

# CPPIB'S ORPEA DEBACLE



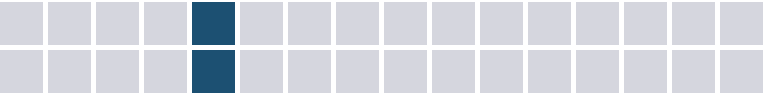
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# EXECUTIVE SUMMARY



The Canada Public Pension Plan Investment Board (CPPIB) shirked its responsibility as the value of its major investment in Orpea, Europe's largest long-term care company, collapsed, resulting in a massive loss to the plan that funds workers' retirement in Canada.

CPPIB, the board that invests on behalf of more than 22 million contributors and beneficiaries of Canada's public pension fund, was the dominant shareholder in Paris-based Orpea for a decade and lost over C\$500 million dollars when it exited. CPPIB claims to be a responsible long-term investor and has a strong set of guiding principles with high ethical standards. But this debacle reveals serious shortcomings in the CPPIB's governance and conduct, and invites questions about its broader investment approach. The collapse of Orpea was a seismic event in France, sending shockwaves through the long-term care sector across Europe. In Canada, however, it caused barely a tremor.

Despite holding two seats on Orpea's board, CPPIB did nothing to stop a pattern of criminal conduct and embezzlement by top management. Nor did it make any public interventions to stem the more than half-billion-dollar loss as the company collapsed and was bailed out with the French government-led intervention. The Orpea scandal, involving catastrophic treatment of elderly residents and care workers, raises broader questions about public pension fund investment in the private long-term care industry, which relies heavily on public funding and has a long-track record of failing to meet the basic human rights of society's most vulnerable people.

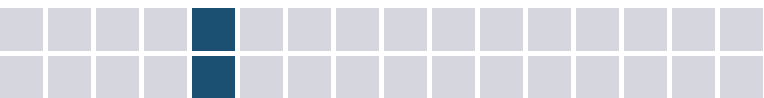
Other Canadian public pension funds also have major investments in the global long-term care sector, which has been plagued by scandals. These other investments in privatised public services may be at risk of a similar collapse and loss of workers' deferred income for retirement.

Until now, the Canadian public has been largely unaware of the Orpea scandal and role CPPIB played in it. Hundreds of millions of dollars in workers' deferred income was lost, yet it appears that CPPIB has never publicly acknowledged its failures or held to account anyone working for CPPIB who may have been responsible.

Without learning from past, these tragic failures are likely to be repeated.

This report explains in detail the crisis that unfolded at Orpea and the failure of CPPIB to adequately oversee and intervene in one of its largest global investments. This scandal, which should be better known in Canada, makes it clear that urgent reforms are needed at CPPIB to increase transparency and accountability, and to ensure that workers' retirement savings are protected, while contributing to a better society without causing harm.

# INTRODUCTION



Orpea — the largest for-profit nursing home company in Europe — spent 2022 on the brink of bankruptcy, following an escalating scandal sparked by allegations of systemic elder abuse, financial mismanagement and fraud. As of writing, Orpea’s former CEO, Yves Le Masne, and former CFO, Sébastien Mesnard have been released on bail, following detention, and continue to be under investigation by the French authorities on charges of breach of trust and fraud, aggravated misuse of corporate assets, organized gang money laundering and corruption.<sup>1</sup> Recently, in an effort to distance itself from its sordid past and scandals, the company has rebranded as “emeis.”<sup>2</sup> The Orpea scandal featured prominently in political debate in France and was at the forefront of media coverage in several European countries. The scandal quickly became a debt crisis, and the value of shares in the company plummeted to just 2% of the peak value.<sup>3</sup> As a consequence of the upheaval, and to prevent a disastrous collapse, Orpea agreed to a refinancing deal which saw Orpea come under the control of the Caisse des Dépôts et Consignations (CDC), a French government investment vehicle that functions like a sovereign wealth fund.<sup>4</sup> While the corporation has pledged to end its worst abuses, major concerns remain about the continued pursuit of profit over care.

In Canada, these upheavals remain largely unknown to the public. Yet the scandal should be as much a Canadian one as a French one. Orpea’s collapse occurred under the watch of the Canadian Public Pension Investment Board (CPPIB), the leading shareholder in the group since December 2013. CPPIB held nearly 23% of voting rights and two board director positions since 2016. CPPIB’s exit from Orpea occurred in February 2023, on the eve of the CDC takeover, following the collapse in the share price. CPPIB divested at a massive loss, costing Canadian pension fund holders over C\$500 million.

In addition to the scandal of profit extraction at the expense of basic welfare of elderly residents and workers, the sheer scale of these losses should have prompted meaningful accountability measures from CPPIB and broader public scrutiny in Canada. Yet the Orpea scandal has received scarce media coverage in Canada and attracted no significant response

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<sup>1</sup> France Info, “Scandale d’Orpea : un ex-dirigeant du groupe libéré et placé sous contrôle judiciaire,” 16 February 2024, [https://www.francetvinfo.fr/societe/prise-en-charge-des-personnes-agees/maltraitance-dans-les-ehpad/scandale-d-orpea-un-ex-dirigeant-du-groupe-libere-et-place-sous-contrôle-judiciaire\\_6370084.html](https://www.francetvinfo.fr/societe/prise-en-charge-des-personnes-agees/maltraitance-dans-les-ehpad/scandale-d-orpea-un-ex-dirigeant-du-groupe-libere-et-place-sous-contrôle-judiciaire_6370084.html)

<sup>2</sup> Reuters, “Scandal-hit French care homes company Orpea rebrands to emeis,” March 20, 2024, <https://www.reuters.com/business/scandal-hit-french-care-homes-company-orpea-rebrands-emeis-2024-03-20/>

<sup>3</sup> For Orpea/EMEIS share price history see Euronext <https://live.euronext.com/en/product/equities/FR001400NLM4-XPAR>

<sup>4</sup> Delmond, D., “Orpea lance sa troisième et dernière augmentation de capital Orpea lance sa troisième et dernière augmentation de capital,” L’AGEFI, January 18, 2024, <https://www.agefi.fr/news/entreprises/orpea-lance-sa-troisieme-et-derniere-augmentation-de-capital>

from Canadian politicians. It appears that CPPIB's preferred (and, to date, successful) crisis management strategy is refusing to comment on its role in the governance of Orpea, the actions or inactions of its appointed directors that allowed the crisis to develop, or the circumstances of its chaotic divestment from the company.

This report explores the questions surrounding Orpea's board of directors and corporate governance and raises serious concerns about the role of CPPIB and its representatives on the board. This relates to both their approach to corporate governance and possible breach of duties as directors. In addition to costing Canadian workers hundreds of millions in losses to their retirement savings, the action or inaction of CPPIB's representatives on the Orpea board may have had a direct adverse impact on Orpea's residents and workers in France, Europe and Latin America.

Year on year, shareholders empowered the Orpea board with financial authorizations allowing it to manipulate the company's shares and issue debt. CICTAR's research has demonstrated that key to Orpea's rapid international expansion was a growing burden of external debt — with the company's international expansion fuelled substantially by debt rather than its own profits. The cost of this debt grew twice as fast as the company's revenues.<sup>5</sup> This coincided with CPPIB's entrance as the key investor in 2013. It is clear that CPPIB was far from a passive investor in Orpea. On the contrary, as discussed in this report, CPPIB's investment was initially promoted — by both Orpea and CPPIB — as a strategic partnership to facilitate Orpea's international expansion.<sup>6</sup> In total, four CPPIB executive officers served as the fund's representatives on the Orpea board. These individuals, responsible for managing international equities and credit portfolios in CPPIB, served on various committees on the Orpea board, including the Audit Committee, when financial scandals were occurring. CPPIB has maintained a position of silence concerning the Orpea scandal. As explored in this report, there is no evidence that any individuals associated with CPPIB have been publicly held to account for their role in Orpea. It is worth noting, however, that none of the employees of CPPIB who had been appointed to serve as its directors on the Orpea board remain employed by CPPIB. At the height of the turmoil within Orpea, the two directors resigned in mid-2022 within weeks of each other, including the member of the Audit Committee.

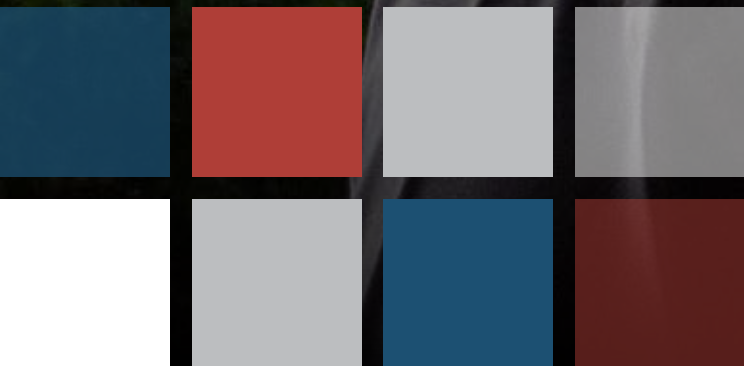
Above all, the story of Orpea's rise and fall illustrates many of the significant risks associated with the commodification of care that is central to any nursing home business model that relies on using public funds for the purpose of profit-making.<sup>7</sup> Orpea's multinational and financialized business — which gave priority to real estate investment, debt leveraging, share trading, and distribution of dividends to shareholders — was increasingly divorced from the company's core purpose of care delivery. Orpea reveals that scale and complexity only compound the risks to the welfare of residents and workers as well as to governments and taxpayers.

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<sup>5</sup> CICTAR, *Orpea: Caring for people or profit?*, CICTAR, CFDT Santé-Sociaux, CGT Santé Action Sociale, February 2022, <https://cictar.org/all-research/orpea-en>

<sup>6</sup> CPPIB, Press Release: "Canada Pension Plan Investment Board Acquires 15% Interest in ORPEA S.A.," December 11, 2013, <https://www.cppinvestments.com/newsroom/cppib-orpea-2013/>

<sup>7</sup> Ward, J. "Failed Market Approaches to Long-Term Care," April 2023, Social Europe, <https://www.socialeurope.eu/book/re-no-13-failed-market-approaches-to-long-term-care>



# ORPEA'S RISE AND COLLAPSE

Valued at its peak at over €7 billion (C\$10.3 billion), Orpea has promoted itself as a high-quality operator with “luxury-style” facilities. Despite receiving government subsidies, its model depended on charging very high resident fees. In France, these fees could be as high as six times the national average. But behind Orpea’s marketing lay a predatory business strategy premised on cost cutting, rationing of food and hygiene items, workforce degradation, financial irregularities, misuse of public funds, and allegations of corruption and tax evasion which are still under judicial investigation.<sup>8</sup>

Originally a French company, Orpea was founded in 1989 by Dr. Jean-Claude Marian. It undertook aggressive multinational expansion throughout the 2010s, a trend that accelerated after CPPIB entered as its leading shareholder. At its peak, Orpea grew to more than 1,100 facilities operating across 23 countries, with over 110,000 beds and employing over 70,000 workers. Orpea’s influence on Europe’s long-term care sector continues to be profound, as it dominates the nursing home market in several countries. After France, Germany is Orpea’s second-largest market, followed by Spain, Austria, Belgium, Switzerland, the Netherlands and Italy. Orpea has more recently expanded to markets outside of Europe, first to China then to Latin America.

