Pension Review Panel
c/o Nova Scotia Labour and Workforce Development
5151 Terminal Road, 5th Floor
Halifax, NS B3J 2T8

Re. Submission to Pension Review Panel

Section #1: Preamble

I am pleased to offer input to the Pension Review Panel (Panel) as it considers possible recommendations it might make regarding amendments to the Pension Benefits Act (Act). The NSAHO Pension Plan (Plan) and the environment in which it operates provide the context for this submission, but the input provided reflects only the opinion of the undersigned. Regrettably, the period provided to respond to the Panel's request for input was insufficient to allow this submission to represent a consensus view of the Plan's Trustees or other stakeholders. When any amendments are eventually drafted, I hope that there will be adequate opportunity for interested stakeholders to provide input on draft legislation, with sufficient time for legislators to give serious consideration to such input.

The Plan is Nova Scotia's largest pension plan regulated by the Act. With approximately $2.6 billion in assets, it provides defined benefit pension benefits to much of the healthcare workforce. In sharp contrast to the broader defined benefit environment, coverage in this Plan continues to grow. From 2000 to today, much of the province's continuing care sector moved from capital accumulation plans to this Plan, helping to increase active membership from 13,389 to 22,541 and the number of participating employers from 50 to 66. From 1996 to 2005, coverage growth represented 145.8% of the growth in public DB coverage noted on page 7 of the Panel's discussion paper.

The Plan has multiple participating employers and is jointly funded by members and their employers. In 2006, the contribution-sharing arrangement was formalized in a Memorandum of Agreement involving the major union and employer stakeholders. Members and their employers share the contribution risk of the plan, greatly increasing the level of risk that can be prudently tolerated.

Despite the fact that there are multiple employers participating in the Plan, the Plan is not currently considered a "multi-employer pension plan" under the Act. There are difficulties in administering a pension plan such as this one, not experienced by single employer plans. Examples are difficulty in collecting retroactive contributions after a valuation report is filed and in remitting lump sums on individual commuted value transfers where the plan has a solvency deficiency. In item #1 in Section #2 of this submission, I provide comments regarding how the environment for this type of arrangement could be improved. Most notably, our pension legislation should provide a logical framework for the operation of plans such as this one.

Nova Scotia is a small jurisdiction. Given this fact, and the inherent complexity of pension legislation, I suggest avoiding differences from pension legislation in other jurisdictions to the extent reasonably possible. It is too easy for hastily implemented "made in Nova Scotia" pension legislation to provide unintended consequences, with the

Bedford Professional Ctr.
2 Dartmouth Road
Bedford, Nova Scotia
B4A 2K7
Canada

Tel: (902) 832-8500
Toll Free: 1-866-400-4400
Fax: (902) 832-8506
E-mail:
pensionplan@nsaho.ns.ca

www.nsahopensionplan.ca

2007 TrentonWorks partial wind-up rules arguably being an example of this (this is discussed further in our response to the Discussion Paper's 5th question in section 4.2). Where examples of well-functioning legislation can be found elsewhere related to issues that need to be addressed in Nova Scotia, it makes sense that we would follow those examples. However, in following examples to provide solutions to existing problems, we should be careful not to sweep in measures with unintended consequences. Ideally, we would see changes that fill gaps in the current framework with enough flexibility to retain the best features of our plans and current regulatory system.

Aside from the practical challenges of maintaining complex and unique legislation, it should be noted that a very significant portion of Nova Scotia's pension members belong to multi-jurisdictional plans. From page 7 of the Panel's Discussion Paper, of the 37.5% that belong to a pension plan, 52.2% are regulated elsewhere. While some of this 52.2% are single jurisdiction federally-regulated plans, the 52.2% does not include the multi-jurisdictional plans that are regulated in Nova Scotia. The complexity and inequity inherent in this patchwork of legislation is needlessly inefficient, and in my view, serves no good purpose. Accordingly, I suggest:

- modeling our Act and regulations after one of the larger Canadian pension jurisdictions. For this to be fully effective, it is important that we regularly adopt improvements as they are made in the modelled jurisdiction and otherwise avoid changes to our Act. I understand that when our legislation was last reformed it was based on Ontario's legislation, but over time various differences have arisen, arguably (as touched upon elsewhere in this submission) a sub-optimal result. Consideration might also be given to confirming that the choice of "model jurisdiction" is the most prominent jurisdiction applicable to the multi-jurisdictional plans that Nova Scotians belong to. However, where a need for change is identified, Nova Scotia should act independently, but only where the model jurisdiction or other example followed does not take action in a timely and reasonable manner; and

- that consideration be given to combining some or all of the four Atlantic provinces under common pension legislation (modeled after a larger Canadian jurisdiction) and supervision. While practically difficult, I understand there is precedent for such cooperation under the auspices of the Council of Atlantic Premiers. Given the increasing complexity of the pension environment it seems desirable to promote reasonable levels of scale in their supervision. However, with only 10.2% membership in private sector defined benefit plans in the province, and coverage trending ever lower, the area of greatest member vulnerability is rapidly diminishing. In light of this, it seems reasonable to seek "out-of-the-box" means of achieving such scale within limited budgets.

I have structured the balance of this submission, to first, provide feedback in a few areas that the Discussion Paper does not ask about, and finally, to respond to the questions posed in the Discussion Paper. It is stressed that the input provided in the balance of this submission is not intended to mute the preference noted above to avoid unnecessary legislative diversity between Canada's pension jurisdictions.

Calvin Jordan
CEO, NSAHO Pension Plan

Section #2: Feedback in areas that the Discussion Paper does not ask about

1. **Jointly Funded/Sponsored Plans:** An important possible means of improving the sustainability of defined benefit pension plans is by sharing contribution risk between members and their employers. The largest pension plans in Nova Scotia tend to be funded on this basis. Unfortunately, Nova Scotia's current Act does not contemplate this type of arrangement, resulting in various logistical problems (*e.g.*, retroactivity of contribution increases). While I am not an expert on Ontario pension legislation, I understand that "Jointly Sponsored Plan" rules were adopted in that jurisdiction to address such problems. Such a framework could be very helpful in Nova Scotia. If such rules are to be adopted, we urge government to allow stakeholders a reasonable period for review of draft legislation. This will help avoid unintended and surprise consequences.

2. **Funding of excluded benefits and solvency deficiencies on transfer from the plan:** The Act permits various benefits to be excluded (*e.g.*, indexing) when solvency liabilities are determined. Starting about five years ago, employers were required to fund the value of any such excluded benefits when terminating members transfer out of the pension plan.

   Similar to the above, when solvency deficiencies exists, the Act requires the employer to make a contribution when terminating members transfer from the plan, with the contribution being proportionate to the deficiency. An exception is, however, allowed if the deficiency for a given transfer is less than 5% of the YMPE, and if the cumulative deficiencies since the last valuation report are less than 5% of plan assets.

   The above two funding requirements protect the plan's solvency position from being diluted by terminations, but the protective value is normally very small and the administrative burden is disproportionately large. It is inconsistent that there is no exception provided for the excluded benefits funding requirement that parallels what is provided for the solvency deficiency funding requirement. It also seems unnecessary to apply an individual limit (*e.g.*, 5% of the YMPE) on the solvency deficiency exception so long as the cumulative limit exists. This appears to have been recognized in Ontario, where changes to these funding requirements were made two years ago so that the 5% of the YMPE limit applicable to individual transfers was eliminated. In Ontario, such funding is now only required if the cumulative solvency deficiencies on transfers since the last valuation report are more than 5% of plan assets. Furthermore, Ontario now effectively applies the funding exception so that it is also applicable to the excluded benefits funding requirement.

