



# **ACPM BRIEF TO THE PROVINCE OF NOVA SCOTIA PENSIONS REVIEW**

Discussion Paper on Pensions  
Policy and Planning Division  
Department of Labour & Workforce Development  
Consultation Paper

Prepared by:  
**ACPM Advocacy &  
Government Relations Committee**

# ACPM CONTACT INFORMATION

**Mr. Bryan Hocking**  
Chief Executive Officer  
Association of Canadian Pension Management  
1255 Bay Street, Suite 304  
Toronto ON M5R 2A9  
Tel: 416-964-1260 ext. 225  
Fax: 416-964-0567  
Email: [bryan.hocking@acpm.com](mailto:bryan.hocking@acpm.com)  
Web: [www.acpm-acarr.com](http://www.acpm-acarr.com)

## TABLE OF CONTENTS

<b>Foreword .....</b>	<b>3</b>
<b>Comments on Department Responses</b>	
<b>Recommendations #'s 1 – 4 .....</b>	<b>4</b>
<b>Recommendations #'s 5 – 8 .....</b>	<b>5</b>
<b>Recommendations # 9 .....</b>	<b>6</b>
<b>Recommendations #'s 10 – 13 .....</b>	<b>7</b>
<b>Recommendations #'s 14 – 17 .....</b>	<b>8</b>
<b>Recommendations #'s 18 – 23 .....</b>	<b>9</b>
<b>Recommendations #'s 24 – 29 .....</b>	<b>10</b>
<b>Recommendations # 30 .....</b>	<b>11</b>

## **FOREWORD**

### **The Association of Canadian Pension Management (ACPM)**

The Association of Canadian Pension Management (ACPM) is the informed voice of Canadian pension plan sponsors, administrators and their allied service providers. Established in 1976, the ACPM advocates for an effective and sustainable Canadian retirement income system through a nonprofit organization supported by a growing membership and a team of volunteer experts. Our members are drawn from all aspects of the industry from one side of this country to the other. We represent over 400 pension plans consisting of more than 3 million plan members, with total assets under management in excess of \$330 billion.

The ACPM promotes its vision for the development of a world leading retirement income system in Canada by championing the following Guiding Principles:

- Clarity in legislation, regulations and retirement income arrangements;
- Balanced consideration of other stakeholders' interests; and
- Excellence in governance and administration

### **Introduction**

The ACPM appreciates the opportunity to again provide our input to the Nova Scotia Department of Labour & Workforce Development consultation process regarding pensions, in particular issues around the funding formula and the impact of changes on the near-public sector.

In this Brief you will find our responses to various Recommendations put forth by the Department of Labour. We are also attaching ACPM's recently issued *Improving Retirement Coverage in Canada – The ACPM Five Point Plan* and our May 2008 DC Paper – *Delivering the Potential of DC Retirement Savings Plans* both of which are referred to in our responses that follow.

## **ACPM Comments on Department Responses to Report Recommendations**

### **Recommendation #1 – Increasing transparency of information under Pension Benefits Act**

ACPM agrees with the Department's response to Recommendation #1, with the caveat that the goal of transparency does not add a cost burden to plan sponsors and administrators. We would also urge harmonization with other jurisdictions as transparency is increased.

### **Recommendation #2 – Goals of Pension Benefits Act**

ACPM has long supported adding purpose to any pension act and so agree with the Panel's recommendation to add a purpose section to the legislation.

We are concerned that the phased-in approach to vesting would mean less harmonization, therefore we do not support. As we stated in our November 20, 2008 submission to the Nova Scotia Pension Review Panel, ACPM is not opposed to earlier vesting (see our response to Recommendation #25). However, we are concerned with the significant additional administrative burden and costs it may create for plans with high employee turnover. This could be an acute problem for certain large multi-employer plans that cover an economic sector with a large number of temporary and seasonal employees. Exempting certain plans from immediate vesting should be considered.

We are supportive, in principle, of "greater plain language information about pensions" and its need for members and retirees. However we are concerned about the cost of implementation of additional information requirements relative to its benefits.

We are supportive of removing or streamlining barriers to pension growth and that legislation be enacted that would allow other groups to form pensions, taking advantage of economies of scale.

We are supportive of tax incentives that will encourage pension plans for workers.

