SYNDICAT CANADIEN DES COMMUNICATIONS, DE L'ÉNERGIE ET DU PAPIER
COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA

Submissions to the Nova Scotia Pension Review Panel
On behalf of Communications, Energy and Paperworkers Union
Locals 141, 259, 434, 440, 576, 583 and 972

July 4, 2008

Introduction

1. These are the submissions of Communication, Energy and Paperworkers Union of Canada, Locals 141, 259, 434, 440, 576, 583 and 972 to the Nova Scotia Pension Review Panel in response to the Panel's discussion paper dated May 28, 2008. We represent employees in the pulp and paper and forest products manufacturing industries in Nova Scotia. We have negotiated pension plans, mostly defined benefit plans, with our employers and the security of the pension benefits in these plans is the single greatest concern of our members.

2. CEP Locals 259 and 141 represent the employees at the Abitibi-Bowater pulp and paper mill in Liverpool, Nova Scotia. CEP Local 972 represents the employees at the New Page (formerly Stora Enso) pulp and paper mill at Port Hawkesbury. CEP Local 440 represents the employees at the Neenah Paper mill at Ambercrombie Point in Pictou County. CEP 434 represents the employees at the Louisiana-Pacific Canada wood product manufacturing plant at East River, Nova Scotia. CEP 583 represents employees at the Minas Basin Pulp and Power Company Limited and CEP 576 represents the employees in the CKF Inc. paper plate mill which uses the pulp product produced at Minas Basin Pulp and Power Company Limited.

St. Anne Nackawic

3. On September 14, 2004, St. Anne Nackawic Pulp Company Limited shut down its mill in the town of Nackawic, New Brunswick putting 406 employees out of work. In bankruptcy proceedings, it was revealed that the employees' pension plan was underfunded by $40 million dollars **as allowed by New Brunswick law**. The employees were told that workers over age 55 would receive 87% of their pension benefits and younger workers would receive no pension benefits at all. Later changes to pension rules in New Brunswick provided for the distribution of pension funds to include those under age 55. Ultimately older workers would receive between 65% and 72% of their pension benefits.

Trenton Works Limited

4. On May 4, 2007, Trenton Works Limited in Trenton, Nova Scotia closed when its owner, The Greenbriar Companies moved production of rail cars to Mexico. A few weeks later employees were notified that their pension plan was underfunded, **as allowed by Nova Scotia law,** and their pensions would be reduced by 10%. Recognizing that Nova Scotia law was drastically deficient in protecting worker's pensions, the Nova Scotia government introduced legislation on November 23, 2007 which required pension funds to be fully funded when a pension plan is wound down. On the same day, the Minister of Environment and Labour announced his intention to create "an advisory panel to review our current legislation to ensure best practices are being followed to protect pension plan members". Bill No. 4 was duly enacted but Trenton Works Limited was insolvent and the employees' pension plan remained underfunded and their pensions were reduced.

Need for Change

5. The *Pension Benefits Act* is a critical part of labour and employment legislation in Nova Scotia. It establishes the minimum standards for pension plans and regulates those plans to ensure that they meet minimum standards and operate properly. The fundamental purpose of the *Act* is to ensure that pension benefits are properly funded on a current basis with sufficient funds held in trust to provide the retirement income promised to employees.

6. Nothing being considered by the Pension Review Panel is more important than ensuring that pension plans are adequately funded to protect the employee's pension benefits.

7. The *Pension Benefits Act* and Regulations have failed to achieve the primary objective of the *Act* of ensuring that employee pension plans are adequately funded to protect their pension benefits. In both St. Anne Nackawic and Trenton Works Limited, the pension plans were funded as required by law when the plant closed. These closures demonstrate how vulnerable employees and retirees are under the present legislative scheme. Not only is an employee's income security affected by economic factors such as international competition, exchange rates, rising costs of energy and globalization but, just as importantly, by the freedom of employers to restructure their businesses to leave no assets to cover pension benefit shortfalls on closure. At Trenton

Works, a profitable multi-national corporation moved production from Nova Scotia to Mexico and abandoned its insolvent Nova Scotia subsidiary and its insolvent pension fund. At St. Anne Nackawic, the company's corporate owners restructured the company so that its liabilities were much greater than its assets and then closed the mill leaving an insolvent subsidiary and an insolvent pension fund.

