

Remarks on Bill 339**Law Amendments Committee****October 23, 2023****Presenter: Kevin Russell, Executive Director, The Investment Property Owners Association of Nova Scotia**

Mr. Chair and members of the Law Amendments Committee:

Thank you for the opportunity to speak today on Bill 339, amendments to the Financial Measures Act.

It's an honour to speak on behalf of the Investment Property Owners Association of Nova Scotia – more commonly known as IPOANS.

IPOANS members are women and men who work hard to provide quality rental housing to Nova Scotians.

Private sector rental housing providers are the largest single source of rental housing in Nova Scotia...

And they are the largest single source of affordable rental housing in Nova Scotia.

Many rental housing providers are struggling in Nova Scotia.

Every day I get phone calls and emails from rental housing providers.

They are tired. They are hurting. They feel ignored by their government.

They feel targeted by politicians that want to use them as scapegoats to win votes.

Remember – more than 80% of rental housing providers are sole proprietors.

They own and operate their buildings.

And they are struggling because rent control causes them to lose money.

While the government has capped rents – against the recommendation of the 2021 Affordable Housing Commission report and breaking the promise made by the Premier during and after the last election...

Rental housing providers are forced to pay skyrocketing costs – insurance, energy, labour, mortgage payments, property taxes.

There's no rebate program for rental housing providers. They are left to pay all of the extra carbon tax costs.

It's not lost on rental housing providers when the Nova Scotia government rolls out a Heating Assistance Rebate Program, there's no such help for them.

Rental housing providers are abused by bad tenants that don't pay the rent, that damage property, that threaten staff and other tenants.

Rental housing providers also struggle to get any help to enforce compliance of the Residential Tenancies Act.

Tenants can and do live rent free for months on end.

Another financial hit on the rental housing provider who have to personally make up the revenue shortfall to pay the bills.

Yet there is no help from the government to bring in a compliance and enforcement unit.

Apparently, there's a report from Davis Pier.

A report that we participated in, but a report that we haven't seen.

All of this financial pressure on rental housing providers has made the housing crisis worse.

Two years ago, I warned this committee that the financial crisis caused by government's rent control and skyrocketing costs would result in property owners being forced out.

As I said then, quote:

"Selling units will result in current renters without a home and further reduce rental housing stock."

Many rental housing providers are selling, not to turn a profit.

They are selling to stop the bleeding - bleeding caused by damaging government policy – supported by every MLA and every political party.

What type of rental properties are being sold?

Single-family homes. Duplexes. Triplexes. Townhouse. The vast majority providing affordable homes with backyards to renters with families and pets.

Other rental properties being sold are ones that offer single room occupancies, which are the most affordable rental housing in our communities.

What happens when these properties are sold? The new owner moves into the home with their family displacing the renting family into a rental market with less than a one percent vacancy rate.

This is the direct result of rent control, combined with the lack of any financial support programs for rental housing providers.

Rent control has created financial distress among rental housing providers and it has made the housing crisis worse.

Since rent control has come to Nova Scotia, rents have actually increased at a higher rate than before it was introduced. These are the facts according to Statistics Canada.

Since rent control has come to Nova Scotia, we have more tent cities and more Nova Scotians without a home.

These are facts, according to the Affordable Housing Association of Nova Scotia.

Why do I say these things?

Because Bill 339 was a missed opportunity to help rental housing providers deliver affordable housing.

To be clear, our members support the federal and provincial governments agreeing to an HST rebate on new construction.

Many have asked us for this kind of support for years.

In fact, we don't know why the rebate wouldn't apply to existing projects that began prior to the mid-September effective date proposed in this legislation and its mirror legislation before Parliament?

While the HST rebate will support new construction, it doesn't help the much larger number of existing affordable housing providers who are pleading for help.

Here are proposed solutions we have already advanced.

Solution #1: The government should introduce an Affordable Housing Emergency Rebate for Rental Housing Providers. Any rental housing provider that's charging rent of a \$1,000 or less should get a rebate from the government to pay for increased costs.

Solution #2: extend the residential Capped Assessment Program to include rental apartments. Mobile homes, condos and single-family homes are covered by the Capped Assessment Program. It's time to bring property tax fairness to rental apartments. I would note that this is an ask, not only for our members, but of not-for-profit housing providers like Dartmouth Housing.

