

**Submissions to the Nova Scotia
Pension Review Panel**

By the Cape Breton Island Building and Construction
Trades Council

July 4, 2008

The Cape Breton Island Building and Construction Trades Council is very pleased to have this opportunity to present its views to the Pension Review Panel on the important issues raised in the Discussion Paper. We hope to have the additional opportunity to meet with the Panel to discuss the issues in greater depth.

The Council is comprised of twelve unions representing approximately 3800 members in the different building and construction trades on Cape Breton Island.

Each trade participates in a separate multi-employer pension plan. Four of these plans are exclusive to Cape Breton Island, namely:

- The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 682 (“UA, Local 682”)
- The International Brotherhood of Electrical Workers, Local 1852 (“IBEW, Local 1852”)
- The United Brotherhood of Carpenters and Joiners of America, Local 1588 (“Carpenters, Local 1588”)
- Sheet Metal Workers, Local 1852

The UA, Local 682 pension plan is a jointly trustee, multi-employer defined benefit plan with about 950 active members (including 250 apprentices) and 250 retirees. The number of active members has doubled since 1989. The pension fund has assets of approximately \$54 million. Contributions are negotiated as part of a total hourly wage package. Currently, participating employers remit to the pension plan \$5.41 per hour worked under the collective agreement to the pension plan. This amount will soon be increasing to \$6.00 per hour. The collective agreement stipulates that, if the pension plan is ever wound up, the hourly pension contribution reverts to form part of the hourly wage. In these circumstances, the pension contribution is effectively an employee contribution (although it is remitted as an employer contribution for tax purposes) and pension benefits clearly constitute “deferred wages”. Benefits under the plan are accrued by a straight forward calculation – for every \$1,000 of contributions, a member earns a monthly benefit of \$14.30.

The other Cape Breton plans are defined contribution plans.

The remainder of the trades participate in either a provincial, maritime, or national multi-employer plan.

The Goals of Pension Legislation

Should pension legislation and regulation have goals other than those listed?

In addition to the goals listed in the Discussion Paper, the Cape Breton Island Construction and Building Trades Council believes that the goals of the *Pension Benefits Act* should include promoting pension plan coverage in Nova Scotia and improving pension benefits.

A further goal should be to promote and encourage defined benefit pension plans, which minimize the risks for individuals and provide for a more secure retirement.

Types of Plans

Are there plan designs not in use that would provide the benefits of DB plans while minimizing risk?

It is our submission that all single employer pension plans should be jointly trustee, defined benefit plans in which the funding risks are shared equally by employers and employees. In our view, this is the best and most effective plan design.

Under this plan design, contribution rates would be negotiated, and any funding shortfall would require increased contributions. As in the case of multi-employer plans, the trustees would be allowed to reduce benefits in the event increased contributions are not sufficient to remedy a funding deficit. When funding is equally shared, it is important to keep in mind the impact on employees, and that there are limits to the percentage of income employees can financially bear to pay as pension contributions. There would be no issues of surplus use or ownership, because any surplus in the plan would be used to improve benefits. By minimizing funding risks for employers, this plan design would encourage the creation and continuation of defined benefit plans. The British Columbia public sector plans described on page 14 of the Discussion Paper are based on this model.

The Quebec hybrid plan model described on page 17 of the Discussion Paper is also to be commended.

The key in our view is joint trusteeship, which has been very successful for multi-employer pension plans in the construction industry. Employee involvement in a pension plan produces greater employee "buy-in" on funding and other issues. When employees are not involved in the administration of a plan, the lack of information and knowledge is more likely to result in disputes with the employer.

Also, administration through a board of trustees that is independent of the employer allows the interests of the plan members to be front and centre, which is where they should always be.

Where plan members are represented by a trade union, the trade union should have the right to require the employer to adopt this type of plan design. Where plan members are not represented by a union, it should be imposed by legislation similar to what has been implemented in Quebec.

Defined Benefit (DB) Plans versus Defined Contribution (DC) Plans

Should the current trend towards less DB plans be accepted, or should regulators permit DB plans that may be more attractive to employers by reducing funding risks?

Should new forms of DB plans be permitted to enhance their availability?

The Cape Breton Island Building and Construction Trades Council urges the Government and the Pension Review Panel to not accept or condone the trend towards fewer defined benefit plans. Defined benefit plans should be encouraged, because they provide workers with the best opportunity for financial security in retirement.

