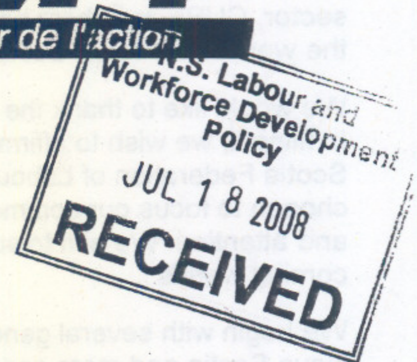

Submission to the

Nova Scotia

Pension Review Panel

from the

Canadian Union of Public Employees - Nova Scotia Division

July 17, 2008

Introduction

The Nova Scotia Division of CUPE is the voice of some 11,000 public sector and public service workers in Nova Scotia – people who work on the front lines in health care, school boards, highway workers, universities, municipalities, home support, social services, child care and more. As members of many different Nova Scotia pension plans in both the public and private sector, CUPE members have substantial first-hand experience and knowledge to contribute to the work of the Nova Scotia Pension Review Panel (hereafter "the Panel").

We would like to thank the Panel for this opportunity to present the following written submission. In filing it, we wish to affirm our support and agreement with the submission filed by the Nova Scotia Federation of Labour (NSFL), of which we are one of the largest affiliates. We have chosen to focus our comments below on a set of issues that we feel merit particular emphasis and attention. We aim to supplement this written submission with an oral presentation in the coming weeks.

We begin with several general observations regarding the pension system as it has evolved in Nova Scotia and more generally across the country. The struggle for basic pension entitlements, and for legal regulations to protect those entitlements, has been engaged for more than a century, and the labour movement has been a principal actor in that struggle. While we have fought for and won many important gains, we are the first to recognize the partial nature of our victories. First and foremost, we fought for many years for the establishment of an adequate and universal public pension system. While the establishment of the federal Old Age Security system (OAS) and the Canada Pension Plan (CPP) in the 1950s and 1960s were turning points for Canadian workers' retirement security, they were and remain inadequate to the task of securing retirement incomes sufficient to place retirees comfortably above the poverty line and living with dignity.

As a result, the Canadian labour movement has responded by working very hard to gain, defend, and improve what we view as supplemental workplace pension plans, including the defined benefit pension plans that appear to be the principal focus of the Panel's work and its Discussion Paper. We are very mindful of the recent decline in pension coverage over the paid workforce noted in the Panel's Discussion Paper.

However, we consider it important to recognize that the declines in defined benefit ("DB") pension coverage in recent years have been almost entirely within workplaces that are not unionized and within the private sector. In this context, recent moves by various governments to shift jobs, agencies, and entire functions from the public to the private sector through various forms of privatization and contracting-out is having the effect of reducing quality pension coverage of the workforce. Moreover, certain private sector employers have closed down their DB plans when their costs rose and they did not face any trade union opposition within their workforce.

In this light, it should be noted at the outset that we are not persuaded that a more "liberalized" pension regulatory framework, which weakens the protections for plan members or undermines pension security, will serve to address the pension coverage problem. In fact, such a move risks doing damage to the hard fought rights and protections currently in place for those workers now participating in workplace defined benefit plans, while failing to actually deliver the expanded coverage that is the ostensible objective.

In observing this, we observe that the recent reviews of the pension systems of various provinces (Ontario, British Columbia and Alberta, and now Nova Scotia) have been launched in the context of a number of high profile employers and pension industry organizations lobbying very hard for changes to the pension system that we view as entirely to the advantage of employers at the expense of pension plan members. Therefore, we are very glad to take part in the Panel's review process as a trade union and a voice for our members, and as an advocate for a strong workplace pension system governed by a strengthened regulatory framework.

The Imbalance of Power in the World of Pensions

While we are strong defenders of the pension system, CUPE Nova Scotia has a number of concerns. Particularly in cases where pension plan members do not enjoy the benefit of trade union representation, employers are all too often able to make crucial decisions about workers' pensions – benefit levels, surplus disposition, contribution rates, investment policies, member communication – unilaterally. In our view, this concentration of power often has serious negative consequences for the pension rights – and actual entitlements – of pension plan members.

CUPE and other trade unions have struggled long and hard against this power imbalance, and we have won important victories along the way. The strengthening of pension legislation and regulation has extended vital protections over pension plans, and we work hard to supplement these protections where we can through collective bargaining over individual plans. In certain cases, Jointly Trusteed, or "Jointly Sponsored" plans have been established, such that significant decision-making authority over a plan is conferred on a Board of Trustees, one-half of which is named by trade union representatives.

Nonetheless, in spite of the important progress made, serious problems continue – even within plans that are jointly controlled. The recommendations in the present submission are directed to addressing and mitigating this continuing power imbalance.

Key Issues

We have reviewed the Panel's Discussion Paper in detail, and appreciate both its scope and the questions it has posed. For our part, we aim to answer many (though not all) of its questions in the course of our discussion of our most central concerns – explicitly in some cases, and indirectly in others. We organize our comments under the following headings.

1. The importance of pension fund and surplus security
2. Public-Private Partnerships (P3s) and other risky pension investment trends
3. Strengthening minimum standards
4. Improving plan governance
5. Declining DB pension coverage and benefit inadequacy

1. The importance of pension fund and surplus security

[Corresponding, in part, to the Panel Discussion Paper's Questions under section 4.3 (Surpluses)]

We observed in our introduction that there remains a power imbalance between pension plan members and employers. This imbalance is directly relevant to another of the focal issues raised by the Panel's Discussion Paper – the rules on funding, surpluses, deficits and security.

Following the market drops of 2000-2002 and the decline in long-term interest rates, many of pension funds began reporting funding deficiencies. These deficiencies were revealed under either or both of the "going concern" and "solvency" measures of funding balance. When these

deficiencies are reported, particularly when the obligation to fund them falls to the employer, the situation is invariably presented to plan members as a "crisis".

Too often, the employer response to such "crises" is to transfer as much as possible of the costs onto plan members through various changes to the plan: benefit cuts, member contribution rate increases and new claims on future surpluses – sometimes all three. In certain cases, employers have even moved to freeze or shut down their plans entirely. We sometimes see short-term funding problems used as a rationale for long-term or permanent losses for the plan members.

CUPE views pension funds as mechanisms that hold workers' deferred wages. On this point, our answer to the Discussion Paper's first question under Section 4.3 is strongly in the affirmative – this is very much a valid concept. In practice, we experience very directly the reality that all pension contributions made by employers are incorporated into their calculation of their payroll cost, and this cost directly informs their bargaining (both formal and informal) around wages and other compensation. These deferred wages are earned at the time that contributions are made – not at the time that pension benefits are eventually paid out. When contribution requirements rise, and when deficiency payments are required of employers, these cost increases automatically and understandably affect the employer's negotiating position on other cost and compensation issues.

