

June 30, 2008

Pension Review Panel
c/o Nova Scotia Labour and Workplace Development
Policy Division
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N.S. Labour and
Workforce Development
Policy

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Dear Pension Review Panel,

I would like to make a few comments with regards to your review of the Pension Benefits Act of Nova Scotia. As a little background information, I would like you to know that I and many others were involved in a pension dispute with our former employer that took 12 years to solve. This case went all the way to the Supreme Court of Canada which denied our former employer leave to appeal and the issue was found in our favour.

There must be something wrong with the Pension Benefits Act of Nova Scotia or our legal system to allow a dispute involving some 60 employees working in Nova Scotia to go on this long in order to come to a conclusion. Not to mention the expense.

There are a number of areas that arouse from our case that I think need to be addressed. After reading your "Discussion Paper", I see we have some of the same concerns. The items that I see that need addressing are:

- 1) Jurisdiction
- 2) Enforcement
- 3) Severance/pension (relationship)
- 4) Grow-in benefits
- 5) Surpluses

1) Jurisdiction (4.5 Governance)

Our pension dispute started when the Superintendent of Pensions for Nova Scotia made a ruling under the Pension Benefits Act. He ruled on the circumstances and actions of our employer. A partial wind-up order was issued. This ruling was made under provision under the Nova Scotia Pension Act. The ruling also allowed the provision for grow-in benefits for many of the employees. A problem arose when the employer challenged the jurisdiction of the Superintendent of Pensions for Nova Scotia. The employer insisted the Superintendent had no jurisdiction in making a ruling on a pension plan that was registered in Ontario. The superintendent withdrew his order for a wind-up in order to investigate his jurisdiction. Following his review the superintendent again issued a partial wind-up order. The employer again challenged the jurisdiction of the superintendent of pensions all the way to the Supreme Court of Canada. The employer was denied leave to appeal.

Resolve

The main objective of the Pension Benefits Act of Nova Scotia is to safeguard employee entitlements to benefits. It is clear in my mind that an employer who has an established operating business in this province must follow the law under legislation for this province. It is the same as working under the Occupational Health and Safety Act. You do work in Nova Scotia; you follow the law in Nova Scotia. **The superintendent of pensions must have the jurisdiction to enforce the Act and regulations outlined in the Pension Benefits Act for Nova Scotia.**

2) Enforcement (4.7 Role of the Regulators)

In our case, following the ruling for a partial wind-up by the superintendent of pensions and the challenge by the employer, the fight to uphold the ruling was put on the employees. If someone disregards the order of the superintendent, someone must defend, enforce and standby his order. There is an appeal process but it should be incumbent of the Province to enforce and defend the laws that are legislated in the Province. If someone wishes to ignore a law that has been legislated, and the province doesn't defend the law, then we are in trouble. In our case, we had to finance and coordinate the defense of a law legislated by the Province. What is the sense of having a law if the Province doesn't enforce and where is the power of the law???

Resolve

The Province must defend legislated law. If an employer someone doesn't wish to follow the law then it must be up to the Province to enforce and defend the law. Not the victim. If an employer refuses to follow passed legislation – acts and regulations, then **the Province needs to defend the rights of the employees at any cost.** That is why we have a Provincial Prosecutors Department.

3) Severance/pension (relationship)

In our case the employer insisted that the cost for the grow-in benefits according to the Provincial Act were all inclusive in the severance payout. The Company stated that the employees would be unjustly enriched if both were paid out. Severance and pension are two completely different items. They have no relation. The severance is an agreement between the employer and the employee. The pension is a benefit for the employees of the company.

Resolve

The pension plan of a company is a benefit formulated, in some cases, in agreement with the employer and the employees. The plan, no matter how it is operated, must fall within the pension law and regulations that protect employees in the province the employees are working in. The Pension Act must keep severance and pension completely segregated. **A company should not be permitted to circumnavigate the law and connect severance benefits and pension benefits as all encompassing. They are two separate issues.**

4) Grow-in Benefits (4.10 Grow-in Benefits)

In our case, the company that took us over, also took control of our pension fund. At the time the plan was around 72 million over funded. The take-over company then divested of the Atlantic assets and we were left with no pension plan. We were paid our vested amount for those who qualified, but we were not given any service recognition or pension money carry-over to our new employer. We were starting all over again from day one after working and being a member of our pension plan for 27 years. The only saviour we had was the Provincial provision in the Pension Act for "Grow-in" benefits. I find it rather ironic that the Province amended the "grow-in" provision in the Pension Benefits Regulations in 2004. This, at the same time as we were in heated battle over the grow-in provision with our former employer. I am a little confused as to the meaning of the changes in 2004. I understand a company does not need to fund for "grow-in" benefits under a solvency valuation. Further in your discussion paper (section 4.10) you indicate that "grow-in" benefits continue to apply as long as the employer is in good financial standing. However, if the employer becomes insolvent and goes out of business then they are not required to pay out "grow-in" benefits. This sure doesn't look good for the employee.

I understand that the grow-in provision is only available to employees in Ontario and Nova Scotia. This provision is extremely important to the workers in Nova Scotia. We have too many employers that are being bought out, break up, or just shut down doing business. This leaves employees with lost pensions. If the "grow-in" provision is not funded by the company pension plan, that leaves the employees in this province very vulnerable.

Resolve

As mentioned many times, the Pension Benefits Act is to safeguard employee entitlements to benefits promised under pension plans. I would hope that this does not exempt employers from following the Provincial law and regulations in the Province under the Pension Benefits Act. I realize that funding for grow-in benefits could be expensive. However, combined contributions (employer & employee) should be a means of ensuring this liability is met. The only person who loses from not having the grow-in provision in the Pension Benefits Act are the employees of Nova Scotia. **Legislation should require that grow-in benefits be provided on a plan wind-up or partial wind-up. The funding for grow-in benefits must be maintained.**

5) Surpluses (4.3 Surpluses)

Surpluses in pension plans are a rarity these days, but they are part of any pension plan and should be addressed as to ownership. If a company finds that their pension plan is running a surplus (over-funded) then all members of that plan should be sharing in that wind fall. Companies continually try and structure their pension plans to ensure that any surplus generated in the plan is owned by the company. The pension members are part of the reason a plan may become over-funded. At the same time any unfunded liability must be shared by all members of the plan. Contribution formulas must be in place in order to continue to have the plan properly funded for all benefits required by provincial law and within the plan itself.

Resolve

The Nova Scotia Pension Benefits Act should address the question of ownership of any surplus generated by a company pension plan. All members are part owners of the plan and should be entitled to reap the benefits as well as the downfalls of the plan.

I apologize for the rather crude and hasten response to you discussion paper. I wanted to make sure I submitted my comments within the time frame allotted.

I firmly believe that the Nova Scotia Pension Benefits Act needs an overhaul. In my personal opinion, I believe there is a push by large companies to ensure they are not going to be held accountable for the downfalls of their pension plans. At the same time they are trying to ensure that they have control of any wind falls generated by their plans. They do not wish to fund "grow-in" benefits because it only benefits the employee.

Again, I mention that the main objective of the Pension Benefits Act is to safeguard employee entitlements to benefits under the pension plans. If the Act continues to cut the security and benefits of the employees in this Province then we are in for more and more seniors leaving in poverty during their retirement years. **Please protect the employees in this Province.**

I thank you for the opportunity to make my comments to your discussion paper. I am available at any time for any clarity on my comments or for any other reason you wish to discuss.

Thanks again.