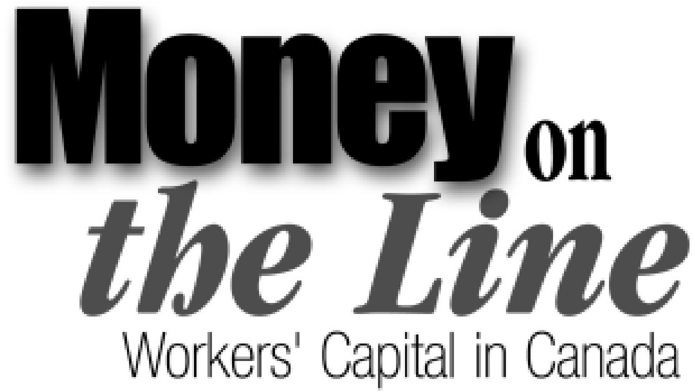
Money on
the Line
Workers' Capital in Canada

MONEY ON THE LINE | Workers' Capital in Canada

Edited by Isla Carmichael and Jack Quarter

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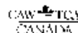

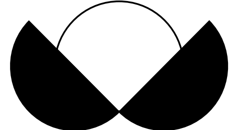

Canadian Centre for Policy Alternatives
Suite 410, 75 Albert Street
Ottawa, ON K1P 5E7
Tel 613-563-1341 Fax 613-233-1458
www.policyalternatives.ca
ccpa@policyalternatives.ca

Dedication

To Bill Clark, trade unionist, labour educator

BROTHER CLARK SAW THE POWER OF WORKERS' PENSION capital some forty years ago. Since then he has worked unceasingly to achieve worker control of pension funds in his Local, his union and his province of British Columbia. As modest as he is, Bill understands the power of what he and his co-workers have achieved as a model for trade unionists everywhere. He has happily, generously and enthusiastically shared his experience with others.

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— *Isla Carmichael and Jack Quarter*, *October 2002*

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FOREWORD

Investing in a better world?

The union role in joint trusteeship of pension plans

EARLY IN JANUARY 2001, I CHAIRED A MEETING OF PENSION PLAN trustees from the National Union of Public and General Employees (NUPGE). A new group, these people represented every pension plan where the National Union has joint trusteeship. Over $60 billion in pension fund assets were represented in the room. That's a really large number, so large that it's hard for many of us to even fully comprehend the amount of money associated with that figure.

One week later, I was at a meeting of Public Services International on pension trusteeship. There was $1 trillion in pension fund assets represented around that table. This is an enormous amount of money, representing a potentially huge amount of economic power.

The road to joint control has been long one, and it hasn't always been a straightforward route. Pensions were originally put into place so employers could keep workers loyal. If you left a job or were dismissed, you wouldn't get a pension, so you stayed. These early pensions weren't paid out for too long a time, because life expectancy was shorter, and workers therefore didn't live too long after retirement. As more pensions became contributory, workers regarded pensions as their deferred wages—an entitlement that is earned when working, but paid out after retirement.

Unions in the public and private sector worked hard to win better benefits for their members, whether or not they had the right to negotiate. For a long time the focus was on the actual amount of the pension: that is, on the level of benefits that an individual worker was entitled to under his or her plan. The 'administration' of the pension fund itself was left to employers. In fact, in respect of public sector employees, most governments operated these pension plans on a "pay as you go" basis.

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This meant that there was no need for a fund, per se, because the benefits were guaranteed. In other words, there would always be a government in place to ensure that the benefits promised were actually paid.

Within the last two decades there has been a huge shift. The focus has shifted from the benefit entitlements under the plan to one where the health of the pension fund is considered the major factor in attaining one's pension benefits. There were a number of reasons for that shift, and I don't really want to go into any real detail about them here. However, included in the factors was the imposition by the financial profession of the concept of an "unfunded liability" into the public pension system. Another was the deficit hysteria that we saw all too often in so many facets of government operations, and the resulting cuts in pensions and benefits, along with contribution "holidays" by employers.

The result is a good example of the law of unintended consequences: if, as a result of these events, workers are now more aware that the health of the pension fund is critical to their pension entitlements, then control over that fund becomes a critical issue. When workers know that the health of the fund is such a critical factor in pension payments, then they become far more aware of the fact that it really is *their* money in the fund. The reason, of course, is that the fund determines the pension benefits available. To put this another way, the balance in the fund determines the deferred wages our members are entitled to. An added factor is that, in the public sector, most often half of the money in the fund has been contributed by public service employees themselves.

There are several models of how employees exercise effective control over the health of their pension funds, including sole trusteeship by worker representatives. But it's safe to say that joint trusteeship is the most common model, and the fastest growing model.

All of this begs a very fundamental question: for what purpose do we want effective control? Is it simply to do a better job in maximizing returns? Or is it to make more fundamental changes in the financial system, a system that up until now has not had a "worker-friendly" agenda?

As an important example, our financial system includes the stock market, where stock values have often been known to fall when unemployment comes down. In the perverted logic of financial markets, too many workers with jobs may not be "good news," because that could possibly result in inflation. In companies that make their money from privatizing government services, cutting government jobs is an investment with in-

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stant payoffs for their shareholders—even though this is bad for public sector workers, and *very* bad social policy.

Slavery, sweatshops, environmental negligence, *maquiladora* factories—all can be very profitable for companies. They all reduce corporate costs, and augment the corporate bottom line. Short-term profits become the be-all and end-all, even if they result from violating human or labour rights, polluting the environment, or irretrievably damaging the long-term wellbeing of our families and communities.

The question is whether we have to use workers' money in an investment system that is anti-worker. Is there no choice but to play by *their* rules?