In this light, the claim that employers suffer from an "asymmetry" of risk and reward with defined benefit pension plans is spurious.[1] The risks faced by employers who face short-term pension costs is ultimately, always, shared with their workers. The overarching risks faced by workers – of pension benefit cuts, of contribution rate increases, of plan "conversions" – tend to be left entirely unmeasured in these formulations.

The Dangers of Contribution Holidays

CUPE and other trade unions have seen the practical reality of pension "risk-sharing" revealed in actual lived experience. At a very general level, pension funds were awash in surpluses through the roaring 1980s and 1990s. Many employers enjoyed years of contribution holidays during this period – all too often without reporting this fact to plan members. When asset values dropped in 2000-2002, many employers were forced to not only start making their full current service contributions again, but in many cases to add additional payments to amortize deficiencies. Not surprisingly, they do not like this growth in pension cost, and they have responded with the claim that the entire DB system is "in crisis".

Fortunately, we do have some industry voices willing to admit that such claims are overblown, fuelled by employers and other industry players simply wanting to escape or reduce their pension costs (or recover them through future contribution holidays). A comprehensive August 2007 study by DBRS suggests that the public perception of a serious pension funding problem in North American pension plans is, in fact, "a myth". Their conclusion, following an extensive review of the recent financial history of 536 North American plans, is that 70% of plans are well funded. Looking forward from mid-2007:

[1] The concept of "asymmetry" of the risk-reward dynamic suffered by employers is most elaborately developed by the Association of Canadian Pension Management (ACPM) in: "Back From the Brink: Securing the Future of Defined Benefit Pension Plans," Association of Canadian Pension Management, August 2005. Available at: http://www.acpm.com/docs/ACFD2B.pdf For an even more aggressive formulation of this employer view, see David Laidler and William B. P. Robson, "Ill-Defined Benefits: The Uncertain Present and Brighter Future of Employee Pensions in Canada," Commentary, C.D. Howe Institute, June 2007, and CGA-Canada, "The State of Defined Benefit Pension Plans in Canada: An Update," Research Report, 2005. Available at: http://www.cga-canada.org/en-ca/Pages/default.aspx

> …DBRS believes that the funded status of plans is likely to continue to improve in 2007, leading to an increased number of fully funded plans. With few exceptions, *pension funding deficiencies are becoming less of an issue.*[2]

We consider such reports to be important counterweights to the continuing marketing of a "pension crisis" resulting from "asymmetric risks" faced by employers.

CUPE also urges the Panel to examine the character and causes of the recent spate of deficiencies quite closely. A research analysis published in June 2005 reviewed the data on employer contribution holidays in the British Columbia and federal jurisdictions. They discovered that these holidays – resulting in huge cost savings for employers – were a significant factor in the emergence of the later deficiencies.

> Of the 42 significantly under-funded (i.e. going-concern funded ratio of 80 to 89.9 per cent) or extremely under-funded (i.e. going-concern funded ratio of 70 to 79.9 per cent) pension plans in the study, *45 per cent would have completely eliminated their current actuarial deficit if contribution holidays had not been taken.*[3]

It seems to us very likely that a similar analysis of Nova Scotia plan experience would show similar results. This study also showed that in many cases, the employer involved recognized the funding deficiencies, but they continued to take them (and put funding security at risk).

> OSFI documents that in 2003/2004, 16 federally regulated pension plans continued to take contribution holidays when they were aware that they might no longer be in a surplus position…While these plans resumed their contributions following OSFI's enquiries, the regulator's findings raise concerns about employers' contributions, as well as policy and enforcement practices related to contribution holidays.[4]

Too often, we see these same employers responding to the obligation to contribute again – or contribute more - with moves to cut members' benefits, or using the funding problems that they helped create (by taking holidays) as a rationale for full conversion or plan windup. Another strategy, sometimes used in combination, is to impose increases to the fixed member contribution rates to the plan. Finally, employers will also bring their concern regarding pension cost increases to the wage negotiation table. Clearly, there are many different mechanisms through which pension costs and liabilities are shared between employers and plan members – far beyond the explicit and formal sharing of contributions to the plan (or current service cost sharing). As such, we have a particularly difficult time accepting the notion that employers suffer from a risk-reward "asymmetry".

In our view, the risks associated with pension funding are still ultimately shared by workers.[5] Moreover, we see no reason to believe that the various proposals coming from employers and their agents – to increase their access to surpluses (via contribution holidays), or to relieve employers of their established funding obligations, will actually contribute to pension fund security.

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[2] DBRS, "Pension Plans: The Myth of a Pension Problem", Industry Study, August 2007, p. 6 Emphasis added.
[3] SHARE, "Taking a Holiday: The Impact of Employer Contribution Holidays on the Funding of Defined Benefit Pension Plans," Research Report, June 2005, p. 5-6. Available at: http://www.share.ca/files/Taking%20a%20Holiday.pdf
[4] Ibid. p. 11
[5] In the UK, trade union advocates have argued that the move by employers to close DB pension plans was a simple response to the fact that "contribution holidays were over". See citation in Monica Townson, Growing Older, Working Longer: The New Face of Retirement, Canadian Centre for Policy Alternatives, 2006, p. 66.

"Excess Surplus" Rules

Where CUPE members do see an explicit asymmetry – at their expense – is in the *Income Tax Act* (ITA) rules on so-called "excess surplus". The ITA requirement of employer contribution holidays in instances where valuations show an "excess" surplus has only exacerbated the current problems by cutting off the employers' funding flow to the plans. CUPE has repeatedly argued, along with many in the labour movement, that the excess surplus rules in place and the "remedy" of employer contribution holidays were ill conceived at the outset and should be repealed.

We note that on this issue, our critical view is shared by analysts at both the C.D. Howe Institute and the Certified General Accountants Association of Canada. Both groups have argued that the existing excess surplus thresholds are too low and should be immediately raised.[6] Our view is that the original "excess" threshold was never justified, and that even if it were, benefit security or enhancement ought to have been the priority for eliminating such "excesses". Plan members should benefit from positive plan experience.

Funding Deficiencies

CUPE strongly supports the security that was won in the establishment of real funding for defined benefit pension promises. Through various phases of legislative and regulatory reform, that security was further enhanced through the requirement that funding deficiencies be amortized over prescribed schedules.

Several prominent advocates of the "asymmetry" and "crisis" theories described above have developed proposals for reducing the cost of pension liabilities. They include the following:

- Letters of Credit as a partial or full alternative to real deficiency funding;
- Longer schedules for amortizing solvency deficiencies;
- New tax-assisted trust accounts to hold additional – but refundable – pension contributions from employers;
- Automatic calls on future surplus for employer "recovery" of deficiency amortization payments.

CUPE rejects these proposals. All of them have the result of either reducing pension funding security or increasing employer contribution holidays – or both. We consider the existing funding system to be basically sound, and are not persuaded that recent developments amount to an insurmountable "crisis".

