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Nova Scotia Discussion Paper on Pensions

NATIONAL PENSIONS AND BENEFITS LAW SECTION
CANADIAN BAR ASSOCIATION

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PREFACE

The Canadian Bar Association is a national association representing 37,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the National Pensions and Benefits Law Section of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the National Pensions and Benefits Law Section of the Canadian Bar Association.

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I. INTRODUCTION

The National Pensions and Benefits Law Section of the Canadian Bar Association (CBA Section) is pleased to provide its views concerning the Nova Scotia Department of Labour and Workforce Development (the Department) *Discussion Paper on Pensions* (Discussion Paper). The CBA Section has approximately 600 members involved in pensions and benefits law from across the country, including counsel to pension and benefit administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

It is important that Nova Scotia continue its consideration of reforms of the *Pension Benefits Act* (PBA) because of current financial conditions and challenges to pension plans. Other provinces and the federal government have also engaged in inquiries expected to lead to pension reforms. Reports have been issued by the Ontario Expert Commission on Pensions and the Joint Expert Panel on Pensions Standards of Alberta and British Columbia. As well, the federal government has commenced a consultation process under the federal *Pension Benefits Standards Act, 1985*.

The CBA Section previously participated in the review process undertaken by the Nova Scotia Pension Review Panel and submitted a response to the Panel's position paper in November 2008. We welcome the opportunity to continue to participate in the Department's considerations of potential pension reform.

In our response, we follow the numbering system for the recommendations in Appendix A of the Discussion Paper. We identify only those specific recommendations on which we have comments.

II. SUBMISSIONS ON SPECIFIC ISSUES

5. Jointly Sponsored Pension Plans

The CBA Section supports recognizing Jointly Sponsored Pension Plans (JSPP) as a distinct type of plan. The definition of a JSPP will depend on the particular distinctions the government intends to make to differentiate JSPPs from other types of plans. We suggest the definition include that:

- the plan provides defined benefits
- members contribute towards the cost of the plan
- members and employer(s) are jointly responsible for determining and amending the terms of the plan
- members and employer(s) are jointly responsible for appointing the administrator of the plan which is a board of trustees
- the plan could involve a single employer or multiple employers

Since members share in the obligation to contribute towards any funding shortfalls that may develop in these plans, we suggest that the legislation authorize the body which governs the JSPP and sets contribution levels to determine how it will respond to a situation where the plan liabilities exceed plan assets, and to decide whether to increase contributions, decrease benefits (accrued or future) or some combination of the two. Similarly, the body that governs the JSPP should determine the use of any surplus.

6. Target Benefit Plans

The CBA Section strongly supports amending the Act to promote the establishment of Target Benefit Plans (TBPs). This will add a greater degree of flexibility for both employers and plan members, which hopefully can result in greater coverage. TBPs should be available in both single employer and multi-employer circumstances and, in both the single employer and multi-employer environments, the plans should be jointly governed so as to provide plan members a voice in the administration of the plan. Also, TBPs should be required to clearly and regularly communicate the nature of the target benefit to plan members to ensure that plan members properly understand the pension promise.

8. Accrued Benefit Measurement and Valuation Methodology

The CBA Section believes that general uniformity in funding standards is highly desirable[1] and does not support adopting the Accrued Benefit Measurement, which is substantially different than the current approach. The Canadian Association of Pension Supervisory Authorities (CAPSA) *Report On Regulatory Principles For A Model Pension Law* also promotes common funding standards across the country.[2]

The Nova Scotia Review Panel recommended that a commuted value would be calculated in accordance with the Accrued Benefit Measurement method. This would result in commuted values determined on a significantly different basis for a Nova Scotia member as compared to a member located in another jurisdiction. Rather than encouraging uniformity, this would introduce another form of disparity between jurisdictions.

The Review Panel recommended that a valuation include all benefits promised under the plan and that no asset smoothing be permitted. At present, a solvency valuation is not a pure assessment of full wind-up liabilities and is a compromise between benefit security for the plan members and benefit affordability for the employer. As part of that compromise, an employer is not currently required to include the value of escalated adjustments in solvency liabilities, presumably to encourage employers to continue to promise and deliver such benefits. A requirement to include the liability for an indexation promise in all valuations may make employers more reluctant to offer this promise. However, benefit security for those members for whom an employer continues to offer indexing would be enhanced.

