



**DALHOUSIE
UNIVERSITY**

A Response To:

**Nova Scotia Pension Review Panel
Interim Paper**

November 21, 2008

Introduction

Dalhousie welcomes the opportunity to comment on the Pension Review Panel's Position Paper for Discussion, released October 17, 2008. Its perspective is set out in detail below, in sequence with the Panel's proposals in the Position Paper.

The Position Paper proposes a number of fundamental changes in the pension regulatory system in Nova Scotia. In the short time provided, we have attempted to test the impact of these proposed changes on the Dalhousie University Staff Pension Plan. In large measure, this Response follows up on the themes advanced by the Council of Nova Scotia University Presidents ('CONSUP') in CONSUP's initial submission to the Panel.

Dalhousie is dissatisfied with the Panel's "one size fits all" approach to pension plan regulation; this ignores the vast differences that exist among pension plans and among pension plan sponsors. The insufficiency of a "one size fits all" approach to pension regulation is a significant theme in the recent report of the Ontario Expert Commission on Pensions. In Dalhousie's view the Nova Scotia Position Paper's failure to recognize these real differences is fundamental.

Dalhousie's competitive position among the Group of Thirteen ('G-13') research intensive Universities across Canada will be seriously compromised by the Panel's recommendation that the unique character of Universities and University pension plans should not be recognized by the Nova Scotia *Pension Benefits Act*.

Dalhousie strongly urges the Panel to reconsider its proposals in a manner that provides Universities with some tangible funding relief. Our specific suggestions relating to funding relief, and other issues, follow.

2.2 Goal of Pension Legislation

Dalhousie supports the position taken by the Panel that the "promotion of pension plans" should be included as a goal of pension legislation and regulation.

3.1 Types of Pension Plans

Dalhousie agrees with the position taken that legislation should be flexible to enable a variety of pension plan designs and that defined benefit plans ("DB plans") should be promoted.

3.2 Province Wide Plan

Dalhousie takes the position that, as long as participation is strictly voluntary, it is supportive of establishing a province-wide plan that would provide an adjustable contribution/benefit and/or DC option for employers of any size in Nova Scotia.

3.3 Funding - Generally

One of the Panel's goals was to provide some flexibility for plan sponsors, yet the proposed standard is a 'one size fits all' solution. Dalhousie does not support this 'one size fits all' approach as all Plans are not created equal; identical treatment does not lead to equal treatment of all Plans regulated by the *Pension Benefits Act*.

Overall, Dalhousie does not consider that the proposed funding standard is a positive development for pension plans in general, or for the Dalhousie plan in particular. In the limited time available to Dalhousie to test the standard against its plan, we can only conclude that the standard is unclear with no apparent benefits to Dalhousie or Dalhousie Plan members. There does appear to be a considerable increase in the volatility of Dalhousie's annual required pension contributions.

We note that this standard would apparently be unique to Nova Scotia. This raises an important concern. Dalhousie operates in a competitive environment with thirteen other research intensive universities in Canada. The financial pressures and uncertainty from the new standard will likely impair Dalhousie's competitiveness compared to the other G-13 members. The current financial crisis has magnified the challenges faced by Dalhousie in meeting its public mission and objectives. We anticipate that this new standard will materially add to these challenges.

Further, the Panel proposes to discontinue regulatory reliance on the going concern valuation. We believe that this is contrary to the basic public policy objectives of the Pension Benefits Act. The PBA is intended to set out minimum standards for pension plans in Nova Scotia. One of the most fundamental standards is ensuring the long term financial viability of the pension plan. The going concern valuation measures whether that standard is being met. We recommend that the requirement to perform and file a going concern valuation be maintained.

We request that the Panel recommend 15 year amortization periods for certain sectors, including the university sector, in recognition of the institutions' stability and para-public nature. We also suggest the use of solvency accounts and letters of credit. The Ontario Panel has recommended the introduction of both irrevocable letters of credit and asset pledges as security for unpaid contributions in an effort to relieve funding pressures from plan sponsors. We request that this type of relief be further explored here.

3.3(b) Accrued Benefit Measure

We wish to provide more specifics about our concerns about the New Minimum Funding Standard ('NMFS'). The valuation methodology as applicable to the pre-retirement period is the first concern. The approach determines future funding costs through the use of an accrued benefit methodology that is not reflective of the projected nature of benefits under the Dalhousie Plan. This results in a hybrid of wind up and going concern. The appropriate funding goals imposed by the NMFS are unclear for Dalhousie.

Our second key concern is the potential for **significant volatility** in the Dalhousie Plan, due to interest rate volatility combined with the apparent structure of the NMFS.

