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Via email: [tami.dove@gov.sk.ca](mailto:tami.dove@gov.sk.ca)

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Suite 601, 1919 Saskatchewan Drive  
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Dear Ms. Dove:

**Re: Saskatchewan Negotiated Cost Pension Plan Consultation**

I am writing on behalf of the Canadian Bar Association's Pensions and Benefits Law Section (CBA Section) in response to the Consultation Paper on the Proposed Regime for Negotiated Cost Pension Plans (NCPPs) issued by the Financial and Consumer Affairs Authority of Saskatchewan.

The Canadian Bar Association is a national association of approximately 36,000 lawyers, Québec notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section comprises lawyers from across Canada who practise in pensions and benefits law, including as counsel to benefit administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefits consultants, investment managers and advisors.

The Consultation Paper describes in Parts 1 through 6 the substantive components of a new Proposed Regime for NCPPs. Part 7 describes the rules for transition from the current regime to the Proposed Regime. Part 8 describes an alternative to the Proposed Regime and identifies additional considerations for the impact of changes on multi-jurisdictional pension plans and the possibility of expanding the Proposed Regime to other pension plans registered in Saskatchewan. Part 9 identifies 21 questions to which the Consultation Paper seeks a response.

The CBA Section's comments are organized according to the specific questions in the Consultation Paper. We first set out general principles that guide our comments.

## Guiding Principles

The CBA Section is guided in its comments by several factors and principles relating to the administration and regulation of multi-employer pension plans (MEPPs) in Canada:

1. MEPPs have different needs and circumstances from single employer plans, including:
  - a. the often transitory nature of employment of members among participating employers; and
  - b. contributions are outside the control of plan trustees, and reside in the hands of the collective bargaining parties.
2. Retirement security is a key objective.
3. Administrative complexity increases plan costs which directly affects the availability of plan assets for benefits.
4. Good governance must be encouraged but what constitutes good governance should not be mandated.
5. Benefit adequacy is important.
6. Adequate disclosure to plan participants is critical.
7. Consistency and harmonization of MEPP regulation in Canada should be encouraged.

## Comments on Consultation Paper

Responses to the specific questions in the Consultation Paper follow our general comments. We indicate where do not have a position.

### *General Comments*

The Proposed Regime imposes a set of rules that are a "one size fits all" solution for all MEPPs when MEPPs vary substantially from each other in important ways. What may be reasonable for a large national industrial plan may make less sense for a local construction industry plan. Flexibility is a more appropriate approach than strict rules. The plan trustees of MEPPs, with the assistance of their advisors, should be presumed to have the necessary knowledge to make decisions that reflect the particular needs and interests of the plan's participating employers and members.

The CBA Section generally supports innovative and new plan design but is cognizant of the administrative challenges for multi-jurisdictional pension plans when regulatory regimes differ from jurisdiction to jurisdiction. The CBA Section supports harmonization to the extent possible (and ideally as much as possible), while recognizing the different needs of MEPPs. Because of this, the CBA Section supports the elimination of the solvency funding requirement for NCPPs, and favours the enhanced going concern approach (the alternative to the Proposed Regime canvassed in the Consultation Paper) because it is consistent with the approach in other provinces, and is the approach recently put in place for other solvency-exempt pension plans in Saskatchewan.

Similarly, for the calculation of transfer values – commuted value (CV) calculations on termination – the CBA Section supports the proposed change that would permit CVs to be calculated on the basis of a going concern model rather than a solvency model. Given the introduction of new target benefit regulatory rules in British Columbia and Alberta and shared-risk rules in New Brunswick, which permit similar treatment of the transfer value, we support a change harmonized with those

jurisdictions. Further, to the extent that a going concern CV approach encourages members to leave their benefit entitlements in a pension plan, it enhances benefit security by preserving the defined benefit pension as intended by the sponsors.

