SUBMISSIONS TO LAW AMENDMENTS COMMITTEE ON BILL 96

BY

THE MAINLAND NOVA SCOTIA BUILDING AND CONSTRUCTION TRADES COUNCIL

AND

THE CAPE BRETON ISLAND CONSTRUCTION AND BUILDING TRADES COUNCIL

Submissions to the Law Amendments Committee on Bill 96

by

The Mainland Nova Scotia Building and Construction Trades Council and

The Cape Breton Island Construction and Building Trades Council

The Mainland Nova Scotia Building and Construction Trades Council and the Cape Breton Island Construction and Building Trades Council represent most construction trade unions in Nova Scotia. Between them, the two Councils represent 12,000 members and beneficiaries in specified Multi-Employer Pension Plans, and there are over 550 contributing employers. Collectively the Plans exceed $700 million in value.

MEPPs are the base upon which many Nova Scotians depend for their retirement income. MEPPs are currently permitted under the current *Pension Benefit Act*. As a way of background, you should be aware that all MEPP's have a similar design.

The Pension Plans receive contributions from various contributing employers in the construction industry. This is due to requirements of the Collective Agreement. These contributions are negotiated during collective bargaining with the employer's representative. Essentially, the contributions come from the employee's pay package, and it currently is approximately $5.00 per hour for every member. The money that goes into the Pension Plan is invested by professional investment personnel.

Most MEPPs are Target Benefit Plans. This means that the Pension Plan projects a benefit on retirement. For example, the Plan might project $100 per month for every twelve months of contributions. If upon review, the actuary determines that the $5.00 per hour cannot provide the promised benefit, the Trustees (union and management) must decide on one of two options:

1. Put more money in the plan, for example, $5.50 per hour; or

2. Reduce the level of benefits, for example, $90 per year.

MEPPs in the construction industry in Nova Scotia have operated successfully for over 30 years. No MEPP in Nova Scotia has had a reduction in retirement benefits, i.e., the monies required to pay the pension. While MEPPs have, over time, adjusted the timing of early retirement benefits or modified other ancillary benefits, they have never changed basic retirement benefits.

MEPPs have been successful for the following reasons:

1. The funding of the Plan is actively managed;

2. The Trustees of all plans are employers and employees who are very dedicated to ensure the pensions of construction workers are maintained;

3. All the Trustees have a vested interest to ensure that the Pension Plan succeeds;

4. Members know that the pension is not guaranteed – it all depends on the level of funding at the time of retirement; and

5. The Trustees of Pension Plans spend considerable time and effort and expense studying how to better manage and operate the Pension Plan.

Over the past five years, the major issue affecting MEPPs is the solvency funding requirement. Although MEPPs were exempted by temporary regulation for the past number of years, solvency funding is always lurking in the background.

Solvency funding is an actuarial test to ensure that the "promise of the benefit" is adequately funded in the event of the windup of the Pension Plan. In MEPPs, however, the pension promise is different. Members are not made a promise but instead are offered a "target". If the funding is there, the member hits target. If the funding is not there the target must be modified.

Furthermore, MEPPs are different from Single Employer Pension Plans. When a single employer goes out of business, the Pension Plan goes out of business as well. However, in a Multi-Employer Pension Plan, where there are dozens and dozens of employers contributing, if a single electrical contractor goes out of business, its unionized workers can work for another unionized electrical contractor. Often, members of the Pension Plan work for various contractors throughout a year and, obviously, contribute to the same Plan. The funding is not dependent upon a single employer. The funding is dependent upon all employers contributing to the Pension Plan. Since there is no "fixed or guaranteed promise", there is no need for funding on a windup basis. If the Target Benefit Plan is ever wound up, the members only receive what the fund will provide – no more, no less.

The Mainland and Cape Breton Building Trades Councils have actively promoted the removal of solvency funding requirement from MEPPs for many years. Solvency funding for MEPPs is unnecessary. It doesn't improve benefits. The money sits in the Plan and earns investment interest, but it cannot be used to improve benefits or reduce contributions. The recent action by this Government and its predecessor Government to remove solvency funding from MEPPs through regulation over the past several years has saved employees in the construction industry hundreds of thousands of dollars. Monies that would have been spent to maintain the solvency level of Pension Plans has instead provided improved benefits.

The Councils understand that the Government has indicated that regulations will be introduced which will not require solvency funding by Multi-Employer Pension Plans. This is in accord with the Black Committee on Pensions in Nova Scotia and events in Ontario and other provinces. (By way of caution, the regulations surrounding MEPPs will expire on December 31, 2011 and a new regulation will have to be passed to extend the solvency exemption or, alternatively, a new regulation will have to be passed under this *Act* if it is proclaimed.)

The Councils have reviewed the provisions of Bill 96, and commend the Government for its thoroughness. The treatment of MEPP's is truly a significant development. This Government has, through its actions, become a leader in Canada with respect to how MEPPs will be governed and how they will treat their members throughout the duration of their operation. We wish to publicly acknowledge that this Bill will be a terrific benefit to working men and women in Nova Scotia who participate in Multi-Employer Pension Plans. Further, we publicly acknowledge the wonderful work of the Superintendant of Pensions who has always been a strong supporter of MEPPs and has encouraged their development and growth. We know that she has had a leading hand in bringing this Bill to fruition and we commend her for her strong support of MEPPs and the promotion of Jointly Trustee Pension Plans. Further, to the Legislative Council, we wish to say that the draft of this Bill is a "piece of art". The Legislative Counsel has taken a subject which is often dry and difficult and made a complete code which will, in our view, become a leader in Canada.

We heartily endorse this piece of legislation as it applies to MEPPs and recommend no changes in this legislation.

Respectfully submitted this 1st day of December, 2011.

Mainland Nova Scotia Building and Construction Trades Council

Cape Breton Island Construction and Building Trades Council

Submission by:
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To the
Law Amendments Committee on
Bill 96: Pension Benefits Act
An Act Respecting Pension Benefits

December 1, 2011

Law Amendments Committee
Bill 96 - *A New Pension Benefits Act*

1. The Nova Scotia Federation of Labour and its affiliates support the efforts to modernize and update the *Pension Benefits Act.* We are pleased to see a new Act come forward in this Sitting of the Legislature.

2. Our Federation and its affiliates have been active participants in the consultation process over the last several years leading to the tabling of this *Act*. We prepared two submissions and met twice with the Pension Review Panel in 2008. We have attached a summary of our July recommendations to the 2008 Panel as Appendix "A".

3. The Federation has continued to respond to various discussion papers released by the Minister's Department. We responded to the Department of Finance's consultation process about retirement security. We have communicated regularly with officials in the Department about the possibility of legislation in 2011. We were represented at all three stakeholder consultation sessions held in June, 2011 about a new *Act*. Finally, we were represented in the initial stakeholder discussions in September, 2011 about draft regulations for a new *Act.*

4. *In general, we are pleased with a number of long overdue provisions in Bill 96. Some* are "housekeeping" changes, some are important steps forward, and some are based on changes elsewhere, especially in Ontario. At the same time, we do not think the Bill goes far enough to provide the basis for retirement security for the people of Nova Scotia. Today, we will indicate what provisions we support, what provisions we think need to be changed, and how the draft Bill needs to be amended and strengthened.

CANADA PENSION PLAN

5. We urge Finance Minister Graham Steele to continue to support an expanded and enhanced CPP. Minister Steele will soon attend a meeting of the Federal/Provincial and Territorial Finance Ministers in Victoria, December 18-19, 2011.

6. This is the first such meeting since the Federal election on May 2, 2011, and since the meeting in Alberta in December 2010. Just prior to that meeting, Prime Minister Harper rose in the House of Commons to announce that while he wished to continue to look for

improvements to the CPP, he did not wish to increase premiums at that time. He said as follows:

> *As for the Canada pension plan, I think all are agreed that while we will continue to look at improvements, now is not the time for CPP premium increases.*

7. This statement put a real stake in the heart of pension reform at the December 2010 meeting of the Finance Ministers. However, the provincial Finance Ministers were undaunted and seven of them continued to support the expansion of the CPP and indicated they wished the policy to remain on the agenda. (British Columbia, Manitoba, Ontario, Newfoundland and Labrador, New Brunswick, Prince Edward Island and our Province, Nova Scotia)

8. Canadians have had a number of provincial elections since December 2010. We urge our Provincial Government to continue to insist the Federal Government move to amend the Canada Pension Plan, without unanimous consent. It is not required. So long as 2/3 of the Provinces which represent 2/3 of the population support the expansion of the CPP, the Federal Government can initiate legislation. The process will take some three years to wend its way through Federal and Provincial legislative assemblies. We should start now to ensure workers and employers can start contributing to a safe, reliable, effective, fully indexed defined benefit pension plan in 2015.

9. The Federation of Labour supports the expansion of the CPP because it:

   - Provides defined retirement benefits which are Inflation-indexed to CPI as well as survivor, and disability benefits for all workers in all industries across the country, including the self employed, regardless of the number of employers and number of jobs a worker has over her or his lifetime;
   - is jointly funded by employees and employers (currently 4.95% each – 9.9% combined) on earnings up to annual maximum of $ 48,300 (in 201);
   - is actuarially sound for the next 75 years;
   - has administration fees of less than 0.05% of assets which are far lower than the management expense ratios for privately administered assets by Canadian financial institutions.

PRIVATE SECTOR WORKPLACE PENSION PLANS

10. Enhancement and expansion of the CPP is necessary because private sector employers have not held up their part of the bargain which created the CPP in 1966. Private sector employers promised to create and expand workplace pension plans to supplement the CPP. Private sector employers in Canada have gradually eroded their commitment to workplace pension plans. They need to be held accountable for this.