Thirdly, the proposed valuation methodology (including current service cost determination) is not at this time defined by professional actuarial standards. This leaves an open ended interpretation burden on actuaries, regulators and plan sponsors. The NMFS requires another valuation beyond the existing going concern valuation and the wind-up valuation which will continue to be required by professional actuarial standards. The additional valuation and the uncertainty will increase regulatory risk and administrative cost.

Ultimately, in Dalhousie's view, the NMFS is not a positive improvement and should not be pursued. The Panel may wish to consider variations to solvency funding through longer amortization periods, authorizing solvency accounts, or enabling letters of credit.

THE SUPERIOR STANDARD:

In the context of the Dalhousie Plan, we believe a going concern valuation utilizing appropriate assumptions is the superior standard for the following reasons:

1. Dalhousie's going concern funding costs consider equity risk premium in the pre-retirement period and converge at retirement to a minimal risk liability.
2. Going concern funding costs recognize the projected nature of benefits under the Dalhousie Plan including final earnings benefits and the unique nature of the termination benefits payable.
3. Projected going concern funding cost together with current service cost funding result in a more stable pattern of funding costs, while still converging at retirement to a minimal risk liability.
4. Going concern deficits can be amortized over a period of 15 years (a period of time that allows for adequate smoothing of short term plan experience).

3.31 Amortization of Deficits

According to the NMFS, an ongoing plan that is not fully funded on a minimum funding basis will have an 8 year amortization period to bring the assets and liabilities in sync. The proposal calls for straight-line amortization without interest.

The relief Dalhousie (and the other universities) have sought both in the past and from this Panel is a longer amortization period that allows for better management of cash costs and budgeting: such that annual cash costs are lower but payable over a much longer period unless plan experience – favourable investment returns, for instance – intercedes to make the payments redundant prior to the end of the amortization period.

The proposed standard does not provide the relief that Dalhousie is seeking. Dalhousie restates its view that a longer amortization period of 15 years is more appropriate, as an alternative to its primary position that a stand alone going concern standard is preferable.

3.3.1(a) 5% Collar

Dalhousie supports the Panel's proposal to introduce a collar so that if a plan is well funded to an established standard it will not have to make payments towards less significant shortfalls. However, Dalhousie suggests that the Panel consider a 10% collar for University pension plans in recognition of their unique situation.

3.3.1(b) Fixed 3 Year Actuarial Valuations

Dalhousie does not support introducing a legal requirement that actuarial valuations be performed on a fixed 3-year schedule. Dalhousie supports the maintenance of the more flexible 'status quo.'

As an example, if a Plan had to file an actuarial valuation in the current economic environment, it could have a significant deficit for which it would have to make additional contribution over the following three years. Should the Plan returns bounce back in the following year to ease or erase the deficit, the Plan would not be able to take advantage of this market recovery, as it would not be permitted to file before the three year period expired. This result is not reasonable and would impose a significant additional financial burden if applicable in the current circumstances.

The current model should be maintained.

3.3.1(e) Timing of Deficit Payments

Dalhousie supports the Panel's proposal to introduce flexibility into the timing of deficit payments.

Dalhousie requests that the Panel provide additional consideration to the arguments proposed in its initial submission on alternative funding suggestions such as letters of credit and solvency accounts.

3.3.2 Surplus Ownership

In Dalhousie's view, the Panel's recommendations regarding surplus ownership/ use will reduce flexibility of sponsor/employee groups in utilizing surplus. Limitation on employer surplus entitlement to 50% is inconsistent with the employer being 100% responsible for shortfalls in the event of wind-up. Dalhousie could only support a legislative restriction to 50% employer ownership on surplus if the legislation also required employees to cost share the bad times on a 50/50 basis.

Under the proposed new system, we understand that there would be a more intricate interaction between minimum funding and going concern funding, so the details of the mechanics will be important and are unknown at this stage. Dalhousie has always relied on a

“going concern” measurement for purposes of preparing its funding recommendations, whereby the existence of a going concern surplus can influence the level of additional required employer contributions.

Section 3.3.2 of the Position Paper deals with surplus, but for the most part “surplus” is defined for purposes of applying the minimum funding rules. The determination of surplus would, therefore, be the difference between assets and minimum funding liabilities.

In Dalhousie’s case, surplus use has been negotiated in past years, based on a going concern measurement; this will be more difficult to do from now on because there are potentially two measures of surplus, both of which will grow and decline at different rates over time.

Further clarification is requested from the Panel.

3.3.2(b) 5% Collar

Dalhousie opposes a collar on the ‘upside,’ whereby a surplus of up to 5% of liabilities cannot be used to reduce the minimum funding current service cost.