### *Specific Responses to Consultation Paper Questions*

#### **Part 1: Introduction & Background**

**Q 1 With respect to each Part, are there any additional concerns or considerations that you wish to identify?**

Comments have been added in each response, as applicable.

**Q 2 Do you agree with the principles?**

The Guiding Principles of the Consultation Paper are in section 1.3. We comment as follows:

- **Pension sustainability** as defined in the Consultation Paper – that an NCPP must provide benefits at a reasonable cost to plan sponsors and members – is, a laudable goal, but not feasible given the funding structure: NCPPs are, by definition, negotiated with employers on behalf of workers; funding of the plan is fixed by contract and benefits are those the negotiated contributions can pay for. It is of course important that NCPPs be as cost-effective as possible and that its administration be kept at a manageable level. However, benefit adequacy and security is a more relevant goal.
- **Benefit security** is important for an NCPP, as for all pension plans, and a reasonable level of benefit security can be achieved for this particular plan design by the elimination of the solvency funding requirement in combination with an enhanced going concern approach.
- We agree that **equity and transparency** are important. Intergenerational equity is an important goal for NCPPs. As in all pension plans, appropriate levels of disclosure and transparency are important for plan participants to understand risks and entitlements.
- We agree that **flexibility** is an important guiding principle, particularly in the MEPP world. The size and sophistication of MEPPs varies widely and it is critical that plan decision makers be given latitude to make decisions appropriate to the circumstances of their plans.

#### **Part 2: Funding**

**Q 3 Do you agree with the proposed funding requirements, including the method of calculating provisions for adverse deviation (PfAD)?**

The CBA Section supports the elimination of solvency funding requirements for NCPPs as this is consistent with the trends across the country and would assist in harmonization. If solvency funding is eliminated, we do not believe that NCPPs should be required to continue to calculate the plan's solvency funding position. While some NCPPs may choose to do so for informational purposes, NCPPs should not be required to incur the cost of the calculations given that they are not required to be funded on a solvency basis. If, however, NCPPs are required to continue to calculate the plan's solvency funding position for informational purposes, we do not support a requirement to include the calculation in any report filed with the regulator or any requirement to otherwise report the calculation to plan members. Reporting to members could be misleading because it would not necessarily be clear to members that the plan is not being funded on a solvency basis.

The CBA Section has no comment on the method of calculating the PfAD and defers to commenters with actuarial experience. As noted in our response to question 17, the CBA Section does not support the PfAD concept as presented in the Consultation Paper.

**Q 4 Should the rules be more prescriptive regarding the funding policy for an NCPP (e.g., require that such plans have a funding policy; set out the minimum contents of a funding policy)?**

A "funding policy" is not particularly relevant for an NCPP because funding is determined by the bargaining parties, not the trustees of the plan. A more appropriate term would be "benefit policy" as those matters are in the control of the trustees. As a matter of good governance, it may be desirable to have a benefit policy in place with specific priorities for benefit changes, should they be required. However, the need to reduce benefits can arise in different circumstances and a set of prescriptive rules may inevitably lead to less than optimal decisions. Accordingly, it would be undesirable to mandate the contents of any benefit policy, constraining benefit decisions.

**Q 5 Is stress testing an appropriate way to understand the risks of an NCPP?**

Stress testing should not be required of NCPPs. As fiduciaries, the plan trustees have obligations to monitor and manage their plans and should be encouraged to do so as a part of good governance. However, the utility and appropriateness of stress testing in any given plan and circumstances will vary widely and should be the decision of the trustees. It may add administrative complexity and cost that is simply unwarranted in particular circumstances.

**Part 3: Benefit Improvements & Benefit Reductions**

**Q 6 Do you agree that an NCPP should have AGCE in order to improve benefits?**

The CBA Section does not support a formulaic "one size fits all" rule that substitutes a universal formula for a plan-specific consideration of the risks and benefits in the circumstances of a decision to improve benefits.