We would suggest, however, that the application of PBA solvency funding rules to multi-employer plans (MEPPs) is unnecessary. In large multi-employer plans, the risk of insolvency is clearly very low.

CUPE Recommends:

1. That the PBA be amended to provide that all allocations of actuarial funding surpluses will be dedicated to plan benefit improvements, and failing that, that any other application of surplus be subject to the approval of all bargaining agents (if any). In the absence of such bargaining agents, any allocations to employer cost (i.e. contribution holidays) should be subject to an appropriate majority vote of affected plan members.

[6] See Laidler and Robson, Ibid., p. 9 and CGA-Canada, Ibid., p. 44.

2. That the Panel highlight the problem posed by the "excess surplus" rule in the *Income Tax Act* and propose that the rule itself be eliminated. At a minimum, any prescribed resolve to surpluses deemed excessive should be an allocation to benefit improvements rather than the one-sided employer windfall established under the existing rules.
3. That the PBA be amended to exclude multi-employer plans (MEPPs) of a reasonable minimum size (in both assets and number of participating employers) from the requirement to fund for solvency.

2. Public-Private Partnerships (P3s) and other risky pension investment trends

CUPE represents over 560,000 workers across the country, including those that are most directly targeted by the recent trends of privatization and contracting-out of public sector services and jobs. In most instances, the central driving force behind the recent moves to privatize public services, public infrastructure and public sector employment, has been the desire to cut government costs. Of course, such cost cutting translates into real, material effects on the workers involved: alongside de-unionization, wage losses, and employment insecurity, privatization often results in workers losing their pension plan.

CUPE members in Nova Scotia have experienced this when public sector employers contract-out certain jobs that had traditionally been within the public sector, and lose their eligibility to participate in the established pension plan. To provide just one example of this trend, a group of long-service trades workers at Acadia University saw their jobs contracted out by their employer in 1997. While many of the affected workers were re-hired (as "new" hires) by the new contractor, they were no longer eligible to participate in the secure, defined benefit pension plan provided to Acadia workers and forced instead into an inferior and insecure defined contribution (DC) type plan. This experience has been far too common in Nova Scotia and across the country.

We have also seen the growth of new forms of privatization, such as "public private partnerships" (or P3s) and "alternative funding and procurement". In all such cases, the very logic of the new model rests on increasing the ownership or control mandate for private sector "partners" in the delivery and management of what had previously been public sector assets or functions.

Across the country, the result of these developments has been the erosion of public sector employment and the union representation and pension coverage that has tended to come with it. We are doubtful that there is even much debate on this question.

CUPE is widely recognized as one of the country's leading forces mobilizing the growing opposition to privatization. We challenge not only the negative impact of privatization on the job security and working conditions of public sector workers, but also the often disastrous consequences for the quality, security and efficiency of public services and infrastructure. In the case of the over-sold "P3" model for privatized infrastructure, we have shown repeatedly that these projects are based on the fundamental design flaw of unnecessarily expensive private sector financing. Along with being negative for workers and their wages and working conditions, and bad for public assets and services, P3s are also bad (and risky) public policy for taxpayers. On the other hand, they are extremely profitable for the investors that finance and (directly or indirectly) manage them.

Pension funds investing in P3s

This brings us to a second important relationship between privatization and pensions that is not addressed directly in the Panel's Discussion Paper but is of serious concern for CUPE members in Nova Scotia. One of the especially perverse developments in recent years in the evolution of pension fund investment has been the increasing role played by large pension funds in financing the very privatizations discussed above. Large pension funds have been sought out as underwriters and financiers for major privatization projects. As the C.D. Howe Institute recently reported enthusiastically:

> Private-sector and government-worker plans are scouting the world for investments in power and gas transmission, water, roads, bridges and tunnels, airports and ports…More Canadian savers, large and small, would do well to get a piece of this action.[7]

Notwithstanding the implication of this commentary, the novelty of this development is not the fact of pension fund investment in infrastructure. Pension funds have long been relied upon to invest in the government bonds issued for financing capital-intensive infrastructure projects. Indeed, the original reserve fund of the Canada Pension Plan was dedicated almost exclusively to funding this valuable infrastructure via purchase of long-term bonds from the provinces. The innovation that attracts the C.D. Howe's Institute's interest is that the pension funds described are taking over direct ownership and control of these assets, and operating them as private, for-profit investors. In several cases, pension plans have become direct and indirect agents of privatization – a development that the Institute ideologically supports.

This development has taken various forms. Pension funds have been invested in projects such as toll highways, toll bridge and tunnel construction, hospital and school construction and management. Many of these projects are structured and labelled as "public private partnerships" (P3s), though recently the negative publicity associated with this term has led P3-privatization advocates to find new labels for their concept.[8]

CUPE, along with many other trade unions and policy advocates, has argued strenuously that P3s are terrible public policy. We have shown that it always costs the government less to borrow than it would cost a private corporation. P3s arrange for a government to pay a private corporation to go out and borrow on the government's behalf, at a cost of borrowing that is substantially higher than the government's own direct borrowing cost.

The result, consistently, is that P3 projects generate much higher costs (for the public "partner") than if the same project were pursued on a traditional public sector model. This conclusion is being reached by an increasing number of independent research studies, including one released just weeks ago by the Federation of Canadian Municipalities. Their analysis, focused on municipal sector P3s, concluded as follows:

> To make infrastructure investments, municipal governments can easily borrow almost all the funds they need at very favourable rates. Indeed this fact is so clear, it is rarely challenged. To leave the responsibility of financing to the private partner is a poor solution to a non-existent problem, when traditional municipal financing is simple, relatively easy and, above all, **much less costly than the private-sector equivalent**. Nevertheless, the truth is that some people have an interest in making us think that there is a problem … because they have solutions to sell.[9]

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7 William B. P. Robson, "Found Money: Matching Canadians' Saving with their Infrastructure Needs," C.D. Howe e-brief, March 8, 2007. Also see John Chenery, "Financing the Future: Building Canadian Infrastructure," *Summit Magazine*, Focus Issue: Public-Private Partnerships, 2001.

8 See, for example, "Big pension funds hope for new infrastructure opportunities," *Globe and Mail*, November 24, 2006

9 Pierre J. Hamel, "Public-Private Partnerships (P3s) and Municipalities: Beyond Principles, a Brief Overview of Practices," Institut national de la recherche scientifique, Commissioned by the Federation of Canadian Municipalities, August 31, 2007. Emphasis added. http://www.fcm.ca/english/media/backgrounders/p3report.pdf

We outline this argumentation and research at such length for an important reason. We consider our policy critique and our opposition to these projects to be based on fundamental principle. Our position has also been repeatedly ratified by our membership. In addition, our National structure voted to approve a policy statement in 1999 that called on the trustees and managers of CUPE member pension plans to resist the promised returns associated with these projects and turn them down on the ground that they are not in the interest of plan members, nor of taxpayers.