   I also note that making the employer solely responsibility for these funding requirements is contrary to the principle of shared funding inherent in jointly funded plans (the plans described in #1 above), and can also be logistically difficult for pension plans with multiple participating employers.

I therefore recommend relaxing the requirement to fund excluded benefits and solvency deficiencies so that funding is only required to the extent that such amounts since the last valuation report are in excess of 5% of plan assets. I further recommend that jointly funded plans be permitted to include any such funding in satisfaction of the employer's share of contributions.

As Nova Scotia's population ages, attraction and retention of our healthcare workforce is becoming critically important. The Act should not unnecessarily impede these efforts. As described in #3 and #4 below, accommodating those training to enter this field, and encouraging older employees to stay in the workforce longer, may provide important support for human resource objectives, and accordingly for Nova Scotians' health care.

3. **Acceptable classes:** I recommend increased flexibility in what constitutes an acceptable class of employees. One example of where the application of the current rules is too rigid is for temporary employees. This impacts some of Nova Scotia's largest healthcare employers, as they regularly provide temporary employment to individuals (in professional training or work experience programs, for example). Our understanding is that the Superintendent of Pensions is unwilling to use her latitude to accept temporary employees as an acceptable class of employees, presumably to protect these employees' eligibility for participation. We are therefore forced to subject these employees to the same eligibility rules as permanent employees (mandatory participation in our Plan). The affected employees frequently find this annoying because they are forced to contribute to a pension with no expectation of retirement benefits. It is also annoying to their employers, because they incur the cost of contributions, which are not refunded when the non-vested member terminates, with no corresponding benefit to the temporary employee. If temporary employees were an acceptable class, these employees could either be excluded from participation, or their participation could be optional.

4. **Retention of retirement age employees:** Over the past year, the Plan has been considering an idea to improve retention of Nova Scotia's health care workers who are approaching retirement age. On February 1, 2008, Nova Scotia's Superintendent of Pensions wrote to me stating: *"I think you should bring this proposal forward to the review committee when the Committee is up and running."* I do not believe that there are any changes in the Act that are necessary to permit this idea. However, I ask that the Panel take care that its recommended changes to the Act do not inadvertently prevent or limit the potential of this idea.

   The idea is to dramatically increase the size of our bridge benefit for members who delay their retirement beyond their earliest unreduced pension commencement date. Members who retire ***after*** their earliest unreduced date would have their bridge benefit amount increased, until the bridge benefit is doubled for retirements that are at least 5 years (for example) after the earliest unreduced date. For example, let's look at a full-time member who has 30 years of credited service at age 55. I've assumed a pension based on earnings averaging $35,000 at age 55, with earnings increasing by $1,000 for each year that retirement is delayed. Here's what the numbers look like before age 65 (after the bridge stops at 65 there would be no continuing enhancement):

Retirement Age	Pension with regular bridge	Pension with enhanced bridge
55	$21,000	$21,000
56	$22,320	$23,659
57	$23,680	$26,522
58	$25,080	$29,594
59	$26,520	$32,885
60	$28,000	$36,400

I suspect that there may be little (if any) cost to our Plan for this design enhancement because the cost of the improved bridge benefit would be offset by the savings from having delayed retirement experience.

5. **Definition of common law partner:** The Act's definition of a "common law partner" is "…another individual who has cohabitated with the individual in a conjugal relationship for a period of at least two years, neither of them being a spouse."

As a result of the above definition:

- An individual plan member who is not married, but living with another individual, cannot provide spousal survivor benefits to that other individual, if that other individual is married; and
- An individual who is married, but living with another individual, cannot provide spousal survivor benefits to that other individual. In effect, priority is given to the partner to whom the member is married (but living apart from) over the partner with whom the member is living.

I question whether either of the above results is desirable.

Section #3: Feedback on questions asked in the Discussion Paper

3. Pension Legislation

Question: Should pension legislation and regulations have goals other than those listed above?

Answer: I believe that the stated goals are sufficient.

