



College and University  
Retiree Associations  
of Canada

7B Pleasant Blvd.  
Suite 997  
Toronto ON M4T 1K2

Associations de retraités  
des universités et collèges  
du Canada

curac@curac.ca  
www.curac.ca

## ASSOCIATION OF DALHOUSIE RETIREES AND PENSIONERS

c/o Room 2831, Life Sciences Centre, Dalhousie University  
Halifax, Nova Scotia, B3H 4J1

**Officers:**

President: Dr. J. Phillip Welch  
First Vice-President: Kenneth Rozee

Secretary: Colin Stuttard  
Treasurer: W. Richard Sutherland

### COMMENTS ON THE 17 OCTOBER POSITION PAPER OF N. S. PENSION REVIEW PANEL

These comments from the CURAC/ARUCC Board and from the Association of Dalhousie Retirees and Pensioners [ADRP] are addressed to the Nova Scotia Pension Review Panel. As the only national Canadian federation of post-secondary retiree organizations, CURAC speaks for the interests of some twenty thousand retired faculty and staff in associations on sixty campuses of our major academic institutions in every Canadian province. Our Nova Scotia member organizations at this time include retirees' associations at Acadia, Dalhousie and St. Mary's universities. As the only retiree organization at Dalhousie University, the ADRP represents about 630 pensioners and surviving spouses, which include both former faculty and former staff.

The CURAC Pension Committee is composed of Emeritus Professors John Meyer, Chair, (Windsor); Howard Fink (Concordia) and Paul Huber (Dalhousie).

Professor Kenneth Rozee  
First Vice-President, ADRP

Professor Tarun Ghose  
President, CURAC

November 14, 2008

-----  
CURAC Member Organizations:

• Association of Dalhousie Retirees and Pensioners • Association of Professors Emeriti at University of British Columbia  
• Association of Retired Faculty of York University • Associations de retraités des universités québécoises • Carleton University Retirees Organization • Fédération des retraités de l'Université du Québec • Lakehead University Faculty Assoc. (Ret.)  
• Laurentian University Faculty Assoc. (Ret.) • Retired Academics and Librarians of the University of Toronto • Retired Acadia Faculty Association • The Ryerson Connection • Trent University Association of Retired Persons • University of Regina Academic and Administrative Pensioners Association • University of Alberta Association of Professors Emeriti • University of Guelph Retirees Association • University of Manitoba Retirees Association • University of Waterloo Retirees Association • University of Winnipeg Retirement Association • Windsor University Retirees Association • York University Retirees Association • Retirees Association of Queens • Retirees Group of the McGill Association of University Teachers • Concordia University Pensioners' Association • Simon Fraser University Retirees Association • University of New Brunswick Retired Employees Association  
• Association of Professors Retired from the University of Ottawa • McMaster University Retirees' Association • University of Saskatchewan Retirees' Association • Sir Wilfred Laurier Retirees' Association • Memorial University of Newfoundland Pensioners' Association • Ontario Colleges of Applied Arts and Technology Retirees' Association • University of Victoria Retirees Association • College and Institute Retirees Association of British Columbia • Association des bibliothécaires et professeur(e)s retraité(e)s de l'Université de Moncton • University of Prince Edward Island Retiree Association • British Columbia Institute of Technology Retirees' Association • Saint Mary's University Retirees Association • St. Thomas University Retirees Association



## **I. Preliminaries**

We wish to start our brief comments on the Panel's Position Paper by thanking the Pension Review Panel for providing the public a further opportunity to make comments on the issues involved in pension regulation in Nova Scotia.

Clearly the Panel has considered some of the contentions currently prevalent among pension stakeholders and suggested changes. In principle, we welcome a number of these interim proposals, although subject to significant caveats, which are mentioned immediately below, and spelled out in detail in part III of this submission. Our general agreements are set forth in part II, the next section of this submission.

In significant respects, we find the Position Paper severely deficient. We do not believe that this is an inevitable result of our perspective as pensioner organizations. Instead, we submit that the Position Paper, which we have carefully read, suffers from major flaws. These we address in section III of these Comments.

## **II. Points of General Agreement**

Subject to the detailed issues raised below in part III of this memorandum, we find the following aspects of the Position Paper generally acceptable.