Yet, many of our own pension funds are still being used against us. Even in cases where CUPE is able to name one or more trustees to a decision-making Board that sets out investment policy, they are often advised that their fiduciary obligation to plan members *requires* them to invest in P3s – even where it can be shown to be bad public policy, bad for public services, and bad for workers' pension coverage. The argument advanced, stripped down to its most simplistic formulation, is that fund trustees are obliged to aim to "maximize" their rate of return, and rest indifferent to all "non-financial" considerations.

While CUPE takes issue with this simplistic formulation of the legal parameters of fiduciary duty, there is no doubt that ambiguity and dispute over this issue remains. Just as with an older (but continuing) debate about "socially responsible investment" (SRI), our struggle to restrain aggressive and (in our view) high-risk privatization investments is hampered by the lack of clear language in the *Pension Benefits Act* (PBA) that would expressly permit and legitimize such considerations or exclusions. While CUPE certainly recognizes the need to earn reasonable returns on fund investments, we reject the notion that this responsibility creates an absolute obligation to support every high-yielding project or proposal that money managers or investment groups put together.

CUPE's concerns regarding pension investment trends extend beyond just P3s and privatization. We are also seeing rapid growth in more complex and less transparent financial vehicles and instruments that are being increasingly marketed to pension funds. Hedge funds, private equity funds, highly leveraged and "short-sell" investments, and various types of derivatives are becoming more popular as pension fund investments.

As last summer's "asset-backed commercial paper" (ABCP) crisis illustrates, pension funds are increasingly becoming involved – perhaps even lured – into complicated investments whose risk profile may be beyond their current capacity to measure and monitor.[10]

For example, in the course of his reflections on the 2006 fiasco surrounding a collapsed US-based hedge fund called Amaranth, one hedge fund manager admitted:

> Hedge-fund strategies have become so obtuse, their sales pitches so aggressive, and their monitoring so lax that one could question whether anyone should be in these funds, let alone pension-plan managers who have no ability to judge what these funds are doing and are supposed to invest regular folks' money in relatively safe places.[11]

A related but separate set of concerns is also emerging in relation to the rapid recent growth in private equity as an asset class for pension funds and other financial investors. A February 2007 submission by a Europe-based international hotel and food workers' union to British Members of Parliament sounded a serious alarm about the increasing domination of financial markets by private equity. The union describes private equity funds as follows:

[10] We would argue that all boards and Administrators – including so-called "lay" boards and "expert" boards – face the capacity problem identified here.
[11] James J. Cramer, "After Amaranth," *New York Magazine*, September 22, 2006.

> Enormous pools of money provided largely by institutional investors and managed by the fund for the purpose of acquiring other companies in whole or in part, delisting them from stock exchanges if they are publicly listed, restructuring them and then selling them to other investors, either through public stock offerings or to another buyout fund. While private equity firms have traditionally set targeted rates of return of 20 to 25% annually, the largest funds have generated returns of 40% a year over the past 10 years.[12]

The union presents disturbing evidence of a virtual explosion of private equity buyouts and sell-offs, and argued that the scale of these deals – particularly their highly leveraged character – poses risks to the financial system as a whole. Moreover, they suggest that the funds (with the associated leverage) are so large that all public corporations have become potential takeover targets (an observation familiar to many observers of the potential buyout of BCE by a consortium led by the Ontario Teachers' Pension Plan). The effect, they suggest, imposes a serious cost on workers affected:

> A pre-bid environment hangs over the economy as a whole, meaning short termism is institutionalized, bringing with it more job cuts and more attacks on wages and working conditions and more attacks on trade union rights.[13]

While it is theoretically possible that Canadian practices with private equity are more benign than this, CUPE is nonetheless concerned about these dynamics and their implications for our members (and their pension coverage). While promising – and perhaps delivering – substantial rates of return to pension fund investors, such predatory investment practices are anathema to the trade union movement and to CUPE members. We certainly do not expect that our pension funds will be secured - or workers' DB pension coverage improved – through such "innovations" by the financial sector.

Rather, as negotiators of pensions, and as a trade union that names pension fund trustees to various Boards, CUPE is concerned that pension fund trustees and money managers face legal arguments about the need to "maximize" their rate of returns within a new, rapidly changing, and higher risk environment. We are concerned that aggressive marketing campaigns by financial specialists and marketers may be pressuring pension fund trustees and money managers to pursue strategies that are both riskier and more punishing to affected workers than their advocates are inclined to admit.

CUPE Recommends:

1. That the Panel addresses the corrosive effects of privatization and P3s on pension plan coverage.
2. That the Panel appeal for the clarification of pension investment and trust law in order that decisions by pension fund trustees to expressly avoid investments in P3s and other forms of privatization are clearly permitted.
3. That the Panel propose concrete policy measures to strengthen the existing regulatory framework covering pension investment in complex financial instruments such as hedge funds, derivatives, private equity funds, etc. Such measures should mandate greater transparency rules that will clarify both the character and the risk profiles of any such investments.

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[12] Peter Rossman, "Presentation to Trade Union Sponsored Labour MPs on Private Equity and Leveraged Buyouts," International Union of Food, Agricultural, Hotel, Restaurant, Catering and Allied Workers Associations (IUF), February 27, 2007

[13] Ibid., p. 5

3. Raising minimum standards

The Panel's Discussion Paper reports under Section 3.2 some of the legislative changes recently enacted under the Nova Scotia Pension Benefits Act. While there are no questions posed following this section, we consider this to be an issue that merits some significant discussion, particularly in light of the continuing enhancement and strengthening of pension minimum standards that has taken place in other jurisdictions. Further, while the Discussion Paper considers the concept of regulatory "harmonization" (Section 4.6) and the role of the regulators (Section 4.7), the questions posed seem to place an emphasis on whether there are "currently unnecessary rules and regulations in place?" (p. 20). The lack of any similar questions regarding the possible *inadequacy* of current rules and regulations might be seen to reflect an assumption that Nova Scotia pension regulation is, if anything, excessive.

Whether this is the case or not, we would like to present the following comments on minimum standards. Where, in certain cases, our comments relate to questions raised under other sections of the Discussion Paper, we attempt to point it out.

As with real funding security, the minimum standards established in the existing system represent important and hard won gains. DB pension coverage would not be as high as it is today were it not for the existing rules on vesting, eligibility, and portability.

We would suggest, however, that there is still significant room for improvement to the minimum standards. CUPE represents many of the growing number of precariously employed workers – part-time, temporary, and contract workers who struggle from job to job, either excluded from participation in workplace pension plans or unable to vest, defer or transfer entitlements when they do earn them.

Moreover, we are very aware that those workers that face discrimination and disadvantage in the labour market – women, new Canadians, people of colour, workers with disabilities, etc. are disproportionately represented in these categories. Under the existing rules, even part-time workers who become permanent and long-term will self-exclude by opting-out. As a result, these same workers are far less likely to build up decent pension entitlements by the time they are ready to retire. For some employers, these precarious workers are viewed positively as a solution to budgetary or competitive pressures precisely because they can be used as a cheaper reserve of labour to which they do not have to commit job security. Part of the cheapness of this labour is the lack of pension coverage (along with certain other benefits, health insurance, etc.).