11. In Nova Scotia, the number of registered pension plans in the private sector in Nova Scotia actually increased from 385 in 2005 to 406 in 2009 with an increase in the number of pension plan members from 56,763 to 63,633.

12. However, despite the increase in the number of pension plans, these plans only covered 63,633 private sector workers in Nova Scotia in 2008.

13. The data released in the consultation paper of the Province last Fall indicated that as of *2007, 54% of Nova Scotia citizens between the ages of 18 and 71 will rely exclusively on* CPP, OAS and GIS for their retirement security because they do not make any contributions to a workplace pension plan (RPP) or to an Registered Retirement Savings Plan (RRSP). The percentages were even higher for those citizens who earned less than $30,000 per year in 2007.

14. Limited workplace pension plan coverage is not expanded by attacking private and *public sector employers who actually provide a workplace pension plan to supplement* the CPP. The Federation of Labour does not support bringing everyone to the lowest common denominator. Further, not every school board, not every municipality, not every long term care employer offers its employees a defined benefit pension plan. All employees in Nova Scotia should be able to belong to and contribute to a workplace defined benefit pension plan.

15. The solution for this deficient workplace pension plan coverage is to require every employer in Nova Scotia to create and offer a defined benefit workplace pension plan. To that end, the Federation of Labour suggests the *Pension Benefits Act* should be amended to require, over a three (3) year period, each employer in the Province to create a defined benefit workplace pension plan, with a minimum level of employer and employee contributions, and a jointly trustee model for the administration of the

pension plan fund. The defined benefit workplace pension plan should be available to all employees, not only full time employees.

16. The Federation of Labour would maintain the proposed new preamble of the legislation and Section 13 of the *Act* which provide as follows:

> AND WHEREAS the Government of Nova Scotia intends to promote and facilitate the implementation and continuation of pension plans;
>
> 13 (1) The Superintendent shall
> (a) promote the establishment, extension and improvement of pension plans throughout the Province;

17. Employers can't have it both ways. If employers reject an expanded CPP to provide retirement security for Canadians, then they have to step up and provide workplace pension plans as the original 1966 commitment required.

POOLED RETIREMENT PENSION PLANS

18. RRSPs, defined contribution, or money purchase retirement schemes are NOT pension plans. They do not provide retirement security. They require employees to speculate on the financial markets. They force employees to hope the day they retire they can actually purchase an annuity to provide retirement payments with the money left in their retirement account. This situation will be exacerbated by the Federal Government's proposed legislation for "pooled retirement pension plans".

19. A PRPP will be worse than no workplace plan at all for workers, and will certainly be much worse than the current or expanded CPP in the following ways:

- It will not require employer contributions
- Employers will be able to force employees to contribute to a PRPP and will unilaterally set the amount of the employee contributions
- It does not provide survivor and disability benefits
- It will not likely be portable from employer to employer or province to province
- It does not provide a secure defined benefit to count on for retirement
- It does not provide inflation protection

- It allows banks and insurance companies to invest workers money, with the ability to charge somewhat reduced "management fees" but with no public oversight as to how those monies are managed or where they are invested unlike the CPP.

20. We urge our Provincial Government NOT to propose mirroring enabling legislation for workers in Nova Scotia.

21. If the Provincial Government does introduce enabling legislation it should prohibit the conversion of an existing defined benefit workplace pension plan to a PRPP.

INVESTMENT DECISIONS – EXISTING PENSION PLAN FUNDS

22. The Federation of Labour believes the *Pension Benefits Act* and Regulations should be amended to explicitly allow pension plan administrators and investment managers to consider social, ethical, environmental principles when making investment decisions. Acting in the best interests of the pension plan beneficiaries does not mean searching *only for the highest return on the dollar.*

23. The NSFL believes that each plan should be required to submit an annual investment policy as is required under Schedule 1 of the Act. We also think Schedule III should provide a list of acceptable investments and quantitative limits on certain classes of investments.

PENSION PLAN FUNDING AND SOLVENCY ISSUES

24. The Federation of Labour will review the proposed regulations regarding solvency with care. The Federation of Labour believes all proposals to extend or otherwise reduce the solvency funding obligations should be subject to the approval of plan member trade unions (if any) or a two-thirds majority vote of plan members where no trade union exists.

LETTERS OF CREDIT

25. The Federation of Labour objects to the proposed Section 77 of the *Bill* which would allow employers to replace real special payment (deficiency) funding with "Letters of Credit". The legislation proposes to limit the total value of such "letters of credit" to no more than 15% of the solvency deficiency [Section 77(3)]. The Federation of Labour would prohibit such "paper" contributions entirely.

26. In the event "letters of credit" remain, the legislation should be amended to require an employer to notify plan members and/or a trade union representing such members of its intention to avoid direct special payment funding through the use of "letters of credit". Further, they should only be permitted where the trade union consents, or where 2/3 of the pension plan members consent.

27. Section 77(10) should be deleted. The "fees and expenses associated with enforcing a letter of credit" should not be payable from the pension fund. Such fees and expenses should be added to the costs owed by the employer who provided the letter of credit.

INDEXING

28. The Federation of Labour believes the *Pension Benefits Act* and Regulations should be amended to require every workplace pension plan to provide full indexing of pension benefits payable, including accrued/deferred benefits, matched to the Nova Scotia inflation rate. We believe that such a provision could be structured to allow a transition period for those plans currently facing funding deficiencies once the plan returns to a healthy funding balance.

PENSION PLAN FUND SURPLUS AND CONTRIBUTION HOLIDAYS

29. *The Federation of Labour believes the* Pension Benefits Act *and Regulations should* be amended to ensure pension plan fund surplus can only be used if the fund will remain at 110% solvency following the allocation of surplus, not the 105% proposed by Section 105(d) of the Bill which provides as follows:

> (d) the greater of the following amounts is retained in the pension fund as surplus:
> (i) the sum of A and B where,
> A is an amount equal to twice the normal cost of the pension plan, and
> *B is an amount equal to five per cent of the liabilities of the pension plan,*
> determined in accordance with the regulations, and
> (ii) an amount equal to twenty-five per cent of the liabilities of the pension plan, determined in accordance with the regulations; and

30. The 105% requirement could still be applicable where the surplus is used to provide for pension plan improvements.

31. The Federal Government has amended the *Income Tax Act* to increase the allowable "surplus" a pension plan might have to 125% so as to establish a greater "rainy day" fund. The Federation of Labour supports this. Contribution holidays will not be required "lessen" the notional surplus on a valuation report.

32. The Federation of Labour supports the notification requirements set out in the proposed Section 103(2) of Bill 96. When an employer seeks to obtain access to surplus, it must provide notice of the application to various employees, and in particular to each trade union which represents affected employees.

33. The Federation of Labour suggests the PBA be further amended to require the annual information statement to members to include particular information as is the case in British Columbia as follows:

- whether the pension plan actually provides for a contribution holiday;
- the amount of the surplus assets on the plan as at the last review date;
- the amount of the surplus assets proposed to be used to fund the contribution holiday;
- a statement that, in the administrators opinion, the plan will continue to meet the new solvency requirements of **~~105%~~ (110%)** after taking the contribution holiday;
- a statement of the right of any person entitled to a benefit or the spouse of any designated beneficiary or agent of the person entitled to a benefit to examine plan documents.

34. Further, we propose the annual statement provided to plan beneficiaries should include the total of member contributions, employer current service cost payments, special payments and contribution holidays if any. Administrators are already required to provide this information to the Superintendent as part of the Annual Information Return (Sections 12 and 13, we believe). It would be quite simple to provide the information to plan beneficiaries.

35. The Federation of Labour is opposed to the provisions of Section 76 of the Bill which would permit "contribution holidays". Many of the pension plans which are currently experiencing solvency issues just a few short years ago took contribution holidays. For example, the solvency difficulties experienced by Air Canada are almost identical to the amount of money NOT PAID by Air Canada into the pension plan as a result of contribution holidays when market returns were good.

36. All the old philosophical arguments about an employer taking the "risk" of funding a pension plan and accordingly being rewarded to access to "surplus" and "contribution holidays" should be dismissed. It is no longer possible for any employer to seriously make this argument in the face of NORTEL and Abitibi pension plan disasters. The only people at <u>wind up</u> who are <u>at risk</u> of pension plan solvency difficulties are the beneficiaries.

37. Finally, the Federation of Labour submits the provisions of Section 86 of the Bill should be eliminated. We believe an employer "over contributes" in very rare situations. If such a situation actually exists, the employer should merely be given credit on future contributions. The "value" of the funds of a pension plan change from day to day depending on market conditions. Money should never be removed from a pension plan, *even in these circumstances.*

INFORMATION AND DISCLOSURE

38. The Federation of Labour supports the proposed amendments which allow for active disclosure of pension plan documents in Sections 38, 40, 41 and 42 of the proposed Bill. However, the Federation of Labour is concerned the language still uses the phrase *"available for inspection"*.

39. The Federation of Labour disagrees with the proposal to limit the inspection ability to once per year. *This limit is not imposed on trade unions, which the Federation supports.* However, the Federation does not understand why the limit is imposed at all.

IMMEDIATE VESTING

40. The Federation of Labour supports the provisions of Section 53 of the Bill which allow for immediate vesting, or entitlement to a deferred pension. However, the Federation suggests the Bill should indicate a date for this entitlement, rather than leaving the right to some unknown date when the subsection "comes into force". Section 53 provides as follows:

> 53 (1) A member of a pension plan who is a member on or after XXXXXX ~~**the day on which this subsection comes into force**~~ and who terminates employment with the employer before reaching the normal retirement age is entitled to the benefit described in subsection (2) in connection with the member's employment after December 31, 1987.
>
> (2) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in the Province or in a designated jurisdiction,
>
> *(a) under the pension plan in respect of employment by the employer after the later of* December 31, 1987, or the qualification date;
>
> (b) under any amendment made to the pension plan after December 31, 1987; and
>
> (c) under any new pension plan established after December 31, 1987, for members.
>
> (3) Subsections (1) and (2) do not apply in respect of benefits that result from additional voluntary contributions.

