



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

By the Municipal Association of Police Personnel

July, 2008

## Introduction

The Municipal Association of Police Personnel (MAPP) is the certified bargaining agent for almost 600 sworn officers and civilian police personnel who serve and protect the citizens of Halifax Regional Municipal (HRM).

MAPP would like to thank the Government of Nova Scotia and the members of the Pension Review Panel for this opportunity to comment on the important issues facing pension plans today and to address the questions posed by the Discussion Paper. We hope to be able to meet with the Review Panel to discuss our views and concerns, and to answer any questions the Panel may have.

Our members belong to the HRM Pension Plan, which was established effective April 1, 1998. Before turning to the questions posed in the Discussion Paper, there are several issues of particular importance to the HRM Plan and our members that we wish to highlight at the outset of our submissions. These are:

- solvency funding for public sector pension plans;
- uncertainty in the application of minimum funding requirements to equally funded plans; and
- unnecessary restrictions on plan amendments under the temporary solvency funding relief for municipality pension plans.

## The HRM Pension Plan

Our members belong to the HRM Pension Plan, which was established effective April 1, 1998. This plan is unique in its design. It is a public sector plan sponsored by HRM. While it is registered as a single employer plan, there are fourteen other participating employers. The administration and funding of the plan is shared equally by the employer and employees.

The HRM Pension Plan is a contributory defined benefit plan. The employer and employees contribute equally to the plan in an amount determined by the actuary and expressed as a percentage of salary. The shared funding obligation extends to any solvency deficiency and going concern unfunded liability. These must be paid through increased contributions by HRM and employees, or by a reduction in future benefits.

The plan is administered by a joint Pension Committee, which is independent of the employer. The Committee is comprised of 5 members appointed by the employer, 1 member appointed by each of 5 unions representing employees (including MAPP), 1 representative of non-union employees and 1 representative of retirees. The Pension Committee has the power to amend the plan. If an amendment affects benefits or contributions, it is subject to the approval of the employer and the bargaining units. The Committee also determines how any surplus will be

used. In the unlikely event the plan is wound up, any surplus is to be used exclusively for the benefit of plan members.

One of the duties of the Pension Committee set out in the Plan text is to report regularly and openly to all parties on the operation of the plan (with the exception of matters concerning individual benefit entitlement). This ensures transparency for all participants.

The plan includes a small voluntary defined contribution component. Contributions to the defined benefit component are based on regular salary. For overtime earnings, a member can make additional contributions to the defined contribution component, which are matched by HRM.

There are certain special rules for members in a “Public Safety Occupation”, which is defined to mean a sworn officer in the police or fire service. For plan members in a Public Safety Occupation, the normal retirement date is age 60. For all other plan members, the normal retirement date is age 65.

The HRM Pension Plan is professionally managed by a CEO and other employees.

### **Regulation of the HRM Pension Plan**

The HRM Pension Plan has three key features that bear – or should bear – on its regulation:

- it is a public sector plan;
- it is jointly administered and equally funded; and
- it is registered as a single employer plan.

The *Pension Benefits Act* explicitly addresses single employer plans. However, it does not adequately take into account the unique characteristics of public sector plans, and the Act fails entirely to recognize equally funded plans. These shortcomings lead to anomalies and to uncertainty in the application of certain provisions of the Act to the HRM Plan, particularly those concerning funding.

#### **A. Public Sector Plans and Solvency Funding**

Until the recent introduction of Regulations providing temporary solvency funding relief to municipality pension plans, the Act drew no distinctions between public sector and private sector plans. Yet, in terms of the risk that underlies the requirement for solvency funding, public and private sector plans are clearly distinguishable. It is unlikely that a public body, and

particularly a large municipality, is going to go out of business or become insolvent. In turn, it is unlikely that a public sector plan is going to be terminated.

Currently under the Act and Regulations, the only risk to the pension promise under single employer plans is employer insolvency, because s. 80(1A) of the Act now requires an employer to fully fund benefits on a full or partial wind up. Section 80(1A) came into force in December of 2007. Previously, an employer was not required to fund a plan shortfall on wind up, even if the employer had sufficient funds to pay. Only multi-employer pension plans are exempted from s. 80(1A).