**Figure 1: Orpea’s geographic footprint (December 2022)<sup>9</sup>**

Country	Facilities in operation	Beds in operation	Country	Facilities in operation	Beds in operation
France	358	33,462	Brazil	11	1,108
Germany	171	17,620	Portugal	11	893
Spain	55	7,795	Slovenia	5	731
Austria	85	7,685	Croatia	4	451
Belgium	51	5,708	Latvia	1	202
Switzerland	43	3,767	China	1	154
Netherlands	116	2,686	Luxembourg	1	123
Italy	23	2,378	Mexico	1	120
Czech Republic	17	2,315	Uruguay	1	91
Ireland	23	2,105	United Kingdom	2	86
Poland	12	1,380			
		<b>Facilities in operation</b>			<b>Beds in operation</b>
Total		992			90,860

<sup>8</sup> Florek, K., *The rise and fall of Orpea*, EPSU, June 2023

[https://www.epsu.org/sites/default/files/article/files/The%20rise%20and%20fall%20of%20Orpea\\_EN.pdf](https://www.epsu.org/sites/default/files/article/files/The%20rise%20and%20fall%20of%20Orpea_EN.pdf)

<sup>9</sup> Orpea, 2022 Universal Registration Document, p. 33

[https://www.emeis-group.com/wp-content/uploads/2023/07/ORPEA\\_DEU\\_2022\\_UK\\_.pdf](https://www.emeis-group.com/wp-content/uploads/2023/07/ORPEA_DEU_2022_UK_.pdf)

Orpea's collapse began on January 26, 2022, with the publication of *The Gravediggers*, a book by French investigative journalist Victor Castanet.<sup>10</sup> Castanet painted a powerful picture of Orpea's profit-maximization strategies, carried out through exploitation of elderly people and workers, aggressive cost-cutting, combined with systematic defrauding of public funding. The allegations, in large part substantiated following subsequent investigations by French authorities,<sup>11</sup> concerned the fundamental business model of Orpea. A product of three years of extensive research, Castanet's exposé of the company benefited from testimonies of company whistleblowers, union activists, workers and families, as well as information provided by the French trade union, CGT-Santé Action Sociale. Two specific allegations of systemic abuse concern the falsification of payroll data to claim higher subsidies from the state while understaffing and saving on actual staffing costs, and fraud in food and supply budgets. In some cases, food at Orpea's nursing homes was so austere, it led to malnutrition, while the company secured rebates from suppliers.<sup>12</sup> The publication of *The Gravediggers* coincided with a number of parallel investigations, including work carried out by CICTAR. These reports shone a light on the tragic human costs inflicted on Orpea's vulnerable residents and its workers, and on the underlying financial mechanisms and opacity driving the abuses revealed by Castanet's book.

For trade unions, the revelations did not come as a shock. Orpea had a long history of anti-labour activity, pursuing a suite of tactics to suppress wages and conditions and prevent employees from organizing. These included rigging elections for workplace representatives in France (now overturned),<sup>13</sup> hiring private investigators to spy on CGT union activists and, when the workplace spies were exposed, attempted bribery for silence and withdrawing complaints.<sup>14</sup> More recently, Orpea engaged in a campaign to frustrate the setting up of the European Works Council (EWC),<sup>15</sup> culminating in harassment and attempted unlawful dismissal of a union leader in Germany.<sup>16</sup> All of these activities occurred during the period that CPPIB was Orpea's leading shareholder.

While there is no reason to believe that the CPPIB-appointed directors to Orpea were directly responsible for, or aware of, alleged criminal activities, as directors they bear responsibility for oversight and should have been aware of irregularities in the company.

The revelations contained in *The Gravediggers* resulted in immediate political fallout in France. While Orpea initially denied all allegations and threatened to sue, within 48 hours the CEO was sacked. As the French government launched official investigations, the share value of Orpea plummeted. The official investigation soon returned with damning conclusions, vindicating

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<sup>10</sup> Castanet, V. *Les Fossoyeurs: Révélations sur le système qui maltraite nos aînés*, Fayard, 2022

<sup>11</sup> Inspection Générale des Finances (IGF)/Inspection Générale des Affaires Sociales (IGAS), Mission sur la gestion des établissements d'hébergement de personnes âgées dépendantes (EHPAD) du groupe Orpea, mars 2022, [https://solidarites.gouv.fr/sites/solidarite/files/2022-10/vff040422\\_2022-m-012-06\\_rapport\\_definitif\\_orpea\\_publicable.pdf](https://solidarites.gouv.fr/sites/solidarite/files/2022-10/vff040422_2022-m-012-06_rapport_definitif_orpea_publicable.pdf)

<sup>12</sup> Hubert, T. "Au revoir Orpea? Part 1 – How a French scandal engulfed the largest owner of Irish nursing homes," *The Currency*, November 2, 2022, <https://thecurrency.news/articles/98662/au-revoir-orpea-part-1-how-a-french-scandal-engulfed-the-largest-owner-of-irish-nursing-homes/>

<sup>13</sup> "PSI congratulates French affiliates as court overturns Orpea management elections, calls for fresh vote," *Public Services International*, September 13, 2022, <https://publicservices.international/resources/news/psi-congratulates-french-affiliates-as-court-overturns-orpea-management-elections-calls-for-fresh-vote?id=13348&lang=en>

<sup>14</sup> Goanec, M, Mathieu, M., "Health firm 'offered 4 million euro deal' for French union's silence over workplace spies," *MediaPart*, April 24, 2015, <https://www.mediapart.fr/en/journal/france/240415/health-firm-offered-4-million-euro-deal-french-unions-silence-over-workplace-spies>

<sup>15</sup> "EPSU Executive Committee stands for ORPEA workers' rights to information and consultation," *EPSU*, November 25, 2020, <https://www.epsu.org/article/epsu-executive-committee-stands-orpea-workers-rights-information-and-consultation>

<sup>16</sup> "Orpea: Bremen labour court upholds allegations of anti-union harassment," *EPSU*, March 23, 2022, <https://www.epsu.org/article/orpea-bremen-labour-court-upholds-allegations-anti-union-harassment>



numerous allegations and opening the state's legal proceedings against the company and its senior officers. In March 2022, The French government commenced legal proceedings against Orpea for mistreatment of elderly patients, financial malpractices and the misuse of public funds.<sup>17</sup>

In February 2022, in co-operation with French trade union federations CGT-Santé Action Sociale and CFDT Sociaux-Santé, CICTAR released a research report that exposed the hidden structures and finances of Orpea, including a complex maze of corporate structures from Luxembourg to the British Virgin Islands. The report found that Orpea engaged in financial engineering for purposes of property speculation, buying and selling its growing property portfolio via over 40 subsidiary companies it had set up in Luxembourg. Orpea undertook property transactions via offshore structures that enabled these transactions to be thoroughly anonymized and relied on reduced public accountability and transparency.<sup>18</sup>

At this point, Orpea was already under investigation by French authorities and had sacked its CEO. Yet questions raised by the latest findings led to a widening scandal that embroiled other senior executives, resulting in further criminal investigations by the French public prosecutor. Expanding on CICTAR's findings, a team of investigative journalists from Investigate Europe identified a Luxembourg company called Lipany linked to Sébastien Mesnard, Orpea's former Chief Financial Officer, and Roberto Tribuno, the former head of Orpea in Italy. Set up in 2007 and connected to two other entities in Panama and the British Virgin Islands, Lipany appeared to function as both a de facto Orpea subsidiary and as part of a parallel holding structure for Orpea's assets in Italy, France, Belgium and Germany. Since 2009, Orpea had shifted at least €92.9 million (C\$136.3 million) worth of assets into this structure, engaging in numerous transactions that included dubious payments to intermediaries, while it excluded Lipany from its consolidated corporate reports.<sup>19</sup> In this manner, Orpea was alleged to have engaged in "ping pong purchases" of nursing homes between 2011 and 2017, trading ownership of properties back and forth with Lipany.<sup>20</sup>

CICTAR's prior research into Orpea demonstrated that, over time, the company had reduced its financial reporting as compared to comparable publicly traded companies, limiting disclosures of assets, structure, and transactions, and reducing the number of subsidiaries it reported from 314 to just 16.<sup>21</sup> Orpea's own subsequent internal investigation found breaches and failures in maintaining backed-up data for internal accounting databases, making it impossible to know whether intentional deletion of data may have taken place.<sup>22</sup> Significantly, Orpea's reduction in its financial reporting coincided with the entrance of CPPIB as the leading shareholder in Orpea in December 2013.

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<sup>17</sup> Castanet, V. *Les Fossoyeurs: Révélation sur le système qui maltraite nos aînés*, Fayard, 2022

<sup>18</sup> CICTAR, *Orpea: Caring for people or profit?*, CICTAR, CFDT Santé-Sociaux, CGT Santé Action Sociale, February 2022, <https://cictar.org/all-research/orpea-en>

<sup>19</sup> Peigné, M., Miñano, L., Buzzoni, L., "Lipany holding: care giant Orpea's dirty secrets hidden in Luxembourg," Investigate Europe, May 18, 2022, <https://www.investigate-europe.eu/posts/orpea-secret-lipany>

<sup>20</sup> Tagesspiegel, "Orpea's Dirty Secret," Global Happenings (archived), May 18, 2022,

<https://web.archive.org/web/20220822144250/https://globalhappenings.com/economy/181936.html>

<sup>21</sup> CICTAR, *Orpea: Caring for people or profit?*, CICTAR, CFDT Santé-Sociaux, CGT Santé Action Sociale, February 2022, <https://cictar.org/all-research/orpea-en>

<sup>22</sup> <https://peopleoverprofit.it/resources/news/orpeas-finances-still-shrouded-in-secrecy?id=13043&lang=en>



# WHO IS CPPIB

Operating as CPP Investments, the Canadian Pension Plan Investment Board (CPPIB) is a Crown corporation tasked with managing and investing the funds contributed to the Canada Pension Plan (CPP). It is the largest pension fund in Canada, and the seventh largest globally, with over 21 million contributors and beneficiaries across all provinces and territories in Canada, excluding Quebec.<sup>23</sup> As of March 31, 2024, CPPIB manages assets valued at C\$632.3 billion, which are spread across several investment categories: private equity (31%) and public equity (28%), credit (13%), government bonds (12%), real estate (8%), and infrastructure (8%).<sup>24</sup> CPPIB is one of the world's largest institutional investors, especially in the controversial field of private equity.<sup>25</sup>

Although CPPIB shares certain similarities with sovereign wealth funds in the manner it is constituted, it does not invest public money. Funds are sourced from worker and employer contributions. Functioning in practice just like any for-profit investment manager or private equity company, CPPIB operates at arm's length from the federal government to which it is legally accountable. It is, however, effectively unaccountable to both contributors and beneficiaries of the pension fund, who have no influence over CPPIB's investment decisions or governance, despite its significant footprint across multiple industries both in Canada and the entire global economy.

Established in 1965 as a key component of Canada's social security framework, the CPP is the default pension fund for all Canadian workers. Prior to 1997, the CPP invested exclusively in government bonds in Canada, and thus was a lender that helped to finance public assets. CPPIB was established through specific parliamentary legislation, the *Canada Pension Plan Investment Board Act*, enacted by the Chrétien-led Liberal government. Under this legislation, the mandate of CPPIB was to "invest its assets with a view to achieving a maximum rate of return, without undue risk of loss."<sup>26</sup>

The board of directors is appointed by the federal Minister of Finance and, in principle, answerable to Cabinet and provincial ministers responsible for finance. The directors can then make by-laws and delegate their tasks, including the "engagement of investment managers empowered with discretionary authority to invest the assets of the Board."<sup>27</sup> CPPIB typically recruits its staff from within Bay Street, Canada's finance industry, and through its network of global offices in financial centres that include New York, London, Luxembourg, Hong Kong, Mumbai, Sydney, Sao Paulo and San Francisco.<sup>28</sup>

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<sup>23</sup> CPPIB, Press release: "The success of the Canadian pension fund model," November 7, 2023, <https://www.cppinvestments.com/for-canadian/the-success-of-the-canadian-pension-fund-model/>

<sup>24</sup> CCPIB, Annual Report 2024, p. 31 <https://www.cppinvestments.com/wp-content/uploads/2024/07/PPP-Investments-F2024-Annual-Report.pdf>

<sup>25</sup> CPPIB, "About Us" <https://www.cppinvestments.com/about-us/>

<sup>26</sup> CPPIB, "Our Mandate" <<https://www.cppinvestments.com/about-us/our-mandate/>>

<sup>27</sup> Canada Pension Plan Investment Board Act (S.C. 1997, c. 40), s 5 (c), 10 (1), 35 . <https://laws-lois.justice.gc.ca/eng/acts/C-8.3/FullText.html>

<sup>28</sup> CPPIB, Office locations, <https://www.cppinvestments.com/contact-us/>

While initially focused on investing in Canada's economy, as part of the transition from public lender to active investment manager, CPPIB has pursued a global financial market expansion strategy that has resulted in it primarily holding international assets.<sup>29</sup> As of March 2024, only 12% of funds are invested in Canada,<sup>30</sup> compared to 36.7% in 2014 and 64% in 2006.<sup>31</sup> While CPPIB currently holds investments in 55 countries, a growing priority has been on emerging markets, which now account for 20% of all investment assets.<sup>32</sup>

Over time, CPPIB increasingly directed its attention to private healthcare and for-profit social care, both in Canada and worldwide, as investments in this sector tend to be highly lucrative, generating above-average rates of return. As standard-bearer of financialized profiteering from essential services, Orpea epitomizes such problematic investment. Corporations like Orpea are driven by maximizing returns to investors — from public funding and private fees — generally at the expense of the welfare of residents and workers.