8. Ultimately the directors of multi-national corporations consider that they have a duty to their shareholders and not to their employees and retirees. If it will benefit a corporation to sell off the valuable assets of a Nova Scotia subsidiary and move production elsewhere, they will do so to remain profitable or to become more profitable in their world-wide operation.

9. Corporations based in Nova Scotia are often more loyal to their communities than multi-national corporations. However, a mill or production facility owned by a Canadian corporation or a Nova Scotia company can be sold in an instant and become the next St. Anne Nackawic or Trenton Works. Ultimately, workers covered by pension plans in Nova Scotia are faced with a legal system that gives primacy to maintaining the corporate veil, priority to the duties of directors to the interests of shareholders and bankruptcy rules that provide scant protection for employees when a pension fund is insolvent.

10. The recent examples of St. Anne Nackawic and Trenton Works demonstrate dramatically that the requirements to fund pension benefits in New Brunswick and Nova Scotia are too lax and do not achieve the fundamental and overriding purpose of protecting the pension benefits of employees.

11. We were dismayed by the overall tone of the discussion paper from the Pension Review Panel. Many of the questions appeared to emphasize proposals to make funding requirements more lax in order to encourage employers to adopt defined benefit plans. We submit that, in the case of single employer pension plans, exactly the opposite approach should be taken. Funding requirements should be tightened up to prevent insolvent pension funds. It is completely unnecessary to weaken the protection of employee pension benefits in existing single employer pension plans to promote the goal of expanding defined benefit plan coverage for the benefit of workers who are not covered by pension plans today.

Avoiding the Funding Deficit

12. We propose that a combination of measures be implemented to ensure that there is no likelihood of a repeat of Trenton Works and St. Anne Nackawic situations. These include:

a) More timely information for employees, their Unions and the Superintendent by modifying the present requirements of conducting an actuarial valuation every three years and reporting it to the Superintendent of Pensions by including the following requirements for single employer pension plans:
   - Conduct a solvency valuation every three years and report the valuation to the Superintendent, any union representing employees who are members of the plan and any advisory committee;
   - Conduct annual "mini-valuations" and report to the Superintendent, any union representing employees in the plan and any advisory committee;
   - If the triennial valuation or a mini-valuation identifies a solvency deficit conduct a full actuarial valuation annually and report to the union and the advisory committee and the Superintendent and authorize the Superintendent to order further valuations as required;
   - Improve the accuracy and transparency of valuations;
   - To avoid manipulation of the timing of actuarial valuations or of actuarial assumptions that can result in underfunding, the *Pension Benefits Act* should impose fiduciary duties on an actuary to the members of the pension plan and appropriate governance arrangements so the actuary is not acting for the employer but for the plan and its members plan beneficiaries.

b) Recommend to the federal government to increase the limit on surplus in the *Income Tax Act* above the current limits to a percentage of liabilities that reflects the volatility in the equity markets and the decline of long term interest rates.

c) Prohibit use of actuarial surplus to pay employer contributions or the use of contribution holidays until the amount of actuarial surplus reaches the *Income Tax Act*.

d) Any use of actuarial surplus over the income tax limits should be subject to negotiation between plan sponsor and any union representing employees in the plan.

e) Where a solvency valuation shows a deficit, require deficiency payments to be amortized over a five year period and authorize the Superintendent to perform ongoing risk assessment.
f) Letters of credit and asset pledges should not substitute for the amortization of solvency deficits other than in exceptional circumstances with the agreement of a union representing employees who are members of the plan and approved by the Superintendent.
g) If the employer of employees in a pension plan becomes insolvent, the Superintendent should be authorized to aggressive measures to protect employee's pension benefits.

13. The above proposals are a package of measures which, if adopted, would make it less likely that a pension plan would become insolvent due to underfunding. These proposals need to be understood in context.

Context

14. These proposals for improved regulation of single employer pension plans must be understood in a broader context. During the later part of the twentieth century a booming stock market in Canada and high yields on long term bonds allowed many defined benefit pension plans to generate actuarial surplus. Starting in the year 2000, there has been a sharp decline in long term interest rates and significant fluctuations in the equity markets. These economic changes have had the combined effect of increasing the actuarial liabilities of defined benefit pension plans on solvency valuation because of low interest rates and decreasing the actuarial assets of pension funds through declines in the equity markets and the unavailability of long term bonds. This has led to deficits and, accordingly, the obligation on employers to make special payments to amortize these deficits.