3.1 Types of Plans

Question: Are there plan designs not in use that would provide the benefits of DB plans while minimizing risks?

Answer: The phrase "not in use" suggests a focus that is in my opinion too broad. While it is tempting to look for "giant killer" ideas to remedy the challenges faced by DB plans, this may unduly dilute focus from improving legislation aimed at plan designs that are realistically expected to be in common use.

Pension plan designs that should be mentioned are "Specified Multi-Employer Pension Plans" (SMEP) and "Jointly Funded Pension Plans" (as described in our comment #1 in Section #2 of this submission). Neither reduces risks but they provide a different sharing of risk from traditional DB and DC plans, and can be particularly helpful in keeping risks tolerable in some environments. These designs are common in Nova Scotia, but are not adequately supported by the current Act.

4.1 Defined Benefit (DB) Plans versus Defined Contribution (DC) Plans

Question: 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?

Answer: While funding risks under current pension legislation have undoubtedly hastened the decline in DB plan coverage, I don't expect that any change in pension legislation will reverse this trend. In my view there are likely other more fundamental factors at work (*e.g.*, the perceived value to attraction and retention efforts relative to risk-adjusted costs). Furthermore, even if a legal environment that significantly reduced funding risks were put in place, plan sponsors may lack confidence that this environment would persist. Past legal decisions and changes in legislation have sometimes abruptly altered rights and obligations within existing plans, undermining confidence in the legal environment's stability. I urge the Panel to be mindful of this concern as recommendations are developed.

Placing undue emphasis on minimizing the perceived risks and challenges of managing a DB pension plan for employers that are unlikely to sponsor a DB plan in any event merely distracts from the more practical goal of providing workable legislation for those who continue to be committed to this design.

There are various steps pension plan administrators can already take to reduce funding risks (more conservative funding or investment policy, or benefit and funding policy that entails broader sharing of risks).

I recommend caution when considering changes in pension legislation aimed at reducing funding risks. Short term reductions in employer funding risk may lead to increases in risk for members, and possibly increases in longer term employer funding risk. Without the hard edge of statutory funding requirements, it can be too easy for prudent action to be delayed, leading to deteriorating costs and security.

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

Answer: Not relevant to the NSAHO Pension Plan.

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

Answer: I agree that the Act should avoid unnecessarily restricting plan design. However, I believe that it is more important to focus on the legislative needs of existing pension designs rather than new designs in which utilization may be low. As just one example of an existing design that is not adequately dealt with, I refer the Panel to point #1 of section #2 of this submission.

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

Answer: It is already possible to provide hybrid pension designs so I find this question puzzling. In any event, I doubt that there would be significant interest from plan sponsors in adopting hybrid designs where they are not already in place.

Question: 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?

Answer: Not relevant to the NSAHO Pension Plan.

4.2 Pension Plan Funding

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

Answer: My only concern regarding the funding of going concern deficits pertains to the logistical challenge faced by Jointly Funded Plans when contributions must be increased retroactive to the effective date of an actuarial report. This and other logistical problems faced by these plans are dealt with in our suggestion in item #1 of section #2 of this submission.

The current rules attempt to provide some degree of solvency funding relief, but without a readily apparent logical underpinning. Benefits such as grow-in and indexing can be excluded from solvency liabilities, representing significant relief for some plan designs and none at all for others. Similarly, some categories of plan sponsors have been singled out for relief and others receive no relief. Some argue that this uneven playing field makes sense because there is little wind-up risk for public and quasi-public sector sponsors, a notion which is not fully supported by history.

In place of the above-noted patchwork of exceptions, I propose that solvency liabilities be determined as 80% of wind-up liabilities (excluding grow-in as is discussed further in our response to the questions in section 4.10), with any solvency deficiency funded over 5 years with no exceptions. While 80% is somewhat arbitrary, without some level of relief, I am concerned that benefits (and even plans) would be unnecessarily curtailed. The intent is to provide a level of contribution relief while not subjecting members to an excessive amount of benefit risk.