Before answering that, let's make something quite clear. Whatever we do, we need to be responsible with our members' money. We have our fiduciary responsibilities to meet, under the law, duties that we would want to meet anyway, whether the law required it or not. The law demands that we earn investment returns as Priority No. 1, so that our members have decent pensions, and of course that would be our goal even without the legal requirement. When we have joint control, or *any* kind of control, we are exercising important responsibilities that relate to our members' retirement incomes, in some pretty direct ways.

But remember this: the trade union movement is responsible for our members' retirement incomes in almost everything we do. Bargaining a collective agreement with higher wages affects the retirement income of our members. Higher wages while working equals higher pensions on retirement. Winning job security affects our members' right to a pension, because without a job there is no pension to look forward to. If we win an arbitration on unfair dismissal, or a wage improvement grievance, or even a grievance on basic discipline, we are affecting our members' retirement income.

Sometimes we allow ourselves to be put into a financial straightjacket, based on the fact that we have particular responsibilities towards our members through managing their pension funds. Yes, we do have that responsibility. But it's not the only area where we're responsible for our members' financial security. In reality, that responsibility is the very essence of the union's role in almost *every* activity, not just trusteeship on a pension board. Trusteeship may differ in its *details*-—but it's part of the same fundamental concept of what we do as unions. We can and must exercise control over our money—our members' money—in ways that

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promote the financial *and broader* interests of our members. We must also challenge the financial industry where it does not meet the interests of workers, their families and communities.

We are learning quickly how to do this. We know some of the tools, and we are rapidly expanding our ability to use them. Our efforts focus on three areas.

First is the use of ethical screens. While they are an important tool, ethical screens are most often a 'passive' intervention, involving a decision *not* to invest in companies that operate outside some acceptable limits. For example, ethical investing may be behind a decision not to invest in companies that do business in Burma.

Secondly, there is the growing field of shareholder activism, where we exercise the votes our shareholdings in particular companies give us. For example, we might use our votes to change a company policy that says that a bank vice-president should get paid $14 million per year in salary and bonuses. Or we might vote against a policy that says that a corporate CEO should get paid 400 times the salary of the average worker in a company. Or we might vote for a new policy that ties management salaries to independent surveys of worker satisfaction; or the promotion of environmentally conscious workplaces.

Finally, there are economically targeted investments, where we invest in activities that provide our workers with returns on their pension fund investment, but also provide what are known as "collateral benefits." These include jobs, affordable housing, local development, the promotion of local businesses, and a range of other economic and social priorities. Earlier on, I said that the National Union's own pension trustees sit on pension boards that are responsible for some $60 billion of workers' pension money. If we used a percentage of a percentage of a percentage of that money to invest in things that were socially useful, and if every other union trustee could accomplish the same thing, it would result in a significant investment in a better world.

The union movement is drawing attention from others for our work in pension fund trusteeship. They are giving us strong hints that we may not yet fully grasp the enormous potential that is in front of us. I quote from *The Ambachtsheer Letter*, in an article with the ominous title, "Public Pension Fund Power in Canada: For Good...Or For Evil?". The article says the following:

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> *By almost any standard, this massive accumulation of public pension fund assets, managed by only a handful of agencies, represents a significant concentration of economic power in this country. The implication is that just eight investment agencies could lock up effective control of all of corporate Canada over the next decade if they chose to do so. Thus, if used for the wrong purposes, these eight agencies could wilfully distort business decision-making in Canada, and seriously damage its economic prospects for decades to come.*

"Wilfully" distort business decision-making? We have seen huge examples of distorted business decisions recently. The fact is that others see more clearly than we yet do how huge an impact we might have, if we harness this awesome economic power effectively in the interests of our members.

Of course we need to act responsibly. We can't reasonably exercise this kind of power carelessly. We have to learn the ropes. The problem is that much of the information about the responsibilities of pension plan trustees comes from the industry. Together with the technical and legal jargon, it also contains a lot of biased advice aimed at telling trustees what they can and can't do—mostly what they can't do.

Let's take a different approach. Part of this whole process is for unions to recognize their responsibilities to trustees. We need to recognize that being a trustee can be a lonely job. Trustees are too often kept isolated within their individual plans, and perhaps the whole process is designed that way: to keep trustees isolated from each other. We need to overcome that separation, to provide ways for trustees to get together and work in concert.

Unions need to provide support to the work our trustees are asked to do. We don't ask our bargaining committees to go off on their own without backing them to get good agreements. We don't ask union staff to handle arbitrations without giving them backing and resources. So we shouldn't send our trustees off to do such important work without providing the resources necessary, either.

We also need to establish clear *objectives:* we need to be very clear about what we want as a movement. What we want in the area of pension funds must be both transparent and consistent with our broader objectives.

We need to provide education, at two levels. We need to provide our own technical tools and education, to counter the current model where

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the technical issues are used by "experts" and the system to build walls and chains around our trustees, used to emphasize what they can't do. We need to provide a balance to all the attempts to muzzle and intimidate our trustees with the heavy weight of 'responsibility.' But we also need to provide education on the broader issues: not just the tools, but also the analysis, the broader perspective, the union perspective.

We need to link our work on pensions fund investment to our work in other portfolios. For example, one of the possible tests for investment within our pension funds is adherence to the core labour rights established by the International Labour Organization (ILO). This is also a very significant factor in debates about the World Trade Organization (WTO), the Free Trade Area of the Americas (FTAA), and so on. It is important that the trade union movement be consistent in these positions and in our arguments, whether our work relates to our pension funds, international trade agreements, or other areas.

Another example: we know that so-called public-private partnerships are a bad deal for many reasons. We've done the economic analysis, and we know this is bad public policy. But we also know this kind of investment can be very profitable. That's one of the problems with the idea: private companies are practically guaranteed a profit at great expense to the public purse. It is important that we take our broader analysis back to our pension trustees so they are armed with this information in the face of the pressure to make "good" investments in such schemes.