15. We have gone from a situation in the 1980's and 1990's in which employers were able to make their pension contributions from actuarial surpluses or actually took contribution holidays to the situation in the last five years in which employers have had to make significant special payments. The table below is taken from information in the Superintendent of Pensions Annual

Reports Under the *Pension Benefits Act* between 1995 and 2000. There is no information on contribution holidays prior to 1995 but between 1995 and 2005 employers took their contributions from surplus in the amount of approximately $275 million dollars. During the same period, employers' special payments totaled approximately $425 million dollars.

Contributions

Year Ending March 31st	Employee Required	Employee Voluntary	Employer Current Service	Employer From Surplus	Employer Special Payments
1993	$63,087,000	$2,155,000	$68,352,000	$21,000,000	$18,267,000
1995	64,457,000	3,141,000	89,736,000	11,377,000	20,883,000
1996	66,027,000	4,290,000	93,667,000	15,359,000	27,504,000
1997	63,596,571	2,892,259	82,286,426	22,843,263	31,165,762
1998	57,130,100	3,692,900	71,107,300	30,699,000	15,452,600
1999	61,622,082	3,799,532	82,361,636	35,393,276	11,199,224
2000	70,733,592	4,297,249	120,125,308	24,939,610	12,688,150
2001	79,380,496	5,141,672	114,957,179	40,371,293	8,311,712
2002	92,082,098	6,158,407	129,941,527	34,540,640	14,555,580
2003	102,641,505	6,599,899	159,903,068	12,121,671	52,628,147
2004	113,650,987	7,201,464	183,025,594	7,999,163	58,382,567
2005	131,899,244	8,672,281	202,525,553	3,439,797	83,948,133
2005	131,487,719	8,354,141	209,569,311	16,532,969	70,890,147
Total				**$276,616,682**	**$425,876,022**

16. Even if employers had foreseen the decline in actuarial assets due to stock market volatility and wished to create a cushion of surplus, the *Income Tax Act* prohibited the accumulation of surplus in defined benefit pension plans above 10% of the actuarial liabilities of the plan.

17. This unstable arrangement has been aggravated by one of the central features of most defined benefits plans in Canada. For the most part, employers have exclusive control over the

governance and management of the plan and investment of a pension funds. The vagaries of the financial markets have been aggravated when employers used their investment policies to position themselves for future contribution holidays or adopt aggressive actuarial assumptions in order to reduce their contributions.

18. The exclusive control that employers have over the governance, management and investment of a pension plan creates “risks” for employees, including:

- Inadequate funding of a pension plan on employer bankruptcy or insolvency;
- Poor pension plan governance by the employer who has exclusive control over the terms and operation of the pension plan;
- The lack of participation in pension plan governance;
- The lack of information about the pension plan, its governance, and its funded status;
- The inherent conflict of interest between the employer’s own economic interests and its role as pension plan administrator, which can result in inadequate funding; and
- The close relationship between the plan’s actuary and the employer, which can result in the use of assumptions that are advantageous to the employer but not to the plan and its beneficiaries.

19. Employers have also used pension surpluses to fund generous early retirement packages, used to “buy-out” older employees when “downsizing” was necessary. By using pension plans in this way to fund their human resources needs, employers were able to avoid significant costs associated with severance, common law notice or pay in lieu of notice, and, in unionized workplaces, employee seniority and bumping rights. There are no statistics available to quantify the cost of these early retirement buy-outs to pension plans and the value to corporate bottom lines.

20. It is within this overall context that we propose significant improvements in the transparency of administration of pension plans by reporting to the Superintendent and to unions representing members of the plan and to unions and advisory committees and also reforms in the role of the plan actuary and the plan administrator to overcome potential conflicts of interest that

arise when employers have total control of the administration of pension plans. Further, this context explains our proposals to limit contribution holidays and to promote retention of surplus to cushion the effects of volatile financial markets.

Timely Information on Funding Issues

21. We suggest that the current requirement of the filing an actuarial valuation at three year intervals is appropriate for the single employer defined benefit pension plan, provided that timely information is provided to the union, the advisory committee and the Superintendent. However, in addition, we support the suggestion from a number of quarters that the plan administrator prepare and file annual mini-valuations and the Superintendent should have the authority to order interim valuations where it is appropriate. We propose that when a single employer defined benefit pension plan is in deficit as a result of a solvency valuation, annual valuations should be performed and filed with the Superintendent.