Immediate Vesting and Coverage for Part-time Workers

Immediate extension of defined benefit pension coverage could result from relatively simple and low-cost improvements to the current standards in place. The province of Québec has shown that immediate vesting is viable. Coverage could also be extended if rules were established requiring that part-time workers be required to join pension plans anywhere that full-time workers' participation is mandatory.

Locking-In Rules

The Panel's Discussion Paper observes several recent shifts in various jurisdictions in the direction of "unlocking" pension entitlement values (Section 4.9 Unlocking Funds, pp. 21-22). This section of the Discussion Paper concludes with a question as to whether regulators should "attempt to regulate an employee's access to funds". We note that the current rules already do this through the established vesting rules.

As indicated above, CUPE views the original establishment of vesting rules to have been an important victory in the struggle for pension security. The recent shift in certain provinces to very substantial "unlocking" provisions, allowing plan members to drain up to 50% of the value of their DB pension entitlements out of their plan, is a dangerous one. Apart from very limited allowances in the case of terminal illness, we do not support the move to unlock pension funds. The inevitable result of such changes will be to see pension entitlements significantly eroded (through cash-outs) or converted from secure annuity entitlements to insecure "defined contribution" plans without benefit promises. In turn, this will leave more future retirees dependent on public pensions (including the Guaranteed Income Supplement system), and in some cases in the same poverty that locked-in DB pension entitlements are designed to avoid.

Moreover, we are very concerned to observe that one of the primary active forces lobbying and campaigning for further "unlocking" of DB pension values is the financial services industry itself. The sellers of RRSPs, mutual funds and other such investment products aim to capitalize and profit from such changes. Their marketing of their campaign as one favouring "choice" for pension plan members is a thin disguise for their own financial interest in the changes. CUPE is opposed to any further moves to "unlock", and would propose that the Panel recommend rescinding the current provision for unlocking in the event of financial hardship when such hardship is defined as income dropping below a specified threshold.

Mandatory Indexation

CUPE has always supported the principle that workers' pensions should not have their purchasing power lost to the effects of inflation. While recent years have seen a settling of inflation rates at the 2-3% level, the combination of improving mortality and above-inflation increases in health care and long-term care expenses underline the importance of mandatory indexation.

We note the fact that a form of mandatory indexation has now been provided for under Quebec legislation. We think it is time to follow suit in Nova Scotia. Clearly, such a provision would impose certain costs on pension plans, some of which are already facing funding pressures. We believe that a provision could be structured that would allow a transition period for those plans facing funding deficiencies such that the minimum indexation provision would be introduced once the plan returned to a healthy funding balance. Moreover, in order to reduce the cost effects of such a provision, we would support the concept of a mandatory indexation provision.

Transfer Rights

A more complex section of the PBA deals with securing lock-in and portability rights in the event of terminations and transfers.

In our view, the lack of meaningful portability of DB pension entitlements is a serious weakness of the existing system. The result is that many workers are forced to choose between deferring an entitlement (which often means sacrificing the wage-indexation that would otherwise have applied to it), and transferring the value out to a locked-in RRSP and seeing the benefit promise erased.

Earned pension entitlements should be more secure than this, and the ideal of portability should be facilitated. For example, the PBA should strengthen the obligation on employers to accept transfers-in of accrued locked-in pension entitlements from either individuals or transferring-in groups of workers. The fact is that employers and administrators consider such transfers to be an administrative irritant and cost that they increasingly choose to avoid. While this may be understandable, such transfers are key tools for preserving and building secure DB pension entitlements. Workers' confidence in the DB pension system would be greatly enhanced through such positive innovation.

Plan Disclosure

One of the primary means by which employers continue to exercise unequal power over pension plans is through their control over information. The disclosure rights established in the PBA are crucial, but in our view, they are still not adequate. In this regard, we were very encouraged to find, in the Panel's "Frequently Asked Questions" document posted to the website, that one of its stated objectives is to "enhance the sharing of information to plan members."[14] We are in strong agreement with that objective, and have several observations to make in support of it.

CUPE continues to find that employers are reluctant to provide members with meaningful information about their plan, sometimes even including the documents that they are required by law to provide. Moreover, in certain cases this reluctance and general lack of full disclosure can have serious implications for the pension plans involved.

To provide just one example, in 2006, a number of healthcare sector trade unions (including CUPE) were engaged in collective bargaining with their employers with respect to the Nova Scotia Association of Health Organizations (NSAHO) pension plan. In the course of these negotiations, we requested copies of the Annual Information Returns (AIRs) that had been filed by the plan, in order to ascertain the recent history of fund surplus disposition. However, on receiving the documents, it was immediately clear that their contents were contradicted by recently filed actuarial valuations. While the valuations made clear that millions of dollars of fund surpluses were being consistently allocated to fund employer current service costs, the AIRs indicated that no surplus was being so used.

Several months later, the NSAHO plan staff began to file "corrected" versions of the AIRs with Nova Scotia's Superintendent of Pensions that did accurately show that almost $60 million of fund surplus had been allocated to employer current service cost. These corrected documents confirmed that the union's public assertions regarding surplus use were correct, and that the employer's circumventions on the issue had been, at best, misleading.

The point of this illustration is that the right of plan members to have access to basic pension plan funding information is a crucial element of the pension regulatory framework. As it stands, there remain too many situations where employer administrators, or even (as in the case of the NSAHO pension plan) Boards of Trustees serving the role of plan administrators, are not fully or clearly disclosing even basic information about what is happening to plan members' surplus. The reality is that certain employers prefer to keep plan information flow and disclosure to a minimum – and sometimes fail to even fulfill the existing very limited requirements.

This scenario is disturbingly common. Too often, we find that contribution holidays are denied or disguised. Benefit improvement possibilities (including indexation) are suppressed or needlessly deferred. And, when deficiencies emerge, the close relationship between employers and plan agents will sometimes lead to the presentation of selective menus of "solutions" to funding problems being presented to plan members – often by the authoritative and ostensibly independent plan actuary. This selective communication of plan financial and legal information to plan members by employers (and even Boards of Trustees) demonstrates to us that the letter and spirit of the minimal disclosure provisions of the PBA are too often evaded or ignored.

[14] See "Frequently Asked Questions", posted at: http://www.gov.ns.ca/lwd/pensionreview/

CUPE would like to see the PBA and Regulations require far more disclosure of plan information by employers and plan administrators. All documents that must be provided to pension regulatory authorities should also be automatically provided to any plan member on request (rather than provided "for viewing" at the workplace). Automatic provision of these same documents to all trade unions representing plan members should also be mandatory.

Beyond these general expansions of disclosure rights, CUPE has two very specific proposals to make. First, employers and administrators are already required to report their application of surplus to "employer current service cost "(i.e. partial or full contribution holidays) to the regulators via the Annual Information Return (AIR).