Unions need to provide a place for debate about the current limits, the rules faced by trustees in the system. All of us—unions and trustees—need to work on parallel tracks. We need, at one and the same time, to work within the current rules, while also challenging them, pushing the limits back, breaking the chains that put narrow, short-term corporate needs ahead of those of our members, their families, and our communities.

We can find an analogy in the way unions deal with bad labour law. We always need to understand it, and we mostly work within it, while fighting to improve the legislation. But we sometimes have to confront the rules, to actively and openly challenge them. Or course we accept in general the principle that trustees act in a fiduciary capacity. That doesn't for a moment answer all of the questions. Where exactly is the line between proper and improper behaviour? Are we just going to accept the

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lines drawn for us by the financial industry? Why would we assume that their rules are designed for the benefit of those same workers?

Let me give you some examples of why even apparently good mandates don't fully answer the real questions. One of the large progressive funds in Europe has the following objectives, to ensure:

1. long-term viability of the plan with low and stable premium/contributions;
2. maximum return at preferred risk; and
3. acceptance of general constraints (human rights, weapons, etc.).

If you think about it for a moment, there are some intriguing questions that arise from this set of guidelines. The most obvious is this: what happens when there is a direct conflict between goal No. 2 and goal No. 3—maximum returns vs. human rights concerns?

Another big progressive fund has as its principles to act solely in the interests of the stakeholder/pensioner; to achieve maximum return with reasonable risk; and not to invest where socially unacceptable. Again, what if there is a contradiction between the second and third principles?

And what exactly does "solely in interests of the stakeholder" mean? A major South African pension plan has the articulated goal of improving social conditions in the country. How could this *not* be in the interests of the stakeholder/member?

We usually insist that ethical investment is actually better investment by the rules of maximum return. There is ample evidence that ethical plans earn greater returns, on average, than non-screened investments. But there *will* be times when to be truly ethical, to be truly operating in the best interests of the members, requires lesser returns. The most profitable way of operating can be the most damaging to society. In that case, do we reserve the right not to invest ethically? After all, the opposite of ethical investment is unethical investment. Do we want to reserve the right to act unethically if it means higher returns for our members?

Why is the *sole* definition of "best interests" limited to the financial aspect? Is it somehow in the *sole* interests of our members to have a good pension in a bad society? Is it in their interests to have private (but profitable) hospitals? Private (but profitable) jails? This is a strange and company-friendly system. We should be prepared to challenge it. We have a responsibility to learn what the financial industry and the current law *say* the rules are, and a responsibility to challenge and re-define those rules.

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We need to find our own limits, our own rules, our own answers to the difficult conundrums that will face us in this area. And I don't just mean that our trustees have to do this. We need to work together to come up with our own collective answers as to what we think is in the best interests of our members, their families and communities.

Let me make one observation about the responsibility of international trade union organizations. In our discussions about the use of our pension funds, we are asked to take account of the needs of the developing world, and quite properly so. To do this, we must connect with workers in the countries we are discussing, so we aren't put in the position of making decisions *about* workers in other countries—our own form of enlightened colonialism—but rather so we can make decisions *with* the workers of those countries.

Finally, trustees have a responsibility to make pension plans more friendly to members. In financial language, the members of a plan are called liabilities. In practice, many plans treat them that way, with obscure information about their plans and their entitlements, with difficult and complex processes. In those plans, it seems that the *fund* comes first, the members second.

Union trustees can bring a new sense and a new fairness to the process, to the administration of the plan, to members' access to their plan and their rights under it.

We had to fight out way into joint trusteeship. We weren't welcomed, we weren't invited, until we forced the issue—until we crashed the party. Now that we're inside, the next level of defence is to tell us what we can do, and what we can't. In essence, they're saying to us: "You got here too late, the rules are all defined, the culture is established, and you can only stay if you behave."

We'll behave, all right. We'll behave the way we always do: in the interests of working people. It's *our* money, and we and our members will decide how to use it.

I remember the old call to "do something: lead, follow, or get out of the way." Well, we're here, and we're not leaving, not getting out of way. We shouldn't just follow rules we didn't set, rules that don't work for us or our members. That gives us only one choice: to lead the way to a better system—a system where workers' money acts in workers' interests. Isn't that what we're all about?

— Larry Brown, Ottawa, October, 2002.

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Introduction

by Isla Carmichael and Jack Quarter

ALTHOUGH THERE IS A GROWING BODY OF RESEARCH ON SOCIAL investment, this research is predominantly from the U.S. and does not relate social investment to the involvement of unions. The papers in this book, by comparison, are predominantly Canadian and focused around funds that have union sponsorship: that is, union-based pension funds and labour-sponsored investment funds. The latter are a different type of fund than a pension fund, but in the context of this study have the common feature of labour involvement. The growth of union interest in the investment of pension funds and their participation in labour-sponsored investment funds reflects a change of attitude on the part of labour (Quarter 1995). That change is an important component of the context for this book.

The context

By the late 1970s, unions began to show an increased interest in how pension funds were being invested. The context for that interest was rising unemployment, stagnant wages, restrictions of the rights of public sector workers to strike, and the internationalization of finance. Within the Canadian Labour Congress, earlier discussions culminated in a resolution at the 1986 convention that "endorse[d] the goal of organized Canadian workers achieving greater control and direction of the investment of pension funds" (cited in Baldwin et al., 1991; p. 10). This resolution was reinforced by a similar one adopted at the 1990 convention.

To assume greater control, unions have taken two types of initiatives. One is the direct sponsorship of pension funds, involving about 14% of the membership of pension plans in Canada, largely in the building trades and in industries such as textiles (O'Grady, 1993). The other is joint trusteeship, typically in the public sector, the building trades, forestry, transportation, and some retail industries.

