

# NSGEU

A submission by Nova Scotia Government  
and General Employees Union

Regarding Part VI of Bill 339:  
An Act to Facilitate the Transfer of  
Pension Plans of Private Sector  
Employers to the Public Service  
Superannuation Plan

October 28, 2023

Good afternoon,

My name is Sandra Mullen, President of NSGEU and I am here representing the more than 35-thousand members of our union.

I am here today to speak to Bill 339 and specifically part 4 – Public Services Superannuation Act.

The NSGEU supports the governments direction to increase private sector participation in the Public Service Superannuation Plan (PSSP).

The PSSP promises to deliver retirement income based on the plans formula and the Plan is meeting those responsibilities.

However, the PSSP is not delivering on cost-of-living increases also known as indexing for its retirees.

The last legislative change to the Plan took place in the Spring of 2010. In accordance with these legislative changes, the Board of Trustees are required to conduct a funded-health review of the PSSP every 5 years. One of the purposes of this review is to assess whether indexing may be granted for the next 5-year cycle.

The legislation does not permit the Board of Trustees to assess the possibility of granting interim indexing on an ad hoc basis, especially in a period of high inflation.

We have included a chart in your package, but I have additional copies here, that highlights the impact of this indexing restriction over the last 5 years.

When compared to other pension benefit plans you can see that the Canada Pension Plan had an average cost of living adjustment of 2.88% including a 6.5% adjustment in 2023 as inflation increased, impacting all Nova Scotians and Canadians.

The Federal Superannuation Plan had a 2.84% 5-year average increase with a 6.3% increase in 2023.

The Nova Scotia Health Employees' Pension Plan had a 2.12% 5-year average increase with a 3% in 2023.

By comparison the PSSP, in those same five years only received a 0.34% 5-year average increase with no increase in 2023 and no increase planned for 2024.

Due to this five-year indexing restriction within the PSSP retirees have lost about 13% of the value of their pension in three short years.

The Trustee's next scheduled review of the Plan's funded health will be in 2025, for the 5-year cycle starting January 1, 2026, and ending on December 31, 2030. This is too long for retirees to

wait for the possibility of indexing especially when the Plan has no mechanism to pay missed indexing for the previous 5 years.

That means the current and future retirees of this plan are at a serious and significant disadvantage.

Because of this the NSGEU offers the following amendment for consideration.

It would read:

Notwithstanding the foregoing sections in the exceptional circumstances where both:

- a. The Consumer Price Index for Nova Scotia for the previous 12-month period commencing on January 1 of any year exceeds 3% and;
- b. The funded status of the Plan exceeds 105%;

The Trustees shall consider providing to the beneficiaries a cost of living increase effective the January 1<sup>st</sup> next following the end of the year set out in sub paragraph a) above.

This both protects the health of the fund, by ensuring its funded above 105% and protects those people who rely on their pension in retirement.

As inflation skyrockets and costs continue to rise, retirees are left to survive on an income that cannot keep up to current costs. Retirees have not seen an increase in the last three years.

This amendment will ensure that the plan is keeping pace with the global realities and reduce the lag time of 5-year adjustments.

This is a reasonable solution that will make the plan more competitive and attractive for new participating employers.

I hope you take this amendment under consideration, and I am happy to take any questions you might have.

Thank you.

# Additional Pension Benefits

## Cost of Living Adjustment (COLA)



Year	NSHEPP	NS Public Service Superannuation Plan	Federal Superannuation Plan	Canada Pension Plan
2019	2.2%	0.85%	2.2%	2.3%
2020	1.9%	0.85%	2.0%	1.9%
2021	0.5%	0%	1.0%	1.0%
2022	3.0%	0%	2.7%	2.7%
2023	3.0%	0%	6.3%	6.5%
<b>5-year average</b>	<b>2.12%</b>	<b>0.34%</b>	<b>2.84%</b>	<b>2.88%</b>

# **NSGEU CUPE·SCFP**

## *Joint Submission*

Regarding Part VI of Bill 339:  
An Act to Facilitate the  
Transfer of Pension Plans of  
Private Sector Employers to  
the Public Service  
Superannuation Plan

A joint submission by  
Canadian Union of Public Employees &  
Nova Scotia Government and General Employees Union  
To the Law Amendments Committee

October 23, 2023

## Introduction

The Nova Scotia Government introduced Bill 339 on October 13, 2023. Part VI of the Bill introduces the Act to Facilitate the Transfer of Pension Plans of Private Sector Employers to the Public Service Superannuation Plan (PSPPTA).

