

IIRA Conference Paper

Track 2 Voice and Representation at Work

Elected Representatives; A New Voice in Pension Trusteeship? a Comparison of Canadian Policy-makers Perspectives on Introducing New Actors into Pension Trusteeship

Dr Susan Sayce

**University of East Anglia
Norwich Business School
Norwich NR4 7TJ
United Kingdom ssayce@uea.ac.uk**

ABSTRACT

The comparison of Ontario's and Quebec's policy-makers interpretation of diversity and representation revealed differing attitudes towards appointing or electing pension trustees. Despite similarities in rationale for increasing the membership voice in pension activities such as to improve decision-making as well as accountability and transparency the approach the two provinces took towards including representative voices were very different particularly in relation to the private sector. A key factor that explains this difference is their different political tradition of economic policy making with Quebec emphasising its heritage of 'concertation' and consensual involvement in economy decision-making with key partners such as the unions while Ontario more closely models the wider liberal Canadian economy. Consequently Quebec seems to be closer to Schuller and Hyman's (1983) concept of industrial democracy in pension trusteeship through making it a mandatory requirement to elect employee representatives to its private sector pension committees.

INTRODUCTION

The move towards greater member representation in pension trusteeship is a feature of Anglo-American pension trusteeship (Harper 2008), for example a third of pension boards have to be composed of elected representatives in the UK. However, the political interpretation of involving new forms of voice and representation on pension boards has yet to be fully understood. Thus, a comparative exploration of representation in the Canadian provinces of Quebec and Ontario should help us understand how different people's contribution (including both employer and employee representatives) is viewed by policy-makers in pension trusteeship.

THE CANADIAN CONTEXT

In Ontario legal regulation of pension schemes originally developed around common law as in the UK and the US. However, in Quebec provincial pension regulations are based on the French civil code, thus offering a different political and legal dimension to international research on diversity and pension governance as well as industrial democracy. It is this fragmentation, which has seen different Canadian provinces develop different regulations in relation to pension trusteeship and representation that justifies this research as it indicates slightly different priorities about representation in the composition of pension boards. How different attitudes and

values towards ownership and control relationships in the public and private sectors may have different implications for employee representation and employee participation.

Another reason why these two provinces were chosen is the structural difference between their pension models. For example in the private sector, Quebec follows a pension committee model, similar to the UK while Ontario employs a more permissive model of pension trusteeship. In the public sector both Quebec and Ontario utilise a joint governance model split equally between the employer and the employees. Ontario province also has the largest population and pension schemes in Canada while Quebec legislatively supports the election of employee representatives on all its pension committees unlike in Ontario. Thus a discussion about differences and similarities in Ontario's and Quebec's governance, regulation and political approaches may also offer us insight into how the dynamic relationships of ownership and control of pension schemes could possibly play out in other democratic Anglo-American contexts including the UK. It also offers us an opportunity to start to explore the implications of the research's findings for the theorising of pension governance and industrial democracy in pension trusteeship.

METHODOLOGY

A qualitative interpretative approach has been used to capture policy-makers voices in connection to pension trusteeship and representation (Neuman 2003). This should help us uncover the political intentions behind supporting new actors to pension trusteeship. Semi-structured interviews provided the researcher with the flexibility to accommodate and interpret provincial political perspectives as well as the differing political perspectives of other pension management groups and labour bodies that also contribute to pension policy (Flick 1998).

The flexibility of an interpretative qualitative approach was also indispensable on another level as six of the nine interviews consisted of speaking to a panel of people (maximum of three) who all had expertise in the area of pension administration and education which resulted in a more intense and nuanced discussion of pension trusteeship. The interview profile is outlined in the table below.