See also our comments in item #2 in section #2 of this submission.

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

Answer: I believe there may be an argument for making an exception for Specified Multi-Employer Pension Plans (negotiated contribution plans where employer contributions are fixed, and benefits are reduced when funding is inadequate). In these types of plans, there is an equity argument for using best estimate assumptions (going concern rather than wind-up, unless wind-up is expected; excluding margins for adverse deviation) when the valuation will lead to a reduction in the level of benefits. In any event, the NSAHO Pension Plan is not a SMEPP and as such I defer to the recommendations that are made by those with stakeholder interests in such plans.

As explained in my response to the last question, I do not support singling out other plans or sectors for special relief. I am concerned that such relief may allow, and even encourage, postponement of hard decisions that sometimes need to be made.

The most extreme exception that is granted in Nova Scotia is the exemption for the Public Service Superannuation Plan (PSSP). This plan has significant unfunded liabilities on which I understand interest is not even currently contributed. The practices of the PSSP put pressure on other Nova Scotia public sector pension plans, making it more difficult for us to balance stakeholders' expectations for competitive benefits and affordable contributions. I question the prudence of exempting this or any other plan from the Act.

Notwithstanding the above comments, if plans or sectors are to be singled out for special relief, I believe that this should be conditional on the employer being responsible to fund the deficit on wind-up (as has been required for some of the exceptions granted in the

past). However, this employer responsibility should be subject to limits as described in our response to the question regarding wind-up responsibility that is asked later in this section. Plans and sectors that are singled out for such special relief should be limited to those for whom there is little risk of the employer defaulting on the wind-up funding responsibility.

Question: Should going concern funding still be a requirement?

Answer: There needs to be some sort of funding of current service. In principle, this could take the form of funding the increment in the solvency liability rather than a going concern normal cost. However, in my view, Nova Scotia should defer to the practices of larger Canadian jurisdictions on such technical matters.

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

Answer: This question appears to ask whether it should be possible to take contribution holidays (full or partial). It is already possible to draft plan documents or collective agreements to prevent contribution holidays. For the Act to prevent contribution holidays in all other situations would be a significant departure from the current Canadian legislative environment, and seems unnecessary.

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

Answer: Yes, but excluding the value of grow-in benefits (as discussed under 4.10 later in this submission) and subject to limits as described below. I am concerned that the December 2007 legislation regarding this matter (prompted by the wind-up of the TrentonWorks pension plan) may have some serious unintended consequences. Regulations describing the details of how this legislation will work are still pending, and it is possible that my concerns will be at least partially addressed by these regulations.

My concerns and proposed solutions are as follows:

a. The December 2007 amendment runs contrary to the principle of shared responsibility inherent in jointly-funded plans, alluded to in comment #1 in Section #2 of this submission. Where a pension plan shares responsibility for contribution increases with members, I suggest limiting *the protection provided to members and the employer's responsibility for wind-up deficits to be proportionate to the employer's contribution sharing commitment*.

   It should be noted that in addition to plans that provide a formal contribution sharing arrangement in their plan documents, there are other plans that have less formal contribution sharing arrangements where member contributions are periodically changed to roughly mirror changes made in employer contributions. It should also be possible to adopt contribution sharing arrangements in the future where they don't already exist, with the limit on wind-up protection described above (subject to reasonable transition limits) applying. While adopting such an arrangement in the

future may create concerns that this would excessively erode the protection provided by the December 2007 legislation, I fear that this new protection was put in place with such haste that the full implications were not examined. It is stressed that as pension plan liabilities mature and risks generally increase, if the ability doesn't exist to share risks broadly enough to keep them tolerable, the sustainability of defined benefit pensions will be eroded further.