22. A very important feature of our proposal is that any information filed with the Superintendent should also be provided to a union representing employees in the plan, if there is one, the advisory committee and the Superintendent of Pensions. In our view, transparency of pension plan administration is essential to permit the social partners and the Superintendent to play their role in ensuring that the single employer pension plan is properly funded. Presently, some of the materials filed with the Superintendent of Pensions can be accessed by unions or members of advisory committees but this has become more and more difficult in recent times. We propose that anything filed with the Superintendent the plan, amendments of the plan through the various filings of financial information and everything concerned with wind-ups should automatically be provided to the union and the advisory committee.

23. Along with greater transparency and timely sharing of information with the Superintendent and the social partners and improved ability of plans to cushion fluctuations in the financial markets by retaining surplus, it is essential that the role of the plan actuary be reformed. In single employer defined benefit pension plans the administrator is usually the employer. The employer hires the actuary and provides instructions. An actuary may be instructed to follow very conservative assumptions or to follow assumptions (within the range of

actuarial science) that may risk underfunding. A manipulation of the timing of valuations may result in underfunding.

24. Actuarial valuations should be made more accessible and understandable to employees by disclosing the key assumptions made by the actuary. In the case of a single employer pension plan solvency valuation smoothing of assets or discount rates should not be permitted. No benefits including grow-in benefits should be excluded from the calculation. A standard mortality table should be required for actuaries performing plan valuations.

25. There is always a degree of conflict of interest between the interests of the employer/administrator (i.e. to limit the employer's cost) and the interests of the plan members which is to be certain that the pension plan is funded if the employer becomes insolvent. The *Pension Benefits Act* should clearly state the fiduciary obligations of the plan actuary to the beneficiaries of the plan and to involve the plan beneficiaries in giving instructions to the actuary and receiving advice from the actuary.

Income Tax Act Limits

26. We also propose that the Review Committee recommend to the federal government that the limit on surplus to 10% of plan liabilities in a solvency valuation should be increased. The amount of the increase is a matter for research and analysis by the federal tax authorities. What is needed is to review the impact of the present limits on the accumulation of surplus in plans as it relates to deficits that plans later encounter. It seems clear that the present limit does not allow pension plans to accumulate a cushion of actuarial surplus that is adequate to avoid putting the plan in deficit down the road when the financial markets fluctuate downwards as they inevitably will.

Contribution Holidays

27. For the reasons discussed above, we also propose that the *Pensions Benefit Act* be amended to put strict limits on employers using actuarial surplus to make their required contributions to the plan and that the same limits should be put on contribution holidays. The use

of such contribution holidays has had a direct effect on the creation of pension plan deficits. This can have disastrous effects on employees if the pension plan has gone into deficit and the plant closes.

28. In our view employer contributions from actuarial surplus or contribution holidays should only be permitted if the actuarial surplus exceeds the limits imposed by the *Income Tax Act*. Payments from surplus or taking contribution holidays should only be permitted with the agreement of a union representing employees in the plan, if there is one, or the pension advisory committee if there is no union and after the Superintendent has given approval. When an employer has been permitted to make contributions from surplus or take a contribution holiday the employer should be required to submit annual mini-valuations to the Superintendent in addition to the triennial full valuations in order to continuously monitor the fund status of the plan. We also propose that any payments of employer contributions from surplus or contribution holidays should be disclosed to the plan members in an annual statement.

Amortization

29. For the single employer defined benefit pension plan, a solvency deficiency on an actuarial valuation should be amortized over a five year period. A full actuarial valuation should be done in each of the years in which there remains a solvency deficiency. The Superintendent of Pensions should be authorized to assess the risk to employees, to make orders for additional valuations or reports and to share all of the information collected with a union in the workplace or with an advisory committee if there is one. An insolvent pension fund should trigger the strictest of scrutiny until full funding has been restored.

30. In our view, letters of credit and asset pledges should not substitute for amortization of solvency deficits. However, there may be circumstances where, based on an assessment of the risk of employer insolvency in circumstances where the plan is insolvent, the Superintendent may approve the use of a letter of credit secured by a bank or other financial institution in the event that the assets of the employer are insufficient to pay the solvency deficit if the employer goes bankrupt.

31. In our view, any letter of credit in such exceptional circumstances should be limited in time. A letter of credit does not generate investment income. The employer must amortize a solvency deficiency within the usual timeframes.