Canadian Policy-makers and Supporting Organisations Interviewee's Profile Table

I/V No.	GE	Title	Organisation
1.	1F	Committee Member	Ontario Expert Commission on Pensions
2	2M 1F	Snr Pension Administrators	Ontario's Pension Administration
3.	1M	Economist and Educationalist	SAC: Services De Collectivites Univ. of Montreal
4	1M 1F	Pension Education Pension trustee and specialist on pension issues for federated unions	FTQ: Federation de Travailleurs A Quebec
5	1M 1F	Actuary and Pension Administrator	Quebec Regulator for the Public Sector
6	2F	Senior Regulator and Pension Admin	Quebec Regulator for the private sector
7	1M	Senior Executive	Association for Canadian Pension

			Management
8	2F 1M	Union official with pension responsibilities	OPSEU Union: Ontario's Public Sector Employees Union
9	1M	Former Director of Social and Economic Affairs	CLC: Canadian Labour Congress

The qualitative data that was generated from the above interviews is based on the meanings expressed through the respondents words and as such helps the researcher to link and develop theory in connection to diversity and trusteeship participation (Jankowicz 2005). The benefit of this approach is it permits an exploration of different organisational perspectives of diversity and trustee representation. It also lets the researcher explore the respondents' 'thoughts, feelings and language' as a way of capturing their interpretation of diversity and expertise (Cockburn 1983:212). The interviews were designed to allow the expert respondents to voice their views on the subject of representation, participation and governance.

GOVERNANCE, REPRESENTATION AND TRUSTEESHIP

In Canada research into pension trustee activities and governance has highlighted the link between governance quality and performance (Ambachtsheer et al 2007, Carmichael and Quarter 2003) and the role of labour and employee representatives (Weststar and Verma 2007, Verma and Weststar 2008). While Schuller's and Hyman's original research points out the trustee's role was sometimes to rubber stamp decisions and set out guidelines (1983:72). Internationally, trustees' standards of care towards their membership have increased since that period. But their fiduciary responsibility remains not dissimilar to an executive board's function only the direction of the interests differ in that they have to act honestly and prudently in the long term interests of the members.

Pension governance and pension trusteeship is a small but growing academic field as the strategic importance of pension fund activity increases. Authors such as (Clark 2000, 2004, 2008, Kakabadse et al 2003, have highlighted the high level of skill and competency needed in pension board decision-making as well as diversity both in the UK and internationally. Kakabadse and Kakabadse's (2005) research support the competency and appointment of lay/elected representatives to trustee posts while Clark (2004) is less convinced. However, Clark (2008) argues that if governance is visualised as a way to maintain institutional performance and deliver on the pension promise to the membership then representation does need to be included because of the political nature of pension institutions with the caveat that it needs to be considered in conjunction with financial imperatives and the element of functional efficiency. The tension between expertise and representation is a reoccurring theme of pension trustee literature and while it is not specifically the focus of this paper it is one that appeared in the research particularly when discussing the election of pension representatives, which is a requirement in Quebec but not in Ontario.

INDUSTRIAL DEMOCRACY AND PENSION TRUSTEESHIP

UK industrial relations theorising in the 1960s underpinned a resurgence of interest in the industrial democracy debate about worker's control. As UK workers began demanding greater industrial and social accountability and a desire for business organisations to be less secret in their dealings and decision-making so trade unions began reassessing their industrial strategy (Coates 2003). Coates and Topham (1968: 367) added to this debate by claiming that 'trade unions should reassert the principles of mutual aid and mutual respect' between workers and their enterprises. Therefore as a matter of policy worker's bodies should engage with ways to influence the process of decision-making in business organisations perhaps by considering

how consultative structures could help them achieve improvements in the status and conditions of their members. In the following years interest in the quality of worker's working life and the waste of worker's potential expanded internationally as industrial democracy and employee participation came to be linked to the creation of a genuine participatory society, organised around work structures (Poole 1986).

The UK Bullock Report (1977) considered that boardroom executive decision-making process needed to incorporate employee voices. Thus the report considered how worker directors could be introduced to UK boardrooms. It outlined how they would participate in decision-making and share in taking responsibility for their company's successes and profitability. The committee argued that having workers sitting on corporate boards would increase worker participation at a management level and increase the quality of working life fundamentally changing the relationship between labour and capital (Coates 1980, Coates and Topham 1968).