During the last decade, the CPP fund has seen one of the highest returns among pension funds worldwide, with an annual return of 10% over the past decade and an asset base that has more than tripled.<sup>33</sup> CPPIB projects that this growth will continue into perpetuity, and projects its value to reach C\$3.5 trillion by 2050.<sup>34</sup> This projection is largely due to reforms to CPP that were undertaken in 2016, which added a significant fully financialized layer to the fund that almost doubles the projected rate of growth.<sup>35</sup> However, questions should be asked about whether the CPPIB's current investment strategy of blind pursuit of growth at all costs is actually in the long-term interests of Canadians. A possible contributor to CPPIB's vaunted success is an apparently lax approach to ethics, including an alleged reliance on tax avoidance.<sup>36</sup>

CPPIB has a history of involvement in the privatization of public services, a move that has drawn scrutiny from Canadian unions, including the Canadian Union of Public Employees, and civil society in the affected countries. For example, through its Hong Kong office, CPPIB since 2006 has been the leading shareholder of Anglian Water, one of several privatised water utility companies in the UK. While the entire sector of privatised water companies has come under scrutiny for mismanaging infrastructure and causing sewerage spills, Anglian Water is distinguished for having the highest increases in raw sewage discharges into English waterways in the past year.<sup>37</sup> In 2021, CPPIB and AIMCo, the Alberta Investment Management Corporation, also invested into Iguá Saneamento in Brazil as part of a privatisation deal with

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<sup>29</sup> McCarthy, S., and Carrick, R., "Pension plan pins prospects on market," *The Globe and Mail*, April 11, 1998

<sup>30</sup> CPPIB, Annual Report 2024, p. 31

<https://www.cppinvestments.com/wp-content/uploads/2024/07/PPP-Investments-F2024-Annual-Report.pdf>

<sup>31</sup> CPPIB, Annual Report 2006, p. 18

[https://www.cppinvestments.com/wp-content/uploads/2019/09/ar\\_2006\\_xmz1W15.pdf](https://www.cppinvestments.com/wp-content/uploads/2019/09/ar_2006_xmz1W15.pdf)

<sup>32</sup> CPPIB, Annual Report 2024, p. 35

<https://www.cppinvestments.com/wp-content/uploads/2024/07/PPP-Investments-F2024-Annual-Report.pdf>

<sup>33</sup> CPPIB, Press release: "CPP Investments Net Assets Total \$570 Billion at 2023 Fiscal Year End," May 24, 2023,

<https://www.cppinvestments.com/newsroom/cpp-investments-net-assets-total-570-billion-at-2023-fiscal-year-end/>

<sup>34</sup> CPPIB, "The Fund, p. 7" <<https://www.cppinvestments.com/the-fund/>>

<sup>35</sup> See: Table 11 (financial projection CPP) and Table 21 (historical financial projection CPP) in 31th Actuarial report on the Canada Pension Plan as at December 31, 2021, Office of the Superintendent of Financial Institutions Canada,

[https://www.osfi-bsif.gc.ca/sites/default/files/import-media/oca\\_actuarial\\_reports\\_studies/canada-pension-plan/2023-06/en/PPP31.pdf](https://www.osfi-bsif.gc.ca/sites/default/files/import-media/oca_actuarial_reports_studies/canada-pension-plan/2023-06/en/PPP31.pdf)

<sup>36</sup> Barnea, A., "Canada is cracking down on taxes — so why does our national pension plan pay less than two per cent?" *Toronto Star*, March 11 2024,

[https://www.thestar.com/business/canada-is-cracking-down-on-taxes-so-why-does-our-national-pension-plan-pay-less/article\\_a43f5b86-8ffa-5357-99d4-2c20b1b8ad65.html](https://www.thestar.com/business/canada-is-cracking-down-on-taxes-so-why-does-our-national-pension-plan-pay-less/article_a43f5b86-8ffa-5357-99d4-2c20b1b8ad65.html)


<sup>37</sup> Turner, A. and Sennitt, O., "Anglian Water reports biggest rise in sewage discharges," *BBC*, April 10, 2024,

<https://www.bbc.com/news/articles/c3g5dp274djo>

the former President Jair Bolsonaro's government, despite massive opposition from Brazilian trade unions and civil society, and Canadian trade unions.<sup>38</sup>

The contributions of many CPPIB investee companies to the climate crisis, and the entanglement of its directors and staff with the oil and gas industry, have made CPPIB a target for environmental campaigners.<sup>39</sup> CPPIB has also invested as much as 7% of its total funds into multiple companies that are listed by the UN as complicit with Israeli war crimes, and has faced a campaign since 2021 calling for divestment from firms committing human rights violations.<sup>40</sup>

# CANADIAN PENSION FUNDS AND LONG-TERM CARE



The case of Orpea provides insights into a broader problem. In addition to CPPIB's investment in Orpea, other Canadian public pension funds also invest workers' retirement savings into both Canadian and multinational nursing home corporations. The for-profit nursing home sector in Canada has been under close scrutiny in recent years for failing to provide adequate care. Will these investments suffer the same fate as Orpea?

The Canadian Union of Public Employees (CUPE), the Public Service Alliance of Canada (PSAC) and other unions and healthcare advocates have long campaigned to eliminate profit-making from the long-term care sector and for Canadian pension funds to stop financing for-profit nursing homes. One clear example of this is the #MakeReveraPublic campaign to nationalize Revera, until recently the second largest nursing home operator in Canada. Revera is directly owned by the Public Service Pension Investment Board (PSPIB), a Crown corporation that manages the pension fund for Canadian federal workers.<sup>41</sup>

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<sup>38</sup> FNU, "Trabalhadores canadenses entram na luta contra a privatização da CEDAE," Central Única dos Trabalhadores, April 19, 2021, <https://www.cut.org.br/noticias/trabalhadores-canadenses-entram-na-luta-contr-a-privatizacao-da-cedae-d865>

<sup>39</sup> Shift, "REPORT: Canadian pension fund investment managers' entanglement with fossil fuel industry raises conflict of interest concerns," May 2022, <https://www.shiftaction.ca/climateconflicted>

<sup>40</sup> Just Peace Advocates, "CPPIB Invests at least 7 percent of our public pension in Israeli war crimes," July 2022, <https://www.justpeaceadvocates.ca/cppib-invests-at-least-7-percent-of-our-public-pension-in-israeli-war-crimes/>

<sup>41</sup> PIPSC, "Make Revera Public," <https://pipsc.ca/news-issues/make-revera-public>

In 2020, abysmal conditions for residents and workers at Revera's Canadian facilities resulted in some of the highest COVID-19 death rates in Canadian nursing homes. In Ontario, deaths at Revera's facilities were 20% above the industry average for private nursing homes, 125% higher than non-profit nursing homes and 350% higher than municipal nursing homes.<sup>42</sup> Unions and healthcare advocates across Canada have been calling for a public takeover of Revera and an end to profit extraction in Canada's long-term care sector.<sup>43</sup>

Revera was PSPIB's second most significant global investment. It operates not only in Canada, but also has significant operations in the UK and the US. Revera has a long-time ownership interest in Sunrise Senior Living, one of the largest assisted living companies in the US. Many of Revera's investments have been in close partnership with Welltower, the third largest REIT (real estate investment trust) in the US and the largest owner of senior housing. Recognizing Revera's lack of transparency, CICTAR has previously analyzed Revera's aggressive tax avoidance strategies on its UK investments, including its use of dozens of tax haven subsidiaries in Jersey, Guernsey and Luxembourg to structure corporate ownership.<sup>44</sup>

PSPIB was also the leading investor in a company formerly known as Korian, also based in France and the second-largest European nursing home multinational after Orpea. Korian's stock price crashed only a few weeks after Orpea's scandal commenced, when a French media investigation uncovered similar management practices that involved profit maximization through rationing of food, understaffing and reliance on unqualified staff.<sup>45</sup> Like Orpea, the company also recently changed its name (to Clariane) to distance itself from allegations of abuse.<sup>46</sup> PSPIB had bought a 14% stake in the company in July 2015, and gained a seat on Korian's board.<sup>47</sup> It has since reduced its share but still holds over 6% and remains the third largest investor.<sup>48</sup>

A further example of Canadian pension fund investment in the large European care multinationals is that of Groupe Colisée, the fourth largest multinational care home operator in Europe, which is also based in France with operations in Italy and Spain. Caisse de dépôt et placement du Québec (CDPQ), which manages various pension plans in Quebec and is the second largest pension fund in Canada after CPPIB, sealed its investment deal for Groupe Colisée in September 2020, in the midst of the COVID-19 pandemic, in partnership with the Nordic private equity firm, EQT.<sup>49</sup>

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<sup>42</sup> Mancini, M., Pedersen, K., Common, D., "These nursing home chains have the highest COVID-19 death rates in Ontario, data analysis finds," CBC, December 18, 2020,

<https://www.cbc.ca/news/canada/nursing-homes-covid-19-death-rates-ontario-1.5846080>

<sup>43</sup> <https://makeverapublic.ca/>

<sup>44</sup> CICTAR, *Revera Living, Making a Killing: Tax Dodging by a Canadian Crown Corporation?*, January 2021,

<https://cictar.org/all-research/revera-canadian-crown-corporation>

<sup>45</sup> EPSU, "Care crisis continues: Korian under fire," March 9, 2022,

<https://www.epsu.org/article/care-crisis-continues-korian-under-fire>

<sup>46</sup> Byrne, M., "A bientôt Korian, bonjour Clariane!" *Healthcare Business International*, May 12, 2023,

<https://www.healthcarebusinessinternational.com/a-bientot-korian-bonjour-clariane/>

<sup>47</sup> "PSP investments joins Korian's board of director," Reuters, 16 July 2015, <<https://www.reuters.com/article/idUSFWN0ZV063/>>

<sup>48</sup> Clariane, "The Clariane share,"

<https://www.clariane.com/en/investor-area/the-clariane-share>

<sup>49</sup> "CDPQ co-invests with EQT in Colisée, a European leader in elderly care," CDPQ, September 24, 2020,

<https://www.cdpq.com/en/news/pressreleases/cdpq-co-invests-with-eqt-in-colisee-a-european-leader-in-elderly-care>

Such investments in for-profit nursing home corporations are often characterized as “social infrastructure,” or assets that facilitate social services. Under private ownership, nursing homes typically benefit from government financing for essential services linked to an aging population. For this reason, they are attractive to investors - including institutions such as CPPIB - as reliable, low-risk and steady sources of profitability into the future. The Orpea elder abuse scandal and corporate collapse should shatter such illusions. The extraction of profits from publicly-funded yet privately delivered social services can no longer be touted as a wise, ethical or low-risk investment in the long term.







# THE CPPIB-ORPEA INVESTMENT DEAL

*“Orpea will in effect benefit from CPPIB’s expertise, particularly in real estate, as well as from its networks, to help it roll out its profitable growth model in countries facing the challenge of an ageing population.”<sup>50</sup>*

On December 11, 2013, CPPIB announced that it had acquired 15.9% of shares in Orpea for the price of €320.1 million (C\$466.7 million), making it the leading shareholder in the company. This announcement was accompanied by the publication of a 10-year investment agreement between Orpea and the CPPIB, setting out various concessions. CPPIB agreed to underwrite a €100 million (C\$146 million) share capital increase in Orpea, bringing its total investment to €420.1 million (C\$613 million). As part of this agreement, this meant expanding the total number of shares in the company while maintaining the CPPIB’s proportion of ownership.<sup>51</sup>

At the outset, CPPIB’s interest in Orpea was to finance a profitable international expansion of private long-term care as a long-term investor. At the time of first investing in Orpea, CPPIB’s head of investments Scott Lawrence stated that “we believe in, and will actively support, ORPEA’s strategic goals with respect to geographic expansion and growth within its current markets, and that the alignment of those goals with CPPIB’s long-term investment objectives will help foster future success.”<sup>52</sup>

Significantly, almost all of the CPPIB’s shares were purchased directly from one source: Dr. Jean-Claude Marian, the company founder and chairman.<sup>53</sup> Although it is unclear whether CPPIB sought Orpea as a strategic investor, or vice versa, the peremptory introduction of a series of financial authorisations that gave the Orpea Board powers to raise capital suggests that an investment deal was likely under negotiation for some time. Since Orpea’s launch as a publicly traded corporation in 2002, Dr. Marian had been progressively selling off his shares to external investors, and the CPPIB deal represented the largest deal to date. Following this, he still retained 7.6% ownership in the company. It was not until seven years later, when Orpea’s share price had tripled, that Dr. Marian finally exited the company he had founded, selling the remainder of his stake for €456 million (C\$668 million).<sup>54</sup>

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<sup>50</sup> Orpea, 2013 Registration Document, p. 136

[https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA\\_Reg\\_Doc\\_2013.pdf](https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA_Reg_Doc_2013.pdf)

<sup>51</sup> Ibid., p. 78-79

<sup>52</sup> CPPIB, “Canada Pension Plan Investment Board Acquires 15% Interest in ORPEA S.A.,” December 11, 2013,

<https://www.cppinvestments.com/newsroom/cppib-orpea-2013/>

<sup>53</sup> Ibid., Most shares were purchased directly from Dr. Marian and a minority from Santé Finance et Investissements, an entity owned by Dr. Marian and his family.

