

HRM Pension Committee Response to Nova Scotia Pension Review Panel: Discussion Paper

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*Submitted to:
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Pension Review Panel
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Who We Are

The Halifax Regional Municipality Pension Plan (“Plan”) is primarily a defined benefit pension plan which includes a small defined contribution component. The Plan became effective April 1, 1998, as a result of the merger of the following pension plans sponsored by HRM:

- Prior City of Dartmouth Employees' Retirement Pension Plan;
- Prior Halifax County Municipality Full-time Retirement Pension Plan;
- Prior City of Halifax Superannuation Plan; and
- Prior Metropolitan Authority Employees' Pension Plan.

The Plan essentially is a continuation of all the pre-amalgamation pension plans, as well as a new plan design that most members elected to participate in. The Plan has approximately 8,600 plan members including 2,700 pensioners. The pension fund has assets of approximately \$1.1 billion.

The sponsor of the Plan is the Halifax Regional Municipality, but there are 14 other participating employers including:

- Halifax School Board non-teaching staff
- Halifax Regional Library Board (under the purview of the Minister of Education)
- Various entities incorporated under the Societies Act (Ocean View Manor, Quest, Dartmouth Sportsplex and other community facilities)
- Community Builders Inc. (incorporated as a company limited by guarantee)
- Trade Centre Limited (a provincial Crown corporation)

While these diverse employers share a pension plan, they are independent entities created and governed by different levels of government or community groups.

The Plan is jointly-managed by a pension committee of 12 voting members representing unions (5), management (5), non-union employee association (1), and retirees (1). Participating employers are non-voting participants in Pension Committee meetings.

The Plan is jointly-funded. Participating employers and plan members share the cost of the plan equally.

We are proud of this Plan and are committed to ensuring it remains healthy.

Executive Summary

The HRM Pension Committee applauds the Nova Scotia government in its review of pension legislation. The *Pension Benefits Act* (PBA) and applicable Income Tax Act (ITA) regulations need to be updated to reflect significant changes in the environment that may not have been anticipated when enacted in the late 1980's. The pension system today is facing enormous challenges including:

- *lack of understanding and confusion amongst Nova Scotians as to why some public sector plans are exempt from pension legislation, such as public servants and teachers, but not municipalities, universities, and hospitals. This has created an inequitable pension environment in Nova Scotia that employers have to deal with in a competitive employment market.

- *unnecessary regulatory funding burdens for public sector plans that have a low probability of going bankrupt

- *lack of clarity in pension legislation

- *lack of alignment of interests with many stakeholders who benefit from servicing pension plans (e.g. investment managers, actuaries, lawyers, etc)

- *lack of portability of DB pension benefits for mobile plan members who transfer to multiple employers (e.g. only certain plan members are eligible to use reciprocal arrangements on post 1992 service)

- *difficulties with employee appreciation and understanding of DB pension plans

- *an aging population

- *interest rates at 40 year lows

- *market volatility

While the situation may sound dire, solutions are at hand. The federal and provincial governments need to develop comprehensive policies with respect to retirement to ensure that all individuals are treated fairly regardless of the retirement vehicle used. Pensions are just one component. With respect to pensions, the federal and provincial governments can and should alleviate some of the funding and regulatory challenges that pension plan sponsors and pension plan administrators are facing.

In this submission, the HRM Pension Committee is recommending that Nova Scotia:

