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*OFFICE OF
THE VICE-PRESIDENT, RISK MANAGEMENT
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July 4, 2008

Pension Review Panel
c/o Nova Scotia Labour and Workforce Development
attn: Rachel Henderson, Policy Support for Pension Review Panel
Policy Division
PO Box 697
Halifax, NS B3J 2T8

Dear Panel:

Re: Nova Scotia Pension Review

Recently I participated in a Government Relations Round Table (a committee of GR professionals representative of NS employers) with Dick Crawford and Rachael Henderson and we were pleased to listen to a brief presentation and to provide some preliminary oral response. We were encouraged to provide written comments by the July 4 deadline. Due to the very tight time frame, I was unable to internally poll our HR experts and discuss this in any extensive way with our colleagues in business, especially with the Canadian Manufacturers and Exporters but would like to respond to the Panel by providing what are broad comments based on my personal and professional knowledge of pension matters. These are my observations only.

The primary concern is that future pension legislation accurately reflects the evolving needs of the workforce. Legislation should include requirements for flexibility and portability that will enable the pension system to change with and continue to support its participants appropriately. Long gone are the days of the one employer/one plan life-time employee. Employees have dynamic careers and are increasingly mobile. Their decreasing participation in pension plans shows there is a need for a pension

system that can support them as they move through their career and life. Canadian companies are experiencing labour supply issues and it is likely an employment imperative (and a Canadian competitive issue) that pension plans be recognized and treated as an important remunerative consideration and a major recruitment and retention tool. One need only look at the myriad of financial products that presently exist compared to even two decades ago to support the proposition that changes are needed and any new regime must be designed to meet changing needs and the advent of new products.

Social policy should encourage the establishment of programs (regulated and non-regulated) that promote and encourage savings to address the needs of individuals throughout their working lives and retirement. However, pension programs, specifically, should not be a vehicle for broader social engineering. It should be limited to providing a regulatory regime that facilitates the administration of an agreement between an employer and employee. Regulated regimes should be in harmony (or at least not conflicting) with other programs such as RRSPs, etc. There should also be resistance to trying to expand into other speciality, and presently non-regulated, areas such as deferred profit sharing, group RRSPs, supplemental executive retirement plans, to name three. These each may provide specific advantages and should be offered by agreement based on their own merits.

An example of need is that many employers and employees alike would appreciate flexibility in pay and benefits, including retirement benefits, in order to attract employees to remain in the work force. Employees likely do not wish to be forced into arbitrary choices with respect to having to begin drawing pension or may even wish for partial payments, etc. to supplement present earnings. Similarly, employers may wish to temporarily amend benefits as an employee phases their work towards full retirement. Each circumstance is dependant upon the needs of the individual and hence a “one size fits all” legislation is likely too rigid.

The goal of being able to design and improve pension programs is presently being undermined by significant weaknesses in those same systems. Certain aspects of the existing pension regulatory regime are complicated, costly, and unfair and ultimately discourage plan sponsors from establishing new plans or may have a deleterious effect on existing plans. Moreover, these shortcomings may be driving existing plan sponsors out of the pension sphere entirely. There are many issues on which to focus the Pension Review. Lack of portability and rigid and differing rules within different jurisdictions also make administration of pensions more costly. Uncertainty is also a major risk factor.

The following is an enumeration of what may be the more important pension issues (not listed in any order of importance).

Increase Flexibility

- Greater flexibility is necessary. However, it should not be pursued at the expense of reduced clarity.
- Beyond clearly framed legislation, the autonomy of plan providers should be increased to allow them to create plans that best suit the needs of the contributing employees and employer(s).
- Given the increased mobility of today's workforce, it is desirable from a government policy perspective that pension plans be designed to facilitate such mobility.
- Increased frequency of reviews of the pension legislation should ensure that the pension regulation of today continues to further the social and economic goals of tomorrow while keeping pace with developments in plan design.

Harmonization

- Complexities caused by non-harmonized and different legislative requirements are unnecessarily confusing and are acting as deterrents to the establishment and continuation of pension plans and result in increased costs.
- An updated reciprocal agreement amongst the provinces would be helpful, as would a model pension act. We do recognize the challenges in having this occur but modern realities realistically support such a cohesive effort.

Reduce Uncertainty

- Pension regulation cannot be left to *ad hoc* interpretation of regulators or the courts, as reliance upon the discretion of adjudicators increases uncertainty. This potentially leads to unpredictable and conflicting results and fosters increased and costly litigation. For example, the application of legal classic

trust principles likely needs to be revisited. In reality, pension plans are a contractual arrangement.

- Principles-based legislation leads to necessary flexibility in the pension system. A simplified foundation of rules-based legislation in tandem with principle-based legislation should give pension legislation a manageable degree of structure but allow much needed flexibility.
- Empower regulators with discretionary authority to implement creative and constructive solutions that consider the concerns of all stakeholders. This flexibility should facilitate the introduction of many beneficial practices such as extended amortization periods and taking other forms of security from the plan sponsor, for example.
- Provisions should be in place to establish a regime that prevents certain regulatory responses turning principle-based legislation into an *ad hoc* rules-based system.

Lower Costs

- Legislated standards for governance would be unnecessary as this process is being left to the expertise that is provided by corporations, accountants, other experts and the investors. Putting specific governance provisions in the legislation creates another layer of bureaucracy and likely more disincentives.
- There is a need to address changes in process and participants such as the potential right to force out terminated members, simplification of marriage breakdown requirements and ability to charge full costs.
- As a larger percentage of the workforce nears retirement age, flexibility is needed to develop occupational plans that can be used to attract and/or retain older workers, as well as facilitate their retirement transitions.

Plan Surplus

- Clarity and fairness are essential in the treatment of plan surpluses. Legislation should be changed to recognize that stakeholders who are exposed to downside risk should quite reasonably be entitled to the upside benefits of taking such

risk including the rights to surplus on plan wind-up, and have a clear right to take contribution holidays.

- Legislation should assign the rights to surplus both on an ongoing basis and at the time of plan termination, the ability to pay reasonable plan expenses from the fund, and the establishment of definable rules on plan mergers and asset transfers.

Safe Harbour

- Safe Harbour rules for plans that are principles-based (as opposed to the highly prescriptive US rules) should be adopted thereby allowing the flexibility needed to address the myriad of existing and to-be-developed pension plans. The certainty and protection of a safe harbour will encourage the adoption of new pension plans.

The aforementioned is primarily written from the corporate perspective. We do also acknowledge that with ever changing products and numerous choices, there will be a need for the proper education of employees so they can make informed decisions. Also, it may become necessary that there are adequate protections (without being unduly paternalistic or placing unnecessary expense and burdens on employers and plan administrators) to properly reduce the exposures to exploitation by others, gaming or high risk taking on the part of individuals.

It is our hope that changes to pension legislation resulting from this review will ultimately be based upon and respect the specific arrangement agreed upon between a plan sponsor and its members. We hope it encourages and enables stakeholders to work together towards mutually agreed goals of capital accumulation for retirement and general financial stability.

Respectfully submitted,



Robert G.H. Patzelt, Q.C.
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& General Counsel