PART TIME WORKERS

41. The Federation of Labour believes part time employees must be members of any workplace pension plan. A growing percentage of the workforce is precariously employed and only works on a part-time or seasonal basis. Section 49 of the Bill requires "reasonably equivalent" pension benefits where an employer establishes a separate pension plan for part time employees.

42. However, an employer is not required to allow part time employees to join a pension plan. Further, Section 45 of the Bill expressly permits membership restrictions which require more than 700 hours of work per year, or earnings of not less than thirty-five per cent of the year's maximum pensionable earnings. Section 20(3) of the Bill also allows the new "jointly sponsored pension plans" to create a separate pension plan for part time workers. However, this permissive provision does not go far enough.

LOCKING IN

43. We are pleased to see the prohibition on "unlocking" vested pension entitlement remains in Section 87 of the Bill. We are concerned however about the provisions of Section 70 of the Bill which increase the amount from 10% to 25% for the pay out of the commuted value. We do not support this amendment and submit the language should remain at the 10% limit as is currently the case.

POWERS FOR THE SUPERINTENDENT OF PENSIONS

44. The Federation of Labour supports the increased supervisory, inspection and administrative powers provided to the Office of the Superintendant of Pensions. A regulatory regime is only as powerful as the powers provided to the regulator. In order to ensure financial solvency and transparency for pension plan members, the Superintendent of Pensions must be given adequate powers and resources to fulfil her statutory mandate.

PENSION BENEFITS GUARANTEE FUND

45. However, even with these supervisory powers, some businesses might fall financially while a pension plan is underfunded. To protect against the broken pension promises, the *Pension Benefits Act* should be amended to create a Pension Benefits Guarantee Fund like the one which exists in Ontario. It would be funded by contributions by all

workplaces in the Province to support the workplace pension plans. The benefit coverage should provide up to $2,750 per month, and the benefits payable should be fully indexed.

FIDUCIARY LIABILITY

46. The Federation of Labour submits the legislation does not go far enough with respect to fiduciary liability. Section 33(4) and (6) of the Bill should be amended to impose fiduciary obligations and liabilities on all agents of a pension plan, not just the administrator.

47. The PBA should expressly prohibit any contract which proposes to place a limit on the liability of any service provider.

RETIREES

48. The Federation of Labour is concerned with the proposal to provide for representation for retirees on pension advisory committees in Section 18(4) and Section 36 of the Bill without a review of the regulations which will delineate how this representative will be chosen by the retirees. The regulations must ensure the "representative" cannot be unilaterally chosen by the employer. Further, retirees do not have a direct concern for the contribution rate paid by active employees. They are no longer working and no longer contributing to the pension plan. The Bill should contain some restriction on the ability of retirees to impose contribution increases on active employees.

49. Further, many large pension plans, such as those offered by the Health Association of Nova Scotia, provides benefits to many unionized employees represented by different bargaining agents, and non-unionized employees as well. How would representation of retirees who used to belong to the different unions be determined? This should be left to the decisions of the bargaining agents as part of a joint trust model of governance.

JOINTLY SPONSORED PENSION PLANS

50. The Federation of Labour suggests the Bill should allow "jointly sponsored pension plans" only where employees are represented by a certified bargaining agent. A number of provisions are contained in the Bill allowing favourable treatment with respect to funding requirements for such plans. Without a certified bargaining agent to represent

employees with resources, expertise and experience, the Federation is worried unrepresented employees might be taken advantage of in a JSPP situation. The JSPP would not be required to meet solvency requirements and the employees would be "jointly liable" for funding deficiencies.

51. For another example, a JSPP may be permitted to "opt out" of the now Section 97 "grow in" benefits. As previously indicated, grow in benefits have been found by the Nova Scotia Court of Appeal to be clearly intended to benefit employees, and particularly those affected by plant closures. The Federation submits this provision should only be "negotiated away" by a certified trade union – not a "representative" of a group of non-unionized workers: Section 97(8).

52. The Federation submits this provision should not be effective where employees are not unionized. For example, without the democratic structures of a union constitution, how would employee representatives be chosen? Without the duty of fair representation provisions of the Trade Union Act, how would employee "representatives" to the JSPP be constrained? These are serious questions. The Bill should not allow the JSPP provisions to simply be put into effect without addressing these concerns.

    See also: Definition (y); Section 36(9) – JSPP not required to have advisory committee; Section 75(4) – member contributions to JSPP; Section 85(3) – application for surplus; Section 92(2) – wind up of JSPP; Section 97(8) – grow in benefits; Section 99(4) – requirement for employer to fully fund plan on wind up; Section 100 – wind up provisions for JSPP.

53. Further, the Bill should prohibit the transformation from an existing workplace defined benefits pension plan, with all of the funding requirements, to a JSPP without the consent of the certified bargaining agent. The new Pension Benefits Act should "do no harm" to existing defined benefit pension plans.

MULTI-EMPLOYER PENSION PLANS

54. Similarly, the Federation of Labour suggests the Bill should allow "a multi-employer pension plan" *only where employees are represented by a certified bargaining agent. Section 18(1)* (e) implies "MEPP"s will be established pursuant to a collective agreement; however the Bill does not require this. It expressly leaves open the possibility a MEPP could be created by a trust agreement, without a certified bargaining agent. Further Section 54(6) refers to a *situation where a member of a MEPP is represented by a trade union. This implies other* members might not be represented by a trade union.

55. Finally, Section 109 refers to a transfer of union membership, and again implies other MEPPs might not involve unionized workers.

56. Section 24(4) of the Bill will allow a multi-employer pension plan to make amendments to a pension plan which could reduce already earned benefits. The Federation believes employees must be represented by a certified trade union in order for the pension plan administrator to have this power. Further, in some jurisdictions, earned pension benefits may not be reduced even for a multi-employer plan. Nova Scotia should adopt a similar provision where no trade union represents employees: Section 57(4).

    See also: Section (ab) – definition; Section 24(4) – amendments can reduce earned benefits; Section 36(9) – not required to have advisory committee; Section 41(2) – termination of membership; Section 45(4) – membership criteria; Section 54 – termination of membership; Section 55(8)(c) – commuted value computations; Section 57(4) – target benefits – other jurisdictions where benefits may not be reduced; Section 80(10) – contributions to be held separate and apart; Section 83 and 84 – bonding and transmission of information ; Section 86 – overpayment of contributions; Section 92 – wind-up; Section 93(g) – superintendent ordered wind-up; Section 109 – transfer of union membership.

TARGET PENSION PLANS

57. The Federation of Labour has reviewed the new provisions regarding "target" pension plans. The Federation of Labour supports defined benefit workplace pension plans. We believe the PBA should expressly prohibit an employer from converting an existing defined benefit pension plan to a "target" pension plan.

58. Further, Section 57 should be amended to restrict the situations where a target pension plan can actually reduce benefits to one where the funding or solvency situation requires it. The PBA should not simply allow the target pension plan to be able to reduce benefits without some criteria.

59. Finally, the Federation of Labour submits "target" pension plans should only be permitted where the pension plan is governed by a "joint trust" model with an express provision which requires the plan to be governed in the interests of the plan members, actives, deferred and retired beneficiaries. These interests must particularly govern decisions regarding benefit reductions, in the event they are required.

PHASED RETIREMENT

60. The provisions regarding phased retirement are repeated in Section 51 of the Bill. They were never proclaimed when passed in 2009 as part of Bill 48. We remain concerned about the potential for "favouritism" on the part of an employer and the potential to adversely affect wage rates paid to persons who return to work on pension. Perhaps this is something which should be permitted only where employees are represented by a certified bargaining agent to ensure their interests are protected. We will carefully examine any regulations regarding this provision.

61. The Federation also recommends the PBA requires plan administrators to provide a separate, plain language report of the actuarial cost impact of Phased Retirement systems on pension plans. Such a reporting requirement will protect against costly Phased *Retirement systems being introduced only for some categories of employees* (or *favoured* individuals), with costs paid inequitably by plan members who may never be eligible.

REGULATIONS

62. The word "prescribed" was used more than 100 times in an electronic "word search" of the Bill. *The Federation of Labour is concerned a significant number of decisions are being left* to the Regulation development process. The Federation of Labour suggests regulations not be enacted without a thorough consultation with the Federation prior to implementation. This is not without precedent. The Regulations made under the *Registered Nurses Act* included a requirement to consult with the bargaining agents representing Registered Nurses prior to amendment.

OTHER ISSUES

63. The Federation of Labour suggests the Bill should use "subtitles" as were used in the existing legislation for ease of reference.

64. The Federation of Labour is pleased the Bill retains the right of "grow-in" benefits on partial or full pension plan wind up in Section 97. These provisions have been a matter of significant litigation in our Province. The Nova Scotia Court of Appeal held the current Section 79 (now renumbered to Section 97) was clearly intended to benefit employees,

and particularly those affected by plant closures: _Hawker Siddeley Canada Inc. v. Nova Scotia (Superintendent of Pensions)_, 1994 CanLII 4141 (NS CA)

65. We are concerned about the "transfer" provisions of Section 108. It is possible the successor plan will be an inferior pension plan. It leaves all of the details regarding the transfer to the employers. *The beneficiaries only receive "notice" of the various* intentions. The Federation is concerned employees, and their unions, and beneficiaries, will be the "last to know" about their pension plan and its benefits in a sale or transfer *situation.*

66. Further, the Federation is concerned the prior employer could be entitled to "surplus" while the employees continue to work under the provisions of a successor plan which, as indicated, could provide inferior benefits.

