] had occurred south of the border, there would be people in jail right now-you just can't get away with this," says Pasz. The UFCW is not a democratic union and FSCO are not an effective referee, she says.

For example, while FSCO has the regulatory power to request docu-

The FSCO appears reluctant to give CCWIPP a public relations black eye

"They [union representatives] say my pension plan is quite safe and doing quite well but I don't have the information that backs that up," says Sigurdur. "And, quite frankly, I don't trust the information that's coming to me.

ments from pension plans under review, in several instances, CCWIPP has dragged their feet in response to such demands. Consider a February 2003 letter FSCO sent to CCWIPP. Pasz says: "They [FSCO] are not acting like a regulator should. They are instead treating the people being investigated as 'clients'."

Hugh Finnamore, an ex-UFCW member based in British Columbia, shares Pasz's disdain. Finnamore has been pushing for a forensic audit of CCWIPP. Finnamore recalls how a FSCO representative, Brad Mockford, told him that the regulator routinely shies away from conducting such due diligence. "He [Mockford] said, 'Well, you know, we really don't like to do anything about these things because, you know, if we have to do an audit, the [pension] plan has to pay for it

and then the members sort of get hit twice because an audit is really expensive. Besides, usually when people phone us, it's usually someone with an axe to grind.' And I said, 'Just because someone has an axe to grind doesn't mean they aren't telling the truth.'" (Mockford was unavailable for comment.)

Lynda Ellis, a manager with FSCO who was directly involved with the CCWIPP investigation, was also short on answers. When asked what level of cooperation FSCO received from the UFCW, she replies: "I'm not going to comment on that at all." When asked if it is likely criminal charges will be laid against CCWIPP representatives in the future, Ellis says: "I'm not going to speculate on this." As for the forensic audit? "That [audit] is a very significant cost factor when dealing with a plan this size," says Ellis. "And what is it going to accomplish in the context of what we're doing?"

The FSCO even appears reluctant to give CCWIPP a public relations black eye. FSCO refused to provide *Canadian Grocer* with a copy of its report on CCWIPP, forcing *Canadian Grocer* to obtain the document from another source.

The question now begs: where does FSCO go from here? "We have to do two things," says Ellis. "One, we have to bring the plan into compliance and ensure there are processes in place so this kind of situation doesn't arise in the future. The second thing we are doing is looking at our options for purposes of what would be the next step in the process. The act permits us to lay charges if warranted."

As for a timeline in accomplishing these tasks, Ellis can only speculate. "I would say months, but it could turn into years, God only knows. What looks to be straightforward is sometimes not."

Sharyn Sigurdur, a clerk/cashier at Save-On Foods in Mission, B.C., says she feels doubly-victimized-by the irregular way CCWIPP seems to operate and by the fact that regulators don't

seem to be too eager in proceeding with penalties or a forensic audit.

"Quite frankly, I think we've been lied to [by UFCW leadership]," says Sigurdur, who has served as a UFCW elected shop steward since 1987 "much to the union's dismay, actually," she notes.

"I have questioned my leadership to no avail," she says. "We're basically told, 'Don't worry be happy.' It doesn't leave me with much confidence about my pension plan."

Back in Charlottetown, Paul Whiteway frets that after years of research and questioning, in the final analysis, all his efforts may have gone for naught. "Everyone [UFCW workers] is scared that it [CCWIPP] will wind down and we will end up with nothing," says Whiteway. "Somebody should be made accountable. This thing has been going on for 10 years now and it seems to be going round in circles. And every year it appears to be getting worse."

Whiteway says in light of FSCO's reluctance to render justice, there have been discussions about CCWIPP pension plan members getting together to launch a class action lawsuit against the UFCW. But Whiteway knows such a strategy will be costly and time-consuming. "The majority of [people in] this pension plan are part-time workers and about 80% of them are women getting only about 20 hours a week," he says. "The UFCW has a lot of power and a lot of money and a lot of big shot lawyers. That's what we are up against."

Sigurdur echoes Whiteway's fears, even though the UFCW has informed her that her UFCW pension plan is separate from CCWIPPS. "They [union representatives] say my pension plan is quite safe and doing quite well but I don't have the information that backs that up," says Sigurdur. "And, quite frankly, I don't trust the information that's coming to me. I'm looking at early retirement in two years. I need to know what's there for me." ☞

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