b. I am concerned that without rules that treat all stakeholders in pension plans with multiple participating employers fairly, there could be a significant and unnecessary disincentive to new employers who are considering participation in such plans. This would be unfortunate as these plans appear to explain the majority of the growth that has occurred in public sector-regulated in NS coverage as reported on page 7 of the Discussion Paper. For plans with multiple participating employers, I recommend that:
   i. any employer responsibility on full or partial wind-up be allocated to the employers in proportion to each employer's involvement in the wind-up. For example, if a partial wind-up involves a single employer, the withdrawing employer would be fully responsible for any wind-up liability to be borne by employers;
   ii. an employer should not be responsible for any wind-up deficits that existed prior to an employer's participation in the pension plan. An example of a fair approach in these situations may be:
      1. to limit the protection that is provided for service prior to the employer's participation in the pension plan (that may have been purchased or otherwise granted), to the greater of:
         a. the contributions plus interest that were paid for this prior service; and
         b. the value of the prior service, reduced proportionate to the wind-up deficit that existed when the employer's participation in the pension plan started.
      2. to limit an employer's liability on wind-up to be proportionate to the increment in wind-up deficit during the period of their participation (excluding any deficit that existed at the start of their participation).

   The above recommendation is conceptual. The technical details (*e.g.*, the effective dates of the wind-up assumptions to be used) are important but have not been considered in this submission.

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

Answer: Such plans can be a good idea and they already exist (Union of Nova Scotia Municipalities, NSAHO Pension Plan, Police Association of Nova Scotia Pension Plan, etc.). Such plans should not be forced to operate as a MEPP (our understanding is that the Superintendent does not consider the NSAHO Pension Plan to be subject to MEPP requirements). The Act should be drafted to avoid hindering the creation of such plans,

but doesn't otherwise have a role in the creation of such plans. On this note, see our comment in item #b in our response to the prior question.

4.3 Surpluses

Question: Should regulators speak to the question of the ownership of plan surpluses? If so, what should it say?

Answer: In my view surplus ownership should generally be in accordance with the plan documents.

Question: 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?

Answer: Certainly it seems logical that participation in a pension plan will tend to cause cash compensation to be less than otherwise would be the case. However, I expect that in most cases this trade-off is very approximate. Employers facing increases in pension contributions do not have unlimited flexibility to offset these costs with reductions in cash compensation given their need to attract and retain employees.

When pension improvements are collectively bargained, the trade-off of cash compensation becomes more explicit. However the trade-off is generally based on an actuary's estimate of costs, usually using an investment assumption that includes an equity risk premium. Because of the inclusion of an equity risk premium, the wage trade-off tends to be much less than the true market value of the pension benefit that is bargained. Furthermore, the actuary's costing does not generally include the expected benefit of future surpluses, and accordingly we doubt that the possibility of future surpluses usually has any impact on the amount of any wage trade-off.

Therefore, it seems a stretch to use deferred wages as an argument for either surplus entitlement or deficit funding responsibility, neither of which is generally anticipated when any trade-off occurs. A more straightforward answer seems to be provided by reference to what is collectively bargained or otherwise explicitly agreed to, as is evidenced in plan documents and collective agreements.

4.4 Multi-employer Pension Plans

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

Answer: Not all multi-employer pension plans (MEPP), or pension plans with multiple participating employers, are specified multi-employer pension plans (SMEPP). The NSAHO Pension Plan is a pension plan with multiple participating employers, but is not a SMEPP. This distinction between pension plans with multiple participating employers, MEPPs and SMEPPs needs to be made clear in the Act, with supporting legislation provided for each. As this question appears to be aimed only at SMEPPs, and as the

NSAHO Pension Plan is not a SMEPP, I will not respond further, deferring to the views of SMEPP stakeholders.

Question: Which of the funding tests should apply to MEPPs?

Answer: Please see my response to your second question of section #4.2. As this question appears to be aimed at SMEPPs, and as the NSAHO Pension Plan is not a SMEPP, I will not respond further, deferring to the views of SMEPP stakeholders.

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

Answer: I doubt that there would be enough real interest in such plans, given the relatively small size of our province, to justify legislation in this area.