However, there was resistance as employers fought to maintain their right to manage (Hyman 1995). Private capital was also reluctant to encourage union or worker's discussion at the political level of enterprise and this in conjunction with an unwillingness to engage with union representatives to encourage them to develop executive decision-making skills meant the initiative ran aground in the UK (Coates 2003). Historically many trade unions themselves were unable to break away from the defensive mentality of the past which prioritised traditional forms of collective bargaining for better work conditions and wages (Payne and Keep 2005). There were also concerns of 'incorporation' with representatives becoming subverted ideologically or practically to become managerial tools (Schuller 1985:79). Thus theorising around industrial democracy fell out of fashion in the UK. But its arguments still continued to exert influence in European countries, which had a stronger history of corporatism and social democratic thinking such as Sweden and Germany (Marchington 2005) than countries such as Canada and the UK where the politics of liberalism in economic policy-making held sway.

However, one area where industrial democratic ideas about employee participation and representation did not recede was in the area of pension trusteeship. Schuller and Hyman (1983) point out that even though priorities in respect of organisational change and development had then shifted to economic survival, and despite neither management nor unions having much appetite for 're-fashioning decision-making procedures' (ibid 1983:70) employee participation in the UK was occurring in pension institutions and they were becoming involved in organisational decision-making.

A key factor for this involvement from the worker's perspective for Schuller (1985:77) was how pensions had shifted from being seen as 'fringe benefit' to 'deferred wages' and as such were seen as an entitlement. Thus workers expected to have some input into the running of their pension plans. This shift also reflects how employees' contribution became to be conceptualised as ownership although this ownership is sometimes blurred because of problems of lack of knowledge or because of tensions between different groups of workers. Finally changes in the wider economic climate, were increasing individual worker's knowledge about how much their pension was worth as redundancies and cutbacks swept through UK organisations. As a result pensions became a new frontier in which corporate policy became subject to some degree of joint decision-making leading Schuller and Hyman (1983) to claim that employee participation was industrial democracy in action in the management of pension plans.

THE CANADIAN RESEARCH AND EMPLOYEE PARTICIPATION

The trend towards employee participation in order to maintain memberships' links and improve decision-making has continued in an Anglo-American context since Schuller's and Hyman's research. Presently in the US one third of public pension funds boards are elected (Hess2005) and in Canada one third of all pension assets comprise some form of joint-trusteeship (Weststar and Verma 2007), and in the UK it is mandatory for a third of the pension trustees to be elected from the membership.

This paper claims that both Clark's concept of pension governance (2008) as well as Schuller and Hyman's concept of industrial democracy (1983, 1984) help to explain differences between Quebec's and Ontario's political interpretation of representation within pension trusteehip and this reflects Ontario's and Quebec's differing political attitude towards regulation and administration. It indicates that pension governance and employee participation, the key attribute of industrial democracy in pension trusteehip (as defined by Schuller and Hyman 1983) need not be necessarily incompatible with pension governance.

However, the empirical findings of the research with Ontario and Quebec's provincial policy-makers seems to suggest that a key aspect of how employee representation is viewed is the primacy that is placed upon financial imperatives and functions of pension governance in relation to acting collectively in the interests of all members. The degree to which either aspect is favoured can lead to different outcomes in respect of regulation and structure for employee participation.

Consequently this can lead different political entities such as Quebec and Ontario down different paths in respect of how people are placed on pension board/committees with Quebec regulation obligating pension committee to elect member representatives while in Ontario there is more of an adherence to appointing professional people to take on the difficult and challenging roles of trusteehip. A key influential factor in negotiating where the balance should lie between financial imperatives and representation is the involvement of labour bodies in policy-making:

There is a tradition in Quebec, a greater tendency, for participation or what was a catchword in the 1970s which was 'concertation' at times a word which had overtones of tri-partism of some kinds and that was both a reaction to the under-developed status of both Quebec state and the Quebec regions. So there were attempts to do some type of planning in social developments but planning in a more concerted way than directive, and the unions were a part of it. The unions were strong and vocal in Quebec. So the government thought better to have them around the table and come to some agreement than have them fighting in the streets over work and social matters (Interview 3)

Quebec's stance on pension governance is more closely linked to their political provincial foundations their 'concertation'. Concertation in connection to economic policy making emphasises a closer relationship with labour bodies to achieve consensus-based solutions, for example to help manage Quebec's pension institutions for the benefit of their members (Compston 2003). This approach may help to explain why Quebec representation on their pension committees include elected representatives as well as appointed.