Solution #3: Provide a rebate on the provincial portion of the HST for apartment building expenses. This would be application based and give apartments a break on their skyrocketing costs.

Solution #4: Create an emergency rent bank, as is done in other provinces including New Brunswick, so that tenants in need are able to pay their rent.

We know that government legislation, especially for Bills that are financial in nature, are almost never amended.

My hope here today is that as elected officials, you will start to recognize three things:

First: the damage rent control is causing to rental housing providers; and

Second: how rent control has made the housing crisis worse and increased homelessness; and

Third: that rental housing providers are desperate for financial help – without financial help, you can count on the housing crisis becoming even worse.

Thank you for your attention.



Remarks by Peter Polley
Owner of Polycorp
Standing Committee on Law Amendments
Bill 339 – Financial Measures (Fall 2023) Act
October 22, 2023

My name is Peter Polley. For those who weren't here during my appearance last week on Bill 329, for the last 30 years, my company, Polycorp, has developed and built residential housing – both for rent and for sale – in the downtown Halifax, the north end of Halifax, in Bedford, in Armdale, in Spryfield near Long Lake Provincial Park and in Wolfville.

As I noted in my comments last week, it's long since time for elected officials and their staff to start listening to the experts in housing.

As I said last week, one of the major reasons we are in a housing crisis in Nova Scotia and in Canada is because of government.

Governments at the federal, provincial and municipal levels have not made housing a priority.

All political parties and all levels of government are responsible for this failure.

And by and large, governments at all levels have collectively done a terrible job of acting on the advice from those that actually build housing.

I am going to keep saying this over and over and over until the government starts listening to the myself and my colleagues in the housing development industry.

As I made clear last week, none of my colleagues in the development industry will speak out on housing issues. They do not want the negative exposure associated with attending these public sessions. They do not want to take the time or risk the exposure of being critical of the government, nor do they offer solutions in a public forum like this.

In my presentation I said that other builders do not present in this forum because they do not want to be punished for speaking out.

Over the past week, since I attended the last Law Amendment Committee meeting, I came under attack from two members affiliated with HRM in retaliation for my comments before the Law Amendments Committee about the changes to the HRM Charter and the HRM Housing Act.

I will address those two examples outside of this Committee, but it underscores the risk faced from speaking out by those who build housing, who should be supported in solving the housing crisis.

Now, back to the main presentation regarding **Bill 339 – Financial Measures (Fall 2023) Act.**

The only way we can actually solve our housing crisis is through a massive amount of new housing construction done by the private sector. Non-profits or public cannot fix this problem by themselves without the private sector.

The last few years have not been easy for the development of new housing units in Nova Scotia, in Halifax, in particular.

Unprecedented run up in materials and labour costs.
Simultaneous material and labour shortages.

COVID and its aftershocks have wreaked havoc on project scheduling and supply chains. A doubling or tripling in interest rates.

The government needs to do whatever they can to support private sector builders.

It is great news that the Government of Canada is increasing the GST rebate for new rental housing construction in Canada as a major effort to increase the supply of new rental housing.

It is even greater news that Premier Houston has committed to “matching” Minister Fraser’s initiative.

You are probably NOT aware of the magnitude of this policy change on the GST and HST rebates announced. I want to put the size of the HST cost on new rental housing in Nova Scotia in perspective.

The HST is the largest single budget item for our “under construction” new rental housing projects.

The HST is higher than our land cost.

The HST is higher than our projects’ entire concrete and steel structure cost from footings to roof, including the roof.

The HST is higher than the combination of all of the electrical and mechanical systems combined [which we hope will includes considerable renewable energy systems].

The HST has been a punitive tax on the rental housing development industry. The federal government is to be applauded for listening to industry and experts regarding the anticipated benefit of the GST being removed on rental housing supply.

But the impact is even bigger in Nova Scotia than the federal announcement of the GST rebate being increased to 100% of the GST amounts that would otherwise be payable.

It is monumental news that the Province of Nova Scotia will also provide relief from the provincial portion of the HST. The provincial portion of the HST is three times the size of the GST. The math is a bit complicated, so it is worth speaking to this committee so that hopefully they understand it.

The HST is comprised of the 5% federal GST component and 10% representing the former provincial sales tax component [“PST”]. I will call the 10% “PST” for short, even though it is not officially PST.

Since the inception of the GST in 1991, there has been a 36% rebate of the GST. This means that the federal GST is actually reduced to 3.2%, after the existing GST rebate program.