In addition to s. 80(1A) of the Act, s. 37(10) of the Regulations states as follows:

(10) If a municipality pension plan is wound up in whole or in part during the time period referred to in subclause 6(1)(d)(iii) [temporary solvency funding relief period], the employer or any person required to make contributions on behalf of the employer, must pay into the pension plan in respect of members affected by the partial wind up, the amount required

(a) to liquidate all solvency deficiencies existing at the date of the partial wind up of the pension plan; and

(b) to pay for the benefits provided under Section 79 of the Act.

***Proposal: Since it is highly unlikely that a public sector employer, and particularly a municipality, is going to become insolvent, and since pension benefits are otherwise protected by the requirements of s. 80(1A) of the Act and s. 37(10) of the Regulations, it is our submission that solvency funding should not apply to public sector plans. The purpose of solvency funding is to ensure that benefits will be paid in the event of plan termination and employer insolvency. In the case of municipalities in this Province, the risk of the pension promise not being met is very small. In contrast, the risk is much higher for private sector employers. Solvency funding requirements should take into account the different levels of risk posed by different employers and different plan designs. This is one area where "one size does not fit all."***

## **B. Equally Funded Plans**

There is no recognition in the *Pension Benefits Act* or Regulations of equally funded plans. While the text of the HRM Pension Plan requires the employer and employees to equally share in funding, including any solvency or going concern deficits, the Act and Regulations do not actually authorize this arrangement.

The Regulations provide for two funding regimes. Section 5 applies generally, and requires a pension plan to include a provision for funding that sets out the obligation of the *employer* to contribute both in respect of the normal cost of the benefits and any going concern unfunded liabilities and solvency deficiencies. It further requires the *employer* to make payments to the pension fund in an amount not less than the sum of employee contributions, the balance of the normal cost, and special payments in respect of an unfunded liability or solvency deficiency. The only exemptions from this provision are for multi-employer pension plans established pursuant to a collective agreement or trust agreement, and a defined benefit pension plan under which the obligation of an employer to contribute is limited to a fixed amount set out in a collective agreement. Section 8 of the Regulations governs funding for these plans.

The HRM Pension Plan is neither a multi-employer pension plan established pursuant to a collective agreement or trust agreement, nor a defined benefit pension plan under which the obligation of an employer to contribute is limited to a fixed amount set out in a collective agreement. Therefore, the general funding provision in s. 5 of the Regulations applies. However, that provision requires the *employer* to fund any solvency deficiency or going concern unfunded liability. This is inconsistent with the HRM Plan text. Does this mean that the HRM Plan is contrary to the minimum standards in the Act and the employer is responsible for funding any deficit?

If the employer under an equally funded plan is not bound by the funding requirements in s. 5 of the Regulations, what then of the employer's obligation to fully fund benefits on a full or partial wind up under s. 80(1A) of the Act and, in the case of municipality pension plans, s. 37(10) of the Regulations? In an equally funded plan, are employees required to share this full funding obligation?

In MAPP's submission, it is appropriate that the employer alone should bear the obligation to fully fund benefits on the full or partial wind up of a single employer plan, because only the employer's decisions and actions can trigger a wind up. The circumstances in which a single employer plan may be wound up are set out in s. 73(1) and 74(1) of the Act, which state as follows:

73(1) An **employer** or, in the case of a multi-employer pension plan, the administrator may wind up the pension plan in whole or in part.

...

74(1) The Superintendent may, by order, require the wind up of a pension plan in whole or in part if

(a) there is a **cessation or suspension of employer contributions** to the pension fund except where payments are being made from surplus funds;

(b) the **employer fails to make contributions** to the pension fund as required by the Act or the regulations;

(c) the **employer** is bankrupt within the meaning of the Bankruptcy Act (Canada);

(d) a significant number of the members cease to be employed by the employer as a result of the **discontinuance of all or part of the business or the employer or as a result of the reorganization of the business of the employer**;

(e) all or a significant portion of the business carried on by the employer at a specific location is discontinued;

(f) **all or part of the employer's business or all or part of the assets of the employer's business are sold, assigned or otherwise disposed of** and the person who acquired the business or assets does not provide a pension plan for the members of the employer's pension plan who became employees of the person;

(g) in the case of a multi-employer pension plan,

(i) there is a significant reduction in the number of members, or

(ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions;

(h) any prescribed event or prescribed circumstance occurs.