Unfortunately, this crucial document – though technically available "for viewing" – is almost never provided to plan members or their trade union representatives.

It would be a simple and cost-free improvement to the disclosure rules to require that the funding information reported in the AIRs also be included in the annual statement sent to all plan members. We see no good reason to deny this information to plan members when it is being annually reported to the regulators.

In fact, there is already a model in place for significantly strengthened disclosure that Nova Scotia could follow. In British Columbia, there is a powerful disclosure requirement for plan Administrators that take contribution holidays to report the following items on the "annual member statement":

1. a statement that the pension plan provides for a contribution holiday;
2. the amount of the surplus assets on the plan as at the last review date;
3. the amount of the surplus assets to be used to fund the contribution holiday;
4. a statement that, in the administrators opinion, the plan will continue to meet the solvency requirements after taking the contribution holiday;
5. a statement of the right of any person entitled to a benefit or the spouse of any designated beneficiary or agent of the person entitled to a benefit to examine plan documents.[15]

This is the strongest contribution holiday disclosure regime in the country, and CUPE sees no reason why Nova Scotia's pension plan members deserve any less information than those in British Columbia. Moreover, we consider such basic disclosure requirements to be key elements of a move to empower a wider net of stakeholders – including plan members and their trade unions – to take informed action to assist the Superintendent of Pensions with the enforcement of existing provincial pension regulations. Had such rules already been in force here, it is quite possible that the lengthy and costly dispute between the NSAHO and the healthcare sector trade unions would not have occurred (or at least, not been as lengthy or divisive). At the very least, there does not appear to be any good reason to deny Nova Scotia's plan members this kind of basic information about the operation of their pension plan.

In addition, we would suggest that plan disclosure rights could be easily enhanced through a requirement that employers and administrators provide pension committees and/or plan member trade unions with copies of draft (not yet filed) actuarial valuation reports that report "excess surpluses" under the terms of the current ITA. It should be made clear to plan member trade unions or other representatives that the ITA "requirement" of employer contribution holidays to eliminate "excess" surplus is only triggered upon the filing – not the preparation – of a valuation that shows it. At the very least, plan members should be provided with an opportunity to propose alternatives to contribution holidays.

[15] See William M. Mercer Limited, *The Mercer pension manual*, Thomson Canada Limited, 2008, Volume I, p. 7-28.4

Phased Retirement

The minimum standards of the PBA and Regulations that we aim to defend and improve are complemented by important and related standards established by the ITA. One of the federal tax rules on pensions that has recently been subject to review and amendment is the restriction on continuing to work with an employer whose pension plan is paying the same worker a pension benefit. This restriction entrenched the concept that pensions are for retirement, and that they are tax-assisted because there is a public interest in ensuring that more workers are able to *retire* with income security.

In December 2007, the federal government amended both the ITA and the federal *Pension Benefits Standards Act* (PBSA) to enact a newly expanded concept of "phased retirement", under which employees are permitted to begin drawing a pension from a Registered Pension Plan while continuing to work and contribute to (and accrue benefits from) the same pension plan.

CUPE has a number of reservations about this direction for pension policy. We can imagine such models of phased retirement being applied in ways that undermine trade union wage bargaining. Further, this model is being proposed alongside three other retirement age related developments:

1. Legal norms regarding the age of "mandatory" retirement are changing in many provinces;
2. Many employers are concerned about a rapid exit of experienced workers from the workplace in the coming 10-15 years;
3. More and more employers and industry organizations favour an increase to their plan's age of eligibility for retirement and a discontinuation of programs for early retirement as a means to reduce pension liabilities.

In this context, the proposal to permit pension funds to begin flowing to workers who continue working is a serious concern. We can envision a situation where a growing percentage of a given workforce is receiving a kind of "double" pay packet (i.e. their regular wage plus a pension), possibly to a level that is greater than their regular pay, for the same or even less hours of work.

For those individuals who come to be eligible for such compensation, this would seem quite advantageous. However, because such "phased" retirement will only be those plan members who meet certain age and service eligibility requirements, we are concerned that the access to such generous benefits will be limited, possibly to a minority of those whose long pensionable service already place them in a position of relative advantage. Based on known patterns of labour market participation, this will likely be disproportionately male workers that have had stable employment over their working lives.

There is a risk that the effect of such an arrangement will be to introduce a second, advantaged category of worker into the workplace and thereby undermine collective bargaining and trade union solidarity. Finally, we foresee such models adding more weight to the growing pressure to raise the "normal" age of retirement for both workplace and public pension plans from the current standard of age 65 to 67, 70, or beyond.

Finally, even apart from these concerns with the potential impact of this type of phased retirement, we have several concerns with the manner in which the concept has been introduced. The amended ITA appears to allow phased retirement to be introduced in an especially inequitable form. While touted as a concept supporting a gradual phase-out of near-retired employees, the rules for a "phasing" retiree do not actually require them to reduce their

work-time at all. Yet, they will be permitted to begin payment of a pension worth up to 60% of the value of the pension to which they would have been entitled had they fully retired.

Most disturbingly, the ITA does not impose any requirement of equity or even-handedness in the application or eligibility of phased retirement. As a result, unless provincial pension legislation indicates otherwise, employers have been provided a free hand to "handpick" the employees to whom they wish to offer this potentially generous benefit. The potential for abuse and discriminatory or preferential treatment with such a program is simply too great, and harkens pack to a previous era when employers were permitted to dole out pension entitlements to favoured employees, and deny them to those they wanted to punish. CUPE feels very strongly that should the Nova Scotia pension legislation be amended to accommodate the new concept of phased retirement, it must do so on the condition that such provisions be offered on the same principle as other pension benefits – that is, equitably across any given "class" of employees (as the term is used in the PBA).

Pension Benefits Guarantee Fund (PBGF)

CUPE considers the additional security provided by the Ontario Pension Benefits Guarantee Fund to be a significant gain for pension plan members (in single-employer pension plans) in that province. It is unfortunate that this additional level of security is only available to members of pension plans registered there. Through various periods of economic difficulties and employer insolvencies, the extra security that the Fund provides has offered reassurance to plan members whose benefits might otherwise have been rolled back.

We strongly support the recommendation contained in the written submission from our colleagues at the Nova Scotia Federation of Labour, which would provide for a program similar to the Ontario PBGF, with appropriate improvement to the level of protection offered.

CUPE recommends:

1. That the Panel develop a set of minimum standard improvements to the PBA, including a move to immediate vesting, mandatory enrolment for part-time workers everywhere that full-time workers must participate, and mandatory indexation.

2. That the Panel consider the limitations of member transfer rights under the existing framework and develop a comprehensive recommendation for changes that will improve basic portability rights and establish greater obligations on plan Administrators to accept transfers of individual and group pension entitlements into established plans.