Insolvent Employer

32. If the employer with a single employer pension plan becomes insolvent, the Superintendent should be given the power to take aggressive measures to protect employee's pension benefits. This would include the mandate to intervene in bankruptcy proceedings, to challenge fraudulent preferences and to pursue assets of the insolvent employer. The Review Committee should recommend to the Province that it urge the federal government to amend the *Bankruptcy Act* to provide priority for unpaid pension contributions ahead of secured creditors.

33. A combination of all of these measures needs to be put in place to ensure that the pension benefits promised to employees are fully funded and available for them if the employer becomes insolvent.

Use of Surplus

34. Our proposals to tighten up the funding requirements of single employer defined benefit pension plans are based on a conservative view of the use of actuarial surplus. Accumulation of actuarial surplus in times of high investment returns is a positive. In our view, the surplus should be retained up to the proposed increased limits in the *Income Tax Act* to ensure that the plan remains fully funded on a solvency basis if investment returns decline. It would be much less probable that a pension plan of an employer like Trenton Works or St. Anne Nackawic would be in deficit upon closure of the operation.

35. At or above the *Income Tax Act* limits two possibilities exist, namely, a temporary reduction in contributions by the employer or the employees or both, or plan improvements. None of these options should be chosen without careful regard for the future solvency of the plan. The choice of options should be determined by negotiation between the employer and the union, if there is one, and should be subject to approval by the Superintendent of Pensions.

36. Actual surplus on a windup or a partial windup is a different question. There is no actual surplus until all of the plan benefits, including grow-in benefits are fully funded. The ownership of actual surplus after all of the benefits are funded is determined by the terms of the plan and the applicable trust principles. It may be beneficial to codify the legal principles relating to pensions in the *Pensions Benefit Act*. This is a very substantial undertaking. We recommend that the Review Committee monitor the Ontario Pension Review where significant resources and attention have been paid to this issue and where recommendations for change may well be appropriate in Nova Scotia. Our view is that actual plan surplus should be used for the benefit of plan beneficiaries. We propose that the employer should bear the costs of a pension plan wind-up including legal fees, not the pension fund unless there is a significant actual surplus.

Minimum Standards

37. The *Pension Benefits Act* provides minimum standards for pension plans in Nova Scotia which include both standards for plan administration and for the benefits to be provided in a pension plan. Some of these minimum standards should be enhanced and new ones should be included in the *Act*.

Vesting, Locking-In and Portability

38. We agree with the Nova Scotia Federation of Labour that Nova Scotia should follow Quebec's requirement that a new employee's pension benefits vest immediately when the employee joins the plan. We also support the Federation's position that all vested pension rights should be locked-in. This, along with enhanced measures for portability should help ensure that the employee's retirement income is protected.

39. Immediate vesting and locking-in must be accompanied by better standards of portability. At the present time, an employee whose employment is terminated receives the "commuted value" of their pension for transfer to some other locked-in arrangement. We propose that the employee be given the right to stay in the former plan or to "buy-in" to the plan of a new employer.

40. In our view, employees should be given the option of "buying-in" to the pension plan of their new employer by permitting transfer of funds based on the aggregate value of their benefits rather than individual benefits. All plans should be required to permit "buy-in" and include the calculation method in the plan. Employees should have the choice of "buying-in" to the new plan or staying in their former plan.

Coverage of Part-time Employees

41. We also support the recommendation of the Nova Scotia Federation of Labour that where an employer provides a pension plan which is mandatory for full-time employees, it should also be mandatory for part-time employees. Large numbers of employees in Nova Scotia work on a part-time basis. They are disadvantaged in the amount of their retirement income because their working income is less than that of full-time employees. Often, they are excluded from participating in the employer's pension plan and become significantly more disadvantaged in accumulating retirement income.

Indexation

42. We propose, as a minimum standard, pension plans must provide for indexation of pension benefits and require the employer to notify pension plan members of the indexing formula or arrangement. Even at low rates of inflation, over time the real personal income of a retiree is dramatically eroded by increases in the cost of living. This is so even where a pension plan provides for some indexing. For example in the pulp and paper industry in Canada partial indexing is provided as follows:

> "There will be a temporary annual post retirement adjustment equal to 50% of the increase in Consumer Price Index, to a maximum adjustment of 5%. This temporary Post Retirement Adjustment formula is renewed for a ten (10) year period, from 1 June 2004 to 31 May 2014, with payment on an every other year basis in 2005, 2007, 2009, 2011 and 2013 (last payment)."