- A. §2.1 We agree that government regulation should aim at creating "... an environment where pension promises will be fulfilled." We also agree that "complete transparency of information" is a desirable goal.
- B. §3.2 We also agree that a Province-wide pension plan might be desirable. However, we continue to hold the view that a Province-wide pension fund for the purposes outlined in our submission of 27 June would provide great benefits to members and former members of existing pension plans in this Province and could be operated in conjunction with a pension plan..
- C. §3.3 The proposals for a minimum funding "baseline" are interesting in a low-inflation environment, but our view is that the minimum for funding should be the greater of a going-concern calculation and the new baseline described by the Position Paper. Recent concern with solvency valuations is driven primarily by the unusually low interest rates that now – temporarily – prevail.
  - i. §3.3.1, §3.3.2 and Appendix B  
Subject to some significant modifications (that are discussed in detail below), we generally accept the mechanism described; in particular, the valuation of assets at market (without smoothing) and the inclusion of all ancillary benefits are both welcome improvements to the current regulatory regime.



However, we disagree with some key points:

- a) First, identification and amortization of surpluses and deficits with reference to the new minimum funding mechanism alone is unreasonable; these should relate to the lesser of going-concern surplus and of MF baseline surplus. Low inflation and low interest rates, such as we now are experiencing and last enjoyed in the early 1950s, cannot be expected to last, and should not drive long-term funding decisions.
- b) Second, the proposal in section §3.3.2 (d) is unacceptable that the plan sponsor alone should allocate the distribution of surplus under wind-up.
- c) Third, the statement in sections §3.3.2 (c) and (d) that a significant portion of surplus belongs to the plan Sponsor must be modified by recognition that a major portion of surplus in wind-up should flow to pensioners.

**D.** §3.4, §3.5, §3.9 and §3.10 and §3.12  
 The Position Paper’s proposals for dealing with grow-in benefits, partial wind-ups, harmonization, safe harbours and vesting all appear reasonable.

**E.** §3.1.1 (last two questions and answers), §3.6, §3.7, §3.7.1, §3.8, §3.11, §3.13, §3.14, §3.15, and §3.15.2  
 These sections deal with important issues, but, as set forth in the Position Paper, the weaknesses they embody are too great for them to be acceptable.

### **III. Major Flaws in the Position Paper**

#### **A. Bias against Pensioners and their Legitimate Concerns**

We are frankly dumbfounded that the Position Paper has chosen to ignore pensioners throughout its Paper. In the entire 32-page text, pensioners are only once mentioned – in Appendix B – and the one reference to retirees [§ 2.1] is dismissive. “Former members” – which is the terminology used in the Provincial Pension Benefits Act for those in receipt of a pension (as well as those with deferred pension entitlements) – are equally absent from the text of the Position Paper. Yet, in addition to our submission on behalf of pensioners that we represent, at least two other pensioner organizations separately submitted their concerns to the Panel in early July.

How can a serious review of pension legislation in Nova Scotia simply ignore pensioners? A third to a half of the liabilities of mature DB pension plans in Nova Scotia relate directly to pensions in pay. In most cases, pension payments are a major source of income for pensioners. As our joint submission pointed out last June, employees and pensioners are distinct groups, not just in legislation and regulation, but in practice.



Despite the fact that pensioned retirees and active employees with future pension entitlements in a given institution may belong to the same pension plan, subject to the same actuarial rules and the same pension committee decisions, differences prevail between them. Retirees rely directly on their monthly pensions for income, not wages or salaries. Most retirees from defined benefit plans have little or no say regarding the administration of their pension plans after retirement, and they possess almost no leverage to prevent adverse changes in their terms or in the interpretation of their terms. [CURAC-ADRP Submission, 27 June 2008, p. 4]

The failure of the Position Paper to recognize the direct and immediate interest of pensioners in pension legislation and unwillingness of the Panel to examine the strengths and weaknesses of the current pension regulatory regime in relation to pensioners suggests strongly that it has not genuinely concerned itself with key objectives of its terms of reference [§ 1.0]. Consider the following:

- [§1.1] The "review includes consultation with the pension management industry, actuaries, unions and employers," but not with pensioners.
- [§1.1] The Pension Panel held "meetings with employers and employees, as well as with pension experts," but never met with pensioners.
- [§1.1] "Some of the stakeholders were invited to meetings with the Panel . . .," but no pensioner group.
- [§1.3] "The Panel commissioned independent research with respect to employer and employee attitudes towards pensions," but this research excluded pensioners.
- [§1.3] The Position Paper comments on the attitudes of employers and union leaders towards pensions, but does not consider the attitudes of pensioners.
- [§2.2] In its revised "Goals of Pension Legislation and Regulation," the Panel now writes (in part):
  - "1. To maximize the likelihood that pension promises are met by: . . .
  - (c) Providing appropriate rules for the protection and benefit of employees in the event of discontinuation of employment, early or late retirement; and of spouses or beneficiaries in the event of the employee's death, or marriage breakdown.
  - 2. To ensure that employees have appropriate access to information about their individual benefits;
  - 3. To provide transparency of information about all aspects of pension plans to members; . . ."Employees, spouses, beneficiaries, plan members all capture the attention of the Panel; where are the pensioners, former members and beneficiaries of pensioners?



[§ 3.7.1] The Position Paper proposes giving Advisory Committees somewhat greater powers, but specifies that they “should be elected by employees.” Once again, pensioners are excluded, even though individually they have far more at stake than employees.

**B. Lack of Clarity**

At many points in the Position Paper, it is difficult or impossible to determine what is being asserted or proposed. Examples follow.

- i. In Section §1.2, the Position Paper suggests that “sharp increases in liabilities” may arise from “weak investment performance. . .” How is this possible? Doesn’t weak investment performance instead imply that plan assets are less than anticipated?
- ii. In section §2.2, the Position Paper lists six types of regulation to avoid. Two of these (#3 and #4) are clear; the remainder are not..
- iii. At the end of section §2.2, the Position Paper refers to the “spirit of the Act and Regulations. . .” What is this spirit? How can it be identified?  
  
In the same context, are the mechanisms for holding plan sponsors to the letter of the law and regulations adequate? Do the rules get enforced?
- iv. Half way through the Position Paper’s answer in Section §3.3, appears “The solvency test is inappropriate for all plans.” What does this mean? Does the Position Paper really mean “for some plans”? Is the Position Paper referring to a solvency valuation rather than a test? How will a plan wind-up take place without a solvency valuation?
- v. In section §3.3.1, the Position Paper refers to “. . . a fixed three year schedule . . .” for actuarial valuations. Is this intended to be different from – or the same as – the currently prevailing schedule under which a new valuation may be submitted before three years have elapsed?
- vi. Section §3.7 on governance, an issue of paramount importance, bristles with undefined terms. For example, in (a), who is “All pension plans” who “must file with the Superintendent of Pensions a copy of their Governance Plan”? In (b), what is “generally accepted practice in the Pension Industry”? What is “continued failure”? How is it identified? In (d), what are “significant abnormalities”?
- vii. Near the end of Section §3.7.1 of the Position Paper it is asserted that, “A third benefit for sponsors would be that they would no longer be required



to disseminate information concerning plan operations and funding status to each individual employee.” Where is this requirement to be found in the Act or in the Regulations?

- viii. Section §3.11, which deals with phased retirement, never references clause 41(4) of the Pension Benefits Act. This clause entitles a plan member who continue to be employed by the employer after the normal retirement date to accrue pension benefits, subject to some conditions. The key condition is that the member not be receiving a pension under the plan. The Position Paper proposes to eliminate this condition at the discretion of the plan sponsor. How is this supposed to work in a regulatory sense?
- ix. Why is Section §3.15.2 on Investments located under the general heading §3.15 Promotion?
- x. In Appendix B, sub-section 1.b.(3), the Position Paper states that, “. . . *minimum funding* will consider benefits accrued to the valuation date, plus provision for projected wage increases over the following 5 years. Why only, “will consider . . .”? Why not, “will include . . .”? The Position Paper goes on to say, “It is assumed that plan sponsors will, via their funding policies, make appropriate projections of the pensions the plan might ultimately pay, and fund accordingly.” What is the basis for this assumption? What happens if sponsors fail to behave as assumed? Will not the entitlements of pensioners be then at risk?
- x. In Appendix B, sub-section 3.a., how is the proposed discount rate structure to mesh with plans that have linked indexation provisions?