The Ontario Federation of Labour argued for co-determination of pension funds in a 1988 brief to the Rowan Commission (Task Force on the Investment of Public Sector Pension Funds, 1987). In Ontario, the Ontario Public Service Employees' Union (the large public sector union) has achieved joint trusteeship of its major pension plans (Carmichael 1996; 1998). The Canadian Union of Public Employees, which represents the employees in 30 of the top 100 plans in Canada, is also pushing for that objective, having also achieved joint trusteeship in some of its plans and having succeeded with other unions in winning co-trusteeship of the large Hospitals of Ontario Pension Plan).

The most recent data from Statistics Canada (2002) indicate that the assets of trusteed pension funds for the third quarter of 2001 were $541.6 billion. However, in addition, these vast pools of capital are a primary source of equity for the largest corporations in Canada, and internationally for the largest corporations in the world. As of 1994, pension funds in the U.S. controlled 47% of all U.S. equities; in Canada, the comparable figure was 35%, with 40% of pension fund assets invested in equities (Patry and Poitevin, 1995). The Caisse de Dépôt et Placement du Québec and the Ontario Teachers' Pension Plan, both with in excess of $50 billion of assets, are among the largest pools of capital in Canada.

In addition to pensions, organized labour has also become involved in the provision of venture capital through labour-sponsored investment funds. Unlike pension funds that are invested predominantly in government bonds or blue chip equities, labour-sponsored investment funds represent risk capital that is designed to meet gaps in markets for small- and medium-sized firms in particular provinces, as defined by the fund, and possibly in particular sectors of the market, if the fund is specialized (Quarter, 1995). For that reason, labour-sponsored investment funds are also referred to as venture capital funds. In general, these funds make long-term investments that bear a greater risk than the equities purchased by pension funds. However, labour-sponsored investment funds, like pension funds, are required by law to diversify their investments and to

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minimize the risks. To encourage participation in labour-sponsored investment funds, participants receive tax credits (federal and provincial) of 30% cent of their investment.

From 1983, when the Quebec Federation of Labour started the Solidarity Fund (Fonds de Solidarité des Travailleurs du Québec), an increasing number of unions have set up labour-sponsored investment funds. A 1995 study found there were 17 funds with more than $1.8 billion of assets, $582 million of investments, and 362,350 investors (Canadian Labour and Business Centre, formerly the Canadian Labour Market and Productivity Centre, 1995).

Most provinces have one labour-sponsored investment fund organized by the central labour federation. However, in Ontario, the Ontario Federation of Labour was split over whether or not to support such a fund because of the opposition of one union, the Canadian Autoworkers' Union (CAW). Therefore, a legislative model was developed that spawned many labour-sponsored investment funds without genuine labour involvement. Moreover, some of these are sponsored by organizations that have a questionable status as a union (for example, the Canadian Football League Players Association). These have been labelled as "rent-a-union funds" to denote the fact that the so-called labour associations that have organized them serve as a front for a conventional investment firm that wants to take advantage of the tax assistance available to labour-sponsored investment funds.

The CAW maintains its historic opposition to both labour-sponsored investment funds and union involvement in pension fund investment through joint trusteeship. According to the CAW, first, this 'muddies' the 'traditional understanding' (Stanford, 1999, p. 372) between unions and employers, and undermines the role of unions in representing their members through collective bargaining. Bargaining flat pension benefits has worked well for the CAW, but not so well for other unions, whose members—these days—must also make contributions to their pension plans and demand a stronger say in the administration of their plans.

Secondly, the workings of the market dictate losses in the rate of return of investments made in the benefit of a broader social good. Unions therefore would be obliged to make trade-offs between the interests of their members and the broader interests of a social investment (Stanford, 1999). This concern has been shared by other unions and is discussed later in this introduction.

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Taken as a group, it is estimated that labour-sponsored investment funds are now providing nearly one-half of the venture capital in Canada. As with the investment of pension funds, organized labour's interest in such funds is based upon dissatisfaction with how capital is being invested. A report prepared for the Canadian Labour Congress in 1991 states: "A strong common current that has animated both the direct involvement of trade unionist in investing...is a strong sense that capital investment markets, left to their own devices and operating under the direction of traditional managers, have not served the interests of working people adequately" (cited in Baldwin et al., 1991; p. 11).

The social investment movement

At the same time as the labour movement was increasing its interest in how capital was being used, there was a parallel movement regarding the socially responsible investment of capital (Ellmen, 1989; Quarter, 1992; Reder, 1995). Although this phenomenon was not specifically tied to the labour movement and had a broad base of support that included religious organizations, social investment groups as well as businesses (for example, The Body Shop and Ben and Jerry's [Quarter, 2000]), the social investment movement has interacted with strategies of the labour movement.

Although there are differing manifestations of social investment, all involve the inclusion of social standards in investment decisions (Bruyn, 1987; Carmichael, 2000; Ellmen, 1989; Kinder, Lydenberg and Domini, 1998). In other words, investment decisions are not simply based on the rate of return (the typical standard), but also social criteria (for example, impact on the community) that may interact with the rate of return. The problem with this definition is that it also allows for the inclusion of right-wing criteria such as the anti-gay screens used by some U.S. funds. Therefore, this study utilizes the additional criterion suggested by some researchers (Bruyn, 19897; Carmichael, 2000; Lowry, 1991; Zadek, Pruzan and Evans, 1997) that social investment should challenge conventional corporate behaviour. Social investment is also referred to as ethical investment; for the purposes of this book, these two terms are used interchangeably.