67. The Federation of Labour is concerned about the effect of the provisions of Section 111 regarding the **Companies Creditors Arrangements Act** and the **Bankruptcy and Insolvency Act**. Often times, unions or employees do not get adequate notice of these types of corporate proceedings and are unable to make submissions regarding their pensions, or the solvency issues regarding their pension plans. We do not want the *Pension Benefits Act* of our Province to give greater priority to creditors than beneficiaries under pension plans. We would like to see the Regulations proposed for this provision prior to proclamation.

68. The Federation of Labour supports the amendments which eliminate the process of *applying for "reconsideration" of a decision of the Superintendent of Pensions, and* further, supports the appeal to the Labour Board, with proper provision for judicial review of any subsequent decision. (Section 115 of the Bill).

69. The Federation of Labour does not agree with the provisions of Section 23(2) of the Bill which will allow amendments to be made retroactively. The Federation suggests this should only be permitted where the Superintendent determines the amendment will not have a negative effect on the beneficiaries.

70. The Bill makes a distinction between an "administrator", an "advisory committee" [Section 18(3)(c) and Section 36] and a "pension committee" [Section 18(3)(b);Section al] with different degrees of legal and fiduciary responsibilities. The Federation is concerned employees receive sufficient and tailored education to ensure they

understand the nature of their responsibilities. This is particularly the case in a situation where employees are not represented by an exclusive bargaining agent.

71. The Federation of Labour supports the provisions of Section 63(2) and Section 67 of the Bill to provide 100% of the benefit to survivors/widows.

72. The Federation of Labour is concerned the provisions of Section 34 might allow an employer to charge for its bookkeeper out of the assets of the pension plan, merely by amending the pension plan to allow for such payment.

73. We support the provisions of Section 56 of the Bill which appear to allow defined *contribution plan beneficiaries to purchase Life Income Funds upon retirement, rather* than "capitalizing" the pension account on a day when the "market" value might be significantly lower.

74. Section 73 of the Bill should be amended to delete the reference to "Old Age Security". Pension benefits are often integrated with CPP benefits. However, the Federation is opposed to "clawing back" OAS benefits from a workplace pension plans.

75. Section 13(c) contains a typographical error – it should say "OF THIS ACT", rather than "OR" this Act.

76. We are concerned Section 104(9) is missing some words between (7) and the word "prevails" as follows:

> 104(9) Before entering into a written agreement described in ss (7) xxxxxx prevails over any document that creates and supports the pension plan and pension fund, over subsections (2), (3) and (4), and notwithstanding any trust that may exist in favour of any person.

77. The Federation of Labour thanks the members of the Law Amendments Committee for this opportunity to suggest amendments to the *Pension Benefits Act*.

APPENDIX "A"
NOVA SCOTIA FEDERATION OF LABOUR
JULY RECOMMENDATIONS TO THE 2008 PENSION REVIEW PANEL

1. The NSFL proposes that the Pension Review Panel should reiterate the established consensus regarding the security of, and preference for, secure, defined benefit type pension plans.

2. The NSFL proposes that the Pension Review Panel recommend feasible approaches for expanding workplace DB plan coverage and/or ways in which to initiate a broad-based debate on the necessary expansion of the public pension system such that all ~~Ontarians~~ Canadians have financial security in retirement.

3. The NSFL proposes that the Pension Review Panel directly address the corrosive effects of privatization and P3s on pension plan coverage in Nova Scotia. Further, it is important that the Pension Review Panel call for the clarification of statutory and common trust law as it applies to pension investment in order that decisions by pension fund trustees to expressly avoid investments in P3s and other forms of privatization that threaten unionized, public sector employment (and the pension coverage that such employment generally provides) are clearly permitted. Further, the NSFL proposes that language be added to the PBA, making it legitimate for pension trustees to consider social, ethical and environmental principles.

4. The Nova Scotia Federation of Labour strongly believes that full indexing should be mandatory under the Nova Scotia Pension Benefits Act (PBA) and urges the Pension Review Panel to so recommend. Indeed, the PBA already contains a provision to provide indexing protection, but successive Nova Scotia governments have never introduced the regulation required to enact it.

5. This indexing protection should extend to accrued and deferred pensions as well.

6. The NSFL proposed that the Pension Benefits Act be amended to provide that there be no contribution holidays unless there is a surplus margin of a least 10%. Second, any use of surplus, whether improvement or contribution holiday, should be subject to the approval of all bargaining agents (if any) and/or an appropriate majority vote of affected plan members.

7. The NSFL proposes that Pension Review Panel recommend that the current disclosure requirements of the PBA be expanded to require that copies of the documents that must be disclosed to plan members be provided to all plan members so requesting in a timely fashion. The concept of providing a copy for "inspection" on the employer's premises should be discontinued. Further, we propose that the content requirements for the members' annual statement be expanded to include the same annual disclosure of surplus applications to meet employer current service cost as is currently required for the Annual Information Returns.

8. The NSFL proposes that the Pension Review Panel explicitly recognize the important regulatory and enforcement role played by trade unions within the existing framework of pension plan governance. For example, where trade unions represent plan members and elect to establish a Joint Trust, we feel that the pension legislation should make such governance improvements mandatory. This will necessitate a program of trustee education and provisions to protect members trustees with respect to the whistle blowing requirement discussed in Section 10 of this submission. Even in the absence of trade union representation, we would recommend expanding the scope for plan member representation on pension committees (alongside the improvements to disclosure and communication advocated elsewhere in this submission). Finally, we propose that the role and mandate of the pension regulator be fully reviewed and that the Pension Review Panel ensure that the Office of the Superintendant of Pensions is provided the resources and mandate to fulfill its obligations.

9. The NSFL believes that the PBA should be amended to require immediate vesting when an employee joins a pension plan. Immediate vesting is already the law in the province of Quebec. In support of the same principle of "locking in" entitlements, we are opposed to moves to unlock or otherwise weaken the vesting system in Nova Scotia. In recognition of the growing percentage of the "non-pension covered" workforce that is precariously employed and part-time, we also recommend that pension plan participation be made compulsory for part-time workers where it is compulsory for full-time workers.

10. The NSFL proposes that the Pension Review Panel recognize and support the fundamental security provided by the existing funding framework, and consider mechanisms to require that any proposals to extend or otherwise reduce the solvency funding obligations be subject to the approval of plan member trade unions (if any) or a two-thirds majority vote of plan members where no trade union exists. The NSFL is

opposed to any proposals that will allow administrators to replace real special payment (deficiency) funding with alternatives such as Letters of Credit. Finally, we urge the Pension Review Panel to recommend that the regulatory framework be amended such that the role of trade unions in situations of funding difficulties be *enhanced and facilitated.*

11. The NSFL recommends that Nova Scotia follow the Québec model on the fiduciary responsibility of plan agents, and amend the PBA such that all agents of a pension plan be listed and named as fiduciaries under the Act. Second, we also recommend that the Act prohibit contractual limitations on the liability of service providers. Third, the NSFL proposes that comprehensive whistle blower protection be provided in the PBA.

12. The NSFL recommends that the PBA be amended such that the value of the accrued pension, once an individual stops participation in a plan, is protected through the mandatory extension of any indexation provided to those pensions that have been deferred. Second, the NSFL recommends that the Pension Review Panel initiate a discussion on how to make the transfer option more practical and viable in private sector plans. In plans that currently allow reciprocal transfers there needs to be a consideration of ways to ensure transferring members do not loose pension value.

13. The NSFL believes that a properly funded program, similar to the PBGF in Ontario, would provide security to Nova Scotians who are members of underfunded defined Benefit Plans. However, any program of this nature should be indexed, and we recommend that the coverage, in the range of 2,750 per month would be more *appropriate.*

APPENDIX "B"

SUMMARY OF DECEMBER 1, 2011 PROPOSALS OF THE NOVA SCOTIA FEDERATION OF LABOUR

1. *The Canada Pension Plan should be expanded by way of a phased in implementation of* a replacement rate of 50% of the average wage to be funded through a seven year phased-in gradual increase in mandatory employer/employee contribution rates to the CPP to pay for this increased replacement rate.

2. Within three years of the proclamation of the *Pension Benefits Act*, every employer in Nova Scotia must create and offer a defined benefit pension plan to **all of its employees** (including part time employees) with a minimum level of employer and employee contributions, and a jointly trustee model for the administration of the pension plan fund.

3. Nova Scotia should not introduce enabling legislation for "pooled registered pension plans".

4. If enabling legislation for "pooled registered pension plans" is introduced, the legislation *should prohibit the conversion of an existing defined benefit workplace pension plan to* a PRPP.

5. The *Pension Benefits Act* and Regulations should explicitly allow pension plan administrators to consider social, ethical, environmental principles when making investment decisions.

6. The *Pension Benefits Act* and Regulations should require an administrator to file an annual investment policy, within a list of acceptable investments provided by the Act and Regulations.

7. The *Pension Benefits Act* and Regulations should require all proposals to extend or otherwise reduce solvency funding obligations should be subject to the approval of plan member trade unions (if any) or a two-thirds majority vote of plan members where no trade union exists.

8. The *Pension Benefits Act* and Regulations should prohibit the use of "letters of credit" to replace real special payment (deficiency) funding. Section 77 of Bill 96 should be deleted.

9. *The Pension Benefits Act and Regulations should require every workplace pension plan* to provide full indexing of pension benefits payable, including accrued, deferred benefits, matched to the Nova Scotia inflation rate, with a transition period to allow for pension plans currently in financial difficulty to return to a healthy funding balance.