### **Recommendation #3 – Issues that the Pension Benefits Act should avoid**

ACPM agrees with the Panel and the Department that it is important to create a permissive rather than a prohibitive framework.

### **Recommendation #4 – Interpretation of the Pension Benefits Act**

ACPM agrees with the Panel's recommendation and the Department's response.

### **Recommendations #5 and #7– Expand the Act to allow new types of plans**

ACPM agrees with the Department's response to Recommendations #5 and #7. Legislation should be flexible enough to accommodate new plan designs as they arise.

In our response to Recommendation #30, we provide comments on ways to improve pension coverage.

### **Recommendation #6 – Allow Target Benefit Plans under the Act**

ACPM feels that Target Benefit Plans should be a recognized alternative that is not prevented by pension legislation. However, we believe that joint governance should be optional not mandatory, and options to include the legacy or past service liabilities in this new design are crucial to the ultimate success of this concept for existing sponsors of DB plans who are looking to change their current design. Promotion of the target benefit plan concept, however, should not be seen as a substitute for action to improve the environment for traditional DB plans nor should it be considered in isolation. Target Benefit Plans are only one of many structures that may be appropriate for employers and their employees. It would be more beneficial to develop principles that can accommodate existing and developing plan designs.

### **Recommendation #8 – Adopt an Accrued Benefit Measurement to test pension strength under the Pension Benefits Act**

Changes to pension legislation in Nova Scotia should be made as far as possible in harmony with changes in the laws in other Canadian jurisdictions. In particular, we are concerned with the Panel's recommendation that would create a unique commuted value calculation in Nova Scotia, producing inequities between Nova Scotia members and members employed in other provinces.

ACPM is also very concerned by the proposed "Accrued Benefit" funding model for DB pension plans in Nova Scotia. Missing from the proposal was any comparative actuarial analysis that might assist plan sponsors and their advisors to fully understand the implications of this new model, and how it would change the current funding regime in Nova Scotia. We reiterate the concerns expressed about the new funding basis in our written response to the original Position Paper (November 20, 2008) and the final report "Promises to Keep" (April 23, 2009).

In general, all DB plans should be subject to the same rules and regulations for funding. However, it is entirely appropriate to have different rules for different risk sharing arrangements. For example, we support different funding rules for MEPPs and JSPPs due to their risk-sharing characteristics. We would not support having different funding or investment rules based on the governance structure used by the plan. If governments see fit to exempt certain plans from specific rules, such as solvency funding/valuations alternate means for regulation (e.g., going concern valuations) would need to be substituted, and the criteria for exemption should be clear.

### **Recommendation #9 – Adopt minimum funding requirements for all plans**

The 5% collar approach seems reasonable but it should not be applied on a cliff approach (i.e. only deficit amount in excess of 5% should require special contributions preventing a small variation in the valuation results from having a significant impact on the contribution requirements).

ACPM fully supports allowing the use of letters of credit as they are a flexible option for plan sponsors to deal with the volatility of solvency valuation results. They are also an effective way to secure plan benefits and possibly avoid the growth of excessive surplus in the future. However, they are not available to all plan sponsors for a variety of reasons: corporate structure, plan design (e.g. multi employer pension plans), lack of credit availability, etc.

The current 5-year amortization period for solvency deficits has proven to be too short leading to overly onerous and volatile contributions from plan sponsors. An alternative to the above 5% collar approach would be lengthening the permissible solvency deficit amortization period to 10 years, without requiring the approval of other stakeholders or the members' collective bargaining agent(s) and without requiring that any letters of credit be posted.

ACPM believes that the risk/reward asymmetry that currently exists, whereby plan sponsors are generally responsible for funding shortfalls but are severely constrained from accessing surpluses, is the major impediment to not only the funding of private sector DB pension plans but to their continued existence.

As a compromise solution to the conflict between risk-reward asymmetry and benefit security in DB plans, we propose that sponsors have the ability to set up a solvency account, independent from the pension trust. This also addresses some of the drawbacks of LoCs. Going concern funding contributions would continue to be paid to the main pension fund. Where the employer is the sole contributor to the pension plan, or where the employee contributions are fixed, further employer contributions required under the solvency valuation could be paid to the solvency account. However, similar to the pension fund, the solvency account would be segregated from the employer's assets, tax-sheltered, and protected from non-pension creditors. Upon plan windup, any assets in the solvency account not required to satisfy benefit entitlements would revert back to the employer. In an ongoing situation, assets in the side account could be accessed by the employer only if the sum of the assets in the pension fund and the side account exceed the plan's solvency valuation obligation.