In Ontario there is more of a cleavage by policy-makers to specific issues such as delivery of the pension promise to the electorate. Here too the union actors are themselves divided and in Canada there is no consensual view of economic planning and involvement on pension issues in Ontario labour federations unlike Quebec which shows a more unified approach to employee participation. In Quebec the union federation FTQ because of their involvement in pension education and training, their

long-standing involvement in the activities of the Caisse de Depot do have more of a shared understanding of pension policy needed to facilitate policy concertation (Compston 2003.792). Indeed this shared understanding extended to the government amending pension legislation so that the FTQ as an organisation could create and manage their own multi-employer DB pension scheme in 2008.

The Quebec interviewees seem to be suggesting that their greater heritage of co-operation with labour bodies, their shared history of concertation has been more influential in developing attitudes towards pension administration and regulation. Their shared understanding has helped to promote the interests of the membership as well as ultimately the economic development of Quebec and this has facilitated greater employee participation and education of lay representatives, a key tenet of Hyman's argument for industrial democracy. While Ontario follows a governance path that stresses functional financial imperatives and this is in line with their political thinking which stresses the importance of pension institutions delivering on the pension promise.

In Ontario there is a preference to appointing expert representation to best serve the interest of the members which fits in with their emphasis on functional financial imperatives. They also have been successful in appointing very effective professional representatives to headline funds such as the Teacher's fund but these professionals are less likely to influence economic policy-making than labour bodies who educate and support representatives such as the FTQ.

CANADIAN PUBLIC SECTOR

In Canada there is one area where a joint governance model reigns supreme including both Ontario and Quebec provinces and that is the public sector. Here public sector decision-making processes do seem to have been re-made in a more consensual manner as indicated by Schuller and Hyman (1983), and Schuller (1985). The interview with the pension actuary for CARRA (Commission Administration des Regimes de Retraites et d'assurance), Quebec's actuary for their public pension committees who outlines their political strategy for discussions indicates this:

So when we vote there is a consensus and we are confident that we are making the right decision. Sometimes we have informal discussion with the union representatives and they will ask for more time to explore the topic before taking a vote on the issue and sometimes on my side people say they are not ready to make a decision they need more time. It is very important that all the people must be able to walk in the same direction. If some people walk west, east or south then we don't do well, an adversarial approach to pension issues does not work (Interview 5).

The actuary seems to be saying that you need to design a decision-making process that offers space for challenges and discussion but after which there is ultimately unanimity. There was an acknowledgement from both Ontario and Quebec administrators that the bigger public sector pensions such as municipal and universities pension plans all have employee representation, which is above the minimum as legislated by the law.

It is generally standard to have union involvement in these schemes although they are not able to collectively bargain. The pension actuary for public pension schemes in Quebec outlined why unions were eager to participate in joint pension committees. Firstly, this was because their scheme had 500,000 members many of whom were union members. Secondly, when a collective agreement comes to an end people can switch unions so having a presence on the pension committee may make them seem more attractive to the membership as well as giving them another opportunity to

persuade members of their relevancy to the union (Weststar and Verma 2007). Certainly the CLC director confirmed that the labour movement was shifting towards advocating joint governance of pension schemes as practised in the public sector although not all unions such as the Canadian Auto Workers, who had a strong presence in Ontario, supported this move because they ideologically considered it was 'incorporation' as outlined by Schuller (1985-79).