The Canadian Union of Public Employees (CUPE) and the Nova Scotia Government and General Employees Union (NSGEU) together (the Unions) have prepared the following joint submission in response to Part VI of Bill 339.

Together our two unions represent approximately 78 per cent of the active membership in the Public Service Superannuation Plan (PSSP), and we appoint 4 of the 6 plan member seats on the Public Service Superannuation Plan Trustee Inc. (PSSPTI). We are major plan stakeholders and take our obligations to represent our members in pension matters very seriously.

## Consultation with Stakeholders

We represent both members in the PSSP and members who may face a move into the PSSP under the proposed rules; therefore, we have examined the PSPPTA from both the public and the private perspective. This is complex legislation that we note is moving quickly through the legislature. At this time, we have had less than 6 business days to review and analyze this detailed and important law. We question why this law is needing to move so quickly and suggest a pause to allow for more detailed analysis.

We understand that Minister MacMaster stated that the PSSPTI is supportive of the PSSPTA overall. We are aware that the PSSPTI has supported this idea generally, as have our unions. However, our support was at a high level of principle and did not pertain to the specific proposals in Part VI of Bill 339. The details of these transfers are incredibly complex and the legislation enabling them therefore requires serious and thoughtful study. This section of the Financial Measures Act should not move forward until all stakeholders are able to conduct a proper review of the legislation and an opportunity to provide comments.

## Accrued Benefit Protection

There appears to be some minimal protections of accrued benefits in the PSPPTA, however it is unclear if it allows for a lower level of protection of accrued benefits than is already provided under the *Nova Scotia Pension Benefits Act* (NSPBA). Would the PSSPTA permit a “freeze” of final average earnings in a defined benefit plan at the transfer date, rather than what is currently promised at the date of retirement? Further clarification on this issue is required.

The labour movement in Nova Scotia and elsewhere has long believed that pension promises must be fully honoured – and the public is very strongly onside with us on this issue as well.

## Indexation

PSSPTA speaks to protecting the pensions accrued to members of designated plans in sections 9 and 10. Section 10 purports to protect the “amount and form” of a retiree’s pension. However, sections 10(1)(d) and 10(2)(d) also states that indexation (cost of living) benefits shall be paid according to the terms of the PSSP and not the designated plan.

Indexation is not guaranteed within the PSSP and the plan unfortunately has a very poor record of indexation delivery. PSSP benefits have increased only by about 10% since 2011 and, per the province’s legislation, will be frozen until the end of 2025. The cost of living in the Province of Nova Scotia has increased by more than 30% since 2011.

PSPPTA is saying two things with respect to pensions already earned: they will be protected, but also the previous indexing provisions will be replaced by the very poor indexing provisions of the PSSP. This could theoretically mean an employer of a designated plan, who had made promises to guarantee indexation improvements, could try to resile from those commitments under this legislation. Sections 10(1)(d) and 10(2)(d) should be amended to ensure that pre-conversion indexation commitments must be honoured for all plan members – active, retired, or other.

Further, If we are amending the *Public Service Superannuation Act*, then its very weak indexation provisions should be revisited and improved. We have included a copy of the CUPE and NSGEU submission on the 2022 PSSP review where we outlined to the PSSPTI our concerns regarding the indexing provisions of the Plan (See Appendix A).