4.5 Governance

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

Answer: In my opinion, no attempt should be made to define, audit or regulate good governance at this time beyond current rules and controls. This is a difficult area in which I believe we should instead follow the lead of other jurisdictions. In my experience, good pension outcomes have much more to do with the people involved (in both governance and operations) than with the formal governance process. Any regulatory effort would have difficulty targeting anything other than process.

Question: Given that there are associated costs with governance, what is an appropriate cost for "good governance"?

Answer: To the extent that governance expenses are charged to the pension fund, they should be subject to the same levels of prudence as any other expense. What represents a level of prudent governance expense is context specific and defies a more specific answer. The Act should state explicitly that reasonable administration costs, including costs to support plan governance, may be charged to a pension plan unless the plan documents state otherwise.

This question may be looking for a solution to a problem that may not exist. In my experience, the governance costs that get charged to most pension plans are really in support of plan administration more than governance. For virtually every pension plan, by far the largest governance cost is the time spent by trustees and committee members, a cost which is only very rarely funded by the pension plan. Within DB pension plans, members are assured of receiving reasonable value relative to their contributions by the so-called "50% rule". Within DC pension plans, I expect that "governance expenses" are only charged within a very small handful of plans, with such expenses being small (as a percent of assets) and primarily in support of administration rather than governance. In contrast to the very limited governance efforts of many DC plans, these few plans that

provide for "governance expenses" should be applauded for taking governance serious enough to provide it with a budget.

4.7 Role of Regulators

Question: 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?

Answer: In some instances, the current legislation is silent on the acceptability of a practice or design feature, including practices and features that are common in Nova Scotia. In theory this should not represent too much of a problem inasmuch as the Act only represents a *minimum* standard. Designs should be acceptable so long as they meet this minimum standard even if not explicitly provided for. In practice, the administration of the Act sometimes prevents a practice or design feature unless explicitly provided for under the Act (*e.g,*. temporary employees are not permitted as an acceptable class; active members may not opt out of current accrual; active members may not start their pensions before normal retirement date without ceasing employment; etc.). In effect, discretion is not fully used by the regulator where the Act provides it. The Act needs to be either expanded to support the various existing designs and practices that are important within Nova Scotia, or in the alternative, it needs to be made clear that features and practices do not need to be provided for explicitly so long as the minimum standards are complied with.

The notion of an appeal process that involves a hearing with the same individual that made the decision that is being appealed seems flawed. Practically however, given the complexity of the issues that can be subject to appeal, it is important that any appeal be decided by persons who have significant pension expertise and are free of biases towards either employers or labour. If an appeals board were to be formed, to increase the pool of pension experts available to serve, consideration might be given to a single appeals board for Atlantic Canada. If this proves impractical, consideration might be given to using the Nova Scotia Utility and Review Board.

Question: 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?

Answer: Single member plans whose member is a "connected person" under the Income Tax Act (Canada) do not require the protection of the Act and should not be regulated. Otherwise there should be no minimum number of members.

4.9 Unlocking Funds

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

Answer: The pension industry appears to be divided over whether some level of locking-in should apply to assets accumulated within a pension plan. Given the lack of consensus, perhaps the best default position is locking-in but with limited exceptions, as

is currently the case. However, I believe that some fine-tuning of the exceptions is in order.

I believe individuals should have increased access to their funds prior to age 65 to permit them to "bridge" their income prior to starting their CPP and OAS pension benefits. This could be done by either increasing LIF income maximums prior to age 65 or by allowing a portion of funds to be unlocked (as is the practice in New Brunswick). If this issue is dealt with by allowing a portion of funds to be unlocked, it might be possible for this to replace the locking-in exceptions that are currently allowed on terminal illness and financial hardship, thus reducing administrative burden on the Superintendent's office.