10. Unless the expenses are for pension plan benefit improvements, the *Pension Benefits Act* and Regulations should be amended to ensure pension plan fund surplus can only be used if the fund will remain at 110% solvency following the allocation of surplus, not the 105% proposed by Section 105(d) of the Bill.

11. The *Pension Benefits Act* should require administrators to provide funding and payment information to pension plan members on an annual basis, similar to what administrators are already required to file with the Superintendent on an annual basis.

12. The *Pension Benefits Act* should be amended by deleting Section 76 which permits contribution holidays.

13. Section 86 of the *Pension Benefits Act* should be eliminated as we believe an employer very rarely "over contributes".

14. *The Pension Benefits Act should indicate a date for the entitlement to a vested deferred* pension in Section 53 of the Bill, rather than leaving the right to some unknown date when the subsection "comes into force".

15. Section 70 of the Bill should be amended to remain at 10%, rather than increase to 25%.

16. The *Pension Benefits Act* should be amended to create a Pension Benefits Guarantee Fund like the one which exists in Ontario. It would be funded by contributions by all workplaces in the Province to support the workplace pension plans. The benefit coverage should provide up to $2,750 per month, and the benefits payable should be fully indexed.

17. Section 33(4) and (6) of the Bill should be amended to impose fiduciary obligations and liabilities on all agents of a pension plan, not just the administrator.

18. The *Pension Benefits Act* should expressly prohibit any contract which proposes to place a limit on the liability of any service provider.

19. Section 18(4) and Section 36 of the Bill regarding representation by retirees should prohibit a unilateral appointment of a retiree by an employer. Further, the Bill should restrict the ability of retirees to impose contribution increases on active employees. Finally, where employees are represented by bargaining agents, they should deal with the issue of representation of retirees.

20. The Federation of Labour suggests the Bill should allow "jointly sponsored pension plans" only where employees are represented by a certified bargaining agent.

21. Similarly, the Federation of Labour suggests the Bill should allow "a multi-employer pension plan" only where employees are represented by a certified bargaining agent.

22. The Federation of Labour submits "target" pension plans should only be permitted where the pension plan is governed by a "joint trust" model with an express provision which requires the plan to be governed in the interests of the plan members, actives, deferred and retired beneficiaries. These interests must particularly govern decisions regarding benefit reductions, in the event they are required.

23. The PBA should expressly prohibit an employer from converting an existing defined benefit pension plan to a "target" pension plan.

24. Section 57 should be amended to restrict the situations where a target pension plan can actually reduce benefits to one where the funding or solvency situation requires it. The PBA should not simply allow the target pension plan to be able to reduce benefits without some criteria.

25. The *Pension Benefits Act* should require plan administrators to provide a separate, plain language report of the actuarial cost impact of Phased Retirement systems on pension plans.

26. The proposed regulations should not be enacted without a thorough consultation with the Federation prior to implementation.

27. Section 23(2) of the Bill should prohibit retroactive amendments where the Superintendent determines the amendment will have a negative effect on the beneficiaries.

28. The Bill should require education for employees who will become members of an "advisory committee" [Section 18(3)(c) and Section 36] or a "pension committee" [Section 18(3)(b);Section al] particularly where employees are not represented by an exclusive bargaining agent.

29. Section 73 of the Bill should be amended to delete the reference to "Old Age Security".

30. Section 13(c) contains a typographical error – it should say "OF THIS ACT", rather than "OR" this Act.

31. Section 104(9) is missing some words between (7) and the word "prevails.

DALHOUSIE UNIVERSITY

Inspiring Minds

SUBMISSION TO LAW AMENDMENTS COMMITTEE

BILL 96 – PENSION BENEFITS ACT

December 2, 2011

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Tel: 902-494-2211 | Website: www.dal.ca

Introductory Remarks

Thank you for this opportunity. In the time available, we want to provide some background on Dalhousie and our pension plan, provide support to the proposed changes to the Pension Benefits Act, particularly related to Jointly Sponsored Pension Plans and retirees, and we wish to underline that a solvency funding exemption is essential to enable Dalhousie to continue its contribution to our community. We will cover each in turn.

Dalhousie Information

Dalhousie University is one of the largest enterprises in Nova Scotia. We provide important public benefits in a variety of ways. We spend $600 million annually on our operations. We employ 5,750 full-time and part-time faculty and staff. This year we spent $75 million on construction activities, and over the next 5 or 6 years we plan to spend an additional $350 million – money that will be spent almost entirely in Nova Scotia.

According to a study recently completed by Gardner Pinfold and Associates, the impact of our activities is huge. Dalhousie generates $1 Billion of Nova Scotia's total GDP. We create over 10,000 jobs. And these jobs generate almost $600 million in wages for Nova Scotians.

Dalhousie purchases goods and services worth another $116 million annually. We currently do business with over 2,000 Nova Scotia companies. In the local businesses community, Dalhousie students spend an additional $88 million a year on rent, food, products and services. Visitors to our campus spend another $15 million annually.

While the province provides us with an operating grant of $168 million, our activities generate $243 million in tax revenue, $134 million for the Province and another $109 million for the federal government.

The provincial operating grant is approximately 30% of our revenue. The other 70% comes from a variety of sources – tuition fees, competitive research grants and contracts, our ancillary businesses and earnings on our endowment. We do not run deficits and we are aggressive at leveraging every cent of investment in our institution.

Dalhousie is in a competitive business. We belong to the U15 – the leading research intensive universities in Canada. We are the only university in Atlantic Canada that belongs to this group. Last year, Dalhousie's professors earned $132 million in competitive research grants and contracts, accounting for about three-quarters of the provincial university sector's research income. These grants essentially pay for research equipment and people working in labs and hospitals. These grants enable us to create an additional 1,100 research jobs on campus.

Dalhousie competes nationally, and increasingly internationally, for the best faculty, staff and students. In order to compete successfully and continue to deliver benefits for our community, we also have to ensure that Dalhousie is not disadvantaged relative to its peers by the pension regulatory system in Nova Scotia.

Dalhousie Pension Plan

Dalhousie offers a defined benefit pension plan to its employees. This is an important part of our total compensation package assisting us in recruiting and retaining high quality staff in all areas of our organization. The pension plan currently has just over 3000 active members, nearly 900 people drawing a pension, and nearly 800 former employees who retain an entitlement to a pension from the plan – nearly 5000 people with an interest in this plan.

Dalhousie currently pays annual pensions totalling $26.5 million directly from the plan. This does not include amounts that are transferred to those employees who, on retirement, withdraw their pension entitlements from the plan.

Both Dalhousie and its employees make significant annual contributions to the pension plan. Total contributions for this year are about $38 million, amounting to 18.36% of payroll. Dalhousie makes approximately $25 million in contributions, with employees providing the remaining $13 million.

As we noted, the plan is an important part of Dalhousie's commitment to its employees. The amounts paid to its staff following retirement are significant in allowing staff to enjoy their retirement years in dignity, as well as providing an additional economic contribution to our community. It is worth pointing out that the Dal pension plan has been in existence since 1960 and over the past 50 years, Dalhousie has consistently delivered on its pension promise to its employees and intends to continue doing so.

Current Funding Status

Regrettably, recent adverse events in the financial markets, beginning in 2008, have put Dalhousie's pension plan under significant financial strain. This is not unique to Dalhousie. Other large defined benefit pension plans in Canada and around the globe are facing very real challenges. We want to speak briefly about the current funded position of the Dalhousie plan so that members of the committee have some sense of the extraordinary challenges Dalhousie is facing.

Recently, we obtained an updated projection of the plan's financial position to the end of September of this year. At that point, our assets were approximately $735 million. Although a substantial amount, our pension plan liabilities are much greater. As of the end of September, the deficit in the plan, when calculated on a solvency basis, was approximately $270 million. If we had to file a valuation today under current solvency rules, Dalhousie's required contributions would more than triple, which would require us to find an additional annual contribution of $50 million.

An additional annual contribution of $50 million would present tremendous challenges. Under such a burden, Dalhousie would have to close programs and Faculties and lay off substantial numbers of people. $50 million is equivalent to the entire Faculty of Medicine, plus over half the programs in the Faculty of Health Professions. An additional annual contribution of $50 million would inevitably undermine our ability to compete, and endanger the public benefits that Dalhousie provides to our province. As a result, Dalhousie needs to evaluate this proposed legislation on the basis of its impact on Dalhousie's required pension contributions, ensuring both the sustainability and viability of the pension plan over the longer term.

New PBA

The Act currently proposed does provide an opportunity for solutions, but we do want to clearly state that much more work will need to be done to ensure regulations are enacted that are appropriately in the public interest, considering the broader contribution that Dalhousie makes to the province.

Recognition of Jointly Sponsored Pension Plans Welcome

The first major improvement is the recognition of new categories of pension plans. In particular, the formal recognition of jointly sponsored pension plans and the ability to prescribe new funding rules for those pension plans is a welcome innovation. Dalhousie wishes to enter into a jointly sponsored pension plan with its employees. This form of pension plan will enable a risk sharing arrangement with its employee groups in which the oversight and operation of the pension plan is fully shared between Dalhousie and its employee groups. This will lead to a regular and cooperative consideration of the benefits and costs of the pension plan, within the overall compensation program for the university.

Solvency Exemption Sought

Government has indicated a willingness to reduce the solvency funding for pension plans that are risk shared to 80% from the current 100%. Although this is obviously an improvement from the current full funding that is required, Dalhousie continues to seek an exemption from solvency funding.

Universities stand apart from private sector employers. Universities are stable, mature institutions. The risks of instability or closure that face other private sector employers do not threaten universities. Dalhousie has been in operation for 193 years. We have lands, buildings and endowments conservatively valued at $2 billion. The notion that under some remote theoretical scenario, the pension entitlements of Dalhousie employees may be at risk and therefore need the security of onerous additional solvency funding is simply ludicrous. In stark contrast, the requirement to provide solvency funding will cause impacts that are tangible, real, and immediate. The impacts will be felt by students, staff and our community.