[emphasis added]

Under s. 73(1), the employer has the authority and discretion to terminate the pension plan in whole or in part. Only in the case of a multi-employer plan is this power and discretion given to the administrator. Under s. 74(1), the Superintendent may order the wind up of a single employer pension plan when the employer ceases to make contributions, is bankrupt, discontinues or reorganizes its business resulting in the termination of a significant number of plan members, discontinues all or part of its business, or disposes of all or part of its business. A decision by a municipality to contract out services would fall within these circumstances. These are all matters within the control of the employer and outside the control of employees and their unions. It is only in the case of a multi-employer plan that the actions of a union could trigger a wind-up. In these circumstances, it is inappropriate to require employees who are members of an equally funded single employer plan to be responsible for fully funding benefits of other employees on a wind up.

***Proposal: MAPP submits that the Pension Benefits Act should explicitly recognize and even define jointly administered and equally funded pension plans. The Act should authorize equal funding arrangements. The existing silence with respect to jointly administered and equally funded plans results in ambiguity and uncertainty. By expressly recognizing this and other types of plan designs and the sectors in which they operate, the regulatory regime will be better able to address the unique features of different types of plans.***

***Proposal: There should be a requirement for full funding on wind up. In the case of single employer plans (including those that are equally funded), and for the reasons explained above, the employer alone should remain responsible for the full funding obligations in s. 80(1A) of the Act and s. 37(1) of the Regulations.***

### **C. Temporary Solvency Funding Relief for Municipality Plans and Plan Amendments**

In 2006 and 2007, the Pension Benefits Regulations were amended to provide temporary solvency funding relief for municipality pension plans. While a step in the right direction, MAPP submits that solvency funding should not apply to municipality pension plans (as discussed above), and that the restrictions on plan amendments under the new Regulations are causing significant and unnecessary hardship for plan members.

Under s. 6(1)(d)(iii) of the Regulations, municipality pension plans are able to fund their plans to only 85% solvency over the next 10 years. However, this solvency funding relief is tempered by two requirements. First, as noted, s. 37(10) requires that any deficiency on a partial wind up must be fully funded by the employer. In addition, s. 4(1A) of the Regulations imposes severe restrictions on plan amendments. If an amendment to a municipality pension plan that is funded under s. 6(1)(d)(iii) affects the cost of benefits or the funding of the plan, the costs of the amendment must be fully paid to the pension fund at the time the amendment is made. MAPP submits that the second of these requirements is unnecessary given the first. That is, since any funding shortfall caused by an amendment must be paid for by the employer in the event of a partial wind up, it should not be necessary to fully pay for the amendment at the time it is made. The benefits promised by the plan are protected. The full wind up of a municipality pension plan – and, in particular, the HRM Pension Plan – is an extremely unlikely event.

The requirement to fully fund an amendment at the time it is made is needlessly interfering with the ability of the HRM Pension Committee to improve benefits for active plan members and retirees, resulting in significant hardship.

The Pension Committee approved two amendments to the Plan which the Superintendent of Pensions has refused to register on the ground that the amendments must be immediately paid in full on a going concern basis (even though the regulations deal with solvency funding). The HRM Pension Committee has disputed the Superintendent's interpretation of the Regulations. MAPP agrees with the Committee's interpretation, and MAPP's submissions should not be taken as approving in any way of the Superintendent's decision.

One amendment provides for a one-time increase for all pensions in pay by 2%. Pensioners have not had an increase since the year 2000, when pensions were increased by 1.5%. Under the terms of the HRM Plan, the Pension Committee has the discretion to increase pensions on an ad hoc basis to provide some relief from inflation.

The other amendment increases the maximum pension under the Plan to the maximum permitted under the *Income Tax Act*. The current maximum pension under the plan is \$1,722.22 per year of credited service, which was the maximum under the *Income Tax Act* at the time the Plan became effective. However, the maximum pension under the *Income Tax Act* has increased and will continue to increase. In 2008, the maximum under the Act is \$2,333.33 per year of credited service, and this increases to \$2,444.44 in 2009. It was always the intention that the maximum pension under the Plan would "float" with the *Income Tax Act*.