3. That the Panel propose other means of protecting the value of accrued pensions, such as a new obligation on Administrators to provide mandatory indexation (set at a reasonable minimum level) to both retirement and deferred pension entitlements.

4. That the Panel develop a comprehensive expansion of disclosure rules under the PBA, beginning with a requirement to report actual contributions made and surpluses applied to any and all employer costs (i.e. contribution holidays) on plan member annual statements. Expanded disclosure should make it automatic that all documentation provided to the regulators should be provided to plan member trade unions and, when requested, plan members.

5. That the Panel recommend a new transparency system for "excess" surpluses whereby Administrators will be required to provide pension committees and plan member trade unions with copies of any draft actuarial valuations reporting "excess" surpluses under the ITA. Such member representatives should be provided an opportunity to propose

alternatives to filing a valuation with an "excess" surplus and thereby prevent damaging contribution holidays.

6. That the Panel directly address the dangers and concerns relating to the various proposed models of "phased retirement", and develop recommendations that will ensure that pension funds are not used to subsidize employer payrolls. Very specifically, we recommend that the Panel urge the Province to specify in any PBA changes to allow phased retirement that any such benefits must be provided on a non-discriminatory and class-wide basis. It should not be legally permitted to confer valuable pension benefits on individuals selected by the employer.

7. That the Panel propose the introduction of a new Guarantee Fund program based on the Ontario model, but with coverage levels that provide protection for up to $2,750 per month.

4. Improving Plan Governance

CUPE is a strong supporter of improved pension plan governance. We participate in plan governance in various ways, including through collective bargaining, as participants in "Joint Trust" governance arrangements, and in our general defence of plan members' pension rights. Yet, while we feel we play a positive role in the enforcement of existing pension law, we consider it a weakness of the existing PBA that the role of trade unions is not specified and developed in more detail.

In addition to the disclosure rule enhancements mentioned above, we would suggest that the plan member representation role of trade unions should be enhanced and empowered. In situations of significant plan change, such as partial or full wind-ups, divestments, "excess" surplus dispositions, benefit changes, governance changes, plan member trade unions can play a constructive role in negotiating the resolution of problems and communicating outcomes to members. However, to play this role effectively, the PBA should provide an outline of clear authorities and responsibilities.

On the other hand, CUPE also has experience with problematic plan governance and administration as a result of an unclear allocation of fiduciary duties and rules around conflicts of interest of plan agents. For example, we frequently find key plan agents – such as the plan actuary – being used by employers as their de facto representative, even within frequently adversarial collective bargaining relationships. This strikes us as a clear conflict of interest for plan actuaries whose work is paid for out of plan resources, and who – we feel – owe a fiduciary obligation to the plan members. We would suggest that all plan agents owe fiduciary obligations to plan members, and that pension regulation to make such obligations clear.

Employers, actuaries, and trade unions should all be provided with very clear guidelines – set out in the legislation itself – regarding the fiduciary duties of plan agents and the avoidance of such conflicts of interest. We are aware that many employers are utilizing plan agents in exactly this fashion, and face no accountability in this regard. This is one of the most direct ways that employers – who are often deciding on the retention of plan agents – wield unfair power over plan members.

We are greatly encouraged that the Province of Québec has recently amended their pension legislation to clarify these fiduciary obligations for certain plan agents, and would encourage Nova Scotia and other jurisdictions to pursue reforms in the same direction.[16]

[16] Regie des Rentes du Quebec, "New pension plan administration measures enacted in 2006," Newletter Number 21, June 2007.

CUPE Recommends:

1. That the Panel develop recommendations for specifying and enhancing the key role that trade unions play on behalf of pension plan members. Whether within formal "Joint Trust" plan structures or with more conventional employer-Administrator structures, the role of trade unions in negotiating the resolution of various problems should be enhanced within the PBA.

2. That the Panel recommend that the PBA be amended to clarify that all plan agents owe fiduciary obligations to plan members.

5. Declining DB pension coverage and benefit inadequacy

CUPE recognizes that the primary focus of the Panel's mandate is defined benefit pension plans – meaning workplace DB plans. Moreover, we understand that one of the primary driving forces behind its formation has been the recent decline in the percentage of workers covered by DB pension plans and the threat by many employers to dismantle their plans.

We are also well aware that certain employers and industry bodies have responded to the combination of declining coverage and today's funding deficiencies with a proposal to allow greater employer access to fund surpluses. One pension industry organization, the Association of Canadian Pension Managers (ACPM), proposes the following "solutions" to the supposed problem of employers bearing funding risk yet not having full and unfettered access to fund surpluses:

> Governments should move quickly and decisively to deal with asymmetry. Governments should pass legislation overriding common law trust precedents [that protect surplus for plan members] and establishing the paramountcy of contract law for pension plans…The use of plan surplus for contribution holidays should continue, where permitted under current plan provisions. But governments should also provide greater flexibility for plan sponsors to withdraw plan surplus…[17]

The ACPM suggests that providing employers with such enticements would improve the environment for DB plans, and allow them to be maintained and improved, while "*a lack of action will worsen the situation.*"[18]

CUPE completely rejects this logic. We would point out that among the employers that have succeeded in freezing or dumping their DB plans, the bulk have been either in the non-union private sector, or a result of the privatization and contracting-out outlined in Section 2 above.[19] This would suggest that the driving forces behind the coverage declines of recent years have been larger, economic processes involving massive losses of manufacturing jobs, privatization, and a gradual de-unionization of the Canadian workforce. To the extent that this is true, granting employers even greater access to pension surpluses than what is already enjoyed would appear very unlikely to reverse these longer-term trends. It would nonetheless be quite popular among the employers who would benefit financially from such changes – at the expense of pension plan members both active and retired.

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[17] ACPM, Ibid., p. 26 Parenthetic comment added.
[18] ACPM, Ibid., p. 9
[19] For a representative illustration of the former, see Craig Sebastiano, "Sears Canada changes pension, benefit programs," Benefits Canada, February 5, 2007.

The Panel's Discussion Paper notes (pp. 4-7) that the pension plan participation of employed Nova Scotia workers has fallen in recent years (though somewhat less so than for Canada as a whole).[20] However, we would suggest that reversing this decline would require significant changes in the larger economic climate, such that good quality, and unionized jobs, in both the public and private sector, are created and protected. Without question, such changes will require a substantial reorientation of public policy – measures that the Panel may consider to fall outside its stated mandate.

Nonetheless, this larger question of public policy is a reminder of the great debate that took place in the early 1960s over the best means to secure universal retirement income security. For many years, trade unions and other popular organizations had been demanding that the Government of Canada follow the lead of many European countries and establish a comprehensive, earnings-based public pension that would provide all workers with adequate retirement incomes. At that time, many employers and their organizations fought hard against the very concept, and insisted that the path to retirement income security was found in the establishment of workplace-based "private" arrangements.

The result of that debate was a tenuous compromise – the establishment of a Canada (and Québec) Pension Plan that provided a relatively low earnings-replacement rate of 25%, and only covering earnings up to the average industrial wage.