The Canadian public sector unions are supportive of joint governance as indicated by OPSEU, Ontario's public sector union. However, the OPSEU representatives linked this less to power and more to greater involvement and participation with the membership, industrial democracy in action. They argued that joint governance had improved transparency and communication with the members in their plan at a time when the plan was in deficit:

Our pension plan was not growing and blooming and doing all the things that it is doing today under the Government so that was a big fight for us. After joint trusteeship was established that changed and it became a more viable plan and there was a guarantee for them and for our membership today. They believe that they are going to have a good pension when they retire. I would say that has everything to do with joint trusteeship and the communications that they receive and being more transparent. They know people who are trustees on the pension plan and talk to them. Our members feel that their trustees are their own people and they can contact them at any time and have open conversation. (Interview 8),

Here the union representative seems to be arguing that institutional structural change to joint representation has resulted in a better deal for the beneficiary rather than making trade unions relevant to the membership. But while the rationale for involvement here is based on industrial democracy the union involvement in joint governance in the public sector also seems to support Clark's case-study research that argues that functional imperatives can be reconciled with representation (2008). Certainly from an industrial democracy perspective the (Opseu) comments about reconciling political deficit in relation to transparency and communication to the membership while negotiating the tricky boundary between the claims made for community representation and board-level expertise seems to support Clark's argument that these two aims are not irreconcilable. Both Ontario's and Quebec's administrators and public sector trade unions were in agreement that joint governance is delivering on the pension promise but with the added benefit of increasing communication and dialogue with the membership.

A key aspect of the adoption of greater employee representation can be collaboration with the labour movement particularly in the public sector where parity has long been established. Public sector unions do not collectively bargain and so there is less risk of them being seen to be incorporated with management a reason why trade unions ideologically shifted away from promoting industrial democracy in other spheres (Coates and Topham 1968).

In Quebec (unlike in Ontario) government and labour bodies are more politically unified in respect of supporting pension trustees, including elected trustees. The FTQ provides pension trustees with education and get involved in wider pension issues such as maintaining its own investment fund 'Solidarity' and setting up a new DB pension plan on the behalf of 12 employers both large and small. But it is in the private sector where employee participation let alone joint governance is more contentious.

TRUSTEESHIP IN THE PRIVATE SECTOR

In Ontario there is no structural provision for the appointment of elected representatives on pension boards indeed they operate a 'permissive model to structuring pension schemes' and if they were to bring in elections for representatives they would have to reconsider how they structure their pension schemes In the 2008 review employers were consulted on implementing a pension committee structure like Quebec:

Admin 1: They didn't like the loss of control where they have the responsibility for funding the plan but at the same time they lose the ability to control, well technically they wouldn't lose the ability to control because the pension committee only requires 2 members to represent members but ...

Admin 2: Close enough.

Admin 1: But they would lose control over how it was invested and how it was run so there was a problem there. (Interview 2)

In Ontario the adherence to a more neo-liberal thinking in policy-making does not automatically support union involvement outside the public sector. So unlike Quebec with its different political heritage of concertation there may be less political incentive to prioritise 'representation in relation to functional imperatives' when their aim is to fulfil the pension promise (Clark 2008:294) in pension institutions.

But there is one area that again differ and this is multi-employee plans. In Ontario multi-employer plans such as the construction industry have a joint trustee arrangement. Here member representatives may sit on the board but according to the administrators this is generally because they've got an active union (the construction union actively manages its pension plan) or an active employee association or other representative organisation but this is not typical for these types of plan across the country. This does seem to suggest that the influence of trade union involvement is key for greater employee participation and representation.

In Quebec there appeared to be more political unity about the need for employee representation from the government and labour bodies and for this to be backed up with legislation to deal with dangerous abuses of control and ownership that were more likely to occur in the private sector where control of occupational DB schemes in particular can be disputed between the employer and the employee.