43. Even with partial indexing a retiree would have a very significant reduced pension in real terms after 10 years. Plans with no indexing at all inevitably lead to drastically reduced circumstances for a retiree 20 years after retirement.

44. We support the proposal of the Nova Scotia Federation of Labour that full indexing should be mandatory under the *Nova Scotia Pension Benefits Act* to preserve the real purchasing power of the pension benefits of retirees.

Grow-In Benefits

45. Employees in any manufacturing industry in Nova Scotia are faced with the very real threat of plant closure because of globalization, exchange rates, increasing energy costs and other economic factors completely beyond their control. Most single employer defined benefit pension plans provide for retirement with a pension at a normal retirement age or early retirement without actuarial reduction. In the pulp and paper industry for example, employees are entitled to retire on the following basis:

> "Optional retirement following the attainment of age fifty-eight (58) and twenty (20) years of credited service with no actuarial reduction. Early retirement is permitted between ages 55 and 58 with 20 years service with an actuarial reduction of 6% per year from age 58.
>
> Example: 94% if age 57
88% if age 56
82% if age 55
>
> Members who retire on or after June 1, 2009
Optional retirement following the attainment of age fifty-seven (57) and twenty (20) years of credited service with no actuarial reduction. Early retirement is permitted between ages 55 and 57 with 20 years service with an actuarial reduction of 6% per year from age 58.
>
> Example: 88% if age 56
82% if age 55"

46. A large proportion of the employees that we represent are over age 45 and under age 58. A plant closure at any time will be a disaster for employees under age 58 because of the actuarial reductions required in the plan. Section 79 of the *Pension Benefits Act* provides some relief for employees caught in that situation.

47. We are strongly opposed to the regulatory change made a few years ago that excluded calculation of the cost of the benefits under Section 59 from a solvency valuation. This must inevitably result in an underfunded pension fund if the plant closes and the employer is insolvent.

48. The grow-in benefits under Section 79 provide some measure of protection for employees under age 58. Many will have worked for 25 or 30 years for an employer with a legitimate expectation that they will receive retirement income at a certain level. Without the grow-in benefit their expectations of retirement income are based on an illusion if the employer becomes insolvent in the event that the plant closes.

49. In our view, the grow-in benefits should not just be maintained but should be extended. Where there is a windup of a single employer pension plan or a partial windup of a single employer pension plan, any surplus available in the plan should be devoted to producing a benefit to bridge employees whose combination of age plus years of employment equals at least 55 until they are eligible for an immediate payment of a pension benefit under the plan. Grow-in benefits should be required for multi-employer pension plans such as those that exist in the pulp and paper industry where a single corporation operates a number of subsidiaries. We propose that the *Pension Benefits Act* be amended to preserve entitlement to grow-in benefits if a company should merge plans and create a multi-employer plan.

50. The closure of a plant where the plan is insolvent produces the social conflict which was seen at St. Anne Nackawic where any measure of relief for employees under age 55 came at the cost of employees who were eligible to retire at the time of closure and the retirees themselves. Our proposals to limit contribution holidays to allow plans a comfort zone of an actuarial surplus and our proposal that the cost of grow-in benefits be included in a solvency valuation are necessary to address the fundamental injustice of significantly reduced retirement benefits for employees in the pulp and paper industry between ages 45 and 58. Otherwise, what was legitimately seen to be a comfortable retirement leads to significantly straightened circumstances upon the closure of the plant.

Information for Plan Members

51. Currently, the *Pension Benefits Act* requires some limited disclosure and reporting to plan members. However, the information that must be either disclosed or reported, and the frequency

of reporting, is not sufficient for plan members and unions to understand the state of a pension plan.

52. For example, the Act requires the administrator to send an annual statement to every plan member. This is essentially a statement of the individual's pension "account". The annual statement must include information such as:

- The date on which the member became vested
- The name of the person's designated beneficiary
- The number of years of pensionable employment
- The accrued annual pension benefit

53. This information says nothing about the financial health or quality of governance of the plan.

54. Plan members should be entitled to know about the operation, administration and funding of their pension plan. The Act should require the annual reports to members to include the following information (expressed in language that members can understand):

- The plan's governance structure and policies, including funding and investment policies
- Any amendments made to the plan during the previous year
- The structure of plan assets and liabilities
- Pension fund investments and quarterly investment reports from the fund's investment managers
- The rules governing surplus
- Responsibility for actuarial deficits
- Annual administrative costs and their breakdown
- Whether the employer is taking a contribution holiday

55. All of this information should also be included in the annual filing with the Superintendent under the *Act*.

56. In addition, just as the *Occupational Health and Safety Act* requires an employer to post health and safety policies in the workplace, an employer should be required to post or otherwise make available the pension plan, any amendments, and the governance policy.