If no asset smoothing is permitted, then solvency contributions will become even more volatile. Recent events have demonstrated the potential impact that volatility can have on employers. The current trend in Canada is to consider mechanisms that can mitigate the impact of some of that volatility, evidenced in Nova Scotia by the temporary relief offered under section 6A of the *Pension Benefits Regulations*.

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1 At its Mid-Winter meeting held in Ottawa, Ontario on February 13 and 14, 2010, the CBA passed Resolution 10-01-M resolving to "urge federal, provincial and territorial governments to support and promote the harmonization of pension legislation and regulation across Canada".

2 A copy of this report can be found at: www.capsa-acor.org/en/init/model_pension_law/Report_Model_Pension_Law_Oct08.pdf

An alternative solvency valuation method is the approach recently proposed by the federal government. The new federal regulations will require the determination of an average solvency ratio based on the ratio in the valuation year and the two preceding years. The solvency deficiency is then calculated based on the average and one-fifth of that deficiency must be contributed in the year of the valuation. This averaging method greatly reduces the volatility of the solvency valuation and effectively incorporates an element of asset smoothing as well. This method will level out the rate of year over year increase in solvency contribution when a plan reaches a deficit state, and conversely will lead to a more gradual decline in solvency contributions when conditions improve.[3]

The CBA Section supports full disclosure to plan members of the basis on which the solvency calculation was determined, including any benefits excluded from the calculation.

We also support the concept that the funding regime that applies to a pension plan should reflect the governance structure and the funding/risk-sharing characteristics of the plan. JSPPs, TBPs, and multi-employer plans established pursuant to a collective agreement or trust agreement (MEPPs), should be required to prepare solvency valuations for information purposes, but should not be required to fund on a solvency basis. The risk-sharing nature of JSPPs, TBPs and MEPPs means these types of plans have other mechanisms to respond to funding concerns, and joint governance means the members of these types of plans are well represented in decisions regarding funding and investment policies so concern for benefit security can be taken into account.

9. Minimum Funding Rules and a 5% Collar

We support a move to a 10 year amortization period for solvency deficits with appropriate member consent. This will help to reduce the volatility of contributions that many employers have found to be burdensome. It can be balanced with the imposition of a 5% collar that will prevent any amortization of surplus unless assets exceed 105% of liabilities and still ensure benefit security for plan members. If Nova Scotia instead follows the federal lead and adopts the averaging method described above under item 8, then a move to a 10 year amortization period would not be needed since the averaging method effectively mitigates the volatility.

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[3] Further details regarding the federal proposal can be found on the Finance Canada website at: www.fin.gc.ca/n10/10-040-eng.asp and www.fin.gc.ca/n08/09-103-eng.asp.

We also agree that an employer should be permitted to use a letter of credit to cover solvency contributions. A letter of credit provides the same security for members as actual cash contributions, but allows an employer the flexibility to determine whether to deposit solvency contributions into the pension fund or to deploy the capital elsewhere in its business.

10. Surplus Use and Ownership

The CBA Section membership comprises counsel that act on behalf of all stakeholders within the pension industry. Accordingly, there is no consensus as to the appropriate use of surplus, on ownership issues, or on the appropriate interpretation of the Supreme Court of Canada's decision in the *Kerry*[4] case.

However, the CBA Section agrees and supports the following principles:

- all stakeholders will benefit from greater clarity in surplus use and ownership matters
- any usage or distribution of surplus from an ongoing plan should not jeopardize the funded position of the plan and the promised benefits

11. Ancillary Benefits

Ancillary Benefits are currently set out in both section 48 of the Act and section 59 of the Regulations. Depending on plan design, these ancillary benefits may have a significant value comparable to the value of the basic pension benefit promised under the pension plan.

Members of the CBA Section representing employees and unions recommend that amendments should only affect benefits on a go-forward basis. The reduction or elimination of ancillary benefits when a member has met a significant part of the eligibility criteria should not be permitted. The Quebec approach should be adopted, which allows the elimination of the ancillary benefit only in respect of future accruals.