## Surplus

Upon transfer, the PSSP identifies the amount of money required to accept the designated plan. The PSPPTA is silent on how residual plan surpluses would be treated at the time of transfer. If there is money left in the pension fund after the transfer has occurred, what happens to these funds, who has ownership?

In the current economic environment, we have seen significant increases in interest rates. These interest rate increases have led to more and more defined benefit pension plans having sizeable surpluses. Our concern is that Employers will use this legislation as a means to access these surpluses, for their own use, which they may not have had the ability to access otherwise. This situation may be further exacerbated in that Employers of designated plans may be able to lower their pension liabilities on transfer thus further increasing their surpluses.

We have already identified our concern regarding the lack of protection for indexing of designated plan members, we would like to see this legislation amended to protect pension plan surpluses for the use of plan members.

Currently, the NSPBA gives trade unions a role on surplus distributions, as does equivalent provision in Ontario, but the PSPPTA is silent. A transfer of a pension plan is a significant and important change that

deserves a higher level of scrutiny, and the legislation should provide for a clear role for trade unions where they exist.

The labour movement has a longstanding belief that pension surpluses belong to plan members. PSPPTA should be amended to require plan member consent pertaining to the use of any residual surpluses after transfer. Without such provisions, we fear employers will use this legislation to offload a very minimal (or even lower) measure of the pension promises they have made to the PSSP, and then pocket the remainder of the pension surplus for themselves. If Government does not endorse this outcome, it must add a provision requiring member consent which would make the treatment of surpluses an item to be bargained between plan members and their employers. Failure to include this would be tantamount to Government endorsing the view that it is fine for employers to take a very limited view of meeting their pension promises, while also taking a very aggressive view of their ownership of the resulting pension surpluses. Union members will not endorse this, nor will the public.

## Consent

Section 7(1)(c) of the PSPPTA outlines the consent mechanism to transfer to the PSSP. It is our opinion that the threshold for consent is low. The PSPPTA requires the designated plan to “make reasonable efforts” to notify plan members and then a vote is held. There are no details as to what a “reasonable effort” is. Leaving this to employers may very well not be fair to plan members.

For a transfer to proceed, no more than 1/3 of active members and 1/3 of retired/former members must pro-actively vote against the transfer. There is no specified role for a trade union in this process.

If we look at the NSPBA Regulations, Section 170 and Section 189(3)(h):

**170** At least 2/3 of the former members, retired members and other persons who are entitled to payments under a pension plan as of the date specified in an agreement for payment of a surplus is prescribed as the number of persons for the purposes of subclauses 104(7)(a)(iii) and (b)(iii) of the Act.

**189(3)(h)** that an election to exclude will be made only if, according to the election forms received by the administrator, 2/3 or more of the total number of JSPP employers and eligible members who were JSPP employers and eligible members on the date the notice of vote was sent to the administrator and the date the information statement was sent vote to exclude the plan and its members from the operation of Section 97 of the Act;

both these sections require 2/3 of plan members actively supporting a change to their pension plan.

If we look to the Ontario Pension Benefits Act, they have a rule which requires 2/3 active member active support and no more than 1/3 of retirees’ active opposition for any similar plan conversion. See



O. Reg 311/15 section 6. The Ontario regulation gives trade unions a clear statutory authority to speak on behalf of its members with respect to transfer consent.

Transferring employers must make more than a “reasonable effort” to notify plan members of the transfer and PSPPTA should be amended to require a larger percentage of plan members to agree/support a transfer. The government should require minimum standards for notice provisions with specified timelines, as is outlined in O. Reg 311/15. These changes would ensure the democratic wishes of the designate plan members are determined and we believe that trade unions have a role to play here as well.

## Transfer Agreements

Section 11(1)(a) of the PSPPTA, allows for a transferring employer to enter into an agreement with a trade union with respect to the transfer. Further Section 11(2) identifies that the Group Agreement may impose obligations or liabilities on or continue obligations or liabilities of the transferring employer.