**C. Lack of Consistency – External and Internal**

At several points, the Position Paper either makes proposals that are inconsistent with its stated objectives in §2.1 or with its other observations or proposals. It also fails to deal with matters that are intimately related with aspects of the current regulatory environment. Consider the following examples:

- i. Regulations under the Income Tax Act require the sponsor of a private pension plan to cease contributions to that plan if a going-concern valuation reveals that plan assets exceed plan liabilities. How are the surplus amortisation proposals in the Position Paper consistent with these Federal requirements? How are the Paper’s assertions that going-concern valuations will no longer be required consistent with the ITA?



- ii. In contrast to its first objective of fulfilling pension promises (§2.1), the Position Paper (§3.1.1) promotes the ACB pension plan structure – one in which pension promises can vary with the investment breezes. In the same section, the Position Paper also promotes “more flexible legislation and regulation. . .” Is this not simply a euphemism for watering down existing rules that protect pensioners and employees?
- iii. In section §3.3.1 (c) and (e), the Position Paper proposes that amortization payments may be spread over eight years and may start a year later than currently required. How are these proposals consistent with improving the likelihood that “pension promises will be fulfilled?” (Five years from the valuation date is the current amortisation period for solvency deficits.)
- iv. The Position Paper argues in favour of “complete transparency of information (§ 2.1). How are proposals to provide information to employees and/or advisory committees simultaneously (§3.14) with submissions to the Superintendent (the regulator) going to make it possible for advisory committees to influence decisions by the plan sponsor? How are pensioners – to whom the Position Paper provides no information whatsoever – going to achieve “complete transparency”?
- v. In Section § 2.1, the Position Paper fully recognizes that pension are deferred wages, specifically asserting, “pension costs are a tradeoff against current wages.” Is this recognition not inconsistent with the Position Paper’s position in section § 3.3.2(d) that the employer might be entitle to up to half of any surplus on windup? Is it not inconsistent with the Position Paper’s view that the plan sponsor should unilaterally establish changed DB plan rules and availability of investment choices in as DC plan (Section § 3.1.1, question #2)?

**D. Analytical Short Circuits**

The Panel is comprised of well-informed people who doubtless have carefully thought through their proposals. But they fail to share most of their analysis with the reader, who thus is forced to guess at the logic – or illogic – that lies behind the proposals. Thus, the Position Paper contains many illustrations of analytical short-circuits. Consider the following:

- i. If the Panel considered the broad social function of pension arrangements, it might want to explain how various structures serve the interests of the wider society, not just those of employers and a limited number of employees. This might lead the Panel to reconsider its unexplained but extreme position on the unlocking (Section § 3.6) of both DC and DB pension entitlements at or near retirement.



- ii. In section § 1.2, the Panel seeks analyse the causes of decline in DB plans, but never takes into account that such pension plans are in sharper decline in the UK and the USA than in Canada. Do these facts not suggest that the Panel is misreading the evidence?
- iii. In section § 1.3, the Position Paper notes that interest in pension issues is positively related to age. But it never considers the reasons. Surely a 60 year old employee with \$800,000 -- or a retiree with \$900,000 -- worth of pension entitlements will have a much more intense interest in pension issues than young person who has contributed \$3000 to a pension plan over 18 months.
- iv. Section § 3.15.2 starts by incorrectly claiming that the Pension Benefits Act refers to investments of pension funds in only Clause 29. Then it fails to analyse why the investment performance of pension plans varies so greatly and how regulation might improve this. With respect to strengthening the governance of the investment of pension funds, the Position Paper provides neither proposals nor supporting explanations for them.

\* \* \*

Adjunct Professor Paul B. Huber, Department of Economics, Dalhousie University, drafted this document. He can be contacted at (902) 494-2026 or (902) 477-9802.

Professor Tarunendu Ghose, President of CURAC, was in Hawaii on holiday during November and unavailable to sign the cover page. He has, however, approved the overall thrust of the document, as has Professor John Meyer, Chair of CURAC's pension committee.