3.3.2(c) Cash on Wind Up

The Panel’s comments dealing with withdrawal of cash on wind-up, is largely irrelevant to Dalhousie given (1) the unlikelihood of Dalhousie’s Plan winding up and (2) the ‘matching contribution’ nature by which the Dalhousie Plan is funded.

3.3.2(d) Maximum 50% on Wind Up

The Panel appears to say that employers should be entitled to no more than 50% of surplus upon plan wind-up. This is largely irrelevant for Dalhousie, due to the high unlikelihood of it winding up its Plan, but Dalhousie questions whether this conclusion properly reflects a Plan sponsor’s ability to negotiate or to contractually provide a Plan that preserves greater than 50% of surplus on wind up.

3.4 Grow-in Benefits

Grow-in benefits are of no consequence to Dalhousie due to the plan’s lack of subsidized early retirement benefits. However, Dalhousie supports the notion of grow-in benefits being offered but not required, and that if they are offered, they must be funded.

3.5 Partial Wind-ups

Dalhousie supports the Panel’s position that partial wind-ups should be eliminated. This will decrease regulatory risk from the operation of a DB plan.

3.6 Unlocking of Pension Funds

For DB plans, the Panel is proposing that at time of retirement, up to half of the commuted value may be unlocked while removing from the legislation provisions for unlocking due to hardship. There is allowance for the Plans to have stricter rules.

Dalhousie believes that the Unlocking of pension funds is irresponsible and could potentially cause serious harm to its Plan. We oppose the unlocking of pension funds, for two reasons:

First, Dalhousie is supportive of the public policy rationale behind locked in pension funds. It is important that Canadians be supported in their retirement savings objectives. Unlocking any portion of pension monies, other than in situations of objectively determined financial hardship, under-cuts the broad purpose of the pension system in Canada.

Second, from a Plan management point of view, Dalhousie objects to unlocking due to concerns about adverse selection. The Panel's proposal disadvantages Dalhousie by allowing members to remove funds from the Plan at retirement. The result could be that large sums of money leave the Plan, making it very difficult for Dalhousie to maintain Plan stability.

The Panel's suggestion that it is up to individual plans to be more restrictive is not realistic in a collective bargaining environment requiring the agreement of multiple employee groups. The financial security of pension promises at retirement should be protected from the potential unpredictability of collectively bargained solutions. The public policy rationale for locking in should not be dependent on individual plan arrangements.

3.7 Governance

The Panel recommendations include requiring Plans to file a "governance plan" with the Superintendent which must also be circulated to employees or employee groups. The Superintendent must be satisfied with the contents of the governance plan. Amendments to the governance model which are approved by employee groups shall be "automatically approved" by the Superintendent unless significant abnormalities exist.

There is some inconsistency in the references to "governance plans" versus "governance models" and their approval by the Superintendent. It is unclear if the "governance model" is intended to be the same as the "governance plan." If the governance plan requirements are very detailed, then imposition of liability for failing to follow a governance plan is problematic. Alternatively, if the requirements for a governance plan are relatively limited, then this would be less of a concern.

We do not see the benefit of filing with the Superintendent, especially given the current constrained resources in that office. We suggest that (similar to the Statement of Investment Policies and Procedures) the governance plan must be prepared, but need not be filed. Governance standards should also be defined and should be circulated for discussion and comment before inclusion in the PBA and/ or Regulations.

3.7.1 Advisory Committees

The Panel advocates greater access to information and decision-making influence for advisory committees. Dalhousie has concerns with the logistics and reality of implementing the recommendations as proposed. Giving an advisory committee increased authority is inconsistent with a governance model where the employer is the sponsor.

If there is a desire to increase employee involvement, this can be done through facilitating joint trusteeship which the panel addresses in other recommendations.

Additionally, this recommendation raises concerns regarding the potential liability of the advisory committee. For example, it is proposed that the advisory committee would “approve” the list of investment options which would make members of the advisory committee jointly liable with the employer for any losses arising from that choice.

If the spirit of these recommendations is to increase employee influence and participation in the pension planning process, then Dalhousie is already following the spirit of the recommendations through the Pension Advisory Committee.

Dalhousie supports these recommendations:

- *“...in the case of plan amendments, agreement to the amendment by the Advisory Committee could enable the Superintendent to simply accept the amendment providing it does not conflict with the regulations*

Dalhousie does not support these recommendations:

- *“Advisory Committees should also be entitled to reasonable access to plan actuaries and other professionals, so that they can communicate with them independent of the sponsor. The plan would be responsible for funding the costs associated with consulting professionals.”*

Dalhousie strongly believes it is inappropriate to have the plan pay for both the sponsor and the beneficiaries to have limitless independent access to advisory professionals.