**Q 7 Do you feel that there should be rules in the Regulations regarding the order of benefits to be reduced to meet the solvency tests?**

Similar to our views on question 4, the CBA Section does not support mandatory priorities for benefit reductions. Plan decision-makers for these widely variable plans should have the flexibility to react to their specific circumstances. For example, reductions may be needed due to factors like declining employment, changes in mortality, changes in retirement patterns or investment losses. Some of those causes are related to active employees, others are not. Judgment is required to achieve a fair balance among plan participants and that judgment can only be exercised by the plan trustees. It should not be set out in regulatory rules.

**Part 4: Benefit Types**

**Q 8 Would the NCPPs that you are involved with be interested in GC CVs?**

Members of the CBA Section involved with MEPPs and NCPPs support a GC CV model as it encourages leaving one's pension entitlement as a deferred defined benefit and avoids treating terminated employees more favourably than continuing employees if a benefit reduction is

required. Moreover, this approach is consistent with that under development or adopted in other jurisdictions, and is consistent with the manner in which pension benefits are funded.

**Q 9 Are there any significant issues respecting preparation of an AVR, member communications, or inequity where an NCPP provides for both methodologies of calculating commuted values (i.e., CIA CV and GC CV)**

We discourage permitting NCPPs to provide for both methodologies of calculating CVs. AVRs will be more complicated if both methodologies are permitted, and to the extent that an AVR is more complex and expensive to produce because of complicated and onerous regulatory rules, a plan's resources are directed away from benefits. Unnecessary and costly administrative burden should be avoided.

In addition, inequities amongst members or categories of members will arise if both approaches are permitted in any one plan. The challenge of communicating the rationale and impact of a different approach for different members will be high, and it will be difficult to avoid confusion.

**Q 10 What are your views on the proposed methodology used to calculate the GC CV?**

The CBA Section has no comment. We defer to those with actuarial expertise on this question.

**Q 11 Given that members could be entitled to a GC CV (a CV that reflects the funded status), should plans that use the GC CV methodology be required to file periodic updates on their funded position to ensure that commuted value more accurately reflects the funded position of the plan at the time of transfer?**

The CBA Section supports a process (similar to that employed in Ontario), requiring a simplified updating process on a quarterly basis that is primarily or exclusively driven by asset changes and does not require updated actuarial liability calculations which increase administrative costs to the plan. This promotes the goal of harmonization.

**Q 12 Should the ability to convert past benefits calculated using the GC CV methodologies be provided at this time to NCPPs?**

The CBA Section has no comment.

**Part 5: Communications**

**Q 13 Is the communications framework appropriate for NCPPs?**

The CBA Section supports full and transparent provision of information to plan participants. We caution, however, that lengthy or complex communications are often counter-productive. The requirements of subsection 5.1, with proposed required explanations of technical matters, may not be useful or understandable by plan participants. We suggest that additional disclosure under the Proposed Regime consist only of:

- the NCPP's going concern funding ratio, and a statement that transfer values will be paid based on that ratio, which may be updated from time to time (for plans using the GC CV); and
- a statement that benefits, in the event of adverse plan experience, can be reduced.

## Part 6: Administration & Governance

**Q 14 Should there be more or less rules regarding NCPP governing bodies (administrator and/or sponsor)? For example, should the regulations prescribe the proportion of plan members and retirees, presence of independent trustees, required knowledge and skills, etc.?**

There should be no rules constraining the composition of NCPP governing bodies beyond a requirement that at least 50% of board members represent plan members. The CBA Section does not support regulations prescribing the proportion of plan members and retirees on governing bodies, nor mandating the presence of independent trustees or required knowledge and skills.

It would not be appropriate to require any particular constituency to be represented by a voting trustee because trustees are required, given the fiduciary nature of their position, to represent all plan members in an even-handed way.