1. Provide pension legislation that is logical and fair to all pension plan stakeholders.

- Treat all public plans the same way in terms of funding requirements. It is unfair to exempt some public plans and not others unless a measure of creditworthiness is used to assess the probability of going bankrupt.
 - Take steps to ease solvency funding requirements by exempting all public sector plans from solvency funding requirements due to their low probability of default.
 - If solvency funding requirements are not exempt for all public plans, solvency valuations should include the cost of all pension benefits provided, including the cost of indexation, which is currently exempt from solvency valuations. This will create a level playing field amongst pension plans.
2. Consider adopting pension legislation that exists in other applicable federal or provincial jurisdictions. The majority of pension plan members that live in Nova Scotia are regulated by pension legislation outside of Nova Scotia. Nova Scotia is a relatively small jurisdiction and has limited resources. After considering where the majority of Nova Scotians are regulated with respect to pension plans, it may make sense to adopt the appropriate federal or provincial pension laws that are outside of Nova Scotia. It is our understanding that Alberta and B.C. are planning to introduce harmonized pension legislation. We encourage Nova Scotia to consider whether it makes sense to harmonize its pension legislation with that of Alberta/B.C. This would add momentum to the recommendation made by many leading pension advocates to create a national pension regulator with one set of pension rules, or at a minimum, to have harmonized pension legislation across Canada. Why should different pension rules apply in different provinces?
 3. Encourage the Federal Government to amend the *Income Tax Act* to allow plan sponsors to make contributions beyond the current 110% limit.
 4. Hold pension investments to the standard of a prudent person and eliminate all quantitative limits on investing. There is no rationale for arbitrary quantitative limits. Canada is the only developed country that has such limits.
 5. Eliminate the concept of a partial wind-up and rely on vesting rights to protect accrued benefits. A wind-up does not actually occur until such time as a pension plan is fully wound up. As such, the concept of a partial wind-up is artificial. If the concept of partial wind-up remains in pension legislation, clarify what is a partial wind up, when it will occur, and what the funding implications are for employers and plan members.
 6. Eliminate “grow-in” rights. Grow-in rights provide additional benefits to plan members who have not accrued these benefits at the detriment to other plan members. It is our understanding that CAPSA has not included grow-in rights

in the proposed Model Law. Currently, only Ontario and Nova Scotia require “grow-in” rights to be funded.

7. Clarify the rules in the case of a merger, split, restructuring or partial wind up to provide that surplus/deficits be transferred in accordance with the pension deal outlined in the Plan Text. If the Plan Text is silent on this matter, the cost-sharing arrangement for contribution rates should determine how surpluses/deficits are shared.

Response to Questions Posed by the Nova Scotia Pension Review Panel

Some answers are similar to those found in the PIAC submission because the CEO of the HRM Pension Plan was a member of PIAC’s working group for the PIAC submission.

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

Pension legislation and regulations should reflect the Province’s policy with respect to pensions. In addition to the list provided by the Panel, the Province through its policies, though not necessarily in pension legislation/regulations, should address whether they wish to:

- extend coverage of pension plans to those who do not currently have pension plans
- encourage the maintenance of defined benefit plans in Nova Scotia
- maintain the affordability of defined benefit plans for contributors
- balance the rights and obligations of stakeholders, including employers, current and future plan members, and current and future pensioners
- ensure that the language of the legislation and regulations is easily understood and is applied consistently by a pension administrator and pension regulator
- minimize discretion that the pension regulator may have in interpreting the pension legislation/regulations

#1, 2, 4, and 5 in the Panel’s list of goals on Page 8 could be simplified in an overall objective to safeguard the security of pension benefits.

If increased coverage of retirement savings is a goal for the Government of Nova Scotia, significant changes will need to be made to provincial and federal pension and tax regulations to provide more equitable retirement arrangements for all Canadians regardless of the type of vehicle used to save for retirement, and the source of eligible income. We refer you to the CD Howe’s list of publications and soon to be published papers recommending changes to Canada’s pension and retirement savings legislation. The CD Howe is an independent Canadian non-partisan think tank.

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

DB plans have inherent risks that need to be managed. Future pension obligations are estimated because future salaries, length of service, and mortality are not known. Steps can be taken to help minimize some risks, such as inflation risk, interest rate risk, risk of contribution volatility, etc. However, risk cannot be eliminated.

We are not aware of any plan designs that are not in use in Canada. Jointly funded plans are in use in Nova Scotia, yet not recognized in the pension legislation. We refer you to Alberta pension legislation which deals with jointly funded plans.

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

We believe that Defined Benefit pension plans should be encouraged. We recommend that public sector plans be exempt from the extreme contribution volatility associated with funding solvency deficits due to their extremely low probability of going bankrupt.