I also believe that an exception should be made for non-residents as is allowed in some other jurisdictions. To do otherwise imposes a restriction on such individuals' ability to effectively manage their investments and taxes that seems disproportionate to any protection that locking-in provides.

4.10 Grow-in Benefits

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

Answer: Yes, but only to the extent that assets within the fund are sufficient to provide this benefit. In the event of partial wind-up, grow-in should be provided to the impacted members to the same extent as would have been the case under a full wind-up. My recommendation is in effect a return to the rules that applied between 2004 and 2007.

If cost were not a constraint, I certainly like grow-in benefits. However, I question why employees who are part of a partial wind-up should receive this benefit when other terminating employees do not. Today, grow-in is primarily an issue for public sector and quasi-public sector plans. Membership within private sector DB plans with generous early retirement provisions has become by comparison very small. In the public sector there is certainly less risk of being part of a wind-up than of terminating on some other basis. Interestingly, the largest public sector pension plans in Nova Scotia are exempt from a grow-in requirement as they aren't covered by the Act.

It should be noted that within public sector pension plans, grow-in frequently enhances rather than protects the value of early retirement provisions. For example, under the NSAHO Pension Plan, the average member currently retires at about age 59.7. If our Plan were wound up, the average member who would be eligible for grow-in benefits could retire without a reduction at about age 57.9. If our Plan were wound up without grow-in rules, members with at least 10 years service could retire at age 60.

By all means, the legislation should require grow-in benefits on wind-up, but without a funding requirement that could threaten current benefit levels. Why should Nova Scotia pension plans be required to fund a benefit that most other jurisdictions have concluded has a cost that is too high to be justified?

Question: Should legislators maintain the requirement to fund grow-in benefits upon wind-up?

Answer: See my response to the prior question.

5.1 "Safe Harbour" Rules

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

Answer: Not relevant to the NSAHO Pension Plan.

5.2 Phased Retirement

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

Answer: We have completed an analysis of the impact phased retirement provisions would be expected to have on the NSAHO Pension Plan and the covered workforce. This analysis assumed that the constraints described in the 2007 federal budget would be applicable. Our conclusion was that phased retirement may increase retention of employees in some situations but would reduce retention of others. We concluded that on balance, it is quite uncertain how much (or whether) phased retirement would improve employee retention within our Plan, but there would nonetheless be a significant cost. This analysis is available to the Panel upon request.

Nova Scotia should adopt legislation enabling phased retirement as is contemplated in the recent federal legislation, to follow the expected practice of other jurisdictions. I recommend adopting these rules in a manner that will give employers flexibility to target members for phased retirement benefits. Even with this legislation, given the expected impact on the NSAHO Pension Plan that is described above, it is uncertain whether our Trustees will choose to adopt phased retirement provisions.

A form of "phased retirement" is already very prevalent within Nova Scotia's healthcare sector. Employees frequently retire, and then return to work on a part-time basis. In order to continue receiving their pension, it is necessary for them to limit their employment to part-time. Otherwise participation would be mandatory under our eligibility rules, and their pension would be suspended as a result of CRA rules. It may be preferable if these employees had the option to simply start receiving their pensions without retiring. This would allow these employees to maintain their seniority, and continue to work full time if they choose to. The current application of the Act does not permit an active employee to cease pension accrual and start receiving a pension without ceasing employment (unless the member has reached normal retirement age). Note that the current restriction appears to result from the regulator's application of the Act rather than from the Act itself.

5.3 Tax Free Savings Accounts

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

Answer: TFSAs should not be subject to pension legislation. I agree that some individuals may find these to be more effective retirement savings vehicles than registered plans. However, this should only be the case for taxpayers that expect to be at a higher tax rate (including the impact of GIS and OAS claw-backs) during retirement than during their contribution years. I expect that the far more common usage will be for shorter term savings, a use that seems to be contemplated by the feature that allows funds to be withdrawn at any time for any purpose. To subject TFSAs to pension legislation puts these vehicles into a regulatory box for which they seem not intended.