Having independent trustees on a governing board is not objectionable *per se* but there is no value in compelling their presence given that the more important criterion for NCPP trustees is sufficient knowledge of the industry in which the plan is engaged, or its employers or workers. Moreover, independent trustees typically require payment, which would deplete plan assets otherwise available for benefits.

The CBA Section also does not support the imposition of required skills and knowledge for trustees. For NCPPs and MEPPs generally, it is typically most important that a trustee have knowledge of the industry in which the plan is engaged. Expertise in the administration of pension plans can be achieved through education, experience and retention of capable advisors, and MEPPs are currently governed in accordance with those principles.

**Q 15 Should the legislation or regulations be more prescriptive regarding the governance policy for NCPPs (e.g. require that such plans have a governance policy; set out the minimum contents of a governance policy)?**

The current CAPSA guidance making it a best practice to have a governance policy in place is sufficient and such matters should not be mandated by legislation, nor should the contents of a governance policy be mandated.

## Part 7: Transition Rules

**Q 16 Is the transition framework appropriate?**

The CBA Section:

- has no comment on the applicable date and transition report proposal outlined in Section 7.1 of the Consultation Paper;
- agrees with the process proposed by the Government for changes to the transfer value calculation methodologies; and
- does not support the restriction on benefit improvements in the Consultation Paper.

**Q17 Have all issues been addressed? Do you agree with transitioning the PfAD on the CSC over a 3 year period?**

The CBA Section does not support the PfAD concept as presented in the Consultation Paper and has no comment on the proposed transition to it. In our view, the PfAD should not be implemented at all, as it is inflexible and unduly constrains plan trustees.

While we understand that the purpose of the PfAD is to reduce the risk of benefit reductions and enhance the sustainability of NCPPs, these measures can add complexity and cost to NCPP administration, reducing funds available for benefits. The policy goal of a proposed PfAD is understandable. However, we question whether the complexity and cost of administering the PfAD is consistent with the broader goals of facilitating effective use of pension plan contributions, efficient pension plan administration and broader participation in NCPPs. In our view, it is critical to require clear communication of the nature and implications of membership in an NCPP, so members can plan appropriately for their retirement, with full information.

**Part 8: Additional Considerations**

**Q 18 Do you feel the “Enhanced Going Concern” option would be an acceptable regime as opposed to the Proposed Regime?**

We believe that the enhanced going concern model is preferable to the proposed NCPP regime for reasons of harmonization and consistency with other MEPP regimes across the country, and should include the following additional components:

- the GC CV should be permitted;
- any limitations on benefit improvements should be flexible and based on the relationship between projected contributions and actuarial costs, not on the funded ratio;
- reducing the amortization period from 15 years to 10 years is preferable to continuing solvency funding but this forces lower benefits (given a contribution income is fixed) than a MEPP might otherwise be able to afford, and is likely to encourage intergenerational inequity as described above.

**Q 19 Should a framework similar to the Proposed Regime be an option available to other types of pension plans registered under the Act?**

Given the concerns we raised about the Proposed Regime, we do not advocate its application for pension funds registered under the Act.

**Q 20 What issues do you foresee will need to be addressed with respect to GC CVs and multi-jurisdictional plans?**

In the interests of harmonization, the CBA Section is concerned with any mandated differences and benefit rules that vary by jurisdiction for multi-jurisdictional plans. Trustees of these plans will likely ensure consistency across jurisdictions if it is not provided by regulation. To the extent that requires the downward adjustment of benefits, it is undesirable.

Similarly, the CBA Section does not support funding rules applicable to MEPPs that differ by province.

**Part 9: Closing Comments**

**Q 21 Please provide any additional comment or information related to this paper.**

None.

The CBA Section is pleased to have this opportunity to comment on the Proposed Regime and trusts that our comments are helpful. We would be pleased to discuss any of the above in further detail.

Yours truly,

*(original letter signed by Gillian Carter for Michael Wolpert)*

Michael Wolpert  
Chair, CBA Pensions and Benefits Law Section