Many provinces have recognized the stability of universities and have made changes to pension legislation specific to their needs. While Nova Scotia has provided some temporary measures, other provinces have gone further. Universities in Alberta, Quebec, New Brunswick and Manitoba are currently exempt from solvency funding valuations. Ontario is offering substantial additional flexibility. The absence of comparable relief for Nova Scotia universities offering defined benefit plans is a competitive disadvantage. It diverts operating expenses that should be spent improving academic achievement and enhancing the student experience. It is a policy that will have a real and negative impact on Dalhousie and all Nova Scotians.

The university sector in Nova Scotia competes with its peers beyond the borders of our province. To be nationally and internationally competitive, Nova Scotia universities must be able to attract students, faculty and research opportunities.

Further detailed discussions will be needed with government in order to ensure that the regulations, when enacted, are properly supportive of the interests of Dalhousie, its employee groups, and the public interest. In our submission, the framework should be fully supportive of the critical role of Universities in our community and not detract from it.

Government has also indicated that it presently intends to maintain the current funding standard for plans that operate on the employer sponsored model, as Dalhousie currently does. This new legislation underlines that it is imperative that Dalhousie and its employee groups move to a jointly sponsored arrangement. Dalhousie believes that a jointly sponsored governance model, combined with a solvency exemption, is the best option for ensuring the ongoing sustainability of Dalhousie's pension plan. A solvency exemption in these circumstances is fully justified and in the public interest based on the reality that the employer and the employee groups will be sharing the risk. The regulatory framework in these circumstances should enable the employer and employee groups to strike the appropriate balance. This sort of facilitative regulatory approach is in the public interest for an institution such as Dalhousie. An option of paying the additional annual contributions of $50 million is simply not in the interest of Dalhousie, its employee groups, nor in the public interest.

Recognition of Retirees

The Act also changes the status and treatment of retirees. There is now a new definition of "retired member" consisting of those who currently receive a pension from the pension plan. Dalhousie welcomes this change and considers this recognition to be appropriate. The Association of Dalhousie Retired Persons is an active association of retirees. They participate in our pension governance presently. There are nearly 800 people receiving a pension from the Dalhousie Plan and these individuals have a substantial stake in the success of the pension plan. We welcome this change.

Consultation on the Regulations Welcomed

We want to underline that we welcome the government's commitment to full consultation on the regulations. We understand that the regulations will be released in draft on December 7th. Based on the government's statement of principles to date, we expect that further significant discussions will be needed to ensure that the regulations, when ultimately enacted, are appropriate. Nonetheless, the government's commitment to consult with all significant stakeholders is welcome and appropriate.

Concluding comments

We hope we have provided some useful background on Dalhousie and our pension plan. We support the proposed changes to the Pension Benefits Act, particularly related to Jointly Sponsored Pension Plans and retirees, but wish to emphasize that a solvency funding exemption is essential for Dalhousie to continue to make its many contributions to our community. Thank you for this opportunity to provide these comments. We would be pleased to take any questions.

Paul B. Huber serves and has served continuously as a member of the Executive Board of the Association of Dalhousie Retirees and Pensions (ADRP) since that registered organization's inception over a decade ago. He is one of its key pension experts. The ADRP represents all Dalhousie retirees including both those who as employees were unionized and those who were not. Among its approximately 300 members are former secretaries as well as former deans, vice-presidents and a former University president.

He was appointed as a trustee of the Dalhousie Pension Trust in 1977 and served in that role for twenty years; he chaired the board of trustees of the Dalhousie Retirees' Trust for a dozen years following its establishment in1982 and later served another five years as a trustee. Huber became an employee member of the Dalhousie Pension Advisory Committee in 1980, and – with the exception of one year on sabbatical leave – he has served continuously on that body (and its various subcommittees from that time down to the present.

Prof. Huber was also the primary employee negotiator (1990-1991) of the partial pension contribution holiday at Dalhousie University extending 1991 to 1993 and the chief employee negotiator (1994-1996) of the pension contribution holiday that extended 1996 to 2001.

He chairs the pension committee of the College and University Retiree Associations of Canada (CURAC), a national umbrella organization, and he currently also serves on its Board of Directors.

He was the primary author of submissions on behalf of CURAC (and its Ontario counterpart) to the Ontario Expert Commission on Pensions in 2008, and to the Federal Ministry of Finance in 2010. Similarly, he was the primary author of two submissions to the N.S. Pension Review Panel (jointly on behalf of the ADRP and of CURAC). He was the primary author of a submission on behalf of CURAC to the Québec Commission des Affaires Sociales regarding the Québec Pension Plan in 2009. For each of these submissions (except that to Ottawa), he was directly involved in presenting to the respective Commission or Panel (in Windsor Ontario, in Halifax, and in Québec City).

Prof. Huber earned his Ph.D. in economics from Yale University in 1970 and was appointed as a professor in the Department of Economics at Dalhousie University in 1965, where he served until 1998, when he retired. He currently is an adjunct professor, teaching European Economic History (20th century).

He was the primary developer in 1988 of the CEBS Study Manual, "Employee Benefits and the Economy," which included a major section on pension arrangements in Canada. In recent years, he has given a number of invited presentations on pension and institutional investment issues. He also currently has a research paper on pensions and taxation in Canada in preparation.

DFA

Dalhousie Faculty Association

Bill #96

Exempt Universities from the Solvency Test

Brief by the Dalhousie Faculty Association

Bill C-96 An Act to Amend the *Pensions Benefits Act*

NS Law Amendments Committee

Prepared by Anthony Stewart, President of the DFA
& Faye Woodman, Dalhousie Pension Plan representative (DFA)

Following presentation: 4:20 p.m., December 1, 2011

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CONTENTS

Brief by the Dalhousie Faculty Association on Bill C-96

SUMMARY

The Dalhousie Faculty Association (DFA) asks the NS legislature to exempt universities from the pension solvency test and do so in Bill C-96, rather than in the regulations, which can be changed by an order-in-council, with no public consultation. Failing that, the DFA urges the government to replace the regulation created April 26, 2011, (N.S. Reg. 176/2011) and grant a full solvency test exemption to universities through regulation.

DALHOUSIE'S DEFINED BENEFIT PENSION PLAN

Dalhousie's Defined Benefit Pension Plan has more than 3000 active members and 700 retirees. It is not a faculty-only plan; it includes secretarial assistants, managers, tradespeople and custodians. These are people who cannot afford to contribute more and receive less.

The pension plan *has* eliminated the prospect of Dalhousie employees ending long years of service in poverty, and it has helped Dalhousie University to attract and to retain faculty, in national and international labour markets in which Dalhousie's salaries are not competitive. (More will be said about this later.)

The current Pension Advisory Committee includes representatives from the Administration, the Dalhousie Professional Managers Group, (DPMG), the DFA, NSUPE and NSGEU. The DFA has a formal veto over changes to the Plan.

The Dalhousie Pension Plan provides a decent retirement income for faculty, but it is not a "gold-plated" plan. We recently analysed pension plans of other comparable universities and our Plan sits about in the middle. The benefits are not automatically indexed. Indexation depends on the performance of the Plan. Consequently, over the last decade, the real value of the pensions of some of our longer-term retirees has declined more than 12 per cent. Additionally, even if economic conditions significantly improve, the need to make up for past poor performance will mean that indexing is unlikely to resume for at least four years. Therefore, current and future Dalhousie retirees are already sharing the pain of the current market downturn.

As you know there are two tests to assess the health of a pension: the going-concern test and the solvency test.

The going-concern test measures the health of a pension plan on the assumption that the plan will continue and not be wound up. Under the going-concern test, the Dalhousie Pension Plan has a $78 million to $120 million deficit which must be paid off over the next 15 years at a cost of about $5-$8 million a year. The figures are fluid because the last official actuarial assessment was in 2010. This amount is a burden to the University, but a manageable one.

The solvency test, on the other hand, assumes that Dalhousie is going to shut down tomorrow and all the funds in the plan used to buy retirement annuities for current and retired members of the Plan. However, historically low interest rates have inflated the costs of these annuities and thus Dalhousie is faced with an artificial solvency deficit of approximately $270 million.

To make matters worse, under the present legislation this solvency deficit must be eliminated in five years. The government has, however, with the agreement of Dalhousie pension plan members and retirees, extended this to 10 years while excusing the University from making any actual payments until March 2013. In 2013, however, the University could be faced with annual payments on the solvency deficit that could reach $40 million a year, a huge burden.

SOLVENCY TEST

In a November 28, 2011, Dalhousie University Senate meeting, Dalhousie University President Tom Traves called the solvency test "unreasonable" and estimated paying it off would cost about $50 million a year starting in 2013. (The Administration had been using $40 million up until that report.)

Mr. Traves went on to say: "That is a substantial amount of money for a meaningless test. Dalhousie is most unlikely to fold, but if we did ... and the pension plan was short we have hundreds of millions of dollars of assets."

The DFA absolutely agrees that it is not realistic to impose a solvency test that presumes that Dalhousie University would close tomorrow. As an economic driver of the province and with a student population that has just exceeded 17,000, this is not going to happen any time soon.

Dalhousie University is the *only* institution east of Montreal that has been included in the federal government's new U-15 designation – research-intensive universities, which means it is much less likely to fail. (Those universities are listed on page 5.) And even if it did, it would be able to pay out the pension benefits that are promised. Not only promised, but guaranteed.

The long-term viability of universities and their pension plans has already been recognized by other provinces. Universities are fully exempt from the solvency test in Alberta, Manitoba, Quebec and New Brunswick, and exempt under specific circumstances in British Columbia, Saskatchewan, and Ontario.