Employers would be able to make additional contributions above the going concern minimums to the solvency account. The ability to make these additional voluntary contributions will provide employers with greater flexibility to manage their cash requirements within their own business cycles and would lead to enhanced benefit security for plan members.

### **Recommendation #10 – Surplus Rules**

Adopting a reasonable and efficient solution to surplus ownership issues is key to the success of any reform to pension legislation.

Legislation should establish that pension plans are employment contracts and that ownership of pension funds is governed by those contracts, thereby achieving clarity and avoiding any surplus disputes. Legislation should also contain principles-based provisions requiring that surplus and deficit “ownership” be clearly defined in plan documents. Surplus entitlement rights must be clarified and plan sponsors must be able to adopt a “fresh start” approach to the new rules.

Ring-fencing, as proposed by the Alberta-British Columbia Joint Expert Panel on Pension Standards, is also an interesting approach.

In addition, it would be beneficial to allow plans to confirm their surplus sharing provisions where earlier versions of their plan documentation were silent on the matter.

### **Recommendation #11 – Ancillary Benefits**

In general, all contractual obligations should be reflected in actuarial valuations of pension plans. Exceptions should be rare. If mandatory grow-in requirements are maintained, we support that potential grow-in liabilities not be required to be funded.

ACPM feels that the constraints recommended by the Panel with respect to removing or modifying entitlements to ancillary benefits are too restrictive and would deter employers from offering these benefits. The ability to amend the plan for removing or reducing ancillary benefits for members who have not met eligibility requirements should remain.

### **Recommendation #12 – Funding Transition Rules**

Proposed Funding Transition Rules are only an issue if the Accrued Benefit funding model is implemented. We have stated our concerns about this funding model in our response to Recommendation #8.

If Funding Transition Rules are introduced, they should be clear and reasonable. ACPM will comment if and when they are issued.

### **Recommendation #13 – Partial Wind-up Rules**

ACPM has long stated its preference to eliminate partial wind-ups.

If the partial wind-up concept is maintained the criteria for partial wind-up must be clear and require a high proportion of members being terminated. In addition, distribution of surplus must not be required upon partial wind-up.

#### **Recommendation #14 – Closure and Use of Surplus**

Rules governing transfer of assets between plans should be flexible and without uncertainty so that they do not create barriers to business transactions or delays in making these transactions.

However we are not clear as to what either the Panel or the Department is recommending, here, and would suggest that a review of more detail (provided by Nova Scotia) is warranted.

#### **Recommendation #15 – Governance**

The Recommendation does not deal with all aspects of governance, but rather focuses on investment related governance for Defined Contribution Plans. We direct the Department to the ACPM's DC Paper – *Delivering the Potential of DC Retirement Savings Plans* – issued in May 2008. We agree with the concepts of auto enrolment and default investment mix selection. We also observe that the CAP Guidelines include some strong governance best practices to which the Department should refer.

#### **Recommendation #16 – Safe Harbour Rules**

ACPM feels that a safe harbor will necessitate prescribed rules that will contradict the spirit of Recommendations #3 and #4. Rather, the legislation should recognize the CAP Guidelines as providing a standard that is acceptable to legislators and thereby provide the comfort needed by plan sponsors and administrators.

However, as ACPM has indicated in other submissions we are in favour of allowing administration of the plan to be on a “good faith” standard of care or make provision for a safe harbour in appropriate circumstances.

#### **Recommendation #17 – Governance Filing Rules**

As stated in our November 20, 2008 Comments on the Nova Scotia Pension Review Panel October 17, 2008 Position Paper, the ACPM does not support the proposal that all plans must file a governance plan with the Superintendent. The development and maintenance of a governance plan will entail some work and expenses that may be unreasonable for certain small or medium size plans. Moreover, for many of them compliance with a governance plan requirement would simply mean the adoption of a boiler-plate document developed by a service provider.

Should a governance plan requirement be implemented, we suggest that the governance plan not be subject to the Superintendent's examination. We note that the examination of governance plans would require significant resources from the office of the Superintendent that could be better used on risk-based monitoring activities. Governance plans, if required, could be treated by pension legislation in a manner similar to statements of investment policies and procedures.