<sup>54</sup> Florek, K., The rise and fall of Orpea, EPSU, June 2023

[https://www.epsu.org/sites/default/files/article/files/The%20rise%20and%20fall%20of%20Orpea\\_EN.pdf](https://www.epsu.org/sites/default/files/article/files/The%20rise%20and%20fall%20of%20Orpea_EN.pdf)

# ORPEA'S COVID-19 DISASTER



Dr. Marian's divestment from the company he founded was incredibly fortuitous. He did so on January 21, 2020, the same day that Orpea's single facility in China was in the process of activating emergency measures. Two months later, as part of reporting its financial results on March 18, 2020, Orpea congratulated itself on its COVID-19 crisis management to date, specifically referring to its Chinese facility as having served the purpose of an early warning system that enabled early preventative measures to be taken across the entire network.<sup>55</sup> Yet, at the very moment that Orpea was circulating this reassuring message, its facilities across Europe were rapidly turning into epicentres of COVID-19 outbreaks.

The initial emergencies unfolded in Spain in the second half of March 2020, when workers at Orpea's facilities in Madrid started to leak reports to the media denouncing their employer for suppressing reports of mass deaths from families and the public.<sup>56</sup> By March 26, there were reports of 20 deaths at Orpea Sanchinarro and 12 deaths at Orpea Loreto in Madrid, with multiple workers infected, lack of personal protective equipment, failures to test and isolate, and an overall chaotic and escalating situation. Yet, as this was unfolding, Orpea maintained the line of reassuring relatives and the public that the situation was one of "normality."<sup>57</sup>

In response, a series of collective legal actions were launched by bereaved relatives, to which Orpea threatened a counter-suit, accusing relatives of "slandering" the company.<sup>58</sup> Nonetheless, by July 2020, half of Orpea's nursing homes in Madrid were under investigation by the Spanish judiciary.<sup>59</sup> Subsequent reports found that in Madrid alone, in just March and April, 544 Orpea residents died out of a total bed capacity of 4,023 — a mortality rate of 13.5% in two months. Although the nursing home sector in Madrid as a whole was a global

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<sup>55</sup> Orpea Group, Investor Presentation: Full-year 2019 Results, March 18, 2020,

[https://www.emeis-group.com/wp-content/uploads/2011/12/Pres\\_ORPEA\\_2019\\_Results\\_ENG\\_final\\_07c52.pdf](https://www.emeis-group.com/wp-content/uploads/2011/12/Pres_ORPEA_2019_Results_ENG_final_07c52.pdf)

<sup>56</sup> Peinado, F., Quesada, J.D., Viejo, M., "Trabajadores de la residencia Orpea Loreto de Madrid denuncian que la empresa oculta muertes por Covid-19," El País, March 22, 2020,

<https://elpais.com/espana/madrid/2020-03-22/trabajadores-de-la-residencia-orpea-loreto-de-madrid-denuncian-que-la-empresa-oculta-muertes-por-covid-19.html>

<sup>57</sup> Rocés, P.R., "Las residencias de ancianos suman más de 40 muertos en las últimas horas en Madrid por el coronavirus," El Mundo, March 26, 2020,

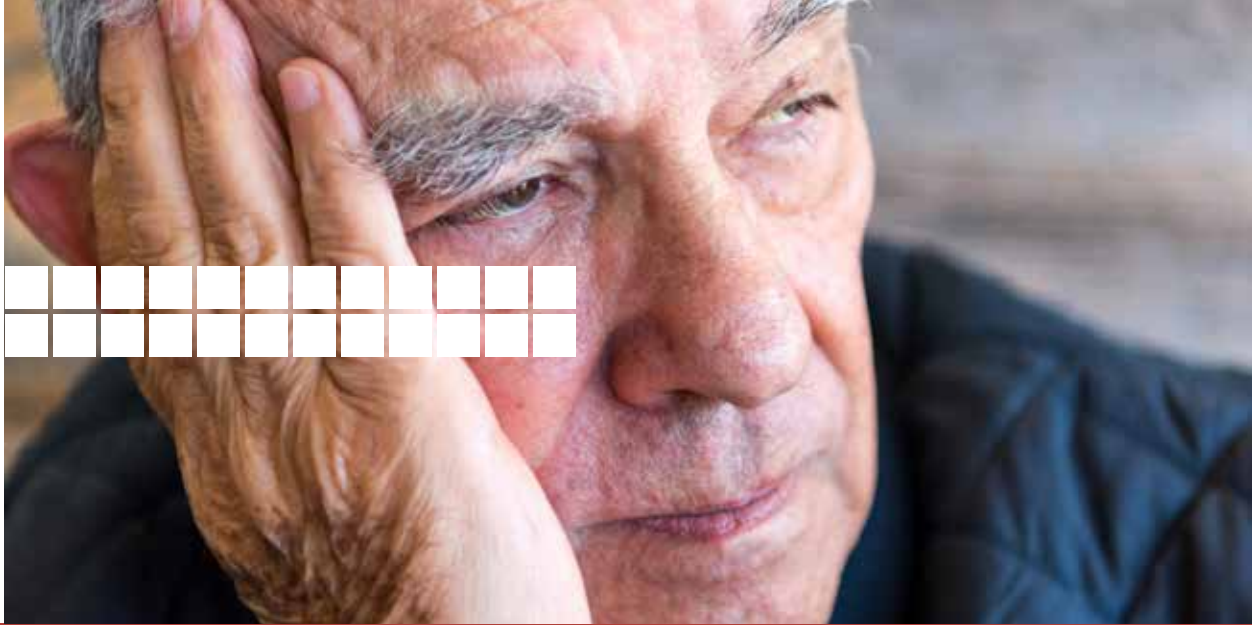
<https://www.elmundo.es/madrid/2020/03/26/5e7ba848fc6c8314658b4671.html>

<sup>58</sup> Recio, P., "Casi el 50% de las residencias de Orpea en la Comunidad de Madrid están bajo la lupa de la Justicia," 65yMas, July 21, 2020,

[https://www.65ymas.com/sociedad/casi-50-residencias-orpea-en-comunidad-madrid-estan-bajo-lupa-justicia\\_17437\\_102.html](https://www.65ymas.com/sociedad/casi-50-residencias-orpea-en-comunidad-madrid-estan-bajo-lupa-justicia_17437_102.html)

<sup>59</sup> García, P., "Orpea, uno de los grupos de residencias con mayor mortalidad en la primera ola, prevé abrir 15 nuevos centros en España," Infolibre, March 29, 2021,

[https://www.infolibre.es/economia/orpea-grupos-residencias-mayor-mortalidad-primer-ola-preve-abrir-15-nuevos-centros-espana\\_1\\_1195348.html](https://www.infolibre.es/economia/orpea-grupos-residencias-mayor-mortalidad-primer-ola-preve-abrir-15-nuevos-centros-espana_1_1195348.html)



COVID-19 epicentre during the initial stages of the pandemic in Europe, later evidence presented by the lawyer and investigative journalist Manuel Rico showed that deaths that occurred in Orpea facilities were disproportionately high — they accounted for 4.52% of total deaths when Orpea managed only 2.95% of residential nursing home capacity in Spain.<sup>60</sup>

By May 5, 2020, Orpea admitted that one-third of its nursing homes across Europe had already reported COVID-19 outbreaks.<sup>61</sup> Yet, Orpea never disclosed the total numbers of COVID-19 deaths that occurred across its facilities. The company never accounted for the failure of preventative measures it had supposedly adopted after receiving an “early warning” on January 21, 2020, the day that Dr. Marian walked away with €456 million (C\$668 million).

Orpea’s strong interest in property acquisition was not dampened by the pandemic emergency. During the period of December 31, 2019 to June 30, 2021, it grew its property portfolio from €6.022 billion (C\$8.781 billion) to €7.432 billion (C\$10.924 billion), an increase of over 23%,<sup>62</sup> despite the rapidly rising costs of servicing debt which months later pushed Orpea to the brink of bankruptcy.

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<sup>60</sup> Garcia, P., “Orpea, uno de los grupos de residencias con mayor mortalidad en la primera ola, prevé abrir 15 nuevos centros en España,” Infolibre, March 29, 2021, [https://www.infolibre.es/economia/orpea-grupos-residencias-mayor-mortalidad-primer-ola-preve-abrir-15-nuevos-centros-espana\\_1\\_1195348.html](https://www.infolibre.es/economia/orpea-grupos-residencias-mayor-mortalidad-primer-ola-preve-abrir-15-nuevos-centros-espana_1_1195348.html)

<sup>61</sup> Orpea Group, Press Release: “All the Group’s resources are being committed to the fight against COVID-19 to protect residents, patients, families and employees,” May 5, 2020, [https://www.emeis-group.com/wp-content/uploads/2020/05/ORPEA\\_Q1\\_sales\\_EN\\_c5e38.pdf](https://www.emeis-group.com/wp-content/uploads/2020/05/ORPEA_Q1_sales_EN_c5e38.pdf)

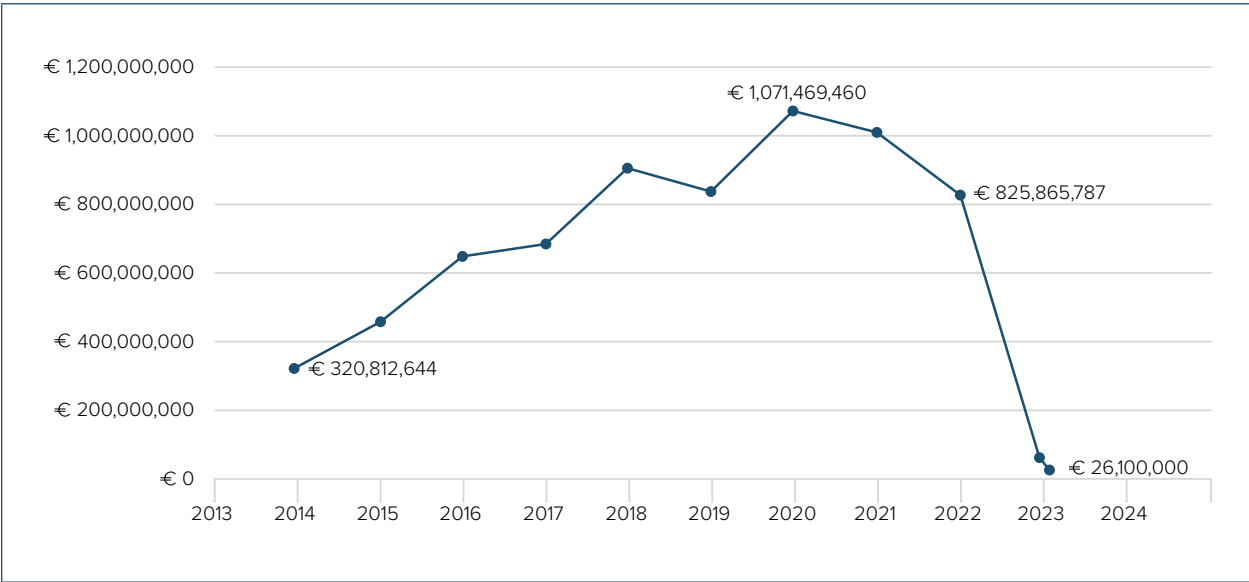
<sup>62</sup> Orpea, 2021 Half-Year Results, [https://www.emeis-group.com/wp-content/uploads/2021/12/Pres\\_ORPEA\\_H1\\_2021\\_Results\\_ENG\\_2bc53.pdf](https://www.emeis-group.com/wp-content/uploads/2021/12/Pres_ORPEA_H1_2021_Results_ENG_2bc53.pdf); Orpea, Full-year 2019 Results, [https://www.emeis-group.com/wp-content/uploads/2011/12/Pres\\_ORPEA\\_2019\\_Results\\_ENG\\_final\\_07c52.pdf](https://www.emeis-group.com/wp-content/uploads/2011/12/Pres_ORPEA_2019_Results_ENG_final_07c52.pdf)



# CPPIB'S LOSSES ON ITS ORPEA GAMBLE

CPPIB divested its entire remaining shareholdings in Orpea from February 2 to 8, 2023, selling to multiple buyers over the course of five days for a fraction of the price CPPIB paid for its shares in 2013. The sale of these shares generated just €26.1 million (C\$38.3 million), representing a massive loss of over 95% on the value of the investment.<sup>63</sup> The loss is even more staggering considering that the value of CPPIB's shares in Orpea exceeded €1 billion (C\$1.47 billion) throughout most of 2019 and 2020.