Today, many members of the HRM Pension Plan earn salaries that exceed the cap in the Plan, and they are unable to make contributions to the Plan or earn pension benefits on that part of their salary that exceeds the cap. These members are also losing the benefit of equal employer contributions. Approximately 100 members of MAPP now earn salaries above the cap (i.e., those in the rank of Sergeant and above). In addition, higher ranking officers who are not members of the union also earn higher salaries, as do other members of the Plan such as the Mayor and all high-ranking HRM employees. In a nutshell, these members are losing pension benefits under the current maximum pension in the Plan. In essence, they no longer have a career average plan, in contrast to those members whose salaries do not exceed the cap. This creates unfairness and inequity among the plan membership – unfairness and inequity that does not have to be there. Within the next few years, approximately 400 Constables will also hit the cap, as well as other employees.

Since the HRM Pension Plan is equally funded, a requirement that the cost of these amendments be paid in full immediately would require a significant increase in both employer and employee contributions, which already exceed 10% of salary. In addition, as more and more employees reach the existing maximum pension in the Plan, the cost of increasing the cap will be substantially more and the amendment will become financially impossible.

***Proposal: MAPP submits that the restriction on plan amendments during solvency funding relief for municipality pension plans should be eliminated. It is unnecessary given the protection that is provided by the requirement that the employer fully fund benefits on a full or partial wind up.***

## The Goals of Pension Legislation

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

The main goal of the *Pension Benefits Act* is, and should be, to secure the pension promise.

It is important to remember that employees work for and earn their pensions through their labour. At retirement, employees have fulfilled their part of the pension bargain. At that point, employers should be required to keep theirs.

MAPP submits that the express goals of the *Pension Benefits Act* should also include:

1. the extension of pension coverage to as many Nova Scotians as possible, including part-time workers; and
2. the encouragement of defined benefit plans, which provide the greatest income security in retirement.

## Types of Plans

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

MAPP is not aware of any plan designs not in use that would provide defined benefits while minimizing risk.

There are many plan designs in use, and in our submission the *Pension Benefits Act* should more clearly and explicitly recognize and distinguish between these designs and the sectors and industries in which they operate.

## Defined Benefit Plans v. Defined Contribution Plans

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

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

MAPP strongly believes that DB pension plans need to be encouraged. As previously noted, DB plans provide the most income security in retirement.

Again, the jointly administered and equally funded plan model reduces the funding risk for employers through sharing some of the risk with employees.

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

New forms of hybrid and other plans should be permitted so as to extend pension coverage in the Province.

### **Pension Plan Funding**

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

*Should there be exceptions to the funding rules for municipalities?*

*Should going concern funding still be a requirement?*

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

The current rules for measuring and remediation of going concern funding are appropriate.

With respect to the other issues, we reiterate our submissions as discussed above:

***Proposal: Since it is highly unlikely that a public sector employer, and particularly a large municipality, is going to become insolvent, and since pension benefits are otherwise protected by the requirements of s. 80(1A) of the Act and s. 37(1) of the Regulations, it is our submission that solvency funding should not apply to public sector plans. The purpose of solvency funding is to ensure that benefits will be paid in the event of plan termination and employer insolvency. In the case of municipalities in this Province, the risk of the pension promise not being met is very small. In contrast, the risk is much higher for private sector employers. Solvency funding requirements should take into account the different levels of risk posed by different employers and different plan designs. This is one area where one size does not fit all.***

***Proposal: MAPP submits that the Pension Benefits Act should explicitly recognize and even define jointly administered and equally funded pension plans. The Act should authorize equal funding arrangements. The existing silence with respect to jointly administered and equally funded plans results in ambiguity and uncertainty. By expressly recognizing this and other types of plan designs and the sectors in which they operate, the regulatory regime will be better able to address the unique features of different types of plans.***

***Proposal: There should be a requirement for full funding on wind up. In the case of single employer plan (including those that are equally funded), the employer alone should remain***

*responsible for the full funding obligations in s. 80(1A) of the Act and s. 37(1) of the Regulations.*

***Proposal: MAPP submits that the restriction on plan amendments during solvency funding relief for municipality pension plans should be eliminated. It is unnecessary given the protection that is provided by the requirement that the employer fully fund benefits on a full or partial wind up.***

## **Governance**

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

MAPP submits that pension plan governance should be not be regulated. In our view it would be too complex to regulate the variety of governance structures and models that exist and to take into account the differences in plan needs. However, it would be appropriate to provide "high level" guidelines for plan administrators and other participants.