In order to encourage and promote defined benefit plans, new forms of plan design should be permitted and recognized by the *Pension Benefits Act*. In particular, the model of joint trusteeship with equal sharing of risk should be more attractive to employers, because it reduces funding risks. The Act should explicitly recognize this type of pension plan.

In the case of DC plans, to what extent should an employee's right to make investment choices be limited, and by whom?

In our submission defined contribution plans should also be jointly trusteeed.

Moreover, individuals should have no right to self-direct investment choices. All investments should be professionally managed. The pool of funds for an individual is small, resulting in a high premium on investments.

We propose the creation of a province-wide investment option for defined contribution plans, which would allow funds to be pooled and more effectively and efficiently invested. Larger pools of money would result in reduced investment fees and more investment opportunities. Investments could be managed by the Nova Scotia Pension Agency, which could also perform day-to-day administration functions.

Should new forms of Hybrid pension plans be permitted to enhance their availability?

New forms of hybrid pension plans should also be permitted.

While pure defined benefit plans are to be preferred, making more options available should help to extend pension coverage to more workers in Nova Scotia.

Again, hybrid plans should be jointly trusteeed with equal sharing of risk for any defined benefit component.

Pension Plan Funding

Are current rules for measuring and remediation of going concern and solvency deficits appropriate?

Should there be exceptions to the funding rules for multi-employer pension plans?

Multi-employer defined benefit plans in the unionized construction industry should be given a longer period of time to address solvency deficiencies. Since these plans have many participating employers, they do not face the same risk from employer insolvency that single employer plans do. In a multi-employer plan, individual employers come and go, but the plan continues to operate. It is very unlikely that the entire construction industry is going to collapse. Given these realities, different solvency funding rules should apply to multi-employer plans in the construction industry.

Of course, solvency funding cannot be disregarded altogether. There need to be some safeguards to protect the pension promise. The Act should empower the Superintendent to intervene if a plan is funded at less than 90%. If the Trustees do not act to remedy the problem, the Superintendent should be authorized to put the plan under trusteeship.

Single employer plans are different. Since they can be wound up at any time, they need to be solvent.

Should going concern funding still be a requirement?

Going concern funding should continue to be a requirement. It provides a necessary and important long-term perspective on a plan's funding needs and contribution rates.

Should promises as to future benefit accrual be restricted to the level that can be funded by contributions?

In our submission, it is also appropriate to take investment income into account in establishing benefit levels.

Should there be a requirement for full funding at wind-up?

If a plan is being properly administered and well governed, there should not be any need to make additional payments on a wind up to fully fund benefits.

If a plan is jointly trustee and the funding risk is shared between the employer and employees, it may not be possible to require full-funding on a wind up. In particular, employees might not be able to contribute the amount necessary to make up their portion of the funding shortfall. In the event this type of plan is wound up with insufficient funds, the only realistic option may be to reduce benefits.

In our submission, multi-employer pension plans should continue to be exempt from this requirement in the Act. Since employer contributions are negotiated and fixed for the duration of a collective agreement, there is no source of funding available to meet this requirement.

Is the idea of province-wide pension plan for some public or private employers a good idea? Should such a plan operate as a multi-employer pension plan?

We believe that a province-wide multi-employer pension plan is a very good idea. It would reduce funding risks by spreading risk across many employers. Pooling funds would reduce administrative and investment costs, and would create more investment opportunities. As suggested above, investments could be managed by the Nova Scotia Pension Agency, which could also perform day-to-day administration functions.

Obviously, a province-wide multi-employer plan would require a legislative framework that includes a governance structure.

It should be a contributory defined benefit plan, with a simple formula such as the one used by the UA, Local 682 plan. For every \$X of contributions made, a person would earn \$Y of monthly benefits. The plan could provide different contribution and benefit options.

In our view, such a plan should be administered by an elected board of trustees, with equal employer and employee representation. To provide stability and continuity, but still allow for change and the opportunity to participate, one position on the board of trustees could be subject to election every five years. There should be no limit on the number of times a trustee can be elected.

By minimizing risks and costs, a province-wide multi-employer defined benefit plan would be attractive to both employers and employees. Hopefully, this would encourage participation and the expansion of pension coverage in Nova Scotia

Surpluses

Should regulators speak to the question of the ownership of plan surpluses? If so, what should they say?