3.8 Role of Regulators

Dalhousie agrees with the Panel’s recommendation that an appeal process be introduced to the legislation from the Superintendent’s decision to an independent third party, and from that independent third party to the Nova Scotia Court of Appeal.

However, Dalhousie continues to urge that appeals should be made to a body with the requisite knowledge and expertise to make informed decisions on pension matters. Dalhousie is concerned that the NSLRB does not currently have the necessary knowledge and expertise to adjudicate effectively over these matters.

Dalhousie asks the Panel to reconsider that the Utilities and Review Board be vested with this responsibility. The UARB exercises a wide variety of regulatory and adjudicative functions in

matters with multiple parties, dealing with taxation and other financial issues, making it far better suited to deal with the financial nature of pension related disputes.

The NSLRB has important expertise in labour relations, but Dalhousie submits that this knowledge is neither directly transferable nor necessarily helpful to the adjudication of pension matters.

Dalhousie takes no position on the minimum size required for a pension plan to attract provincial regulation.

3.9 Harmonization

Dalhousie has not taken a strong position on this issue.

However, concern arises in the context of the proposed new funding strategy and its marked deviation from what is being proposed on a national level. While there is nothing intuitively wrong with Nova Scotia being innovative, a majority of stakeholders in the pension community have indicated in submissions to this Panel and its sister panels across Canada that harmonization would be in the public interest and would benefit the pension community in particular.

Dalhousie remains concerned that **its ability to compete, nationally, with the other G-13 research intensive institutions would be significantly compromised** if Dalhousie's pension plan is forced to operate in a uniquely restrictive regulatory environment, such as the Panel has proposed.

Dalhousie refers particularly to the Ontario Panel's recommendation that funding relief be provided to plan sponsors by permitting letters of credit and asset pledges. The lack of similar relief in Nova Scotia will disadvantage Dalhousie relative to its national competitors.

3.11 Phased Retirement

Dalhousie agrees that phased retirement should be permitted. However changes to the legislation should not dictate the design of a phased retirement program; instead, they should simply set forth what can and cannot be done with pensions.

3.12 Vesting

Dalhousie does not support the Panel's recommendation that vesting be immediate, and requests clarity around the rationale for this proposed change.

While there may be the misconception that processing of termination benefits is routine given our computerized world, there is still significant manual labour involved in processing complex termination calculations. The proposal has the potential to increase administrative cost and complexity.

As well, the vested termination benefit is higher than the non-vested benefit, so the proposal will increase benefit costs under the plan.

3.13 Classes

The Panel has recommended that employers be allowed to make all decisions on classes of employees and benefit design for each, subject to filing the classes with the Superintendent. The Superintendent has residual authority if the class is arbitrary or discriminatory to rectify the situation.

Dalhousie agrees with the fundamentals of this recommendation, but it takes issue with the reference to the Superintendent being able to act if a class is “arbitrary”. “Arbitrary” needs to be better defined. It would provide greater regulatory certainty if a list of acceptable classes was continued, with further classes allowed as the Plan sponsor considers appropriate, subject to review by the Superintendent.

3.14 Access to Information

The Panel has recommended that everything a sponsor files with a Superintendent must be provided simultaneously to advisory committees and to employees in both paper and electronic format.

This would lead to increased administrative burdens which need to be reviewed. It is inefficient, wasteful, and unnecessary to require that all information be provided and in both formats.

Further, access to professional advisors such as actuaries paid for by the plan and provision of cumbersome documentation results in increased costs born by the plan and ultimately the plan sponsor if it is responsible for the ultimate funding in the plan.

Dalhousie suggests that the solution is a right of access in electronic format, not ongoing actual access.

3.15.2 Investments

Dalhousie is generally supportive of the panel’s recommendation to remove quantitative restrictions on investments.

However, further clarification is necessary in the area of what amount of disclosure to plan members is necessary under these provisions. The concern is that institutional investing is based on an established and complex system of monitoring and managing risk that does not easily translate to the lay public. Instead, the public focus tends to fixate on the return on investment data which is misleading and not an appropriate representation of how the investment risk is being managed.

The Panel’s objective of allowing access to information so members can be better informed is laudable, but Dalhousie is concerned that simply offering access to information will not accomplish this.

Dalhousie hopes the above submissions will be of assistance to the Panel in finalizing its recommendations to government. We would be pleased to provide any further information or respond to any questions arising from these comments or otherwise as may be of assistance to the Panel.