There are at least three distinct forms of social investment that shall be discussed in turn. In general, all address methods of handling the assets of a fund and may be called: asset screening, asset targeting, and

asset managing. The first, asset screening, involves the application to an investment of social screens, either negative or positive. Negative screens or sanctions occur where the funds prohibit particular investments. South Africa prior to the move to majority rule was one of the earliest examples; tobacco and armament companies are more current targets. The prohibition of investments in South Africa was utilized by a number of unionized pension funds and other labour investment vehicles prior to majority rule. Some labour-sponsored investment funds (e.g., the Working Opportunity Fund sponsored by the British Columbia Federation of Labour, the Crocus Fund of the Manitoba Federation of Labour, and the Solidarity Fund) have applied social screens to the firms that they evaluate for investment.

Where asset screening is positive, investment is directed to a fund with a positive social goal; for example, to encourage the quality of the environment (Desjardins Environment Fund) or with more general ethical objectives (for example, the Summa Fund). One difficulty with this approach is that it is based on normative criteria within a particular industry, and the overall standard within an industry might not be very positive. In general, unions have not been the sponsors of investment funds with positive objectives. However, there is a union-screened fund (MFS Standard Trust) in Washington that is channelling its investments to firms with a positive labour record. Moreover, CalPERS (the California Public Employees' Retirement System), with assets of about (U.S.) $170 billion, has recently instituted a more comprehensive screen based on the Global Sullivan Principles (Sullivan, 1999), which emphasize a broad range of environmental and social justice criteria.

A second form of social investment is asset targeting or economically targeted investment (Carmichael, 2000; Jackson, 1996). In this strategy, a fund targets 1% or 2% of its assets for specific social goals (affordable housing for low-income earners). In Canada, unions in British Columbia have engaged in economically targeted investment by establishing a development company to which they channel a small portion of their investments (Concert Properties). Some of these unions employ their own members through this strategy, thereby increasing the pay-in to the pension plan. In the U.S., the AFL-CIO has set up a housing trust for a similar purpose.

The third form of social investment—asset management or shareholder activism—involves both individuals and funds that are concerned about

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issues typically involving the governance of companies in which the fund invests. Activist shareholders raise these issues for discussion and propose strategies for change. In Canada, the impetus for shareholder activism has come largely from religious organizations (Hutchinson, 1996), although individuals also engage in such actions; for example, lawyer Yves Michaud's campaign to force the banks to address issues of executive compensation as well as issues related to governance. In the U.S., some of the large public sector pension plans (for example, CalPERS) have established a reputation for using this practice (Smith 1996). Labour-sponsored investment funds often insist on participating in a company's governance as a condition for investment.

Even though there are examples of labour involvement in social investment strategies, unions have also been reluctant to engage in such practices. There appears to be at least two major reasons for this reluctance. First is a concern that applying social criteria to investment can adversely affect the rate of return. Second is the tendency on the part of labour trustees to defer to management. Each of these issues shall be discussed in turn.

Rate of return

This concern is most pronounced with respect to pension plans because the so-called "prudent man" rule suggests that the trustees are required to seek the best possible rate of return for the beneficiaries. Canadian legal opinion on this matter has been heavily influenced by the 1984 decision of the Court of the Queen's Bench of England, the widely cited Cowan v. Scargill case, in which union trustees for the coal miners' fund insisted that there not be investments in energy industries in direct competition with coal. Justice Megarry, writing for the court, ruled against the union trustees, stating: "When the purpose of the trust is to provide financial benefits for the beneficiaries, as is usually the case, the best interests are normally their financial interests...the trustees must not refrain from making the investments by reasons of the views they hold." (Cowan v. Scargill, 1984; p. 760).

As a result of the Megarry ruling, which has been cited in Canada as well, trustees of pension funds have been very cautious about making investments that do not maximize the return to beneficiaries. In summarizing Canadian legal opinion on the issue, Waitzer, (1990; p. 10-11), the

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former chair of the Ontario Securities Commission, issues a warning that probably reflects the norm for social investment of pensions in Canada: "If ethical choices do not lower investment returns, the practical (and legal) reality is that trustees are unlikely to face judicial interdiction, regardless of their motivation. If investment returns are lowered, trustees are in trouble."

Unions in Canada have struggled with this issue. The policy statement passed at the 1992 convention of the Canadian Labour Congress hedges a bit on the rate-of-return issue when it states that: "Unions which achieve greater control of pension fund investment should seek to broaden the range of criteria involved in investment decisions, consistent with securing an *adequate* [emphasis added] rate of return." (Canadian Labour Congress, 1993; p. 9).

Andrew Jackson, a senior economist at the Canadian Labour Congress, takes the point further and suggests that a fund "invest for a positive rate of return but that [it] does not have to compete with best rate of return." (Jackson, 1993; p. 2). CUPE refers to a "good rate of return" (Beggs, 1993; p. 3), whereas the OPSEU Pension Trust, a jointly trusteed pension plan for Ontario government employees, stipulates a 'reasonable' rate of return (OPSEU Pension Trust, 1996). In legal circles, there are also some who argue that a broader range of benefits for the participants of a plan than the rate of return should be considered in determining appropriate investments (Ravikoff & Curzan, 1980).

In addition to legal considerations, there are also practical and political considerations. Evidence that pension plans are yielding a lower rate of return than RRSPs, for example, would provide justification for employers already eager to rid themselves of the responsibilities associated with pension plans and also create dissatisfaction among plan members. With respect to labour investment funds, there isn't the same legal prohibition, but the practical concerns mentioned above do apply. If the funds are not yielding a competitive rate of return to investors, they will eventually lose their appeal. This type of criticism has already been directed at labour-sponsored investment funds, both from labour critics (Gindin, 1989; Stanford, 1999) and from business critics (Suret, 1993).