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

If plan sponsors have the responsibility to select and monitor investments, the number and type of investment options offered must be compatible with the plan sponsor's ability to select and monitor investments. If pension regulators would like to offer unlimited investment choice to plan members, this can be easily accomplished. However, the responsibility for selecting and monitoring investment options would need to be transferred to plan members.

We don't believe that the number and types of investment options should be regulated. We refer you to the CO-OPERATIVE SUPERANNUATION SOCIETY Plan in Saskatoon. It offers two investment choices: a balanced fund and a cash fund used to crystallize values if a plan member does not elect to take an annuity from the plan. It is run in a not-for-profit manner, has extremely low operating costs (0.15%), and is able to pay on-going pensions from its asset base, rather than buying market based annuities. Plan members value the plan and the pension deal is easily understood by plan members. The plan does not have to deal with excessive agency costs or complex regulation.

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

Yes. Pension plans are voluntary benefit plans unless negotiated with unions. Employers, in conjunction with unions where applicable, should determine the type of plan that best suits their competitive situation and employee needs.

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

Hybrid pension plans currently exist. Pension legislation should not try to define all types of plan designs because plan design will evolve in response to changing environments. Pension legislation should not favour one type of pension plan over another. Rather, pension legislation should ensure a level playing field for all, regardless of plan design. However, pension legislation should recognize jointly funded plans.

Should DC members have the ability to use different disbursement options, such as LIF type payments, rather than be required to convert funds on their retirement date?

Yes. DC plans should be able to pay pensions from their plans if this feature is desirable to the plan administrator and plan members.

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

No. Public plans, such as the HRM Pension Plan, should be exempt from funding solvency deficits due to the extremely low probability of HRM going bankrupt.

Should there be exceptions to the funding rules for universities, multi-employer pension plans and municipalities, or anybody else?

Yes. Exceptions should be made for public sector plans such as municipalities, universities, and public sector plans that have multiple participating employers.

Should going-concern funding still be a requirement?

Yes. A 15-year amortization is an appropriate time horizon for managing the funded status of a public sector pension plan.

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

No. Future benefits will be funded by a combination of contributions and investment returns net of fees.

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

In the case of a single employer sponsored non-contributory pension plan, there should be a requirement for full funding at wind-up. In the case of a jointly trustee plan, there should not be a requirement for full funding at wind-up because, in the case of the HRM Pension Plan, 50% of the funding would have to be collected from members. If a participating employer voluntarily withdraws from a plan that has multiple participating employers, there should be a requirement for the withdrawing participating employer to fund any deficit attributed to that participating employer. Otherwise, it is not fair to the remaining participating employers and their employees.

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

Yes. Some smaller plans that lack resources may wish to take advantage of the benefits of pooling their assets with a larger plan that has a strong governance structure in place. However, this should be voluntary since the establishment of pension plans is voluntary. Key factors that plan sponsors will assess before agreeing to join forces with another pension plan are value for money, the ability of the plan administrator to demonstrate strong governance, and transparency of critical information. Plan sponsors may decide to pool investments, or operate as a multi-employer plan or a plan that has multiple participating employers, if they are willing to harmonize plan design.

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

No. Surplus ownership should be decided by the employer in the case of a single employer defined benefit pension plan, by the employer(s) and unions/non-union employee associations in the case of a jointly trustee pension plan and /or multi-employer plan. This should be clarified in the Plan Text. If the Plan Text is silent on this matter, the cost-sharing arrangement for contribution rates should determine how surpluses/deficits are shared.

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

If the concept of deferred wages is valid, the concept is better addressed in the employment contract as opposed to a trust contract. The employment contract provides for a defined benefit based on a formula, and may provide for an entitlement to surplus. Plan Texts should expressly address the rules of the pension deal including whether funding, surplus entitlement, and funding of deficits is shared.

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

MEPPS should address funding issues by being able to adjust contribution rates or the level of benefits offered. MEPPS should be exempt from funding solvency deficiencies.

Which of the funding tests should apply to MEPPs?

Going concern.

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

Regulators should regulate clear pension rules passed by policy makers that meet public policy objectives. As such, government should encourage the use of a variety of different pension arrangements so that plan sponsors may choose an option that best suits the needs of their employer and employees. The Quebec model should be included as an option for consideration by the plan sponsor. The legislation should be broad enough to include different models not yet contemplated by the government.