57. Another shortcoming of the current *Act* is the absence of any requirement to for the administrator to report information to a union that represents plan members. Under the *Act*, the administrator must on written request make certain plan documents available for inspection by a member or a union. The *Act* should require the administrator to send to a union copies of all documents relating to a pension plan that are filed with the Superintendent, including:

- Plan amendments
- Actuarial reports and any mini-valuations
- Wind-up reports
- All of the information about the plan that is sent to individual members

Governance

58. Good pension plan governance is vital to safeguarding employee entitlements to the benefits promised under pension plans. Therefore, to further its main objective, the *Pension Benefits Act* should establish minimum governance requirements to supervise governance and promote good plan governance.

59. The Canadian Association of Pension Supervisory Authorities ("CAPSA") has developed a set of 11 principles, with supporting guidelines, for pension plan governance. The principles and guidelines were developed in consultation with stakeholders and have been "test driven" by pension plan administrators. These principles and guidelines provide a useful foundation for a set of legally binding minimum governance requirements for all pension plans in Nova Scotia. Pension Plan administrators should be required to establish and act in accordance with a governance policy that complies with the principles and guidelines.

60. The CAPSA principles and guidelines confirm the fiduciary and other duties of plan administrators to members and beneficiaries and require the following:

- The establishment of governance objectives for the oversight, management and administration of the plan, which should be clearly documented;

- The clear description and documentation of all participants in the pension plan governance process and all actions taken;
- The establishment of performance measures and regular monitoring the performance of participants who have decision-making authority in the governance process, and procedures for follow-up actions to correct inadequate performance;
- That the administrator, delegates and committees in the governance structure should together possess and apply the knowledge and skills to fulfill governance responsibilities, and that the plan administration be provided with the necessary appropriate training and ongoing education;
- Access to relevant, timely and accurate information by the plan administrator and, as necessary, any delegates to enable them to perform their responsibilities effectively;
- The establishment of an internal control framework, commensurate with the plan's circumstances, that addresses the plan's risks, including policies on: documentation, record keeping, <u>funding, fund investment</u>, expense control, benefits administration, outsourcing, compliance, and communication, fees, and delinquency control;
- The establishment of appropriate mechanisms to oversee and ensure compliance with the legislative requirements and pension plan documents and policies;
- A communication policy and the communication of the governance process to plan members, beneficiaries and other stakeholders to facilitate transparency and accountability, and the establishment of a procedure for handling member inquiries and complaints, and a conflict resolution process;
- The establishment of a code of conduct and a policy to address conflicts of interest; and
- Regular reviews by the plan administrator of its plan governance procedures and practices to assess their effectiveness compared to the plan's governance objectives.

61. In addition to these principles and guidelines, the *Act* could require a minimum frequency of meetings for the plan administrator, and require the administrator to hold an annual general meeting to which all plan members and beneficiaries would be invited.

62. Any regulation of governance must strike a careful balance. They must be specific enough to enable compliance, reporting, and oversight by the Superintendent, while being flexible enough to apply to all types and sizes of plans.

63. The *Act* should require plan governance policies to be filed with the Superintendent. Plan administrators should be required to report on their compliance as part of the annual filing requirements under the *Act*.

64. The governance policies should be made available to all plan members and beneficiaries. The *Act* could require all plan documents to be posted in the workplace in the same manner as workplace health and safety policies must be posted under the *Occupational Health and Safety Act*. Copies of all plan documents should also be available on request to the administrator.

65. The *Act* should authorize the Superintendent to make orders requiring corrective action to bring governance into compliance with the *Act*. The *Act* should further authorize the Superintendent of Pensions to intervene and impose an administrator on a pension plan where governance by the existing administrator falls below a minimum standard, such as gross negligence or failure to comply with corrective orders.

An Enhanced Model of Regulation

66. In our submissions, we have proposed a number of enhancements of the power of the Superintendent of Pensions. The Superintendent already has extensive regulatory powers including the registration of pension plans, assessing their amendments, assuring that pension plans are administered according to the *Pension Benefits Act* and the terms of the pension plan, administering wind-ups and partial wind-ups and the distribution of surplus and other significant roles. We have proposed here that the Superintendent have enhanced powers to address situations where a single employer pension plan has a solvency deficit. We have suggested increased powers of the Superintendent to regulate matters of governance of pension plans.