Under the *Municipal and Other Authorities Pension Plan Transfer Act*, CUPE has entered into agreements with transferring employers. These agreements contain binding terms for the Transfer Agreement. It has been CUPE’s experience that the Transfer Agreement is between the transferring employer and the PSSP, even though it pertains directly to plan members and must comply with a Group Agreement. It is our opinion that the Transfer Agreement should be considered a plan document and subject to the disclosure rules as outline in Section 38 of the NSPBA. Parties to a Group Agreement should be required to receive a copy of the final Transfer Agreement, and any associated documents.

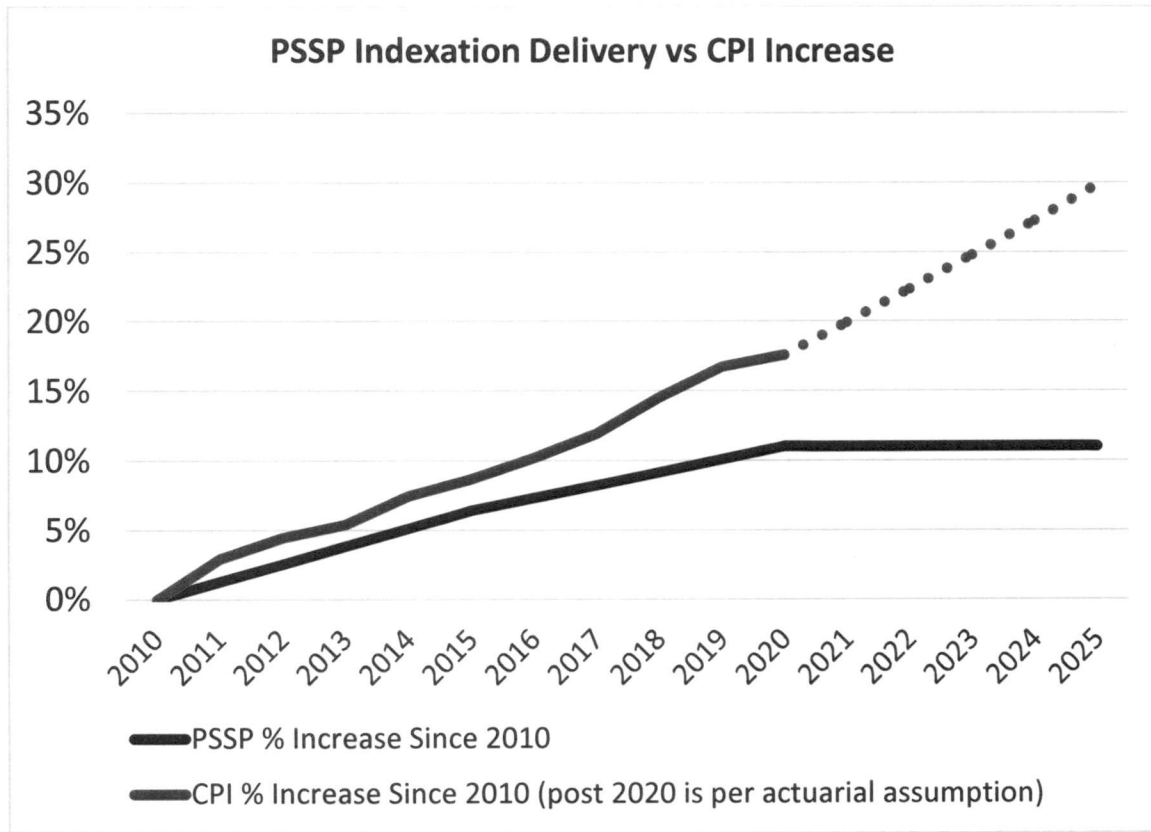
## Special Payments

Section 12(2) of the PSPPTA states that an employer is not required to make special payments to meet underfunding in the PSSP. However, the PSSA (Section 66-68) contains provisions where the PPSTI must look at increasing the contribution rate to achieve the Funding Target when its funded ratio is below 100%. It may be possible for Section 12(2) of the PSPPTA and Sections 66-68 of the PSSA to be read in conflict. A clarifying amendment is therefore justified to require a transferring employer to remit the required contributions per the PSSA and that these contributions do not represent special payments.