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

No. The government should provide guidance to plan administrators in terms of high level governance principles, similar to CAPSA’s Pension Plan Governance Guidelines. Governance best practices are always evolving and regulating good governance is therefore inappropriate.

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

This is subjective and cannot be defined. Governance is a cost of overseeing a pension plan and should be an eligible expense of a pension plan, unless specifically prohibited in the Plan Text.

4.7 Does the current regulatory system work effectively? Are there currently unnecessary rules and regulations in place? If so, what are they? Should the appeal process be changed? If so, how?

No. The current regulatory system does not work effectively. Rules for funding solvency deficits do not make sense for public plans. Pension legislation/regulations require clarity in many areas in order to reduce disputes with the Superintendent of Pensions.

An example of unclear pension legislation/regulation includes the definition of a partial wind-up. We recommend that the concept of partial wind-up be removed from the legislation/regulation. If the concept of partial wind-up remains in the legislation, it needs to be defined so that pension plan sponsors, participating employers, and plan administrators understand what kind of event would trigger a partial wind-up, and what the funding implications are of such an event.

Other examples of unclear legislation/regulation exist in the solvency relief regulations. The HRM Pension Committee has requested a reconsideration hearing with the Superintendent of Pensions, which will likely lead to a court case to resolve unclear regulations pertaining to the funding of amendments prior to entering a solvency relief period and during the solvency relief period.

Appealing the Superintendent of Pensions via reconsideration hearings is redundant since plan administrators are appealing the person who declined the request in the first place. This is an unnecessary waste of time, resources, and money. We recommend

that the government establish an Expert Pension Ombudsman or Expert Pension Tribunal who will hear disputes prior to going to a lengthy and costly court process, where some judges may not necessarily have pension expertise. It is our understanding that Ontario is seriously considering both of these recommendations and is contemplating replacing FSCO with a standalone Pension Tribunal. If Nova Scotia decides to leverage off another jurisdiction's pension legislation, the Government may wish to consider leveraging off another jurisdiction's pension tribunal in order to resolve issues with respect to interpretations.

Regulatory changes seem to happen very rapidly and with little public notice or input. Feedback provided in the past has not been incorporated, resulting, unfortunately, in pension legislation/regulation that is not clear. Clarity in pension legislation/regulations will lead to the reduction of unnecessary time and money spent on interpretations. Money spent on lengthy court cases effectively reduces the amount of money left in the plan for the benefit of beneficiaries. For this reason, we recommend that pension legislation/regulations be clear and concise, and written with care by pension lawyers taking into account standard actuarial practices.

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

All pension plans should be regulated regardless of the number of members, with the exception of plans that only cover persons connected with the employer within the meaning of the Income Tax Act.

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

Pension plans are in place to provide retirement income. As such, regulators should regulate an employee's right to access pension funds prior to retirement, including hardship. Access should be considered for individuals who have small balances or for individuals who no longer work for employers, for example, those who become self-employed. Pension legislation, including access to funds, should be uniform across Canada.

4.10 Should the legislation require grow-in benefits to be provided on plan wind-up? Should legislators maintain the requirement to fund grow-in benefits upon wind-up?

No. Vesting rules protect accrued benefits. Grow-in rules do not make sense since they provide benefits to certain members who have not accrued these benefits, at the expense of other plan members.

5.1 Should "safe harbour" rules be established that would give DC plan sponsors and administrators protection from litigation?

Yes. Provide a safe harbour to those plan sponsors and administrators that adhere to the CAP Guidelines.

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

We recommend that Nova Scotia allow employers and plan members to adopt phased retirement on a voluntary basis.

5.3 What should be the regulatory position of Nova Scotia be with respect to TFSAs for pension purposes?

TFSAs are not a pension structure. They can be used to save after-tax dollars for a variety of purposes, including retirement, education, vacations, etc. We recommend that Nova Scotia not include TFSAs in pension legislation. TFSAs should be treated like a non-RRSP savings account.