An implicit assumption in the argumentation regarding social investment strategies is that they are likely to reduce the rate of return. Yet there does not appear to be evidence to support this point of view. In the U.S., there is some systematic research related to shareholder activism

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(one type of social investment strategy). A comprehensive review of the U.S. literature on pension fund activism and firm performance suggests that there is no substantial effect (Wahal, 1996). That review suggests that the firms targeted by CalPERS experience a small increase in stock values, whereas non-CalPERS targets do not change significantly. Wahal suggests, therefore, that there might be an effect associated with that particular fund rather than funds in general. There is some evidence that suggests that public funds that are subject to political interference may be forced to make investments that do not yield the best rate of return (Romano, 1993).

In Canada there is one study—recently released—done over a five-year and a ten-year period (Asmundson and Foerster, 2002). The study compares returns of ethical funds with the TSE 300. There were no statistically significant differences in results. Therefore, they conclude, screened ethical funds do not have lower returns.

Managerial control

Even though unions have been increasingly assertive in assuming the trusteeship and sponsorship of investment capital, their role in management has been limited. Few unions take a direct role in the management of their pensions. Control over investment can only be a reality once trusteeship of pension plans is won. Unions in 18 of the top 23 funds in Canada are in the process of winning, or have won some form of joint trusteeship (Carmichael, 1998). These struggles have been achieved largely in isolation from one another, from the early 1990s until fairly recently. Therefore, trusteeship models vary considerably and do not always include effective control over the investment arm of the fund (Carmichael, 1998). For example, teachers' unions in Ontario have very little control over the investment of their pension fund.

In cases where union representatives are either sole or joint trustees, they often do not assert themselves or they choose to defer to management. Deaton (1989) argues that trustees of pension funds, including union trustees, often defer to management's advice and fail to assume the level of independence in decision-making that they have the right to exercise. The reasons for this are not entirely clear. It could be a lack of confidence in their abilities, particularly where a fund involves large amounts of money. Other possible explanations are: a lack of training;

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acceptance of the view that introducing social criteria is likely to reduce the return on investment; or lack of interest in the importance of social criteria in selecting investments.

Union pension trustee education as contested terrain

Undermining union trustees is not unusual, where fund managers stress their own professionalism and objectivity in contrast to the lack of expertise and supposed bias of most 'lay' or union trustees. William Dimma, chairperson of several Canadian companies, in a report presented to the House of Commons Standing Committee on the Governance Practices of Institutional Investors, said that:

> *While many plans are managed professionally, their boards are sometimes stocked with persons whose principal merit is that they are members…[who] have been elected by their fellow employees. While this is laudably democratic, it does not always produce the quality of direction and oversight necessary in today's bewildering world* (Report of the Senate Standing Committee on Banking, Trade and Commerce, p. 6).

This paternalistic attitude towards union trusteeship pervades the financial industry. Invariably, trustee education is delivered by representatives of the financial industry, who stress the high levels of accountability expected of union trustees compared to that of employer trustees. Union trustees are expected to set aside the interests of their members and communities to employment security, pension protection, environmental safety, and workplace standards in the interests of the "maximum rate of return." This generally means investment in large trans-national corporations that are already highly capitalized.

Hegemonic approaches to pension fund investment education and training are reinforced by existing training programs delivered primarily by the financial industry and its representatives through the Institute for Fiduciary Education, an American educational institution. This institute is corporate and anti-worker in its focus. The argument is made that training is 'neutral' and that a training program supported by unions will be biased. But union trustees have complained that training received from the financial industry tends to map out 'the way it is always done' uncritically, emphasizing dependence on fund managers. There is often not enough information supplied to allow trustees to pursue a critical

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learning path on their own. Instead, the presentations tend to mystify participants (Carmichael, 1998). Furthermore, existing training takes no account of policy discussions on economics and the behaviour of stock markets, gives few alternatives on different approaches to asset allocation, and fails to discuss gaps in the market caused by over-capitalization of the top 100 companies.

The results of a recent Canadian study (Carmichael, Quarter and Thompson) confirms anecdotal reports that existing opportunities for trustees are minimal and serve mainly to consolidate existing investment practice. Unions and trustees wishing to take a broader perspective towards investment are receiving little support from their pension funds. This is unfortunate because Canada needs new sources of capital to encourage emerging businesses. Pension funds are ideal for this purpose because they can be invested for the long term. However, this will not happen unless there are radically different approaches towards pension fund investment, a strategy that requires a transformative educational agenda developed by the trade union movement.

The need for educated trustees has been recognized as well among conventional business leaders and politicians. For example, Senator Michael Kirby, chair of the Standing Senate Committee on Banking, Trade and Commerce, has referred to the need for "highly knowledgeable people" who can "effectively monitor fund managers" (Canada, Standing Senate Committee on Banking, Trade and Commerce, 1998, p. 6). However, its proposal to deal with this is to replace lay trustees with professionals to be selected from the financial industry, as is legislated for the Ontario Teachers' Pension Plan. This would, in effect, cement control over workers' pension funds by the financial industry.

There are indications that union trustee education is critical to the informed, productive use of pension funds. Carmichael (1998) found through anecdotal reports that union trustees complained about the lack of support and resources from their unions, and suggested that education could be a critical factor in preparing union and other employee representatives to take an active role in pension fund investment. Rudd and Spalding's (1997) ground-breaking research indicates that, if trustees receive an appropriate education, they are encouraged to place pension funds in economically targeted investments which have the added benefits of creating jobs for working people.

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Union pension education has traditionally been limited to equipping rank-and-file members to understand their rights to pension benefits when they retire. Freire (1973) refers to this type of training as involving a semi-transitive consciousness, where the union might take credit for gaining benefits for its members, but there is little historical context for struggle and few connections made between individual experience and social systems. In fact, until recently, unionists (including some trustees) for the most part have remained unaware of the notion that their pensions constitute vast capital funds.