**Figure 2: Value of CPPIB's Orpea investment, 2013-2023**



<sup>63</sup> Calculated on the basis of the original investment of €421.8 million (C\$618.4 million) adjusted for inflation to €537.4 million (C\$787.8 million). CPPIB, Press Release: "CPP Investments has exited its investment in Orpea," March 16, 2023, <https://www.cppinvestments.com/public-media/headlines/2023/cpp-investments-has-exited-its-investment-in-orpea/>

<sup>64</sup> Calculated from shareholdings and dividend payments from analysis of ten years of Orpea's Registration Documents (2013-2022) <https://www.emeis-group.com/en/shareholders-investors/documentation/universal-registration-document/>

CPPIB earned up to €59.8 million (C\$87.6 million) in income from dividends, or €74.4 million (C\$109.1 million) adjusted for inflation, during the period it was Orpea's largest shareholder (see tables below).<sup>64</sup> It is worth noting that this is a maximum earning estimate. CPPIB may have exercised rights on several occasions to convert its dividend income into shares. If this is the case, actual amounts of dividend earnings are likely to be lower, and total losses therefore higher.

**Figure 3: CPPIB's estimated dividend income**

Year of dividend distribution	Dividend per share	Value of CPPIB's dividends	Value of CPPIB's dividends in 2023, adjusted for inflation
	€	€ nominal	€
2013	€ 0.70	€ 6,154,998	€ 7,841,466
2014	€ 0.80	€ 7,034,283	€ 8,923,202
2015	€ 0.90	€ 7,913,569	€ 10,035,341
2016	€ 1.00	€ 8,870,854	€ 11,221,798
2017	€ 1.10	€ 10,112,511	€ 12,576,932
2018	€ 1.20	€ 11,249,023	€ 13,730,736
2019	€ 0.00	€ 0	€ 0
2020	€ 0.90	€ 8,436,767	€ 10,074,137
2021	€ 0.00	€ 0	
2022	€ 0.00	€ 0	
Total (est.)		€ 59,772,005	€ 74,403,612

Taking these earnings into account, the Orpea debacle cost CPPIB's pension fund beneficiaries at least €335.9 million (C\$492.5 million). If the initial investment and the dividend income is adjusted for inflation, the total loss estimate rises to €436.9 million (C\$640.5 million).

**Figure 4: Summary of financial losses, EUR and CAD**

	Initial investment	Sale proceeds	Dividends	Total losses
EUR				
Nominal	€ 421,800,000	€ 26,100,000	€ 59,772,005	<b>€ 335,927,995</b>
Adjusted	€ 537,373,122	€ 26,100,000	€ 74,403,612	<b>€ 436,869,509</b>
CAD				
Nominal	\$618,358,800	\$38,262,600	\$87,625,760	<b>\$492,470,440</b>
Adjusted	\$787,788,997	\$38,262,600	\$109,075,696	<b>\$640,450,701</b>



# ORPEA AND CPPIB'S STRATEGIC OBJECTIVES

CPPIB was attracted to invest in Orpea based on its business model. This model, premised on aggressive international expansion, was until recently closely aligned with CPPIB's strategic objectives for intensified expansion into the Chinese market. As China was opening up to foreign investment, Orpea was frequently promoted by CPPIB as emblematic of its broader strategy.

In 2018, Mark Machin, the CEO of CPPIB, singled out China's aging population trends as an opportunity to expand into commercial nursing homes, healthcare and end-of-life care. He specifically cited Orpea as the flagship example of CPPIB's investment into China. At the time, CPPIB had set a target to double its China investments (defined to include mainland China as well as Hong Kong, Macao, and Taiwan) to 20% of its assets.<sup>65</sup>

Orpea was already on a trajectory of rapid expansion across Europe. However, its first expansion outside of the European market — into mainland China — occurred shortly after CPPIB became Orpea's largest investor. In 2014, Orpea announced a pilot 140-bed nursing home project in Nanjing, which opened in 2016.<sup>66</sup> This was the first private foreign-owned nursing home that was successfully opened in China, attracting state subsidies. Promoted as a "high-end product" targeted at the most affluent demographics, the monthly fee was reported to range from 15,000 to 40,000 yuan (approx. C\$2,687 to C\$6,718).<sup>67</sup>

Yet, CPPIB's ambitions for using Orpea to open the Chinese aged care market were dashed by shifts in geopolitics, a reversal of policies that had favoured Canadian investment due to rising tensions between the US and China. Canadian private equity investments in China collapsed in 2023 compared to 2022 and 2021. While other Canadian pension funds have exited China altogether, nearly 10% of CPPIB's investments remain in China, leaving it exposed. CPPIB has recently been reducing staff working on investments in China.<sup>68</sup>

As late as mid-2020, as the pandemic was sweeping through Orpea's nursing homes across Europe, Nathaniel Farouz, the CEO of Orpea China was still promoting plans to expand operations.<sup>69</sup> He subsequently left Orpea to work for Keppel, a Singapore-based real estate company, where he is the managing director of its senior living subsidiary that opened its first nursing home, also located in Nanjing.<sup>70</sup> As of time of writing, Orpea China continues its operations, and has opened at least one additional nursing home. Benoit Garcin, the former

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<sup>65</sup> Xueqing, J., "Canada pension fund to lift China investment," China Daily, December 10, 2018, <https://www.chinadaily.com.cn/a/201810/12/WSSbbffe16a310eff303281fa2.html>

<sup>66</sup> Asia Pacific Foundation of Canada, "China's Evolving Senior Care Sector: opportunities and challenges for canadian care providers and businesses," February 2020, [https://www.asiapacific.ca/sites/default/files/publication-pdf/china\\_senior\\_care\\_report\\_final.pdf](https://www.asiapacific.ca/sites/default/files/publication-pdf/china_senior_care_report_final.pdf)

<sup>67</sup> Chibelushi, W., "Orpea pioneer the China's social care sector," Healthcare Digital, June 3, 2020, <https://healthcare-digital.com/company-reports/orpea-pioneer-chinas-social-care-sector>

<sup>68</sup> Zhu, J., Wu, K., "Canada's largest pension fund trims staff as it puts China deals on hold," Reuters, September 1, 2023, <https://www.reuters.com/markets/canadas-largest-pension-fund-trims-staff-it-puts-china-deals-hold-sources-2023-09-01/>


<sup>69</sup> Chibelushi, W., "Orpea pioneer the China's social care sector," Healthcare Digital, June 3, 2020, <https://healthcare-digital.com/company-reports/orpea-pioneer-chinas-social-care-sector>

<sup>70</sup> Wenting, Z., "Singaporean brand Keppel launches new senior living brand in China," China Daily, June 1, 2023, <https://global.chinadaily.com.cn/a/202306/01/WS64784a7ca3107584c3ac3656.html>



CFO of Orpea China, took over from Farouz in May 2022, and in October 2023 was promoting the Orpea brand to the Chinese state media as a success story of public private partnership, foreign investment that won government subsidies, and of durable Sino-French relations.<sup>71</sup> Although China was previously targeted for divestment by the new management of Orpea,<sup>72</sup> it is possible that such plans may have been reappraised following CPPIB's exit from Orpea.

# CARE COMPANY OR REAL ESTATE DEVELOPER?



Orpea had long pursued a real estate strategy based on the self-ownership of its facilities.<sup>73</sup> This was promoted by Orpea as a way of reducing long-term costs. Yet on numerous occasions when addressing investors, Orpea promoted itself as a company dedicated to property development rather than care provision.<sup>74</sup> In the mid-2010s, coinciding with CPPIB's investment in Orpea, the company set its sights on enlarging its real estate ownership footprint, adopting a goal of owning 50% of the properties it operated. Between 2014 and 2019, Orpea met this target, increasing its rate of ownership from 32% to 49%.

Rapid international expansion occurred through both the acquisition of existing care companies, as well as the construction of its own facilities. The property development strategy was to acquire and develop land in “city centres or in exceptional surroundings,”<sup>75</sup> with a preference for “premium” urban locations deemed to be “high potential”<sup>76</sup> – cities such as Berlin, Zurich, Prague, Lisbon, Luxembourg, Warsaw, Wroclaw, Lisbon, Seville and Rio de Janeiro.

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<sup>71</sup> Zhihua, L., “CEO of Orpea China: China still key driver of global growth,” China Daily, October 20, 2023, <https://www.chinadaily.com.cn/a/202310/20/WS65336c4ba31090682a5e9ea1.html>

<sup>72</sup> Orpea, Presentation of the refoundation plan, November 15, 2022, [https://www.emeis-group.com/wp-content/uploads/2023/06/Orpea\\_Presentation\\_P2\\_15-11-2022\\_EN.pdf](https://www.emeis-group.com/wp-content/uploads/2023/06/Orpea_Presentation_P2_15-11-2022_EN.pdf)

<sup>73</sup> Lethbridge, J. *Orpea in the long-term care sector: company strategy and working conditions*, PSIRU, University of Greenwich, September 2018. [https://gala.gre.ac.uk/id/eprint/22272/7/22272%20LETHBRIDGE\\_ORPEA\\_in\\_the\\_Long-Term\\_Care\\_Sector\\_2018.pdf](https://gala.gre.ac.uk/id/eprint/22272/7/22272%20LETHBRIDGE_ORPEA_in_the_Long-Term_Care_Sector_2018.pdf)

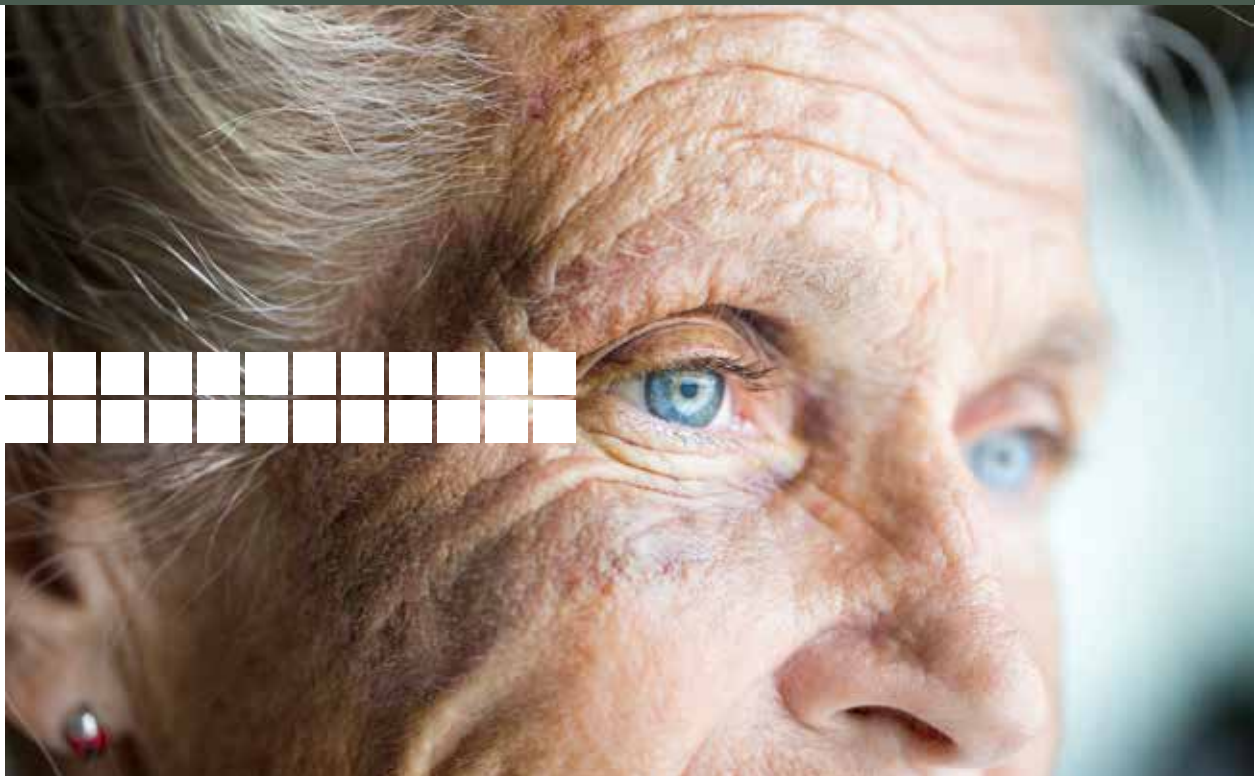
<sup>74</sup> See, for example: Orpea Group, Analyst Day in Lisbon: Management Presentation, December 2019, [https://www.emeis-group.com/wp-content/uploads/2011/12/Analyst-day\\_in\\_Lisbon\\_Management\\_Presentation\\_101219\\_e25d8.pdf](https://www.emeis-group.com/wp-content/uploads/2011/12/Analyst-day_in_Lisbon_Management_Presentation_101219_e25d8.pdf)