As previously discussed, it is our submission that all single employer pension plans should be jointly trustee, defined benefit plans in which the funding risks are shared equally by employers and employees. Any surplus should be used to improve benefits or to reduce employer and employee contributions if these have been increased to address a solvency deficiency. This would eliminate the contentious issues of surplus ownership and contribution holidays.

However, benefit improvements should only be permitted if a plan is at least 110% funded. Plans should be required to maintain a cushion to weather economic downturns. Obviously, this would necessitate a change to the 110% cap in the federal *Income Tax Act*. The Government of Nova Scotia should lobby the federal government to increase this cap to at least 125%

Is the concept of "deferred wages" valid? If so, is there any current validity to it with respect to the determination of the responsibility for funding and for entitlement of surplus?

The concept of pensions as "deferred wages" is clearly valid in the case of multi-employer pension plans in the construction industry, where pension contributions are negotiated as part of a total hourly wage package. In the case of the UA, Local 682, the collective agreement expressly provides that the hourly pension contribution reverts to form part of the hourly wage in the event the plan is ever wound up.

We do not intend to comment on whether the concept of deferred wages is valid for all pension plans, but we note that the various theories used to justify surplus ownership are not necessary under the joint trusteeship and equal sharing model.

Multi-Employer Pension Plans

How should funding concerns for MEPPs be addressed? Would permitting the implementation of a different type of Hybrid pension plan be useful for MEPPs?

Which of the funding tests should apply to MEPPs?

As submitted above, multi-employer defined benefit plans in the unionized construction industry should be given a longer period of time to address solvency deficiencies. Since these plans do not face the same risk from employer insolvency that single employer plans do, they should not be subject to the same solvency funding requirements. However, solvency funding cannot be disregarded altogether. We propose that the Superintendent be given the power to intervene if a plan is funded at less than 90%. If the Trustees do not act to remedy the problem, the Superintendent should be authorized to put the plan under trusteeship.

Going concern funding requirements should continue to apply to multi-employer pension plans.

Should regulators facilitate the further development of hybrid plans? Would the Quebec model be an attractive option for Nova Scotia employers?

The inability to accrue pension benefits while in receipt of a pension from the same plan presents a significant problem for the unionized construction industry. Many union members retire early and, while receiving their pensions, return to work. All too often, however, they return to work for non-union employers who compete against unionized employers. The current rules that prohibit the accrual of benefits under a plan while drawing a pension create a disincentive to work for unionized employers under a collective agreement, because the collective agreement requires an hourly pension contribution for which members get no benefit.

Phased retirement presents one possible solution to this problem, which would allow members to draw a pension and accrue additional benefits at the same time.

Another possible solution is the use of Hybrid plans. For example, when a retiree returns to work under a collective agreement, the hourly pension contribution for his or her labour could be remitted to a defined contribution component or a separate defined contribution plan. This would provide an incentive to continue working in the unionized sector.

The Quebec "hybrid" plan described on page 17 of the Discussion Paper appears very similar, if not identical, to defined benefit multi-employer plans in the construction industry. This structure of plan – with defined benefits based on defined contributions, surplus belonging to members, and the right to reduce benefits in the event of a deficit – has been very successful in the construction industry and is similar to the jointly trustee and shared risk model described above.

Governance

Should government attempt to define, audit, and regulate "good governance"? Why or why not? If so, what types of governance issues should be regulated?

Most, if not all, multi-employer pension plans in the unionized construction industry have established and implemented governance policies based on the CAPSA Pension Plan Governance Guidelines. We believe that multi-employer plans have driven the focus on good governance, and led the way in setting the standards.

In our submission, the *Pension Benefits Act* should regulate governance. Good governance is an essential part of an administrator's fiduciary duty to plan beneficiaries. The Act should establish enforceable minimum standards for all pension plans. We propose that the approach adopted in Quebec be implemented in Nova Scotia. All plans should be required to put in place a governance policy that addresses various aspects of plan administration, funding and investment. The Superintendent should oversee compliance with the minimum standards, and should have the authority to enforce them.

Given that there are associated costs with governance, what is an appropriate cost for "good governance"?

Once good governance policies are established and those responsible for plan administration have been trained on the policies and their responsibilities, the cost of governance is not, and should not be, significant.

Role of Regulators

Does the current regulatory system work effectively? Are there currently unnecessary rules and regulations in place? If so, what are they?