On the other hand, CBA Section members representing sponsors and administrators recommend that if ancillary benefits are vested, they should not be subject to amendment. If ancillary benefits are not vested, the *Act* should permit amendment. Ancillary benefits are vested when all eligibility requirements for the ancillary benefit have been met. The power to

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4 *Nolan v. Kerry (Canada) Inc.*, 2009 SCC 39, [2009] 2 S.C.R. 678.

amend an ancillary pension benefit is subject to other restrictions that may be imposed by the pension plan text, collective agreements, employment contracts and employment standards legislation. It is unclear why a longer notice period of five years would be imposed for certain types of ancillary benefits. As noted, ancillary benefits are considered to vest when all eligibility criteria for receipt of that benefit have been met. These members of the Section support the continuation of this approach.

To appropriately pre-fund ancillary benefits, it is necessary to clarify which benefits are considered to vest on a continual basis and which are considered to vest only after certain eligibility criteria have been met. The *Act* should be clarified regarding the treatment of indexing provisions (which are not listed as an ancillary benefit). Currently, there is conflicting case law on the ability to amend indexing provisions and the ability to amend early retirement provisions.[5]

12. Funding Transition Rules

The CBA Section does not agree with adopting the Accrued Benefit Measurement for the reasons previously set out in section 8. We agree with the Department's suggestion that the impact of any changes to the funding rules on individual pension plans must be carefully considered.

13. Partial Wind-Ups

The CBA Section agrees with the requirement in a single employer plan that the employer must fund any transfer deficiency in the event of an employee terminating employment, whether this is a single termination or group termination. For individual terminations from a single employer pension plan, we support the requirement that the deficit with respect to a single terminating employee be eliminated within one year of departure through an additional contribution, so the employee may transfer the full commuted value of the pension on termination. However, if there is a group termination, such a funding requirement may not be feasible and could impair security for remaining members. In such cases, the payout could be made in installments over time, through additional contributions, through a letter of credit arrangement or some combination of approaches.

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5 *Dinney v. Great-West Life Assurance Co. et al.*, [2005] 252 D.L.R. (4th) 66, 10 W.W.R. 401, 192 Man. R. (2d) 229; *Lloyd v. Imperial Oil Ltd.*, 445 A.R. 32, [2008] 9 W.W.R. 502, 93 Alta. L.R. (4th) 321; *Patrick v. Telus Communications Inc.* [2005], 49 B.C.L.R. (4th) 74; *C.A.S.A.W. v. Alcan Smelters and Chemicals Ltd.*, [2001] 198 D.L.R. (4th) 504, 89 B.C.L.R. (3d) 29.

14. Transfer of Surplus from Closed Plans to New Plans

CBA Section members differ as to the appropriate use of surplus in a closed plan and the ability to transfer any surplus in a closed plan to a new plan. However, the CBA Section supports greater legislative clarity on such issues.

15. Governance Process for Investments – Specific Investments Limits

The CBA Section supports the Department's agreement with the Panel's recommendations, subject to the matters discussed below.

The Panel recommends that sponsors should determine the investment choices to be offered to employees. The CBA Section is of the view that the selection of investment choices is the responsibility of a plan administrator, not a plan sponsor. Imposing such responsibility on a plan sponsor is inappropriate and inconsistent with section (3) of Schedule I which requires the administrator (not the sponsor) to establish a written statement of investment policies and procedures. In addition, it confuses the different roles and duties of an employer as plan sponsor and as plan administrator. The CAPSA consultation paper on *The Prudence Standard and the Roles of the Plan Sponsor and Plan Administrator in Pension Plan Funding and Investment*[6] strives to distinguish and emphasize this distinction. Although that paper primarily focuses on defined benefit pension plans, it expressly states that it applies to all types of pension plans, including defined contribution pension plans. In discussing the role of the plan administrator[7], the paper clearly states that pension fund investment is the responsibility of the plan administrator. To allocate the responsibility of selecting investment choices to plan sponsors will make Nova Scotia different from other jurisdictions and move away from harmonization of pension laws across Canada.[8]

The Panel recommends removing Schedule III to the Regulation. Although the CBA Section supports the removal of quantitative limits contained in Schedule III, we believe that provisions relating to related-party transactions should be kept. Further, Nova Scotia should remain consistent with the Federal Investment Rules. The Federal government has recently proposed certain changes to the Federal Investment Rules.