However, it is clear that unions must develop their own body of knowledge on capital markets and pension fund investment strategies, providing impetus to a more collective discussion of investment in the interests of working people (Habermas, 1972; Comstock and Fox, 1993). At present, even where trade unions have a role in investment, it is not recognized. For example, an article on labour-sponsored investment in *The Globe and Mail* bore no mention of union involvement (Won, 2000). Through education, this silence can be broken (Reinharz, 1992; Hooks, 1988; Schrjivers, 1991).

Central to such an educational approach must be an “unmasking” of the power dynamics of the capital markets, the self-interest of the financial industry, and the development of a union agenda based on the perspectives and interests of working people and their communities. This approach is particularly important since, in some cases, unionists—who have been trustees for many years—agree with the financial industry that they cannot ‘wear a union hat’ when making investment decisions for fear of being subjective.

This belief has been bolstered by the *Cowan v. Scargill* case (1984) in the British courts, which had a chilling effect on union involvement in investment decisions and union support and training of union trustees in North America, as well as the U.K. Such education therefore needs to examine how participants are socially and historically located (Smith, 1987; Harding, 1992) as workers, trade unionists, community members, and future beneficiaries. Some union trustees are beginning to argue that fiscal prudence in the trusteeship of pension funds may be impossible in the absence of training that promotes critical reflection. Critical learning is needed to expose dominant thinking and show how alternative approaches may be initiated; and critical reflection is central to a transformative approach to adult learning (Mezirow, 1991).

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Transformative learning may be liberatory at a personal level, or it may also be the outcome of education for radical social change through challenge to hegemonic ideology (Mojab & Gorman, 2002; Schugurensky, 2001; O'Sullivan, 1999). Critical reflection then becomes the process of revealing oppressive power dimensions in society (Brookfield, 2000).

There is some anecdotal evidence that some employer trustees may also believe that responsible trusteeship requires more comprehensive training and that they would like to work with union trustees jointly on training issues. Obviously, both union and employer trustees need training that will enable them together to make prudent decisions based on a critical approach to their trustee work. Indeed, developing a prudent approach involves deciphering disparate interests in investment decisions.

This approach to transformative education is influenced by Paulo Friere's work on conscientization (1970), as well as the development of critical theory where critical reflection is a means of unmasking hegemonic ideology as a liberatory step (Habermas, 1972). This direction is also supported by literature on socialist pedagogy (Youngman, 1986), popular education (Freire, 1970; Freire & Faundez, 1989), participatory research (Hall, 1993), social action (Newman, 1995), critical teaching (Shor, 1992), feminist theory (Smith, 1987; Harding, 1992), and labour education (Wertheimer, 1981; Martin, 1995; Taylor, 2001). This social activist approach has also been central to the practice of adult education by such educators as Freire, Tomkins, and Coady.

In British Columbia, in the 1960s, concerns about regional development drove Bill Clark, the local president of the Telecommunication Workers' Union, to negotiate joint trusteeship of his members' pension plan and administration of the fund assets. His leadership, together with the support of the B.C. Federation of Labour and its President, Ken Georgetti, and the work of several union-sympathetic professionals, led to the birth of Concert Properties, a real estate development company, and its sister investment vehicle, Mortgage Fund One. Their success was due to dynamic, informal learning processes which occurred between experts outside the trade union movement and leaders and supporters within the Federation of Labour. Their goal was investment in their provincial economy. The experience of these unionists in B.C. can be replicated through effective education for union trustees in pension fund investment.

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There are indications that active involvement of the trade union movement in initiatives that may be broadly called social investment are on the increase in Canada. The CLC has held a conference on pensions, a large portion of which was devoted to trusteeship and investment issues; and it is extremely active in the international movement on corporate social responsibility. It has also endorsed the Shareholder Association for Research and Education (SHARE), a national organization sponsored by the trade union movement to help pension funds "build sound investment practices."

The Shareholder Association for Research and Education (SHARE) is a non-profit agency established by Working Enterprises, a company which provides travel, insurance, and investment services to the trade union movement and is wholly-owned by the B.C. Federation of Labour. SHARE works with pension trustees, plan administrators, and plan members to provide shareholder research, education, and policy. It is a relatively new initiative, fully supported by the CLC, that aims to work as part of the international movement to hold the corporate sector accountable through shareholder proposals. So far, SHARE has drafted and circulated proposals to be filed with the Hudson Bay Company and Sears concerning the use of sweatshop labour by suppliers. It has also developed critical research papers on fiduciary responsibility and investment policy.

The National Union of Public and General Employees has now instituted regular meetings of its union trustees and activists across Canada, and recently held a first pilot educational for trustees to establish a union agenda for investment strategies. The Canadian Union of Public Employees has held similar week-long workshops for trustees.

The CLC is also supporting a new trustee education initiative to provide training to union trustees. This new initiative is sponsored by Carleton University and the Ontario Institute for Studies in Education of the University of Toronto, and aims to design and deliver, through workshops and web-enabled methods, focused, practical training on fund investment for trustees with public-sector and private-sector pension funds across Canada. This group is supported by an advisory committee that includes representatives from the CLC, the National Union of Provincial Government Employees, CUPE, and other leading labour organizations.

Another new initiative is a proposal for Social Science and Humanities Research Council funding for a research/education program to be developed by and for union trustees. Still in its early stages, every federation of labour in Canada has indicated an enthusiastic interest in playing a partnership role. This is startling support for a project which is still in its infancy and, furthermore, based in academic institutions. Whether or not this proposal is successful, indications are that the trade union movement is clearly ready to work on pension fund investment issues and a comprehensive research/education program reflecting a union perspective on investment. More importantly, federations of labour are preparing to play a leadership and coordinating role in working with union trustees and pension activists on investment issues.