## Conclusion

In conclusion, there are a number of areas within Part VI of this Bill that requires further consultation or at a minimum, a guarantee of protection of the accrued pension earned by members of the designated plans.

## Appendix A - PSSP Indexation Delivery Must Be Improved



The Unions share a serious concern about the fifteen-year record of non-delivery of full indexation under the PSSP. As a result of this record of indexation, **since 2010, PSSP pensions have lost about 1/5 of their value in real terms.** PSSP pensions are not keeping up with the ever-increasing cost of living for the province's retirees.

We note that government contribution rates have not changed during this fifteen-year period. When the province made changes to the indexation provisions under the plan in 2010, it said that the benefits would be made "more secure." It is clear to us that plan benefits have been made systematically less secure, which is particularly evident in this long record of partial or no indexation increases. Plan members are bearing the downsides of the plan's funding policy, while nothing new has been asked of employers.

The Unions strongly believe that this situation should not continue. The plan must develop an implement a credible strategy to begin delivery of indexation to PSSP retirees.

There are many different ways in which the plan could begin to deliver indexation. The Unions would strongly oppose any effort to reduce future benefits being earned under the plan as a way of accomplishing this goal. This would merely be an exercise of "rearranging the deck chairs" between plan members that asks nothing of employers. We think that is fundamentally unjust, particularly since it is plan members that have been bearing the brunt of plan risks for 15 years, while nothing has been asked of employers.

In developing a strategy to deliver on indexation, the Reviewer should examine and consider the following strategies:

- The plan's funding policy could be revised to ensure that it is not solely plan members who are bearing the burden of plan risks and/or underfunding. The plan could adopt a risk-shared approach that asks for equal contributions from the member and employer side of the table. If indexation is delivered at less than 100% of CPI in a given year, the employers should be required to make an additional special contribution to the fund, equal to the value of the indexation not delivered up to 100% of CPI. A similar risk-sharing mechanism has existed in the Ontario Teachers Pension Plan for more than a decade.
- As discussed further below, the 5-year window for decisions on indexation should be shortened. The existing structure permits reductions to plan benefits mid-cycle in an unexpected downturn, but there is no equivalent provision for improvements/reinstatement of indexation during an unexpected upturn.
- The funding policy could be amended to permit full indexation delivery below 110% funded.
- The funding policy should be amended to require full indexation payments going forward and including any missed indexation for previous years before any reductions to employer contribution rates are considered. In the current funding policy, employer contribution reductions can happen at the same time as indexation improvements. The Unions believe that indexation delivery should be a higher priority than employer contribution reductions.
- The current funding policy does not permit indexation payments when the plan is underfunded. Returning the plan to full funding with a meaningful surplus should be a priority. The current total contribution flow (17.3% of payroll) is "overfunding" the current service cost (14.3% of payroll) by 3% of payroll. Over time, we would expect this overfunding to lead to plan surpluses. However, the actuarial gains associated with this overfunding have been largely offset by reductions in the plan's discount rate which has dropped by more than 1% since 2015. The overfunding of the plan will not allow a return to surplus and a delivery of indexation if this rate continues to drop. The discount rate is therefore a crucial lever with respect to delivery of indexation. We recommend the plan should produce more disclosure with respect to the discount rate, beyond what is contained in the actuarial report. We suggest the Board deliberations and professional advice with respect to the discount rate should be made available to plan members. We further suggest that the plan should examine alternate asset mix arrangements that would permit a higher discount rate without undue risk of loss.
- It is not clear if the cost of full indexation is built into the plan's current service cost. If it is not, the plan should consider including this cost, with a possible increase to contribution rates should plan members and employers agree. If the cost of full indexation is not built into the plan's current service cost, it makes it more difficult for the plan to deliver on these benefits over the long term.