Nova Scotia historically has had no rebate program for the PST on rental housing. Rental housing builders pay 10% on the project as PST. Some other jurisdictions, such as Ontario, had actually had listened to industry in past years and created sizeable PST rebates for rental housing in their provinces. But in Nova Scotia, we have been paying 10% PST on new rental housing development since the creation of the HST.

The PST is more than three times the size of the GST on rental housing!

Bill 339 will have a huge impact on the cost of new rental housing.

Now let's speak to some of the finer points.

It is understandable that when the federal Ministers worked to finalize the details of the proposed changes to the Excise Tax Act, it was required that some criteria be established to determine eligibility. It is understood that under Bill C-56 that is presently before the House of Commons, the 100% GST rebate will apply to buildings that are started AFTER September 13, 2023.

Under Bill 339 that the Committee is considering today, the provincial government followed this date for eligibility, presumably for simplicity.

There is a small handful of builders across Canada like POLYCORP that have been highly supportive of the Government of Canada's National Housing Strategy over the past five years. Polycorp has engaged with CMHC to develop four sizeable affordable housing projects under CMHC programs, totalling approximately 400 apartment type homes. POLYCORP was one of the first participants in the fledgling RCFi program in 2018, with a Wolfville project that was prominently featured in the 2019 federal budget as an example of the government's commitment to affordable housing development.

We currently have two of these four affordable housing projects under construction in partnership with CMHC in Nova Scotia. One is in Wolfville and the other is in Halifax.

The road to develop these private sector affordable housing projects is not smooth or quick. As rental housing builders, we accept a significant discount to the market rents to participate in these programs that is only partially made up by the affordable housing benefits.

We are partially subsidizing the affordable housing projects ourselves to "do the right thing" to help deliver affordable housing to Canada.

As stated earlier, the last several years have not been easy. When we started these projects, interest rates were considerably lower than they are now, with interest rates doubling in the last two or three years.

The rental commitments and approved rents that we have made under these programs have not kept pace with either the increase in interest rates or dramatically increased construction costs.

Our spread to market rental rates has increased in the last few years, so that participating in these affordable housing programs requires an even large financial contribution from the developer than when we started them.

We could have terminated our participation in these projects out of sole self interest, if profit was the sole motivator, but we want to see them through.

However, the GST / HST will be added to the cost of these “under construction” affordable housing projects, by virtue of the fact that they were started before September 13.

This represents an amount LARGER than the investment we will require to start a comparable number of additional new rental suites, to further increase Nova Scotia’s housing supply.

We have respectfully requested that Minister Fraser request a modification to the wording of the Bill C-56 An Act to amend the Excise Tax Act and the Competition Act.

The modification would allow affordable housing projects that are currently under construction that participate in National Housing Strategy programs to qualify for the GST

rebate increase, notwithstanding that they started construction prior to September 13, 2023.

While we do not have access to the data to do a calculation of the incremental cost to the Government of Canada, or the government of Nova Scotia an educated estimate is that the cost would be minimal in the overall context of solutions proposed to increase supply.

While the increase in the GST rebate on these projects will not be traced to their start, it can be traced directly to the start of our next projects.

We would be happy to make the commitment that 100% of the GST/HST rebated on these projects would be used to construct additional new rental housing units in Nova Scotia to plow the rebate back into housing.

We would be happy to sit down with Minister Fraser and Minister MacMaster to discuss the logistics and intricacies of such an arrangement and propose wording for such a commitment.

Two other issues arise out of the Premier's announcement :

Issue # 1 – Duration

The rebate announced is for two years. We are planning the next project for the next 10 years.

A longer-term commitment is required. We cannot make decisions today based on a program that could end in two short years.

Issue # 2 – Amount

The wording that was used when the announcement was made was “match”.

It is ambiguous as to what exactly “match” means.

The only “Match” that is acceptable to industry is to rebate 100% of the provincial portion of the HST.

Not 50%, not 75%.

100%.

We specifically ask Minister MacMaster to direct his staff to ensure that the portion of the PST that is rebated as they move forward in the rebate program development be set at 100% of the provincial portion of the HST.

Please pass Bill 339 and please ensure our concerns are addressed so as much affordable housing as possible gets built.

Thank you.

