

Response to the Nova Scotia Pension Review Panel Position Paper
by the **Dalhousie Faculty Association**

November 14, 2008

The Dalhousie Faculty Association (DFA) welcomes this opportunity to respond to the Position Paper of the Nova Scotia Pension Review Panel issued on October 17, 2008. The DFA has already commented on the Panel's initial Discussion paper issued on May 28th. In our response to the Discussion Paper, we expressed our support for efforts to make pensions more accessible to Nova Scotians. Nevertheless we were, and continue to be, concerned about the integrity of presently constituted defined benefit plans (DBPs), such as the Dalhousie Pension Plan. We elaborate below. Our response to the Discussion Paper also contained criticism of the use of the term "asymmetry" in relation to DBPs. The idea that employers bear all the risk and employees bear none is at best unhelpful. We are pleased that the Paper has addressed this rhetoric. As the Paper points out, employees bear the risk of the continued viability of the employer and the possibility that they might be asked to increase contributions. We should also add that in excess interest indexing plans, such as the Dalhousie Plan, the retirees bear the risk of no indexation. Finally as in our earlier response to the Discussion Paper, we reiterate our support for an overhaul of the governance structure of pension plans. We regret, however, that the Position Paper does not advocate more meaningful involvement of employees in pension plan governance. In this regards, we quote the Position Paper itself: "pension plans will work much better when there is active employee involvement". We will provide a more extensive critique below.

Before we begin our discussion of the Position Paper, the DFA wants to express its disappointment with the timeline for responses to the Paper. As the Panel knows, two extensive reviews of pension legislation are currently being conducted, in addition to the one taking place here in Nova Scotia. The Ontario review is expected to be made public imminently. The joint Alberta/British Columbia review is slated to be presented to the Alberta and British Columbia governments in the middle of November. Although we hope that communications have been kept open among all three panels, none of the Nova Scotia stakeholders will have an opportunity before responding to the Position Paper to review the recommendations of these two important panels.

Integrity of Presently Constituted Defined Benefit Plans

In responding to the Position Paper, the DFA supports the statement in section 2.1 of the Position Paper, "Panel's Perspective" that "Our focus is first and foremost to create an environment where pension promises will be fulfilled." We are concerned, however, over the possible implications of the answer given in the Paper to the question in section 3.1.1.: "Should the current trend towards fewer DB plans be accepted, or should regulators permit DB plans that may be more attractive to employers?" While efforts to promote more DB plans are welcome, the DFA questions what constitutes "more flexible legislation and regulation." The DFA does not support legislation that would undermine the property entitlements of present members of defined benefit plans. It would be grossly unfair. DBP members have in all good faith contributed to their plans over the years, sometimes many years, in the expectation of receiving specified benefits on retirement. Further, since for most, contributions have been mandatory, they have given

up the opportunity to make other provisions for funding their retirement. If the Panel is simply proposing that pension legislation should accommodate new hybrid type plans that incorporate some DBP characteristics, that should be made clear, and the Panel's support for existing DBPs, as now constituted, should be restated. A true DBP is a complex institution which by its nature needs a sturdy legislative platform.

Good Governance

In section 3.7 of the Position Paper the question is raised: "Should government attempt to define, audit, and regulate 'good governance'? Why or why not? If so, what types of governance issues should be regulated?" The DFA continues to assert, as it did in its July response to the Discussion Paper, that pension benefits are deferred compensation. Workers whose pension entitlements may constitute their biggest economic asset should have an effective voice in the management of those assets.

The Panel's answer to the question of good governance is twofold. First it would require all pensions to operate under a governance plan. All pension plans would have to file a copy of their governance plan with the Superintendent of Pensions. The superintendent would have to be satisfied that the plan meets the "generally accepted practice" in the "Pension Industry." We are not clear, however, on who belongs to the Pension Industry or what are its accepted practices. The members of the Dalhousie Pension Plan are surely not part of the Pension Industry. If there are accepted practices, the Panel should lay them out for all stakeholders to review. In the Dalhousie Plan, as in many other plans, protections for employees have not arisen from accepted practices, but from collective agreements and in some cases, the original terms of the plan. Our concern is that too much emphasis on the Pension Industry and its practices will obscure the perspective and interests of employee plan members.