There are many resources close at hand to support the research needed for educational programs, including academic institutions such as the Ontario Institute for Studies in Education, the Centre for the Study of Training, Investment and Economic Restructuring at Carleton University, as well as the Canadian Labour and Business Centre, SHARE, the Social Investment Organization, labour-sponsored investment funds, church-based organisations such as the Task Force for Churches on Social Responsibility, economically targeted investment vehicles (such as Concert Properties), unions such as NUPGE, the Ontario Public Service Employees Union, and other components of NUPGE and CUPE. All of these are in Canada, but there is also a wealth of expertise in the U.S., such as the George Meany Labor Center and the Center for Working Capital at the AFL-CIO.

We are witnessing a change in organized labour's attitude to dealing with investment matters, and a growing recognition that education—a transformative education—must play a central role in supporting trustees. While we know that training for trustees is dominated by the financial industry, there is a vacuum to be filled by unions and academic institutions that may stress a more transformative, holistic approach to pension fund investment, taking account of benefits to working people, their families, and their communities.

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This book

We intend this book to contribute to this process of education. We anticipate that it will be read by union activists, trustees, and other groups interested in progressive approaches to the social investment of pension funds and labour-sponsored investment funds. We hope that it will be a valuable educational tool as a walk-through of the critical issues facing pension trustees who want—through their work—to make a difference.

The first chapter, by Richard Minns, provides a political analysis of the damaging consequences for workers and communities of the prevailing international investment practices of pension funds. He argues that pension funds are too massive to be evaluated by a financial rate of return only. Their social-economic impacts must be assessed. In that regard, pension funds contribute to financial speculation, often with negative results for productive investment, economic growth, employment, and incomes. This affects millions of people world-wide. New approaches are needed, providing new measures of economic and social welfare in contrast to a narrow rate of return index. Any change to the status quo, he says, depends on unions.

The second chapter, by Isla Carmichael, challenges conventional interpretations of fiduciary responsibility, and argues that the "prudent man" rule has been used by the financial industry to bolster its control of workers' pension funds and to prevent any union involvement. Through an examination of the leading cases in North America and Britain, it assesses the legal opportunities for union trustees to develop social investment strategies. It highlights recent Canadian legal opinion, encourages trustees to work with their unions on economic development policy, and calls for a much stronger role for unions on pension investment education, investment policy, and economic development projects.

The third chapter, by Gil Yaron, Legal Director of SHARE, provides practical, legal guidance to trustees on the development of statements of investment policy (SIPs)—the first step in responsible trustee activism. The product of extensive research in North America, Yaron's chapter provides the legal context, fiduciary checklists, models of general provisions, proxy voting guidelines, investment screening and economic development provisions, conflict of interest guidelines, questions for fund managers and lists of on-line resources. The chapter is a unique and critical resource for those interested in pension fund investment issues.

The fourth chapter, by Jack Quarter and Isla Carmichael, provides the results of a study to understand the dynamics that lead pension funds in the direction of social investment. It builds on an earlier study that found that pension funds in Canada have minimal social investment initiatives. Through an organizational analysis, it identifies leadership as a critical factor in the adoption of social investment strategies, prompted—in one example—by grassroots pressure from members. The authors caution that this is a fragile base for social investment strategies. Furthermore, size appears to be a complicating factor; can pension funds sustain social investment practices as outside management becomes more likely?

The fifth chapter, by Isla Carmichael, provides a case study of Concert, a real estate development company in British Columbia, set up by a group of jointly trusteed pension funds. The impetus for Concert and its sister investment vehicle, Mortgage Fund One, came from the union trustees. This case study of Concert provides a model of a Canadian ETI for trustees. It tells a story of trade unionists and their friends who, in spite of numerous legal and practical obstacles, built a real estate development company that is a leader in affordable housing in Canada. It shows the structure of VLC, the two Concert companies as well as its sister investment vehicle, Mortgage Fund One. This chapter points the way for trustees and trade unions in assessing the collateral value of investment vehicles to their members and the general community. There are no generally accepted measuring tools available to trustees. Yet there are generally accepted measurement tools commonly used in soci-economic analysis. Research in the area of social accounting needs to continue to support the social investment initiatives of trade unions and their trustees.

The sixth chapter, by Tom Croft and Tessa Hebb, tells the story of the development of the Heartland Network, which evolved from a small "grievance committee" into an important part of the growing labour-capital movement in the U.S. A collaboration of labour and community leaders and academics can create opportunities for public and labour education, mobilize leadership, rally expertise, and create the momentum for major social change.

In the seventh chapter, we learn about our Canadian experience growing out of labour sponsored investment funds. Sherman Kreiner describes some of the most recent cutting- edge directions being taken by Crocus, Manitoba's fund. Kreiner defines LSIFs as examples of economically tar-

geted investment in Canada in that they fill capital gaps in the market, provide collateral benefits to the community and risk-adjusted rates of return to investors. As such, these funds may provide leadership and expertise to Canadian pension funds in more progressive investment practices such as the establishment of new venture capital pools, real estate development funds, sports, and entertainment facilities and other downtown amenities and enterprise development corporations in low-income communities.

The last chapter takes us to California. Sean Harrigan, Chair of the Investment Committee, describes the well-established experience of the California Public Employees' Retirement System (CalPERS) in economically targeted investment. He gives concrete examples of benefits to working people in rural and urban communities in mortgages, supportive housing, and affordable housing development. He describes venture capital investing in the retail foods industry, biotechnology, communications, and merchant banking—all worker-friendly.

Canadian trade unions and their pension funds are on the threshold of developing more innovative investment practices of long-term benefit to members as well as the broader community. Indeed, it can be argued that the country itself will benefit from more productive approaches to investment with goals of job creation, community development, corporate accountability, and long-term sustainable growth. The trade union movement can only benefit, as well, through a more pro-active, holistic approach to the interests of their members and communities. With such large interests at stake, and with such enormous amounts of money, the trade union movement may become a more significant player in the Canadian economy.