In Quebec the (SAC) employee pointed to the 'empty shell' concept to help explain why in Quebec they had instigated new rules in 2006 to cover pension administration of its pension committees. These new amendments increased the critical mass of elected representative from two to four (two voting and two non-voting elected members) to the pension committee at the AGM mandatory (www.rrq.gouv.qc.ca). The amendments outline clearly the fiduciary responsibilities of all trustees and also strengthen the contribution of elected participants. These regulations should help avoid the employer subverting the decision-making process:

At its most extreme it is an empty shell the same legislation exists but of course it is not at all the same dynamic in what is going on in well-run committees (Interview 3)

The 'empty shell model' is the most extreme example of an occupational private pension scheme in respect to information sharing and distrust, which is a challenge for employee representatives (Schuller and Hyman 1984). But they do exist even in provinces that have a tradition of concertation and it is here where a knowledgeable employer can control what happens by picking a few 'managerial conscripts' such as

the production manager who may know little about pensions. Cocco and Volpin (2007) consider that insider trustees who are also engaged in managing the sponsor company may prefer to prioritise the sponsor organisation's interests, which has severe implications for fiduciary responsibilities and pension governance. This 'insider' grouping of appointed representatives in Quebec was considered to be the least knowledgeable committee members in respect of governance. So when it was discovered that elected representatives were not receiving all essential reports needed to challenge and monitor plans, new legislation was introduced to strengthen the fiduciary responsibilities of the pension committees in 2006. In addition more education was provided to ensure that elected representatives recognised any shortfalls in documentation and their fiduciary responsibilities because as the FTQ representatives outlined in line with Kakabadse's and Kakabadse's (2003) UK lay/elected representatives can be competent representatives:

Other organisations say it shouldn't be union members it should be specialists because the union members don't have the knowledge or the time to do the job right. And we are saying it is possible. We have been doing it for many years. (Interview 4)

Trustees in Ontario are usually appointed not elected. Generally they exist where there are unions or very long-established employee associations, who would appoint people to run their plan. For example one of the biggest and most successful schemes is the multi-employer Teacher's plan, which covers private as well as public school boards. Here the rules about trustees were established by statute. The sponsors can each appoint four people to the board and usually they are 'blue chip individuals' such as the President of the Bank of Canada. The administrators consider that this fund sets the standard for large pension plans because the teachers are 'unique because they take the appointment process 'seriously'.

In Ontario many private companies utilise their director board as administrators of occupational pension plans. Or in the administrators words they would 'stop and put on their pension hat'. This aspect can be problematic because as the OPSEU and FTQ representatives point out running a pension scheme in the interests of all the members is not necessarily the same as running a private commercial company although the executive board processes may seem similar. The functional financial imperatives for sponsors and stakeholders in commercial enterprises often can prioritise quick returns and short-term objectives. Pension decision-making should be open and transparent because it is the worker's monies that should be prudently and honestly invested for the future and as such they have a major stake in the activities of pension boards and committees (Schuller 1985).

It maybe that the Quebec 'concertation' between government, labour bodies and employers has resulted in a greater emphasis being placed on the political foundations of governance as opposed to functional financial imperatives. It may also explain why they (unlike Ontario) are wedded to elected employee participation. Indeed Schuller and Hyman (1983:74) make the point that for employee representation to be effective it needs to be more than 'a lone employee trustee' so the degree of representation is important. Thus increasing the numbers of elected representatives in Quebec should help to create a critical mass that ensures more participation and thereby increase industrial democracy. In Ontario it would not be possible to bring in a mandatory element of elected employee representation without changing the existing structure of its pension plans board. In Ontario there is no requirement or demand to have a pension committee that would facilitate this. Where increased representation has occurred it is in areas where labour bodies in Ontario have been active such as in the multi-employee schemes and in the public sector.

CONCLUSION

There is no denying that member representation on pension boards is increasing in an Anglo-American context. Certainly governmental decision to increase integrity and accountability through greater participation of the membership theoretically seems to have links with Schuller and Hyman's work (1983). However, outcomes in respect to how that representation is conceived politically indicates the influence of labour bodies. In the UK the TUC have taken an active role in supporting elected members in pension trusteeship (Sayce 2007, 2008) as do the FTQ in Quebec. This might suggest that there are greater similarities between Quebec and the UK than there are between Ontario and the UK although both follow a more neo-liberal model in relation to economic policy-making. So where does that leave the issue of 'concertation'? How do we theorise this aspect in relation to industrial democracy as outlined by Hyman and Schuller? Here a focus on political economy literature in relation to pensions as well as the industrial relations literature may give us an insight into this issue and prove a productive area for future research.

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