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[6] North York, ON: Canadian Association of Pension Supervisory Authorities, November 2009.

[7] *Ibid.* at 6.

[8] Please also see discussion under item 23 below.

The CBA Section also reiterates our previous position[9] concerning section 3.1.1 "Defined Contribution (DC) – Employee Investment Choices Disbursement Options", and in particular, supports automatic enrolment with opting out, the establishment of rules governing default options and clear new legislative rules regarding disclosure of information to members and the rights and obligations of all participants.

16. "Safe Harbour" Provisions

The CBA Section is skeptical about the appropriateness of "safe harbour" protection. Instead, we support the Panel's emphasis on prudence and transparency of investment information to members.

We recognize the argument that "safe harbour" protection will encourage the participation of employees and unions in plan governance and may reduce costly litigation risks to a pension plan. However, it is unclear whether this belief is supported by any statistics. "Safe harbour" protection has existed under ERISA[10] for a number of years but does not seem to have significantly reduced litigation. To the contrary, it is inconsistent with the recommendations of CAPSA in its review of the CAP Guidelines based on results of CAPSA's stakeholder survey. It is doubtful whether there is a link between the willingness or reluctance of employees and unions to participate in pension plan administration and the availability of "safe harbour" protection. If fear of litigation actually deters employees or unions from participating in plan administration, that fear can be addressed by an indemnity from the employer in their favour or appropriate insurance.

"Safe harbour" rules are conceptually and practically difficult as they are based on "good governance rules" or "best practices" that change with time and circumstances. The availability of "safe harbour" protection may result in the inertia of plan administrators in changing investment options and governance practices to deal with changes in circumstances. In addition, plan members may view such protection as unjustly depriving them of their rights of action against plan administrators in case of loss.

[9] See the Section's previous submission responding to the Panel's Position Paper (Ottawa: CBA, 2008).

[10] U.S. *Employee Retirement Income Security Act* of 1974.

One alternative is the “simplified plan” concept that Quebec and Manitoba have implemented. This approach allows the employer to offer DC benefits while the insurer becomes the fiduciary.

The CBA Section is not aware of any other Canadian jurisdiction which supports the availability of "safe harbour" protection. Introducing the concept in Nova Scotia would be inconsistent with promoting greater harmonization of the pension system across Canada.[11]

17. Governance Policy

The CBA Section supports the Department's agreement with the Panel's recommendation on the development of a governance policy and self-assessment and the transparency of governance information to members. However, we disagree with the proposed requirement for filing such governance policy with the Superintendent.[12] Requiring review by the Superintendent would only be beneficial if the resources and expertise are available for expeditious review and comment on governance plan. In most jurisdictions, the filing of statements of investment policies and procedures is no longer required. The Section suggests a similar approach for governance plans. If failure to follow a filed governance plan is deemed evidence of a lack of prudence, it is likely that governance plans will become quite general and brief, defeating the public policy objective for requiring such plans.

18. Advisory Committees

It is critical that the creation of advisory committees does not conflate the responsibilities of the sponsor and the administrator. The administrator has a fiduciary responsibility to act in the best interests of plan beneficiaries and to administer the terms of the plan as filed with the regulator. The legal responsibilities of advisory committees should be clearly identified in the legislation.

Creating advisory committees should not result in those committees assuming liability without any decision-making power. The government should fully consider the potential costs and conflicts of interest associated with the proposal to pay costs from the fund and to have access to plan professional advisors. Any recommended change should ensure that plan

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11 Please also see discussion on harmonization under item 23 below.

12 The reasons set out under "Section 3.7 – Governance" in the Section's November 2008 submission on the Position Paper apply here.

administrator responsibilities continue with the help of an advisory committee better equipped to fulfill its advisory functions. Where the administrator is a joint board or committee, an advisory committee would appear to be an unnecessary cost.