<sup>75</sup> Orpea, 2012 Registration Document, p. 103 [https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA\\_RegDoc\\_2012.pdf](https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA_RegDoc_2012.pdf)

<sup>76</sup> Orpea, 2020 Universal Registration Document, p. 46 [https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA\\_URD\\_2020\\_a994f.pdf](https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA_URD_2020_a994f.pdf)

New nursing home real estate projects typically take many years to complete – from planning to land acquisition to construction to opening. As a result, at any given point during the past decade, approximately 10-20% of Orpea’s bed capacity was “under construction.” What marks such locations as “strategic” was an expectation that property values would rise over the long-term, while in the short-term, revenues could be maximized from the high-end segment of elderly residents.<sup>77</sup>

Orpea’s uneven geographical footprint – premised on social and geographical inequality – is an outcome inherent to the market-orientated policies pursued by governments over preceding decades. Since developers of real estate tend to be guided less by concerns of meeting unmet care needs, and more by the potential for realizing the highest returns on real estate assets, the commercialisation of long-term care has encouraged a development model where nursing homes are increasingly concentrated in locations such as capital cities and wealthy enclaves, to the neglect of regions where larger numbers of elderly people tend to actually live.<sup>78</sup>



<sup>77</sup> Orpea Group, Analyst Day in Lisbon: Management Presentation, December 2019, [https://www.emeis-group.com/wp-content/uploads/2011/12/Analyst-day\\_in\\_Lisbon\\_Management\\_Presentation\\_101219\\_e25d8.pdf](https://www.emeis-group.com/wp-content/uploads/2011/12/Analyst-day_in_Lisbon_Management_Presentation_101219_e25d8.pdf)

<sup>78</sup> Florek, K. “The Crisis in Long Term Care: Effects of Private Provision,” Public Services International, February 2022, p. 6, [https://pop-umbrella.s3.amazonaws.com/uploads/3cb663f8-0078-4617-95b8-e1686b052b1a\\_2022- THE\\_CRISIS\\_IN\\_LONG-TERM\\_CARE\\_EN.pdf](https://pop-umbrella.s3.amazonaws.com/uploads/3cb663f8-0078-4617-95b8-e1686b052b1a_2022- THE_CRISIS_IN_LONG-TERM_CARE_EN.pdf)



# DEBT-DRIVEN FINANCING

Orpea's reputational crisis - which quickly led to removal and criminal investigation of its top executives - rapidly escalated into a debt crisis for the company. By the end of the year, the company was facing a liquidity crisis that would have likely resulted in bankruptcy without the intervention of France's sovereign wealth fund. Orpea's expansion strategy had been made possible by "the cost of very cheap money," according to its founder who made this statement in 2015.<sup>79</sup> Such "cheap" money saw Orpea's gross debt double in five years, to over €7.5 billion (C\$10.9 billion) in 2020, 87% of which was property debt on the company's real estate. As analyzed in previous research by CICTAR, the cost of servicing this debt, through loan interest and bond coupon payments, grew at a rate more than twice as fast as Orpea's revenue.<sup>80</sup>

The crisis for Orpea - which initially started with allegations of elder abuse - escalated into a debt crisis in the summer of 2022, when the new management of Orpea launched a comprehensive asset review and repeatedly announced successive impairments of the company's assets. By the end of the financial year, the total amount of write-downs reached a staggering €5.7 billion (C\$7.5 billion).<sup>81</sup> A large proportion was due to impairments on the value of Orpea's real estate, which were reduced by €3.3 billion (C\$4.7 billion), a massive write down from €8.4 billion (C\$12.1 billion) to €5.1 billion (C\$7.3 billion).<sup>82</sup> In addition to real estate, this review resulted in further reduction of €1.8 billion (C\$2.6 billion) in impairment losses on intangible assets, attributable to the loss of goodwill and the value of operating licenses.<sup>83</sup> Meanwhile, Orpea's gross debt rose further, reaching over €9.7 billion (C\$14.0 billion) by the end of 2022.<sup>84</sup> The consequence was dire: a fall of Orpea's consolidated net equity to a negative €1.5 billion (C\$2.1 billion), compared to positive €3.8 billion (C\$5.5 billion) in the previous financial year.

The accumulation of unsustainable levels of debt, borrowed against property assets that were clearly valued above their actual worth, suggests – at the least – incompetence in governance processes on part of Orpea's board over the period of the decade leading up to this crisis. Indeed, the new CEO of Orpea had publicly denounced the former management team for driving real estate developments "too quickly," creating a "very fragile financial situation" at the cost of "excessive debt," not to mention their "completely dysfunctional management practices and embezzlement."<sup>85</sup>

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<sup>79</sup> "Jean-Claude Marian, président d'Orpea : 'Nous disposons de moyens financiers considérables pour nous développer'," La letter de la bourse, April 2, 2015 (archived)

[https://web.archive.org/web/20160325221925/https://www.lalettredelabourse.fr/public/interview/jean-claude-marian-president-d-orpea-nous-disposons-de-moyens-financiers-considerables-pour-nous-developper\\_132491.html](https://web.archive.org/web/20160325221925/https://www.lalettredelabourse.fr/public/interview/jean-claude-marian-president-d-orpea-nous-disposons-de-moyens-financiers-considerables-pour-nous-developper_132491.html)

<sup>80</sup> CICTAR, *Orpea: Caring for people or profit?*, CICTAR, CFDT Santé-Sociaux, CGT Santé Action Sociale, February 2022, <https://cictar.org/all-research/orpea-en>

<sup>81</sup> Orpea Group, Press Release: 2022 Full-Year Result, May 12, 2023,

[https://www.emeis-group.com/wp-content/uploads/2023/05/PR\\_ORPEA\\_FYR-2022\\_Q1-2023slides\\_EN.pdf](https://www.emeis-group.com/wp-content/uploads/2023/05/PR_ORPEA_FYR-2022_Q1-2023slides_EN.pdf)

<sup>82</sup> Orpea 2022 Universal Registration Document, p. 273

[https://www.emeis-group.com/wp-content/uploads/2023/07/ORPEA\\_DEU\\_2022\\_UK\\_.pdf](https://www.emeis-group.com/wp-content/uploads/2023/07/ORPEA_DEU_2022_UK_.pdf)

<sup>83</sup> *Ibid.*, p. 303

<sup>84</sup> *Ibid.*, p. 51

<sup>85</sup> Orpea, Presentation of the refoundation plan, November 15, 2022,

[https://www.emeis-group.com/wp-content/uploads/2022/11/pr\\_orpea\\_15-11-2022.pdf](https://www.emeis-group.com/wp-content/uploads/2022/11/pr_orpea_15-11-2022.pdf)

Some 30 executives are reported to have been removed for serious misconduct, including the CEO and CFO who have faced criminal charges.<sup>86</sup> Yet, the former board of Orpea, including individuals employed by CPPIB and appointed at the recommendation of CPPIB, have faced minimal accountability for their role in governance, or rather misgovernance, of the company.

What role did CPPIB play in Orpea's debt crisis? In 2013, when it invested in Orpea, CPPIB was introduced as a "strategic" shareholder whose "expertise, particularly in real estate" would benefit Orpea.<sup>87</sup> Starting from the outset of CPPIB's involvement in Orpea, questions should be asked about the extent to which CPPIB and its representatives not only failed in their duties of governance, but may in fact have contributed to debt financing arrangements that led to Orpea's crisis. As will be explored in the following sections, there were a total of six individuals who served on the board of Orpea – four of them employed by CPPIB, one of whom served on the company's audit committee during the years preceding and during the crisis. None of these individuals remain employed by CPPIB. It is not evident whether any of these individuals faced any consequences for their role as Orpea directors, if they were terminated for their failures, or otherwise disciplined or sanctioned.

Orpea shareholders had delegated to the board sweeping financial authorizations to issue shares as part of capital increases, to grant preferential subscription rights and to set the ceiling of debt securities that could be raised. These measures were first introduced through a series of extraordinary resolutions on June 20, 2013 at the Orpea general meeting. At the end of that year, these resolutions enabled CPPIB to underwrite the capital increase.<sup>88</sup> In the years following the entrance of CPPIB as an investor, these broad financial authorizations were repeated and renewed, year after year, at Orpea's general meetings. The details of these resolutions – numbering in the dozens – are complex, yet their core purpose was helpfully summarized by Orpea in its message to shareholders: to delegate power to the board allowing it "to raise the capital it needs in a rapid and flexible manner."<sup>89</sup> Such fund raising was exercised on at least one further occasion after CPPIB's investment deal: a capital increase that occurred on March 26, 2019 involving the issuance of convertible bonds worth €500 million (C\$755 million).<sup>90</sup>

The other purpose of these extraordinary resolutions was to grant the Orpea board powers to use company shares to compensate corporate executives. The mechanism through which this was done appears to be a "liquidity agreement" with the brokerage firm Gilbert Dupont which provided a "share buyback" mechanism for up to 10% of total shares in Orpea. Ostensibly, the objectives behind this program were to "make a market or ensure the liquidity

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<sup>86</sup> Bonnefoy, J., "Après le scandale, rien n'a vraiment changé dans les Ehpad : le dossier spécial de la rédaction," La Montagne, October 18, 2022, [https://www.lamontagne.fr/clermont-ferrand-63000/faits-divers/apres-le-scandale-rien-na-vraiment-change-dans-les-ehpad-le-dossier-special-de-la-redaction\\_14202977/>](https://www.lamontagne.fr/clermont-ferrand-63000/faits-divers/apres-le-scandale-rien-na-vraiment-change-dans-les-ehpad-le-dossier-special-de-la-redaction_14202977/>)

<sup>87</sup> Orpea, 2013 Registration Document, p. 136, [https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA\\_Reg\\_Doc\\_2013.pdf](https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA_Reg_Doc_2013.pdf)

<sup>88</sup> Orpea, 2012 Registration Document, pp. 276-312 [https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA\\_RegDoc\\_2012.pdf](https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA_RegDoc_2012.pdf) note: these capital-raising resolutions for the general meeting were filed on May 14, 2013.