It is difficult to know whether the current regulatory system is indeed working effectively, because there is very little information provided to the public on what is being done under the

terms of the Act and the Regulations. Much of the operation of the Pension Division appears to be cloaked in secrecy, and the decisions made by the Superintendent are not publically available.

The Superintendent puts out an annual report under the Act, which describes generally the number of plans registered and terminated, the number of pieces of correspondence received by the Pension Division, and the number of plan documents approved. The most recent report is for the year ending March 31, 2006. In that year, the Pension Division received 896 pieces of correspondence and 1003 submissions, approved 244 pension plan documents, and issued 38 Certificates of Registration. This is a significant amount of activity. We are aware that the Pension Division has a very small staff.

If the regulatory system is to work effectively, the Superintendent's office needs sufficient personnel and resources to do its job. If the Act and Regulations are expanded to include the regulation of plan governance and other matters, additional resources will clearly be needed.

Should the appeal process be changed? If so, how?

Cape Breton Island Building and Construction Trades Council submits that it is not appropriate that the Superintendent reconsiders his or her own "proposed orders". Instead, the Superintendent should make a decision, and that decision should be appealable to an independent tribunal.

Should a plan have a minimum number of members before the government will regulate it? If so, what minimum number of members would be appropriate?

If a pension plan is not regulated under the Act, it amounts to nothing more than a forced savings plan that is accessible at an individual's discretion and whim. Group RRSP's are an example of this.

If the pension promise is going to be met, a pension plan must be regulated. Pensions are not sustainable if they are not regulated. Although it reflects an unfortunate state of affairs, people need to be protected from themselves where pension funds are concerned, and "big brother" has to keep watch.

Registration under the Act also protects pension funds from personal bankruptcy.

Unlocking Funds

To what extent should regulators attempt to regulate an employee's right to access funds?

In our submission, an employee should only have access to pension funds in exceptional circumstances, and access should continue to be difficult. Again, it is unfortunate that too many people are short-sighted and cannot see ahead to retirement. The needs and wants of today can too easily shadow the need for a pension many years down the road.

Regulators should restrict the circumstances in which access is permitted.

In the event of personal bankruptcy, access should only be permitted after bankruptcy proceedings are completed.

Access should not be permitted in the case of mortgage foreclosure. If someone is facing foreclosure on their mortgage, this indicates a much larger financial problem which accessing pension funds will not resolve.

Access should be allowed in certain medical situations, such as shortened life expectancy and medical treatments for serious conditions that are not covered by public or private health insurance.

Requests to access pension funds should be scrutinized on a case-by-case basis, always keeping in mind that access is exceptional.

Grow-In Benefits

Since multi-employer pension plans are exempted from the requirement to provide grow-in benefits on a plan wind up and our members are not affected, we make no comment on these questions.

Safe Harbour Rules

We believe that one of the goals of the *Pension Benefits Act* should be to encourage the creation and continuation of defined benefit plans. If this is a goal, the Regulator should not make defined contribution plans more attractive by shielding sponsors and administrators from liability.

Sponsors and administrators of DC plans should have the same fiduciary duty to plan members that DB plan sponsors and administrators have.

“Best practices” might be acceptable as a defence, but it cannot bar a complaint or litigation. Otherwise, who determines whether the sponsor or administrator has actually complied with “best practices”?

Phased Retirement

What other issues are raised by phased retirement and what should be the regulatory position of Nova Scotia?

The Cape Breton Island Building and Construction Trades Council is very supportive of phased retirement.

As discussed above, many union members retire early and, while receiving their pensions, return to work. They often return to work for non-union employers who compete against unionized employers. The current rules that prohibit the accrual of benefits under a plan while drawing a pension create a disincentive to work for unionized employers under a collective agreement, because the collective agreement requires an hourly pension contribution for which members get no benefit. Phased retirement will encourage union members to return to work for unionized employers.

Conclusion

In conclusion, Cape Breton Island Building and Construction Trades Council is grateful for the opportunity to participate in the review of the *Pension Benefits Act* and to present its views on the issues raised in the Discussion Paper.

Submitted on behalf of the Cape Breton Island Building and Construction Trades Council

Mr. Cliff Murphy
President
Cape Breton Island Building &
Construction Trades Council
238 Vulcan Avenue
Sydney, NS B1P 5X2

Tel: (902) 539-2661
Fax: (902) 539-4462