Peter Polley
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Submission to Law Amendments Committee – October 23, 2023**RE: Bill 339 – The Financial Measures (Fall 2023) Act**

From: Amanda R. Knight - Small, Rural Rental Housing Provider
Community Housing Growth Fund – Selection Committee Volunteer
Pictou County, Nova Scotia

Mr. Chair and members of the Law Amendments Committee.

Thank you for the opportunity to speak today on Bill 339.

My name is Amanda Knight. Not only am I a small rental housing provider in rural Nova Scotia, I take existing vacant or underutilized housing and breathe new life into them; adding to the housing stock that is so desperately needed in small communities. I own and manage 9 properties consisting of 19 units in Colchester and Pictou Counties and Antigonish.

First, I would like to say that I support the federal and provincial governments agreeing to an HST rebate on new construction. This should increase housing stock in the future for the record number of new residents arriving in the province.

When I spoke at Law Amendments in November of 2021, when the government decided to legislate the first extension to the rent cap, I shared a personal story of how the 2% rent cap would negatively impact rural and small rental housing providers.

I was specifically concerned about the units in which I and many other small rental housing providers were well below market rent. Units that people had lived in for years without a rent increase and more importantly, units that include heat in the rent.

Rent that is capped at 2% while costs are free to increase exponentially. At that time, I saw my oil cost increase from \$0.85/litre to \$1.13/litre over \$225 per fill up. Today, oil is approximately \$1.42/litre or over \$450 per fill up and oil has been high as \$1.98/litre over \$900 per fill up to heat my units, while my rent continues to be capped.

When the Heating Assistance Rebate Program – better known as HARP – was introduced for the heating season of 2019/20, it was “up to \$200 to low-income Nova Scotians who pay their own heat.”¹

Rental housing providers were relieved to see some form of rebate to cover our skyrocketing heating costs, however; even though we pay the heat in some of our units, we don't qualify.

¹ <https://novascotia.ca/news/release/?id=20191021003>

In January 2023, HARP was expanded from \$200 to \$1000 and as Minister LeBlanc stated "We are taking action to ensure the heat stays on this winter."² And again, rental housing providers looked to see if they qualified for this round of rebates, but again, we did not.

Let me clarify, it is NOT the provincial government or HARP that ensure the heat stays on during the winter.

It is rental housing providers who pay for the heat that have made sure it stays on.

We have paid for this out of our pockets, by working more hours at another job, or as one rental housing provider shared, keeping their heat turned down and an extra sweater on, so they could afford to fill up the oil tank at their rental unit.

To add insult to injury, tenants, who don't pay for heat, were able to claim the full \$1000 rebate.

Initially, I couldn't believe there was not a mechanism in place to prevent this, but then more and more stories cropped up that tenants were applying and receiving the rebate. Tenants who are not paying for the heat.

In fact, one of my tenants proceeded to tell me that they had applied for the \$1000 and within a couple of weeks it was deposited in their account. They went to Montreal for a few days and I got to pay for the heat in their empty unit.

On the other side of the coin, I know of tenants who have written letters to their MLAs begging for this rebate to be forwarded to the owner of the property, because it is the property owner – not the tenant – who was paying the heat.

I asked the owner why her tenants were writing these letters and she gave me two reasons:

1. That the purpose of the program is "to help Nova Scotians' who pay their own heat".³
2. The tenants are scared.
 - a. They're scared of what will happen when the current owner can't afford to pay for the heat.
 - b. They're scared that if she can't afford the heat, she may be forced to sell her property.
 - c. They're scared they will be evicted when the new owners move in.
 - d. And they're scared that they will end up on the streets like so many others.

Based on HARP's definition of low to moderate-income Nova Scotians, many, many rental housing providers should qualify for this heating assistance rebate on their rental properties.

Sadly, rental housing providers that include heat in their rent don't qualify.

² <https://novascotia.ca/news/release/?id=20230130001>

³ <https://novascotia.ca/news/release/?id=20191021003>

I have a fourplex, that has 4 families that can all claim this \$600 rebate for a total of \$2400 under HARP, but they don't pay the heating,

I do.

Is it really asking too much for that rebate to be paid to me, to cover the heating costs that I pay on this property? Heating that in the past year alone has gone up \$2800.

We have witnessed this government provide incentives for new rental housing development and rebates for home heating but we have yet to see any help for small rental housing providers.