<sup>89</sup> Orpea, 2019 Universal Registration Document, [https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA\\_URD\\_2019\\_UK.pdf](https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA_URD_2019_UK.pdf) p. 156

<sup>90</sup> Ibid., p. 155

of trading in the shares through an independent investment services provider.” Orpea reported considerable sums were traded through this program but ceased disclosing the exact amounts after 2016. Earlier reports show that these transactions were not small. In 2015, however, Orpea’s broker bought 868,619 shares for a total of €55,544,055 (C\$77,989,408) and sold 876,673 shares for a total of €56,036,818 (C\$78,681,298).<sup>91</sup>

Bonus shares were issued to corporate executives and senior managers, and this was done every year from 2016 to 2022. With the exception of 2017, when 82,250 shares were allocated in bonuses in the form of a capital increase, in all other years the bonuses were created through allocating the company’s existing shares using the above mechanism. The number of grantees varies — in 2020 there were 365 individuals, in 2018 only two.<sup>92</sup>

The use of financial authorisations, intended specifically for capital-raising, to delegate carte blanche powers to the Orpea board to manipulate company shares — and, especially, to authorize bonuses by issuing securities and preferential rights — appears to have been highly controversial among Orpea’s shareholders. Repeated renewals of these rights met with escalating shareholder opposition, as seen in votes at the company general meetings. Opposition peaked in 2018, when one of a series of financial authorization resolutions was defeated, with several others barely managing to pass. It is worth noting that this occurred despite the significant level of inside ownership, including CPPIB and others.<sup>93</sup>



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<sup>91</sup> Orpea, 2015 Registration Document, [https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA\\_2015\\_registration\\_document.pdf](https://www.emeis-group.com/wp-content/uploads/2011/12/ORPEA_2015_registration_document.pdf) p. 45

<sup>92</sup> Based on a review of Orpea’s Registration Documents, from 2012 to 2022 <https://www.emeis-group.com/en/shareholders-investors/documentation/universal-registration-document/>

<sup>93</sup> Orpea, Résultats scrutin AGM 28 juin 2018, [https://www.emeis-group.com/wp-content/uploads/2018/05/ORPEA\\_Resultats\\_scrutin\\_AGM\\_28juin2018.pdf](https://www.emeis-group.com/wp-content/uploads/2018/05/ORPEA_Resultats_scrutin_AGM_28juin2018.pdf)



# CPPIB AND ORPEA'S GOVERNANCE

Orpea's new CEO, Laurent Guillot was recruited in May 2022 and claimed to have quickly realized the full scale of the Orpea crisis. As a consequence of previous mismanagement, the company was "on the verge of bankruptcy due to excessive and misguided real estate investments and international growth." A similar narrative was put forward by the new chairman of the board of directors, Guillaume Pepy, who stated that "immense harm [was] caused to so many by a tiny minority in the past."<sup>94</sup> In their respective roles, both Guillot and Pepy replaced Philippe Charrier. Charrier had stepped in as interim-CEO on January 30 when the CEO Yves Le Mesne's was terminated by the board, an event that occurred several days after the scandal surrounding Orpea first erupted in the French media. He had previously served as Orpea's chairman of the board of directors for more than five years from 2017 and 2022.

Charrier's departure from the company was welcomed by some, with one investment analyst stating that as he had "chaired a council for five years which had failed in its control mission," he could not hope to regain investor confidence.<sup>95</sup> However, his replacement by Guillaume Pepy as chairman of the board on July 28, 2022 also attracted controversy. This is due to Pepy's former consultancy contract with the CPPIB, a role that Pepy held for two years from July 1, 2020 until July 5, 2022.<sup>96</sup> When he was appointed as Orpea's chair of the board, the company claimed that there was no conflict of interest, and he was deemed "independent" on the recommendation of Orpea's Appointments and Remuneration Committee. This was because he had already resigned his position with CPPIB, had only provided advisory services to CPPIB under a consultancy contract, and had not been recommended by CPPIB, with which he "no longer had any links whatsoever."<sup>97</sup>

Guillaume Pepy has a long history as a senior public servant and is perhaps publicly best known as the former Chairman and CEO of SNCF, the French national rail company. His most immediate previous role, however, was as the Senior Advisor to CPPIB for Europe with a special focus on the French market and commercial real estate. CPPIB announced that Pepy was to support their "long-term growth strategy in Europe" through identifying and delivering opportunities, as well as to "provide counsel" on the CPPIB's existing assets in the region which represented 15.5% of total investments.<sup>98</sup> French media analysts noted that CPPIB had €4 billion (C\$5.4 million) invested in France and had committed €185 million (C\$247 million) into a new commercial real estate debt fund. As a well-connected figure, Pepy's appointment was seen as serving the aim of helping to "open doors" in the business world in France.<sup>99</sup>

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<sup>94</sup> Orpea, 2022 Universal Registration Document, p. 7

[https://www.emeis-group.com/wp-content/uploads/2023/07/ORPEA\\_DEU\\_2022\\_UK\\_.pdf](https://www.emeis-group.com/wp-content/uploads/2023/07/ORPEA_DEU_2022_UK_.pdf)

<sup>95</sup> BBoisseau, L., Laurin, A., "Le manque de transparence de la nouvelle gouvernance d'Orpea pointée du doigt," Les Echos, July 5, 2022,

<https://www.lesechos.fr/finance-marches/marches-financiers/le-manque-de-transparence-de-la-nouvelle-gouvernance-dorpea-pointee-du-doigt-1774754>

<sup>96</sup> Ibid.

<sup>97</sup> Orpea, 2022 Universal Registration Document, p. 196

[https://www.emeis-group.com/wp-content/uploads/2023/07/ORPEA\\_DEU\\_2022\\_UK\\_.pdf](https://www.emeis-group.com/wp-content/uploads/2023/07/ORPEA_DEU_2022_UK_.pdf)

<sup>98</sup> CPPIB, Press Release: "CPP Investments Appoints Guillaume Pepy as Senior Advisor, Europe," July 9, 2020,

<https://www.cppinvestments.com/newsroom/cpp-investments-appoints-guillaume-pepy-as-senior-advisor-europe/>

<sup>99</sup> Laurin, A., "EXCLUSIF - Le fonds de retraite du Canada investit dans l'immobilier en France," Les Echos, May 4, 2021,

<https://www.lesechos.fr/finance-marches/gestion-actifs/exclusif-le-fonds-de-retraite-du-canada-investit-dans-limmobilier-en-france-1312111>



# A QUESTION OF INDEPENDENCE



As a key part of its investment agreement with Orpea, CPPIB had the right to appoint a director to the Orpea board, and two directors if it exceeded 16% of voting rights in the company. At first, CPPIB's voting share was just under this threshold. However, in 2016 it could take advantage of controversial provisions of "Florange Law" (Article L. 225-123 of the French Commercial Code) introduced in 2014, which automatically allows for double-voting rights for shareholders after two years.<sup>100</sup> This resulted in an expansion of CPPIB's influence, allowing it to control 22.84% of voting rights in Orpea, and at this point CPPIB also gained the right to appoint a second director.

Orpea's Compensation and Appointments Committee consistently conferred "independent" status on all CPPIB-appointed directors. The purported logic of this was that despite CPPIB being Orpea's largest shareholder, Orpea represented only 0.2% of CPPIB's investment portfolio. Under French law, a company itself determines the status of independence of directors. The rationale used in this case was that there was no potential conflict of interest due to the small proportion of assets that Orpea represents for CPPIB. Such rationale conflicted strongly with other companies in which CPPIB held similar shareholding and directorships. In the case of Elis SA, where Joy Verle concurrently served as a director, she was not deemed to be independent.<sup>101</sup>

The fact that companies can self-judge the independence of directors points to a significant shortcoming of the corporate governance code of reference for publicly traded companies in France, the AFEP-MEDEF Code. Qualification of independent status for directors carries implications relating to conflict of interest and the eligibility to Chair committees such as the audit and nominations committees.<sup>102</sup> Generally, investors consider truly independent directors as having a crucial role in maintaining high standards of good governance, which was clearly not the case in Orpea. For example, global investment giant Blackrock's proxy voting guidelines for Canadian securities state that "a majority of the directors on the board should be independent to ensure objectivity in the decision-making of the board and its ability to oversee management. An addition, all members of the audit, compensation and nominating/governance board committees should be independent."<sup>103</sup> Blackrock's investment guidelines go on to state that a common impediment to independence may include an equity ownership in excess of 20%.<sup>104</sup> The CPPIB-appointed directors represented voting rights in excess of 20%.

<sup>100</sup> Stothard, M, "French companies fight back against Florange double-vote law," Financial Times, April 16, 2025  
<https://www.ft.com/content/05314dfe-e27d-11e4-ba33-00144feab7de>

<sup>101</sup> Boisseau, L., Laurin, A., "Le manque de transparence de la nouvelle gouvernance d'Orpea pointée du doigt," Les Echos, July 5, 2022,  
<https://www.lesechos.fr/finance-marches/marches-financiers/le-manque-de-transparence-de-la-nouvelle-gouvernance-dorpea-pointee-du-doigt-1774754>

<sup>102</sup> AFEP, *Corporate Governance Code of Listed Corporations*, November 2016,  
[https://www.afep.com/uploads/medias/documents/Corporate\\_Governance\\_Code\\_of\\_listed\\_corporations\\_November\\_2016.pdf](https://www.afep.com/uploads/medias/documents/Corporate_Governance_Code_of_listed_corporations_November_2016.pdf)

<sup>103</sup> BlackRock Investment Stewardship, Proxy voting guidelines for Canadian securities (effective as of January 2024), p.4.  
<https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-canada.pdf>

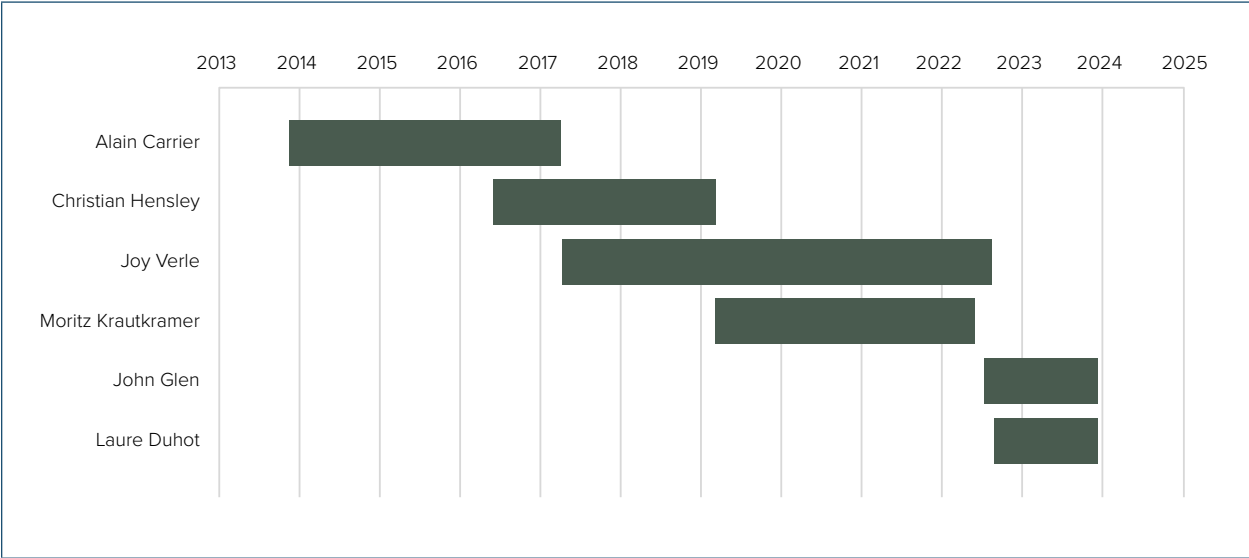
<sup>104</sup> Ibid.



# CPPIB-APPOINTED DIRECTORS ON THE ORPEA BOARD

There were in total six individuals appointed at the recommendation of the CPPIB as directors to the Orpea board between December 2013 and February 2023. The first four were senior employees of CPPIB, but none continue to be employed by CPPIB. The final two — John Glen and Laure Duhot — were appointed in mid-2022 shortly before CPPIB’s divestment.