## **Harmonization**

MAPP submits that the Government of Nova Scotia should encourage and support the harmonization of pension legislation across Canada. In particular, this would facilitate increased portability of pensions and improve the ability of workers to move freely across Canada with minimum impact on their pensions. Harmonization would also help to reduce costs for pension plans.

## **Role of Regulators**

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

There are a number of areas in which the regulatory system can be improved and made more effective. The existing regulatory requirements include unnecessary rules, as well as rules that are inappropriate in their application to all plans. On some matters, more rules are needed.

In addition to the proposals we have already made, we would add the following:

***Proposal: The Pension Benefits Act should confirm that a plan actuary is an "agent" under 29(6) and subject to the same fiduciary duty to plan beneficiaries as is owed by the administrator. The Act should also confirm that the actuary reports to the plan administrator,***

***not the employer, and is accountable to the plan members and beneficiaries. Actuarial firms should be required to disclose conflicts of interest, and they should be prohibited from receiving consulting fees from parties related to the client.***

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

MAPP believes that the current appeal process whereby the Superintendent reconsiders her own decisions seems to include unnecessary steps and should be changed.

***Proposal: Instead of issuing a "proposed order" that is then subject to reconsideration, the Superintendent should simply issue an order. That order should then be subject to a full right of appeal to an independent tribunal with expertise in pensions. The tribunal's decisions would be subject to either judicial review by the court or a further appeal to the court.***

## **Unlocking Funds**

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

The ability of an individual to access his or her pension funds should be restricted to exceptional circumstances, such as terminal illness of the individual, or serious illness of the individual and his or her spouse or children that results in substantial medical expenses that are not covered by public or private insurance. In our view, mortgage default should not be grounds for accessing pension funds.

## **Phased Retirement**

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

The concept of phased retirement is a good one. The ability to continue working on a reduced basis while receiving a partial pension and accruing additional benefits would be welcomed by our members and would generally assist in addressing skills shortages in the Province.

There are four aspects of phased retirement that we wish to draw to the Panel's attention as requiring particular consideration. The first two warrant emphasis for MAPP's members.

**First, the regulatory position must accommodate the earlier retirement dates for police officers and firefighters under the HRM Pension Plan.**

**Second, to qualify for phased retirement benefits under the *Income Tax Act*, an employee must be at least 55 years of age and eligible for a pension that is not reduced because of age,**

pensionable service, or a combination of the two. Under the HRM Pension Plan, police officers and firefighters are frequently eligible for an unreduced pension at an age less than 55 (under a "rule of 80" with no minimum age requirement). MAPP requests that the Government of Nova Scotia lobby the Federal Government for a lower eligibility age under the *Income Tax Act* for phased retirement of employees in Public Safety Occupations.

Third, phased retirement should be cost-neutral to a pension plan, particularly a jointly shared plan. Also, if it is not cost-neutral, it is unlikely municipalities will be able to implement phased retirement under the current restrictions on plan amendments that increase costs.

Fourth, it appears that employees will not have a "right" to phased retirement. Rather, the employer will decide who will be able to take advantage of it. While unions will likely seek to negotiate rules to govern the employer's decision-making process, what recourse will employees who are not represented by a union have to challenge a refusal by the employer to grant phased retirement? Certain grounds of discrimination can be addressed under the *Human Rights Act*, but employees should also be protected against the arbitrary or bad faith conduct of an employer. In addition, where a pension plan is jointly administered or administered by a body other than the employer, what role if any does the administrator play in decisions about phased retirement?

## Conclusion

Protecting pensions is an important issue for our union and its members, and indeed for all Nova Scotians. We are very pleased to have had this opportunity to participate in the review of the *Pension Benefits Act* and comment on the issues raised in the Discussion Paper.

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