Furthermore, employees of Dalhousie University have already demonstrated their support for an exemption from the solvency test by approving the present three year postponement of the requirement to pay down the solvency deficit.

ROLE OF JSPP'S

Dalhousie's Administration wants a solvency exemption within a jointly sponsored pension plan, made possible by very preliminary hints at what regulations would look like under the current Bill C-96. Based on the information 80 per cent solvency test relief will only be available within the JSPP. The Dalhousie Faculty Association *rejects* tying solvency relief solely to a JSPP; we want to see universities exempt from the solvency test no matter what their pension plan structure.

First, tying solvency relief only to a JSPP would interfere with the collective bargaining process we started in April. In fact, it already has. The Administration has stated that it would NOT discuss compensation until the pension issue is resolved with a JSPP. If a solvency exemption is only made for JSPPs, the government is giving us only two choices: either accept a JSPP or watch the Administration carry out their stated threats of cutting programs and staff. And the Administration has made this threat – both veiled and blatant – at a series of town hall meetings throughout the university, at the recent Senate meeting where faculty heads meet, presenting JSPPs as the ONLY solution to this pension issue. The DFA knows that there are other avenues, and an exemption is one of them.

Second, the Administration has made it clear that a move to a jointly sponsored plan would require employees and employers to share responsibility for shortfalls. This would mean a *steady roll back* of benefits, and moreover, a *de facto* end to our defined benefit pension plan.

On March 8, 2011, the Administration presented a draft JSPP Trust Agreement to the Pension Advisory Committee that would require a reduction in benefits in the event that further increases in pension premiums cannot be made because of the *Income Tax Act* (ITA) maximum or *any other reason*. This could include the Administration stating they can't "afford" to pay more because they want to spend the money elsewhere.

The relevant section of this draft JSPP Trust Agreement states (emphasis added):

> Clause 9.09(h). If Members are not permitted to pay the contributions established under this Article 9.09 ... due to applicable legislation or **any other reason**, then, notwithstanding any other provision of this Trust Agreement, the Trustees shall amend the Pension Plan to reduce future benefits so as to reduce Pension Plan liabilities in an amount actuarially equivalent to the amount of the foregone member contributions.

This draft trust agreement gives enormous power to the Administration, the trustees and other groups to decide the future of our pension, both in terms of increased contribution rates for members and decreases in member benefits. Even a DFA veto (as we presently have) would not guarantee our pension benefits.

Furthermore, a significant number of the plan members are custodians, tradespeople, and secretarial assistants and cannot afford higher contributions. The only alternative would be for the Dalhousie Administration to contribute a very substantially increased share of premiums or to force a reduction in benefits.

Even if Dalhousie's Administration funded all the current deficits and a new JSPP was started at 100% funding, given the cyclical nature of the markets, there will come a time again, when the plan will require increased funding. Declining benefits would be the unavoidable consequence of changing the governance structure to a jointly sponsored pension plan.

Dalhousie employees would gain nothing by changing our present plan into a JSPP. Our pension benefits would not be more secure. In fact, they would be less secure. Upon wind up of a JSPP, employees are not guaranteed the equivalent of their full pensions. They get whatever is in the Plan, not what should be in the plan.

COMPETITIVE DISADVANTAGE

Ending the guarantee of defined benefit levels would be disastrous for Dalhousie's competitiveness in recruiting top-quality faculty. At a university where salaries remain below the average of the other universities in the agreed-upon comparator group (Alberta, Calgary, Manitoba, Memorial, New Brunswick, Ottawa, Queen's, Saskatchewan, Western and Windsor), a defined-benefit pension plan is especially important.

The comparator group are what the DFA and the Administration have agreed are comparable universities, but Dalhousie is also part of another group of research-intensive universities called the U-15, to which Ottawa channels research money. Dalhousie is at the bottom of the salary ladder here, but needs to attract the same bright researchers in order to pull in the research money. Dalhousie is also the only U-15 university east of Montreal.

The U-15

Dalhousie University	Université de Montréal	University of Toronto
McGill University	University of Alberta	University of Waterloo
McMaster University	University of British Columbia	University of Western Ontario
Queen's University	University of Calgary	University of Manitoba
Université Laval	University of Ottawa	University of Saskatchewan

A March 2011 report commissioned by Dalhousie (http://senioradmin.dal.ca/files/2011-dalhousie-eia.pdf) shows that Dalhousie University is a crucial driver of the provincial economy, with an impact of more than $1 billion each year—equivalent to three per cent of total economic activity in the province.

The report says that one of the greatest impacts stems from Dalhousie's role as a base for knowledge and innovation in the province. Dalhousie brings $132 million in sponsored research to Nova Scotia each year, with the university's Industry Liaison and Innovation office committing upwards of $4.5 million yearly to turn that research into new commercial opportunities and spin-off companies. Beyond the dollars, though, the impact of Dalhousie research is vast. For example, the university can claim the greatest number of citations per research dollar among Canada's 25 largest universities.

The ability to attract this kind of research talent does not lie in the salaries paid, but in the benefits offered – both tangible with a defined benefit plan, and intangible like location.

The defined benefit pension plan is a key recruitment and retention issue, and faculty have said this is what permitted them to take lower salaries than they would have earned at other research-intensive universities. A JSPP would erode the benefits paid and make Dalhousie less attractive.

WORKING TOGETHER

In our view, Dalhousie's administration and its employees must, as they have always done, work together to resolve the pension issue. Introducing the concept of JSPPs in Bill C-96 and then tying any form of solvency relief to that structure only, will really disadvantage Dalhousie in the long run and interfere with negotiations. It is as if MLA's are sitting at our bargaining table saying: "if you don't move to a JSPP, the Administration will be justified in cutting programs and staff and it will be all the DFA's fault." Please do not interfere with our collective bargaining process – pensions are part of our compensation package.

Dalhousie's employees and faculty have a history of working with Administration. We allowed the Dalhousie Board of Governors to use one-third or more of the *surplus in* the pension plan in the mid-90s to take a break from contributions. This break allowed Dalhousie's Administration to pay off many millions of dollars in onerous debt and to finance restructuring and a number of Board-initiated programmes. We worked with the Administration then, and we will work with them now.

CONCLUSION

The application of the solvency test to the Dalhousie Plan will impose a huge annual bill on the University. Money that would be better spent on needed infrastructure, attracting and retaining high-calibre faculty and providing facilities and services to students.

Dalhousie's employees understand the difficult conditions that the government faces today and that there will likely be further cuts to university funding for the 2011-12 year. We are not asking for any government money. We are simply asking that our Pension Plan be exempted from an artificial and completely unnecessary solvency test. We urge the legislature to enshrine a full exemption from the solvency test for universities in Bill C-96, at best. Or use the 'university' category in the regulations to exempt universities from the solvency test.

CARRIED

Bill #96
Pension Benefits Act

CHANGES RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE
BY THE MINISTER OF LABOUR AND ADVANCED EDUCATION

PAGE 15, subclause 33(7), line 2 - delete ", (2) and (4)" and substitute "to (3)".

LAC GOV-1

DEFEATED

Bill #96
Pension Benefits Act

CHANGES RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE

PAGE 49, Clause 96 - add the following immediately after subclause (2):

(3) A person who is receiving a pension on the wind-up of a pension plan is entitled to require the administrator to pay an amount equal to the commuted value of the remainder of the pension benefit to which the person is entitled

(a) to the pension fund related to another pension plan, if

(i) the other pension plan is a pension plan registered under this Act, a pension plan established or governed by a statute in a designated jurisdiction, a pension plan registered in a designated jurisdiction or a pension plan prescribed for the purpose of Section 61, and

(ii) the administrator of the other pension plan agrees to accept the payment;

(b) to the pension fund of a pension plan established pursuant to Section 97; or

(c) into a prescribed retirement savings arrangement.

PAGE 49, subclauses 96(3) and (4) - renumber as (4) and (5).

PAGE 49, subclause 96(4) (renumbered as 96(5)), line 2 - delete "(3)" and substitute "(4)".

PAGE 49 - add after Clause 96 the following:

97 (1) Where a majority of the retired members of a pension plan affected by the wind-up of the pension plan so elect, the administrator of the pension plan being wound up, in whole or in part, shall establish a pension plan into the pension fund of which the administrator shall pay an amount equal to the commuted value of the remainder of the pension benefit to which the retired members are entitled.

(2) Subject to subsections (3) and (4) and the regulations, the provisions of this Act apply to a pension plan established pursuant to subsection (1).

(3) A pension plan established pursuant to subsection (1) must be administered by a pension committee composed of representatives of the retired members.

(4) Section 93 does not apply to a pension plan established pursuant to subsection (1).

RENUMBER CLAUSES 97 TO 145 AND CHANGE CROSS-REFERENCES ACCORDINGLY.

PAGE 75, subclause 139(1) (renumbered as 140(1)) - add the following immediately after paragraphs (bc):

(bd) respecting pension plans established pursuant to Section 97;

PAGE 75, paragraphs 139(1)(bd) to (be) (renumbered as 140(1)(bd) to (be)) - reletter as (be) to (bf).

PinkLarkin
LAWYERS • AVOCATS

December 6, 2011

By Fax: 424-0547

Mr. Gordon Hebb, Q.C.
Legislative Counsel
Ninth Floor
Joseph Howe Building
1690 Hollis Street –
1681 Granville Street
Halifax, NS B3J 2X1

Dear Mr. Hebb:

Re: Law Amendments Committee – Bill No. 96 – *Pension Benefits Act*

On Thursday, December 1, 2011, I appeared before the Law Amendments Committee on behalf of the Mainland Nova Scotia Building and Construction Trades Council and the Cape Breton Island Construction and Building Trades Council to make submissions on Bill No. 96 with respect to its application to jointly trusteed, multi-employer pension plans in the unionized construction industry in Nova Scotia ("MEPPs").