**Figure 5: CPPIB-appointed director to Orpea - lengths of tenure**



**Alain Carrier** had served as the CPPIB’s first appointed director to the Orpea board. Given his senior position at CPPIB coordinating CPPIB’s operations in Europe, the Middle East and Africa, it is likely that he had considerable influence on CPPIB’s decision to invest in Orpea. Promoted in April 2017, Alain Carrier was replaced as Orpea director by **Joy Verle**, newly recruited as the Managing Director for Relationship Investments at CPPIB. Prior to joining CPPIB, she had worked for ten years at Bregal Investments, an €18 billion (C\$25 billion) private equity fund owned by the billionaire Brenninkmeijer family.<sup>105</sup> For several years Carrier continued to be employed at CPPIB in one of its most senior positions, Senior Managing Director & Head of International. He announced the appointment of Orpea future chairman, Guillaume Pepy, as senior advisor for CPPIB, likely having a significant role in this recruitment.<sup>106</sup> He left CPPIB in mid-2021 after 14 years to work as a CEO of Bregal Investments — Joy Verle’s former employer.<sup>107</sup>

<sup>105</sup> An old merchant family of Dutch-German-Swiss manufacturers, reported to be the richest family in the Netherlands with an estimated net worth of between US\$5-\$20 billion (C\$7-13 billion); Loeb, W., “Highly Secretive C&A Brenninkmeijer Is A Global Powerhouse In Fashion Retailing,” Forbes, July 19, 2016, <https://www.forbes.com/sites/walterloeb/2016/07/18/highly-secretive-c-a-brenninkmeijer-is-a-global-powerhouse-in-fashion-retailing/>  
<sup>106</sup> CPPIB, Press Release: “CPP Investments Appoints Guillaume Pepy as Senior Advisor, Europe,” July 9, 2020, <https://www.cppinvestments.com/newsroom/cpp-investments-appoints-guillaume-pepy-as-senior-advisor-europe/>  
<sup>107</sup> Bregal Investments, “Alain Carrier: Chief Executive Officer,” <https://www.bregal.com/people/alain-carrier/#:~:text=Alain%20Carrier%20%7C%20People%20%7C%20Bregal%20Investments>

Verle served the longest tenure as a CPPIB-appointed director on the Orpea board. She was a member of the company's Appointments and Remuneration Committee, and a member of its Audit Committee. The role of an audit committee is generally seen as responsible for "overseeing financial reporting and related internal controls, risk, independent and internal auditors, and ethics and compliance."<sup>108</sup> Orpea's audit committee, and its CPPIB appointee, were clearly not performing this critical role.

CPPIB nominated **Christian Hensley** in June 2016 as their second director appointment. Coming from a background in investment banking and private equity, including Salomon Brothers, Charterhouse Group and Planier Capital, Hensley held the senior position of Managing Director and Head of Relationship Investments at the CPPIB. Among his peers in the finance sector, Hensley appears to have built a reputation as an expert in the field of private debt.<sup>109</sup> Concurrent to his board appointment at Orpea, Hensley was also a director of 21st Century Oncology, the world's largest operator of for-profit cancer treatment centres. In May 2017, three years after CPPIB became a minority owner with a US\$325 million investment (C\$437 million), 21st Century Oncology filed for chapter 11 voluntary bankruptcy in order to restructure US\$500 million (C\$672 million) of net debt.<sup>110</sup> They were later bought out by Australian-based GenesisCare, which itself then filed for bankruptcy in 2023.<sup>111</sup>

Hensley stayed as a board member of Orpea until March 2019 when he resigned his position at the CPPIB to work at the Investment Management Corporation of Ontario (IMCO), another Canadian public pension investment entity that manages assets for public-sector clients and operates at arm's length from government.<sup>112</sup> He held a senior director role managing IMCO's Equities and Credit division until March 2023, before leaving under unclear circumstances, as he does not appear to have another position.

Hensley was replaced on the board of Orpea by **Moritz Krautkramer**, who served on the board concurrently with Joy Verle. He appears to have been the least senior of all CPPIB-appointed directors, starting his career as an Associate in Investment Banking at Scotiabank in 2006 where he worked until 2010 before taking the job of Managing Director at CPPIB where he stayed for 12 years.

Krautkramer and Verle both resigned from the board of Orpea in mid-2022 and left CPPIB, within several weeks of each other. Neither was immediately replaced during this chaotic period at Orpea. Additionally, based on searches of public sources, neither of them appears to have found new employment since. Their departures coincide with the most tumultuous period within Orpea.<sup>113</sup> In the case of Verle, her resignation occurred on August 30, 2022, just one month after the company's AGM which approved the extension of her tenure as a board director. As a member of the Appointments and Remuneration Committee, one of Verle's last actions had been to appoint CPPIB's former senior advisor, Guillaume Pepy, to the position of Chair of Orpea.

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<sup>108</sup> Deloitte, "Audit Committee Guide,"

<https://www2.deloitte.com/us/en/pages/center-for-board-effectiveness/articles/audit-committee-responsibilities.html>

<sup>109</sup> Kollivakis, L., "IMCO Loses 8.1% in 2022 But Doles Out Millions in Executive Compensation," Pension Pulse, April 14, 2023, <https://pensionpulse.blogspot.com/2023/04/imco-loses-81-in-2022-but-doles-out.html>

<sup>110</sup> Hals, T. "Cancer treatment firm 21st Century Oncology files for bankruptcy," Reuters, May 25, 2017, <https://www.reuters.com/article/idUSL1N1R20D/>

<sup>111</sup> Tallent, A., "Oncology Clinics Face Uncertain Future After Major Bankruptcy Filing," Oncology News Central, July 19, 2023, <https://www.oncologynewscentral.com/article/oncology-clinics-face-uncertain-future-after-major-bankruptcy-filing>

<sup>112</sup> IMCO, Press Release: "IMCO Appoints Christian Hensley to Lead Public Equities and Credit Team," March 11, 2019, <https://www.imcoinvest.com/news/2019-03-11.html>

<sup>113</sup> Krautkramer undertook a career break for a 6-month climate change course following his departure.

There was a lag of several weeks between the resignations of Krautkramer and Verle and their replacements. The relationship between the CPPIB and the individuals it recommended for new directors is unclear but in contrast to the previous appointments, CPPIB appears to have recommended individuals to the Orpea board who were not employed by CPPIB and appear independent. **John Glen** was appointed on July 28, 2022. His previous role was as the Chairman of the stationery manufacturing company, BIC. For more than a decade between 2008 and 2019 he had been a managing director of the estate of the Duke of Buccleugh, one of the largest private landowners in Scotland. **Laure Duhot** was appointed on September 10, 2022. She had worked for Lendlease, Macquarie Capital Partners and Sunrise Senior Living, an American operator of independent and assisted living facilities which expanded to the UK. Her main areas of experience are in real estate investment, especially in healthcare assets.

Glen and Duhot were both present on the board of Orpea during the critical months of negotiations with creditors, CDC and its new owners leading to the eventual divestment of CPPIB from the company in February 2023. CPPIB appears to have had no direct employment relationship with either Glen and Duhot, and following CPPIB's exit, both appear to have retained their directorships until a new board was elected at the company's AGM in late 2023. Both individuals have taken credit for their role in negotiating a major restructure for Orpea.





# CONCLUSION: HOLDING CPPIB TO ACCOUNT

*“There is no ‘responsible investment’ in a care industry designed to maximise returns, rather than provide care and support the dignity of residents. Private investment in care needs to come to an end and direct public investment—to provide the best care possible—needs to replace it.”<sup>114</sup>*

CPPIB exemplifies the contradictions inherent in pension fund capitalism. While ostensibly tasked with safeguarding Canadian workers’ deferred income and retirement savings, it undertakes investment decisions that negatively impact on retirees’ quality of life. Investigation by the Canadian Union of Public Employees’ pension expert, Kevin Skerrett, has demonstrated that reputation is an important risk factor for the CPPIB, as it incorporates risk analysis into its decisions in a way that defines risk in political terms. From the perspective of CPPIB, such risks can lead to weakened public trust and the potential for triggering government action or increased scrutiny or policy changes that diminish CPPIB’s investment opportunities.<sup>115</sup>

Despite early promotion of Orpea as a strategic investment, CPPIB has consistently avoided commenting on its investments in the company, the role played by its directors, or its intentions for Orpea. It seems that maintaining silence is the preferred risk-mitigation strategy in this situation.

Given the prominence of Orpea in CPPIB’s investment portfolio, and the attention placed on expanding the number of directorships, it is remarkable that CPPIB does not even mention the exit from Orpea as part of its annual report, despite the fact that for many years Orpea was ranked among its top ten largest public equity assets. At a bare minimum, the Board’s exit from Orpea and resulting massive losses, must be explained in public reporting as it constitutes a clear failure of CPPIB in its core objective: to “invest its assets with a view to achieving a maximum rate of return, without undue risk of loss.” CPPIB’s reporting to both the Canadian parliament and the general public, however, only makes indirect mention of its exit from Orpea – mentioning losses in Europe that arose due to “health care investments.”<sup>116</sup> Such vagueness indicates a serious lack of accountability rather than an effort to learn from mistakes and avoid future problems.

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<sup>114</sup> Hancock, M., Goudriaan, J.W., “Public pensions push profit over care,” Social Europe, April 25, 2022, <https://www.socialeurope.eu/public-pensions-push-profit-over-care>

<sup>115</sup> Just Peace Advocates, “Webinar & Info: What is the CPPIB really up to? O que o CPPIB realmente está fazendo?,” June 22, 2022, <https://www.justpeaceadvocates.ca/webinar-info-what-is-the-cppib-really-up-to-o-que-o-cppib-realmente-esta-fazendo/>

<sup>116</sup> CPPIB, Annual Report 2023, p. 54, [https://www.cppinvestments.com/wp-content/uploads/2023/10/ CPP-Investments\\_F2023-Annual-Report.pdf](https://www.cppinvestments.com/wp-content/uploads/2023/10/ CPP-Investments_F2023-Annual-Report.pdf)

The Minister of Finance and the Department of Finance Canada prefer to keep an “arm’s length” relationship with CPPIB. Nonetheless, the legislation that governs CPPIB contains clear provisions that allow the government to intervene in the activities of CPPIB at the discretion of the Minister of Finance, including powers to conduct special audits of the board or any of its subsidiaries.<sup>117</sup> The Act also specifies it is an offence for any director, officer, employee, agent or auditor of the Board or of any of its subsidiaries to engage in false or deceptive practices in respect to the activities of the Board, with consequences including summary conviction that can include imprisonment.<sup>118</sup> There is no evidence that the act could, or should, be used to take action against CPPIB or any individual in this case. However, a tightening of the legal framework should be considered to ensure greater transparency and accountability and to avoid a repeat of this damaging situation in future.

There is an urgent need for accountability. Orpea may well be the biggest disaster in CPPIB’s history — and yet so far it has largely escaped scrutiny. A lack of transparency for pension fund investments is unacceptable for workers’ advocates and the labour movement. CPP contributors and beneficiaries could be at increased risk of poor investment returns in future, as contingent benefits, due to recent reforms, can be more easily adjusted downwards. CPPIB has reiterated that as an institution it is committed to the highest global standards of transparency and disclosure — yet this is directly challenged by the case of Orpea. The expectations for a significant national institution such as CPPIB, and the impact of those investments in Canada and globally, should be the subject of far greater public debate.

The case of Orpea clearly demonstrates that CPPIB has not lived up to the relatively light responsible investment standards in its own “Policy on Sustainable Investing.”<sup>119</sup> In the midst of the Orpea crisis, CPPIB updated its own proxy voting principles, to consider voting against directors where “there are oversight failures related to...deficient corporate governance.”<sup>120</sup> It appears these principles were not applied in the context of Orpea and CPPIB’s own appointed board members.

CPPIB’s guiding principles state that it will “at all times meet or exceed the high ethical standards expected” from its more than 22 million contributors and beneficiaries.<sup>121</sup> The guiding principles also state that it will “operate with transparency internally — we have no hidden agendas — and with appropriate transparency externally” and will “quickly communicate both good and bad news.”<sup>122</sup> These guiding principles of integrity seem to have gone missing in the context of Orpea. The failure of governance within Orpea and CPPIB’s critical role has not been publicly addressed in any form. The Orpea case raises significant concerns of possible governance failures, and lapses in upholding integrity and responsible investment principles, elsewhere in CPPIB’s rapidly expanding global portfolio.

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<sup>117</sup> Canada Pension Plan Investment Board Act (S.C. 1997, c. 40), S. 46.

<https://laws-lois.justice.gc.ca/eng/acts/C-8.3/FullText.html>

<sup>118</sup> Ibid., S. 54.

<sup>119</sup> CPPIB, Policy on Sustainable Investing, March 2023,

[https://www.cppinvestments.com/wp-content/uploads/2023/04/cpp-investments-policy-on-sustainable-investing-mar-2023-en\\_vF.pdf](https://www.cppinvestments.com/wp-content/uploads/2023/04/cpp-investments-policy-on-sustainable-investing-mar-2023-en_vF.pdf)

<sup>120</sup> CPPIB, Press Release: “CPP Investments Updates Proxy Voting Principles and Guidelines Elevating Expectations for Board Diversity and Annual Director Elections,” March 10, 2022, <

<https://www.cppinvestments.com/newsroom/cpp-investments-updates-proxy-voting-principles-and-guidelines-elevating-expectations-for-board-diversity-and-annual-director-elections/>

<sup>121</sup> CPPIB, “Our Guiding Principles,”

<https://www.cppinvestments.com/about-us/our-guiding-principles/>

<sup>122</sup> Ibid.