### **Recommendation #18 – Advisory Committees**

ACPM supports that advisory committees remain voluntary, even if strongly encouraged.

### **Recommendation #19 – Access to information**

ACPM believes that the existing information rights are sufficient and would caution against creating further requirements that would add expense for certain plans.

### **Recommendation #20 – Access to Appeals**

ACPM supports the recommendation that appeals from a decision of the Superintendent be heard by an independent adjudicative body. ACPM agrees that the UARB is the appropriate body for the reasons set out in the discussion paper.

### **Recommendation #21 – Exempt Plans for Connected Persons**

ACPM supports fully exempting plans that cover only persons connected with the employer within the meaning of the Income Tax Regulations. Plans providing benefits in excess of Income Tax Act limits for members who have accrued the maximum pension permitted by those limits should also be clearly exempted from the application of pension legislation.

### **Recommendation #22 – Remove Acceptable Classes of Employees**

ACPM agrees with the principle that plan sponsors should be allowed to make their own decision on classes of employees, and benefit design for each.

### **Recommendation #23 – Develop a type of passport system for plans primarily administered outside of Nova Scotia**

This recommendation may require exceptions with respect to the division of pension entitlements upon marriage breakdown, and may require approval from other jurisdictions. We note that the Canadian Association of Pension Supervisory Authorities (CAPSA) has recently issued a proposed new agreement for the supervision of multi-jurisdictional plans. This proposed agreement basically provides that the rules of the plan's province of registration would govern the plan administration and funding, whereas members' benefits and entitlements would remain governed by the minimum standards of the member's province of employment. Consequently, the Panel's recommendation is not in line with the CAPSA proposed agreement.

ACPM generally supports efforts to harmonize pension legislation and supports collaboration among Canadian jurisdictions to streamline pension regulation. At present, the most productive way to accomplish that objective is through continued participation in the CAPSA process.

#### **Recommendation #24 – Changes to the Grow-In provisions**

ACPM supports the Panel's recommendation and the Department's response. Grow-in benefits should be removed from the PBA. Grow-in benefits can be provided in the pension plan text, where desired by the plan sponsor and subject to the agreement of employee groups, where applicable. Removal of Grow-in from the PBA would also contribute to increased harmonization with other jurisdictions.

#### **Recommendation #25 – Immediate Vesting**

ACPM is not opposed to the concept of full and immediate vesting, provided that plan membership can be delayed. Any decision should be made with harmonization to other jurisdictions in mind.

Accelerated vesting would be more acceptable to employers if it were coupled with a removal of partial wind-ups, as has been proposed in Ontario.

ACPM is not in favour of phasing in vesting provisions as it is expensive and complicated to administer.

#### **Recommendation #26 – Unlocking Rules for Defined Contribution Plans**

ACPM is generally supportive of locking-in provisions. To the extent that DC plans are unlocked, the provisions should be straightforward to administer and be harmonized with other jurisdictions as much as possible.

#### **Recommendation #27 – Dealing with Financial Hardship Rules and other unlocking of pension issues**

Unlocking for financial hardship is not harmonized across Canada. We strongly urge Nova Scotia to ensure that no new methods or approaches or amounts of unlocking are introduced. We refer you to our response to Recommendation #26.

#### **Recommendation #28 – Phased Retirement Provisions**

ACPM agrees with the additional flexibility that the concept of phased retirement offers to plan sponsors and plan members.

#### **Recommendation #29 – Promotion of Pensions and Support for Advisory Committees**

ACPM supports that advisory committees remain voluntary. The Superintendent or another government body could promote the establishment of advisory committees by regular communications of the benefits of having an advisory committee to plan administrators.

ACPM would support any initiative that encourages the formation of pension plans of any variety.

### **Recommendation #30 – New Pension Plan**

ACPM believes a number of large pan-Canadian plans is one of the best means to improve coverage. Options such as a supplemental CPP/QPP or provincially encouraged plans could play a role, but it is only with the benefits of competition (whether from a number of privately provided or government/member co-sponsored plans), that the innovation, flexibility and reach needed to meet Canadians' varied needs in a cost-effective manner, will best be encouraged.

We refer the Department to ACPM's recently released *Improving Retirement Coverage in Canada – The ACPM Five Point Plan* for recommendations as to how to encourage more retirement plans in Canada.