At the time, the rationale for this relatively low replacement rate was the notion that this provided an incentive to both employers and unions to establish so-called "supplemental" workplace plans. Of course, hindsight tells us that this optimistic notion must have rested on an expectation of an increasingly unionized workforce and an employer community with the foresight and willingness to see such plans established. Instead, not long after the establishment of the CPP/QPP, powerful political and economic forces began to counter the campaign to organize the workforce and continue to expand the public sector. The result, in part, was to slow and then reverse what had previously been a gradual post-war expansion of pension coverage.

In consequence, just as the "maturing" of the public pensions that were established should have us approaching universal retirement income security, the "workplace pension" pillar of the system is faltering. It occurs to us that the private market for pensions is failing, and leaves a majority of workers to fend for themselves – and face poverty or near-poverty incomes at retirement. Worse still, that minority of workers that is fortunate enough to participate in a defined benefit pension plan (under 30% in Nova Scotia, barely 10.2% in the private sector) are now being asked to give up their fund surpluses, just to keep the DB pension entitlements that they have already sacrificed to gain.

As a result, CUPE and an increasing number of other trade unions are reaching the conclusion that the pension advocates of the 1960s were right all along. As committed as we are to the improvements to the DB system recommended above, we also know that true retirement income security – providing universal coverage, inflation protection, and funding security, is unlikely to come from anything other than a state-based pension arrangement.

Indeed, it is the efficiency of the CPP/QPP and OAS that recommends their expansion. For example, the annual administration costs of CPP/QPP are low enough to make a mutual fund marketer blush, and their pooling of risk has allowed the plans to easily ride through every market drop since its inception. It has truly been one of Canada's most impressive public policy success stories.

[20] Statistics Canada, "The Daily – Pension Plans in Canada," June 21, 2007. Available at: http://www.statcan.ca/Daily/English/070621/d070621b.htm

We recognize that the Panel's stated mandate is primarily focused on workplace based pension plans and that the public pension plans may fall outside its scope. However, Discussion Paper recognizing that the Panel's objectives include outlining "some of the most significant issues that affect pension plans" in the province, we would respectfully suggest that its deliberations and final report would be strengthened by a consideration of the inadequacy of the current public pension system. We are convinced that this is the direction for public policy that could most effectively and quickly deliver improved retirement income security for all Nova Scotia workers.

CUPE Recommends:

1. That the Panel include in its report to the Minister a serious examination of the vital role that the public pension plans play – alongside the workplace DB pension system - in the retirement incomes of Nova Scotia workers. We would also urge that the Panel recommend that the Government of Nova Scotia invite the federal and other provincial governments to establish a Roundtable on Public Pension Expansion.

Conclusion

CUPE greatly appreciates this opportunity to address several of the issues raised by the Panel's Discussion Paper and overall mandate. We look forward to presenting our views in person, and would be happy to answer any questions that may arise from the foregoing.

List of CUPE Recommendations

The importance of pension fund and surplus security

1. That the PBA be amended to provide that all allocations of actuarial funding surpluses will be dedicated to plan benefit improvements, and failing that, that any other application of surplus be subject to the approval of all bargaining agents (if any). In the absence of such bargaining agents, any allocations to employer cost (i.e. contribution holidays) should be subject to an appropriate majority vote of affected plan members.
2. That the Panel highlight the problem posed by the "excess surplus" rule in the *Income Tax Act* and propose that the rule itself be eliminated. At a minimum, any prescribed resolve to surpluses deemed excessive should be an allocation to benefit improvements rather than the one-sided employer windfall established under the existing rules.
3. That the PBA be amended to exclude multi-employer plans (MEPPs) of a reasonable minimum size (in both assets and number of participating employers) from the requirement to fund for solvency.

Public-Private Partnerships (P3s) and other risky pension investment trends

4. That the Panel addresses the corrosive effects of privatization and P3s on pension plan coverage.
5. That the Panel appeal for the clarification of pension investment and trust law in order that decisions by pension fund trustees to expressly avoid investments in P3s and other forms of privatization are clearly permitted.
6. That the Panel propose concrete policy measures to strengthen the existing regulatory framework covering pension investment in complex financial instruments such as hedge funds, derivatives, private equity funds, etc. Such measures should mandate greater transparency rules that will clarify both the character and the risk profiles of any such investments.

Raising minimum standards

7. That the Panel develop a set of minimum standard improvements to the PBA, including a move to immediate vesting, mandatory enrolment for part-time workers everywhere that full-time workers must participate, and mandatory indexation.
8. That the Panel consider the limitations of member transfer rights under the existing framework and develop a comprehensive recommendation for changes that will improve basic portability rights and establish greater obligations on plan Administrators to accept transfers of individual and group pension entitlements into established plans.
9. That the Panel propose other means of protecting the value of accrued pensions, such as a new obligation on Administrators to provide mandatory indexation (set at a reasonable minimum level) to both retirement and deferred pension entitlements.
10. That the Panel develop a comprehensive expansion of disclosure rules under the PBA, beginning with a requirement to report actual contributions made and surpluses applied to any and all employer costs (i.e. contribution holidays) on plan member annual statements. Expanded disclosure should make it automatic that all documentation provided to the

regulators should be provided to plan member trade unions and, when requested, plan members.

11. That the Panel recommend a new transparency system for "excess" surpluses whereby Administrators will be required to provide pension committees and plan member trade unions with copies of any draft actuarial valuations reporting "excess" surpluses under the ITA. Such member representatives should be provided an opportunity to propose alternatives to filing a valuation with an "excess" surplus and thereby prevent damaging contribution holidays.
12. That the Panel directly address the dangers and concerns relating to the various proposed models of "phased retirement", and develop recommendations that will ensure that pension funds are not used to subsidize employer payrolls. Very specifically, we recommend that the Panel urge the Province to specify in any PBA changes to allow phased retirement that any such benefits must be provided on a non-discriminatory and class-wide basis. It should not be legally permitted to confer valuable pension benefits on individuals selected by the employer.
13. That the Panel propose the introduction of a new Guarantee Fund program based on the Ontario model, but with coverage levels that provide protection for up to $2,750 per month.

Improving Plan Governance

14. That the Panel develop recommendations for specifying and enhancing the key role that trade unions play on behalf of pension plan members. Whether within formal "Joint Trust" plan structures or with more conventional employer-Administrator structures, the role of trade unions in negotiating the resolution of various problems should be enhanced within the PBA.

15. That the Panel recommend that the PBA be amended to clarify that all plan agents owe fiduciary obligations to plan members.

Declining DB pension coverage and benefit inadequacy

16. That the Panel include in its report to the Minister a serious examination of the vital role that the public pension plans play – alongside the workplace DB pension system - in the retirement incomes of Nova Scotia workers. We would also urge that the Panel recommend that the Government of Nova Scotia invite the federal and other provincial governments to establish a Roundtable on Public Pension Expansion.

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