The second part of the Panel's answer is that the status of Pension Advisory Committees should be enhanced. The Panel comments, and rightly so, that many plans do not utilize advisory committees because "Advisory Committees have little power to influence sponsors." Indeed, to underline the point, there is no Advisory Committee to the Dalhousie Pension Plan. To ameliorate this problem, the Position Paper suggests that any information filed with the Superintendent of Pensions be concurrently provided to the Advisory Committee. The Advisory Committees should also be given access to actuaries and other professionals at the pension plan's expense. The DFA supports this initiative, but we think that the legislation should go further. We disagree with the Panel's blanket opposition to any requirement of retiree and member approval of prospective changes to a plan. At the very least the establishment of an Advisory Committee should be mandatory. In addition, the Committee should be given the right not only to be informed, but to be engaged in timely consultation with plan sponsors before amendments to Plans are presented to the Superintendent.

The Position Paper does not contain a discussion of the role of the actuary who advises a pension plan. We continue to be concerned over the lack of specific rules governing the conduct of the actuary. We believe the fiduciary nature of the actuary's role in advising a pension plan should be explicitly described in pension benefits legislation.

In the section on Plan governance in our original submission we also touched on the duties and obligations of plan trustees, particularly those who look after plan investments. Again we think the Act should specifically describe their position as fiduciaries. As well, given the complexity of the trustees' task, we support training programs both to ensure minimum competence and impress upon trustees the gravity of their fiduciary responsibilities.

Finally we express our concern over the absence of any discussion of the role of retirees in the governance of plans from which they derive ongoing benefits. At Dalhousie there are over 600 retirees who draw benefits from the Dalhousie plan. At the present time these retirees are not represented by anyone in the formal structure of the Plan. The DFA has a role in the Dalhousie Pension Advisory Committee (a parity committee), but retirees are no longer members of the union. They have no official voice, although they are given, as a matter of courtesy, one seat with voice but no voting privileges on the Pension Advisory Committee. It is extraordinary that these men and women, many of whom are utterly dependent on their pensions to maintain a decent standard of living, have no recognized role in the Dalhousie or other pension plans. The Panel needs to further consider the position of this class of stakeholders.

Unlocking Pension Funds

In section 3.6 the Panel addresses the question of the right of employees to access funds derived from their pension plans. The Paper suggests that up to one half of funds from a DBP could be unlocked at retirement. In this regard, the Panel is following the example of many provinces over the last five years, and most recently the federal government in its 2008 budget, in permitting individuals to unlock up to 50% of their funds by transferring them to registered retirement vehicles. The remaining one-half is preserved in a locked-in LIRA or LIF to produce a future ongoing stream of retirement income. We also note that section 3.1 of the Paper recommends an extremely liberal unlocking regime for defined contribution plans. We are concerned, however, that both proposals go too far and will unduly prejudice the future retirement prospects of employees. While we recognize the many exigencies that support the desire to withdraw funds derived from pension plans –many baby boomers even at retirement have not paid off the mortgage, the costs of the early senior years are arguably greater—we propose further consideration and discussion of this matter. In that regard, we note the unlocking rules in Ontario and New Brunswick which permit 25% unlocking. Twenty-five percent unlocking seems to us a more judicious approach.

Finally we are not clear what provision, if any, the Panel has taken on unlocking funds for specified uses. The Position Paper asserts without discussion that there should be no unlocking for financial hardship. Other provinces, however, have provisions for unlocking for non-residents, hardship due to extraordinary medical costs, and unlocking of small sums. This area needs further consideration.

Minimum Funding

On the whole we support the Panel's recommendations on minimum funding of pension plans. We think, however, that a regular three year evaluation may be too inflexible. We are concerned that any new regulations should recognize the financial

burden the present financial turmoil is exacting on universities. (The reference in section 3.3.1 to universities is incorrect.)

We will not comment on the adoption of a system of accrued benefit valuation. The exact implications for the Dalhousie Pension Plan are not immediately evident. One question, aside from the general comment, is how this method of valuation would apply to the excess interest indexing of the Dalhousie Plan. The Dalhousie Plan is one of several excess interest plans in the province. Finally, we note the intersection of the proposed new rules on funding with the rules already established under the *Income Tax Act* such as the 10% rule and accounting rules. It is not clear from the Position Paper how these two sets of rules will be reconciled.

Province Wide Pension Plan

The DFA supports the proposal for the establishment of a province wide pension plan. Although not directly relevant to our members, the establishment of such a plan is an important first step to securing the financial wellbeing of older Nova Scotians.

If Dalhousie Faculty Association can be of any further assistance to the Panel, we would be pleased to meet with you. As with many policy initiatives, the devil is in the details and we look forward to reviewing more detailed recommendations.