July 4, 2008

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

Dear Sirs,

I am pleased to have this opportunity to participate in the review of the Nova Scotia *Pension Benefits Act* and present my views to the Pension Review Panel on the issues raised in the Discussion Paper.

In addition to my comments here on the questions posed in the Discussion Paper, I have special concerns regarding the treatment of Multi-employer Pension Plans (MEPPs). In this regard, I have had opportunity to participate in the submission by the Trustees of the Mainland Nova Scotia Building and Construction Trades ("Building Trades"), so I will not repeat those comments here. In general, except where otherwise noted, my comments herein apply to single employer pension plans, and follow the sequence of the Discussion Paper.

Thank you for your consideration of my comments.

3. Pension Plan Legislation

Question:

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

Yes. In my opinion, the legislation and regulation should promote the implementation and maintenance of – and participation in - pension plans, with particular emphasis on defined benefit plans. This, in turn, means coming up with solutions to reduce the risks, complexities, and costs associated with these plans, while making them more attractive to workers.

Beyond that, I think the various jurisdictions should work not only with each other, but also with the Federal Government in terms of the Income Tax Act. Pension benefits legislation often works at cross-purposes with the ITA and the end result, I think, is reduced financial security for Canadians in retirement.

3.1 Types of Plans

Question:

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

Yes. I think the legislation should permit special hybrid plans that would include a combination of four components:

1. "Guaranteed" Defined Benefit

   This could be 100% employer paid with investments restricted (primarily to fixed-income assets of appropriate duration) to reduce, as much as possible, the investment risk. The future service rate could be adjusted at each actuarial valuation, based on what can be purchased based on current contribution levels and investment opportunities. The idea would be to provide a basic level of security under this portion of the plan, while allowing greater risks (and, hopefully) rewards under the other provisions of the plan, as discussed below.
2. Additional "Target" Defined Benefit

   This portion might include required employee contributions, with fewer investment restrictions. The sponsor would bear no responsibility for shortfalls in respect of this provision; rather, target benefits would be adjusted as necessary (similar to a MEPP). While the members would bear the risks of shortfalls, they would pool the risk among the membership as a whole.
3. Optional Ancillary Benefits or OAB (Flexible Pension Plan)

   This would operate similar to existing OAB rules, but the permitted Optional Ancillary Benefits would be expanded to include things such as upgrades to career average salary-type benefits that might be provided under provisions 1 and 2 as described above.
4. Optional Additional Defined Contributions (optional Additional Voluntary Contributions)

   This would operate similar to existing rules.

In addition, I think it would be advantageous to explore the possibility of MEPP-type plans that smaller groups could join, with a view to pooling risks (such as longevity risks), reducing unit costs, and improving access to investments that better serve to reduce the risk of investment-related losses.

4. Policy Issues

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

Questions:

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?

No, the current trend should not be accepted, and more innovative plan designs should be permitted, such as discussed in 3.1 above.

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

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

Yes. See 3.1 above.

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

Yes. See 3.1 above.

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, different options should be permitted.

4.2 Pension Plan Funding

Questions:

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

For most single employer plans, the current rules are not unreasonable.

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

Yes, there should be exceptions for all of these types of plans, with less emphasis placed on solvency funding where there is very little risk of insolvency. I think it is more important to enforce reasonable going concern valuation methods and assumptions for such plans.

Should going concern funding still be a requirement?

See above.

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

Not necessarily, as long as the actuarial valuation shows that there is a reasonable expectation that such benefits can be supported by existing assets and future contributions, along with expected investment returns.

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

For single employer plans, yes, but not for MEPPs.

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?

Yes, I think this should be explored. There are numerous solid arguments to be made that the MEPP approach is superior in many respects to the single employer approach.

4.3 Surpluses
Questions:

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

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?

There certainly is some validity to the "deferred wages" concept. On the other hand, in single employer plans, there is often a mismatch between employers and employees in terms of risk and reward. This is largely a function of the conflict in objectives between the ITA and pension benefits legislation, as well as flaws in plan design, funding, and investment structures. This is all the more reason to explore plan designs that better manage risks and contribution volatility, and I think that revisions to legislation and regulation will be required in order to facilitate this.

4.5 Governance
Questions:

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

Why or why not? Is so, what types of governance issues should be regulated?

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

Please refer to comments in the submission by the Building Trades.

4.7 Role of Regulators

Questions:

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?

The "50% rule" should be reviewed. An employer is under no obligation to provide a pension plan at all, but when they do, they have to respect the 50% rule, which, in turn drives up the overall cost of the plan. In my opinion, it is an unnecessary complexity.

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?

No, I don't believe there should be a minimum number of members before the government will regulate. Please also refer to comments in the submission by the Building Trades.

4.9 Unlocking Funds

Question:

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

Please refer to comments in the submission by the Building Trades.

4.10 Grow-in Benefits

Questions:

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?

The answer for single employer plans is yes. Please also refer to comments in the submission by the Building Trades.

5. New Developments

5.1 "Safe Harbour" Rules

Question:

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

No.

5.2 Phased Retirement

Question:

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

I think phased retirement is an excellent idea and should be permitted in Nova Scotia.

5.3 Tax Free Savings Accounts

Question:

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

I think TFSAs are a worthwhile option, but I'm not convinced that they should be considered in pension legislation and regulation.