Advisory committees should be entitled to have reasonable access to professional advisors and the costs associated with consulting such advisors should be paid from the fund. It should be clarified though who will determine whether professional advice should be sought and whether such costs may be paid from the fund. The plan administrator has the overall fiduciary duty to the members, and should be required to assess and determine whether a particular request and cost is reasonable.

There are also implications for the independence of the advisory committee. We believe it would be inappropriate for the Superintendent to rely on the agreement of or decisions of advisory committees in making regulatory decisions with respect to the plan.

Administrators should retain the overall responsibility for member communications, with advisory committees being entitled to access to these communications, subject to privacy limitations concerning individual information.

Advisory committee members will need access to further training and the Nova Scotia Department of Labour and Workforce Development could be part of such training. Rules concerning advisory committees should address training and the payment of reasonable training costs out of the fund.

19. Access to Information

The CBA Section agrees with providing broad rights of access to employees and their representatives. The PBA already provides broad rights of access both to the files of the Superintendent and also the files of the administrator. These rights of access should be limited only to respect the privacy rights of individual plan members. We do not believe that simultaneously providing all filed information to all members (regardless of whether members are interested in the information) will result in meaningful communication. Instead, the focus should remain on ensuring that the annual statement to members contains essential information. For example, the annual statement should be required to set out the funded status of a Defined Benefit (DB) Plan. Currently, annual statements in Nova Scotia are not required to contain this information. Annual statements could also be required to refer to the information access rights of members under the PBA.

20. The Role of the Regulator Including Appeals

The CBA Section agrees that the Superintendent should not review its own decisions and that an independent appeal process should be established. The CBA Section also agrees that an independent adjudicative board to determine issues related to pensions should be established to review the Superintendent's decisions.

The CBA Section's position remains the same as in its submission to the Review Panel in November 2008. Representatives of Employees/Unions strongly agree with the Panel's recommendation that appeals be heard by the Nova Scotia Labour Relations Board (LRB). Pension disputes are grounded in employment and labour relations matters and a board familiar with these issues is appropriate. Those appointed to the LRB should have specialized knowledge of pension matters and additional resources should be made available for this to occur.

On the other hand, Sponsor/Administrator representatives agree with the Department's conclusion that it is more appropriate for appeals to be heard by the Nova Scotia Utility and Review Board (URB). Appeals from decisions of the pension regulators are made to third party tribunals in British Columbia, Manitoba, New Brunswick, Ontario and Quebec.

Only one province – New Brunswick – adjudicates pension appeals before a labour board. In that province, the Labour and Employment Board is a unified board that, unlike the Nova Scotia LRB, is responsible for adjudicating matters under several pieces of legislation, including the *Industrial Relations Act*, *Public Service Labour Relations Act*, *Employment Standards Act*, *Pension Benefits Act*, *Human Rights Act*, *Fisheries Bargaining Act*, *Essential Services in Nursing Homes Act* and *Public Interest Disclosure Act*.

In Quebec, appeals are considered by the Administrative Tribunal of Quebec (ATQ) that was amalgamated from five administrative tribunals. The ATQ considers appeals in all government matters and adjudicates matters under four divisions: Social Affairs; Immovable Property; Territory and Environment; and Economic Affairs.

In the remaining provinces with third party tribunals, appeals are considered by a tribunal focused specifically on financial services or pension issues.

A unified board would allow the appellate tribunal to have more resources and develop more expertise, particularly with respect to financial matters. There would be the potential for increased access to staff and funding, and additional experience in adjudicating complex issues involving multiple and diverse parties. In Nova Scotia, the most similar amalgamated board is the URB, which was initially combined from four boards:

- Board of Commissioners of Public Utilities
- Nova Scotia Municipal Board
- Expropriations Compensation Board
- Nova Scotia Tax Review Board

The Sponsor/Administrator members of the Section also believe that the URB has greater expertise and resources to adjudicate pension issues than the LRB. The issues before the Superintendent of Pensions are more similar to matters normally before the URB than the LRB. For example,

- Pension regulator decisions usually involve more financial and tax issues than labour relations issues.
- Hearings of pension matters could involve multiple diverse parties. In addition to employers and unions, pension hearings could also involve trustees, plan members, retirees and financial institutions.
- Hearings would require consideration of expert opinion such as actuaries.

