



New Glasgow, Nova Scotia
24 JUNE 2008

Pension Review Panel
c/o Nova Scotia Labour and Workforce
Development Policy Division
PO Box 697
Halifax, NS B3J 2T8

Dear Sirs:

Re: Pension Benefits Act Discussion Paper

We would like to thank you for the opportunity to comment on the Nova Scotia Pension Review Panel Discussion Paper dated May 28, 2008.

The paper raises the question *should pension legislation and regulation have goals other than those listed on page 8?*

We would suggest two obvious goals should be to encourage sponsors to offer pension plans and to encourage employees to save for retirement. Certain legislative requirements and court decisions have not encouraged these goals and, in fact, have often had the opposite effect.

With respect to types of plans, page 8 of the paper states that the most common type of plan is a defined benefit plan. However pages 6 and 10 note that the number of defined benefit plans in Nova Scotia have been declining. In fact we understand very few, if any, new defined pension plans have been opened in Nova Scotia for a considerable number of years and that this is consistent with experience in other Canadian jurisdictions. Page 10 of the paper points out, rightly in our opinion, that defined benefit pension plans are not as popular due to the considerable risks associated with them. We believe legislators and courts have seriously failed to recognize consequences that have resulted over the years from some of their past decisions. These decisions have steadily increased both the complexity and the cost of defined benefit plans, and have contributed greatly to the erosion of employer confidence in fair and reasonable treatment as a core stakeholder in the pension system. In our view, it would take major changes to once again encourage employers to even consider establishing defined benefit pension plans.

Michelin North America (Canada) Inc.

Pictou County Facility
P.O. Box 399 New Glasgow, Nova Scotia B2H 5E6
Tel 902-755-6040

Bridgewater Facility
P.O. Box 300 Bridgewater, Nova Scotia B4V 2X3
Tel: 902-543-8141

Waterville Facility
P.O. Box 5000 Kentville, Nova Scotia B4N 4M4
Tel 902-538-8021

The paper also points out that DC plans are not without risk to sponsors and that there has been litigation alleging failures to properly educate members, poor selection of investment vehicles and managers and excessive fees. While sponsors certainly understand that DC plans must be properly administered and are not without risk, some may well feel that such litigation is an attempt to shift more risk to the sponsor and to have the sponsor or plan provide more than a defined contribution plan was designed to provide. If this trend continues, unfortunately it is possible that sponsors will cease to offer any pension plan.

Should funding risks associated with the DB plans be reduced?

The answer is yes, but such risks would need to be significantly reduced to have any chance of reversing the current trend away from DB plans.

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

We would simply point out that the investment choices offered in a plan must be compatible with that sponsor's ability to manage the plan and monitor the investment performance. In this regard, it would be helpful to consider safe harbour rules, including clearly articulated investment default options.

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

In our opinion the five year rule is appropriate for private sector plans. Due to the concerns about some plans being underfunded, one must wonder how extending this period or making exceptions to the rule can possibly lead to the improved funding of pension plans.

Should there be a requirement for full funding at windup?

Yes.

The paper notes that surplus ownership has been contentious and notes the Monsanto case which required that surpluses be distributed immediately on a partial windup. Prior to these matters becoming contentious, many plan sponsors funded their plans fully so as to ensure the plan would be well funded and not require dramatic increases in contributions during economic downturns. Uncertainty over surplus ownership and the Monsanto decision have probably done more to discourage cautious and prudent funding of pension funds than was ever foreseen. We understand that both Alberta and British Columbia have passed legislation that makes it clear surplus distributions are not required on partial plan windups and would encourage Nova Scotia to do likewise.

Should regulators speak to the questions of the ownership of plan surpluses?

If sponsors bear the risks associated with a defined benefit pension plan, they should have the benefit of surpluses so as to encourage responsible funding and avoid disruptive partial wind up distributions that may negatively impact the future security of remaining plan members.

Should government attempt to define, audit and regulate "good governance"?

No. No jurisdiction has done so and there is no evidence mentioned in the paper that changes such as those in Quebec have encouraged better management of pension plans or the adoption of more pension plans.

The paper notes that the Canadian Association of Pension Supervisory Authorities (CAPSA) has developed pension plan governance guidelines for both defined benefit pension plans and capital accumulation plans. Michelin, as part of its pension governance process, is very familiar with these guidelines. These guidelines are, for the most part, very helpful in providing suggestions to improve pension plan governance. They should be given adequate time to work on a voluntary (not regulated) basis.

Should Nova Scotia adopt the model pension law being developed by CAPSA?

The provinces have been unable to agree upon a model pension law since the 1970s. To ask sponsors to comment on an unfinished model law by July 4, 2008 is unrealistic. Something as major as a complete rewrite of the pension act based on a model law requires more careful study by government with more adequate time for stakeholders to comment.

Should the appeal process from a decision by the Superintendent be changed?

No. We consider it extremely important to maintain an appeal to the Nova Scotia Supreme Court.

The paper mentions Group RRSPs and states "employees do not have the protection of the Pension Benefits Act". Page 4 of the paper states that registered *pension* plans are the subject of the discussion paper. Any attempt to regulate Group RRSPs as if they were pension plans could unfortunately lead to employers ceasing to offer such plans. Group RRSPs are a savings vehicle and the paper offers no evidence whatsoever to justify that they should be regulated.

Should the legislation require grow-in benefits to be provided on plan wind-up?

No. The paper correctly states that grow-in provisions do not exist in any provinces in Canada other than Ontario and Nova Scotia. Nova Scotia obviously followed Ontario and no other province did likewise. Grow-in provisions should not be required by legislation and should be left to employers and employees to negotiate by way of contract as is the case in other provinces.

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

Yes.

What should the regulatory position of Nova Scotia be with respect to tax free savings accounts for pension purposes?

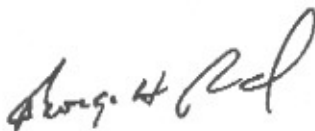
The extent to which sponsors will want to consider offering group tax free savings accounts remains to be seen. In any event, there is no evidence whatsoever that they should be regulated by the Province.

Reviews in other jurisdictions

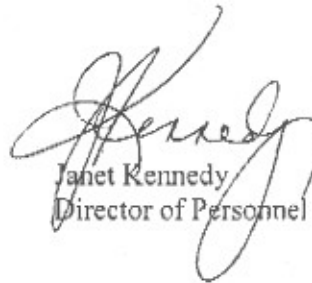
As you probably know, Ontario is also presently reviewing its pension legislation. That review may lead to other recommendations which the Panel may wish to consider.

Michelin has considerable experience with pension plans in Nova Scotia and in other jurisdictions in and outside Canada. We hope these comments are helpful. Thank you again for the opportunity to comment.

All of which is respectfully submitted,



George H. Sutherland
General Counsel



Janet Kennedy
Director of Personnel

GHS/JK:gmd