Gardiner Pinfold released a report in March 2021 where they said "as of June 2020, most (91%) of the 6,289 landlords in Nova Scotia are individuals renting few units, while the other 9% are businesses with employees" "Smaller rental operators are particularly vulnerable, and policies that squeeze revenues such as rent control undermine their chances of success."⁴

Your most valuable housing stock is your existing housing stock. It costs less to renovate and refurbish.

Your most valuable allies are the people within the industry, big and small, urban and rural.

When you put pressure on an industry, people with options will leave – and are leaving – and this will leave more Nova Scotians out in the cold.

Remember at the beginning of my remarks, when I said I own and manage 9 properties with 19 units.

When I appeared before you two years ago, that number stood at 11 properties and 24 units.

When MLAs make life harder for small rental housing providers, you are making the affordable housing crisis worse. You are putting more Nova Scotians out on the street.

Please stop attacking our sector.

Please start helping us – starting with extending HARP to include all of those that pay the heat.

Thank you.

Amanda R. Knight

⁴ https://www.ipoans.ca/wp-content/uploads/2021/05/Rental_Housing_Affordability_In_NS_Gardner_Pinfold_Report_IPOANS.pdf



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 1st 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)

nshepp
NOVA SCOTIA HEALTH EMPLOYEES PENSION PLAN

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%
5-year average	2.12%	0.34%	2.84%	2.88%

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.

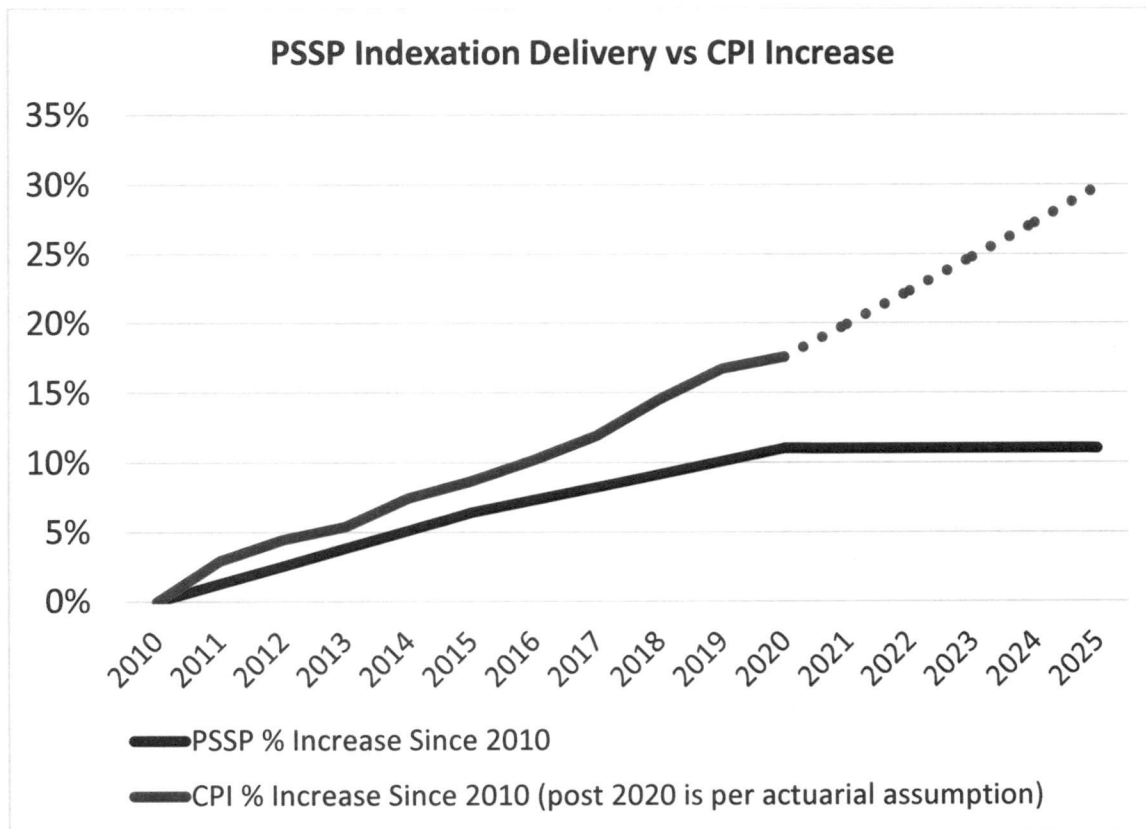
Special Payments

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.