Following my presentation, Mr. Howard Epstein, the MLA for Halifax Chebucto, posed a question that I was not able to answer at the time. Mr. Epstein asked whether MEPPs in Nova Scotia have a dispute resolution mechanism in the event the Trustees are unable to agree on how to respond to a need to reduce the benefits provided by these pension plans. The following is my response to this question.

The Trust Agreements that establish each of the MEPPs in the unionized construction industry in Nova Scotia include a dispute resolution mechanism to resolve deadlocks amongst Trustees. Each Trust Agreement provides for binding arbitration in the event of a deadlock.

By way of example, one Trust Agreement includes the following:

> (v) Questions arising at any meeting of the Board of Trustees shall be decided by a majority of votes. The Chairman shall not have a second or casting vote in the event of a tie. Union Trustees and Employer Trustees shall have the right to cast an equal number of votes, notwithstanding the absence of a Trustee at any meeting. Accordingly, each Trustee of the smaller group shall be vested with additional voting power to equalize the voting power of the two groups.

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A deadlock shall be deemed to exist wherever a proposal, motion or resolution made by any Trustee is neither adopted nor rejected by a majority vote. In the event of a deadlock, a meeting of the Board of Trustees shall be held no later than ten days after the deadlock has arisen for the purpose of resolving the matter in dispute. If the matter is not resolved at such meeting, the Trustees will attempt to agree upon the designation of an impartial arbitrator to whom the matter in dispute shall be referred for determination. If, within ten days after the meeting called to break the deadlock, no impartial arbitrator has been agreed to, then any three Trustees may request the Minister of Labour for the Province of Nova Scotia to appoint an impartial arbitrator. The impartial arbitrator shall immediately proceed to hear the dispute between the Trustees and decide such dispute. The written ruling of the impartial arbitrator so agreed upon or so appointed shall be consistent with the provisions of the Agreement, the Eligibility Requirements, the Pension Plan, and other Plans, and shall be binding on the Board of Trustees. The reasonable compensation of such arbitrator and the costs and expenses (including without limitation reasonable compensation of such arbitrator) and the costs and expenses (including without limitation reasonable counsel fees and reports' fees) incidental to any proceedings instituted to break a deadlock shall be paid by the Trust Fund.

Another Trust Agreement includes the following similar provision:

16.07 Consensus Decision-Making and Voting

Decisions of the Trustees shall be by consensus. However, where a consensus cannot be reached, a vote may be held upon the request of any Trustee and the Chair shall have the right to vote in any such situation. A tie vote results in a deadlock. Notwithstanding the number of Trustees present, the Union and the Employer shall be deemed to have the same number of Trustees present for the purpose of any vote.

16.08 Deadlock Resolution and Arbitration

In the event of a deadlock, a meeting of the Trustees shall be held no later than 10 days after the deadlock has arisen for the purpose of resolving the issue or such later date as may be agreed upon by the Trustees. In the event that the deadlock is not resolved at such meeting, the motion shall again be called by the Chair. If the motion does not pass, the motion shall be referred to arbitration at the request of any two Trustees.

16.09 Arbitration pursuant to Article 16.08 above shall be conducted in accordance with this Section. Within forty-eight (48) hours after a deadlock has been declared, the dissatisfied Trustees shall declare their intentions to remit the matter to binding arbitration. Failure to advise all the remaining trustees in writing within forty-eight (48) hours shall mean that there is no objection to the decision taken by the Trustees and that no arbitrator need be appointed pursuant to this Article.

16.10 In the event that proper notice is given, then the parties shall refer the outstanding issue for final offer selection to the arbitrator on the list set out in Schedule C who is first available to hear the matter. The arbitrator shall only have the authority to select the position of either Trustee and shall not have the authority to modify the position of either party. The decision of the arbitrator is final and binding and not subject to review at any time by any court. The costs of the arbitration shall be borne by the Fund. Each Trustee shall bear their own costs.

I note that these binding arbitration provisions have never been used in Nova Scotia or, to my knowledge, elsewhere in Canada. I note, as well, that no MEPP in the unionized construction industry in this province has ever reduced pension benefits for retirees.

I trust the foregoing addresses Mr. Epstein's question. I would be pleased to provide further information or clarification.

Yours truly,

Bettina Quistgaard
bquistgaard@pinklarkin.com

c. Clients

HRM PENSION PLAN

December 13, 2011

Gordon Hebb, Q.C.
Legislative Counsel
PO Box 1116
Halifax, NS B3J 2X1

Dear Mr. Hebb:

Re: Bill 96 – Pension Benefits Act

We are writing to express our comments on Bill 96.

The Halifax Regional Municipality Pension Plan is a multi-employer pension plan that represents approximately 10,000 plan members from HRM and thirteen other participating employers. The Nova Scotia Government has recognized the HRM Pension Plan to be a Jointly Sponsored Pension Plan (JSPP) because of its joint governance model: shared decision-making amongst union, management, and retiree representatives. In addition, contributions, deficits, and surpluses are shared 50%/50% amongst plan members and employers. Represented unions are: Halifax Regional Police Association, International Association of Fire Fighters, CUPE, Amalgamated Transit Union, and Nova Scotia Union of Public Employees.

1. We do not agree with immediate vesting as this would be a "take-away" for our plan members. We currently offer <u>immediate membership</u> to our Plan for employees <u>with immediate vesting retroactive to the first day of employment pending completion of 2 years of employment.</u> To address concerns regarding turnover of "seasonal" plan members or those new employees who do not plan to remain employed with a participating employer for more than 2 years, we offer a full refund of contributions with interest. We wish to keep this model and encourage the Nova Scotia Government to grandfather this practice for the HRM Pension Plan or to allow JSPPs to choose a vesting design that works for the JSPP entity. The administrator of a JSPP, through joint representation of employee/union groups, reflects the wishes of the plan membership.

HRM PENSION PLAN

Immediate vesting as proposed in Bill 96 will result in higher costs for the Plan, from higher actuarial costs associated with calculating the termination benefit for employees who leave within 2 years, which impacts all plan members in the Plan because the Plan pays for this. In essence, the remaining plan members will be subsidizing those that terminate within 2 years. This is unfortunate since the objective of a defined benefit pension plan is to reward longer term members.

The Government advised us that we could delay offering membership in the Plan for 24 months in order to address the higher cost issue. While this is a partial solution, it is not ideal. An employee who ends up terminating after 2 years of employment, would not earn credited service for 2 years. We prefer our existing model.

2. We believe the concept of a "partial wind-up" should be eliminated since it is a theoretical wind-up of a plan for a certain number of plan members, where the number has not been defined. Under a partial wind-up scenario, remaining plan members would be subsidizing those plan members who terminate under a "partial wind-up" scenario. There is no definition of a partial wind-up nor are there any criteria for determining when a partial wind-up will occur other than when the Superintendent of Pensions says a partial wind-up has happened. For these reasons, the trend is towards the elimination of partial wind-ups across the country (e.g., Federal, Quebec, and Ontario). Alternatively, we encourage the Nova Scotia Government to allow JSPPs to be exempt from partial wind-ups.
3. We encourage the Nova Scotia Government to exempt JSPPs from providing advance notice for all planned amendments. JSPPs, by virtue of their shared governance model , obtain input from their constituents on planned amendments. Each union in the HRM Pension Plan or Council can veto an amendment that has cost implications. It has been our practice, that when the wording of draft amendments has been reviewed by the Superintendent of Pensions, changes are made a few times. Most changes are technical or administrative. We would not want to incur the unnecessary expense and/or create confusion amongst members for providing advance notice for these iterations.

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4. We are extremely disappointed that the NS Government did not exempt the HRM Pension Plan from funding solvency deficits. Municipal pension plans are exempt from funding solvency deficits in B.C., Alberta, Manitoba, Quebec, and New Brunswick. Municipal pension plans are exempt from funding solvency deficits in Ontario if they are a JSPP. Saskatchewan has announced that it intends to adopt B.C./Alberta's proposed joint pension legislation which would continue to exempt municipal pension plans. PEI does not have pension legislation, so all pension plans are exempt from funding solvency deficits. Newfoundland has historically provided temporary relief from funding solvency deficits when required.

   Nova Scotia's proposed regulation for JSPPs to fund solvency deficits under 80% still requires the unnecessary use of plan member and taxpayers dollars at a time when long-term interest rates are at record lows. On August 24, 2010, the Ontario Government issued a press release recommending "that MEPPs and JSPPs should be allowed more flexibility in funding, citing joint governance, risk-sharing, the ability to reduce benefits and the absence of Pension Benefits Guarantee Fund (PBGF) coverage as legitimate reasons for different funding rules. " As a result, Ontario will exempt current JSPPs from solvency funding requirements, provided certain requirements are met, e.g., enhanced disclosure to members and retired members. In the draft regulations for Nova Scotia, the enhanced disclosure requirements are there but funding of solvency deficits remain. Because of the Financial Crisis and political events in Europe, long term interest rates remain extremely low, resulting in higher valuations for pension obligations. Mercer estimates that the median pension plan in Canada has a solvency deficit of 60% as at September 30, 2011.

5. It is not clear how Nova Scotia is handling the funding of plan amendments for JSPPs who happen to be municipal pension plans. Ontario does not require that plan amendments be pre-funded on a solvency basis because JSPPs are not required to fund solvency deficits. We encourage the Nova Scotia Government to adopt Ontario's regulations in this regard.

We are in the process of reviewing the draft regulations and will be making a submission before the deadline of January 31, 2012.

HRM PENSION PLAN

Teresa Troy
CEO, Halifax Regional Municipality Pension Plan

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