67. The Review Committee will have to assess whether the present structure and resources of the Superintendent's office are adequate to carry out these enhanced roles. The role of the Superintendent should be clearly stated in the *Act* as the protector of the interests of the plan beneficiaries. Her overriding responsibility should be to ensure that pension plans are properly funded.

68. The present *Pension Benefits Act* has a strange provision that provides for an appeal from orders of the Superintendent to the Superintendent herself. As one might expect, a review of the record indicates that the Superintendent has never overturned her own decisions. We suggest that a proper regulatory model would permit an appeal from orders of the Superintendent to a part-time expert tribunal. Appeals from the expert tribunal could be limited to questions of law and appealed directly to the Nova Scotia Court of Appeal.

The Future of Defined Benefit Plans

69. The CEP Locals submit that the Review Committee's main task is to assure plan beneficiaries that they will receive their plan pension benefits. We have stressed that the present *Pension Benefit Act* is not adequate to provide that assurance. We have seen that an employer can meet all obligations of the funding regulations and leave the plan in deficit if the plant closes. Despite the new requirements to fully fund a pension plan in those circumstances, these duties mean nothing if the employer is insolvent. Above all else, we urge the Review Committee to make recommendations to ensure that pensions are properly funded on a current and ongoing basis so that the insolvency of the employer will not lead to the loss of pension benefits.

70. The discussion paper raises broad questions, many of which seem to share the assumption that the present rules for single employer defined benefit pension plans are too restrictive and burdensome to employers and need to be loosened to encourage employers to maintain present defined benefit plans and start new ones. Our view is completely the opposite. The present rules are too lax. The plan beneficiaries in single employer defined benefit pension plans are unfairly at risk of losing their pension benefits if their employer becomes insolvent.

71. The discussion paper records arguments that the pension system is unfair to employers with defined benefit plans because the employer is responsible to make special payments to amortize deficiencies if investment returns are poor but have no automatic right to take surplus if investment returns are good. It is argued that employers will be reluctant to make sufficient contributions to fund benefit plans because these contributions may result in surplus which is trapped and inaccessible to the employer.

72. With all due respect to those arguments, an employer contributes the minimum amount required by the plan actuary as a result of the triennial valuations. In our experience, if there is an actuarial surplus, employers will reduce their contributions by paying contributions from the surplus. Employers have complete control over the investment policies of the plans and employees are kept in the dark about investments and the administration of the plan generally. Yet, in the manufacturing sector, in the pulp and paper industry and forest products industry where we work, employees face the real and palpable risk of loss of pension benefits if the operation closes.

73. In these submissions, we have proposed restrictions on freedom of employers to take contribution holidays and have suggested strict rules for the amortization of deficits. These are necessary in the case of the single employer defined pension benefit plans to ensure the payment of the pension benefits.

74. A new model of defined benefit plans is needed to address the reluctance of employers to agree to new defined benefit plans and the risk to employees in existing defined benefit plans that they will not receive their benefits. We believe that defined benefit plans are in the best interest of employees and society as a whole. We agree with the comments of Mr. David Dodge, the then Governor of the Bank of Canada in his address to the Conference Board of Canada 2007 Pension Summit in May, 2007, where among other things he says:

> "For society as a whole, defined-benefit plans can also mitigate risks more effectively. While defined-contribution plans typically offer members a limited range of investment choices, the managers of defined-benefit pension plans have both the ability and the incentive to invest in the kinds of assets that the average individual investor might not normally consider. This helps to reduce the possibility I mentioned earlier that these pools of contributions could be invested in a less-than-optimal way; that is, that there could be a reduced supply of long-term risk capital for the economy. Further, pension managers are more likely to invest in alternative asset classes and to engage in arbitrage between markets. All of these activities make financial markets more complete, and thus enhance their efficiency."

75. A new model of defined benefit plans is needed for Nova Scotia workers. For the workers we represent the existing *Pension Benefit Act* rules must be modernized and improved. Lax funding rules must be tightened. Greater transparency must be mandated. Minimum standards must be improved. Grow-in benefits must be maintained and extended.

76. We appreciate the opportunity to make these submissions to the Pension Review Committee and look forward to the opportunity to meeting with the Committee to discuss our views.