The CBA Section agrees that the URB's ability to appoint consumer advocates would also be valuable in the pension context as certain pension stakeholders, particularly retirees, are not represented by groups or organizations.

21. Exempt Pension Plans for the Exclusive Benefit of "Connected Persons"

The CBA Section agrees with the Department's position to exempt plans for the exclusive benefit of "connected persons" from regulation under the *Act*. As noted in the discussion paper, exemptions currently exist in British Columbia, Alberta, Quebec and Manitoba. These jurisdictions exempt pension plans for "specified individuals", as defined in the *Income Tax Act* (Canada), from certain obligations in the applicable pension benefits legislation.

The approach in British Columbia, Manitoba and Quebec is to apply a blanket exemption for plans for connected persons but preserve certain statutory requirements for those plans. The requirements maintained for plans for connected persons vary by province and include:

- Establishment of a pension fund so as to separate funds from the assets of the employer;
- Provisions prohibiting differentiation on the basis of sex;
- Vesting of pension benefits;
- Locking-in of pension funds;
- Portability restrictions on pension funds; and
- Spousal benefits and pension division on marriage breakdown.

In Alberta, plans for connected persons are not subject to a blanket exemption but exempted from specific requirements.

The CBA Section recommends that the Department follow the approach in most provinces with exemptions for plans for connected persons by applying a blanket exemption and specifying certain requirements to be maintained, including the requirement of a separate pension fund, locking-in of pension funds and protection and division of spousal benefits.

23. Harmonization – Proposed "Passport" System

The CBA Section supports harmonization of pension laws across Canada. Harmonization has also been generally supported in reports from the other pension reform commissions in Alberta, British Columbia and Ontario.[13]

In 2010, the CBA urged federal, provincial and territorial governments to support and promote the harmonization of pension legislation and regulation across Canada.[14] The reasons for the Resolution included:

- Pension regulation is multi-jurisdictional;
- Lack of harmony in pension laws results in duplicative or unnecessary regulatory burden and cost, increased administrative costs for pension

[13] See, *Getting our Acts Together – Pension Reform in Alberta and British Columbia*, Report of the Joint Expert Panel on Pension Standards; and *A Fine Balance*, Report of the Ontario Expert Commission on Pensions.

[14] *Supra* note 1.

plan sponsors and unequal treatment of pension plan members in different jurisdictions;

- Harmonized laws would encourage broader pension coverage and enable efficient delivery of pension benefits to plan members, advancing the objective of providing for Canadians in retirement;
- National initiatives are underway to harmonize pension standards legislation across Canada, including a proposed framework agreement by the Canadian Association of Pension Supervisory Authorities.

To be effective, harmonization efforts like those recommended by the Panel must be reciprocated by other jurisdictions. A stipulation under Nova Scotia law that the pension laws of another jurisdiction be applied to provincially regulated Nova Scotia employees would only be effective if the other jurisdiction also agreed that the application of its laws would be extended to those Nova Scotia employees.

Harmonization will likely only be obtained through the CAPSA. CAPSA released a consultation document on October 21, 2008[15] setting out a proposed framework for greater harmonization of pension laws in Canada. The CAPSA consultation document does not propose harmonization in the manner suggested by the Panel. The CBA Section recommends that the Nova Scotia government pursue harmonization initiatives within CAPSA.

24. Grow-In Benefits

In order to avoid unnecessary litigation, we suggest that rules be developed to clarify when a plan will be considered to provide grow-in benefits if legislation is amended to remove the mandatory provision. We also suggest that a transition period be provided in which a plan may be amended to clarify whether grow-in benefits were intended. For instance, if the plan references the *Act* with respect to the provision of grow-in benefits, presumably grow-in benefits are not provided under the plan once the *Act* no longer requires it. The ability to amend grow-in benefits after the transition period should also be clarified (see section 11).

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15 *Proposed Agreement Respecting Multi-Jurisdictional Pension Plans* (North York, ON: Canadian Association of Pension Supervisory Authorities, October 21, 2008).

25. Vesting in All Plans Should Be Immediate

The CBA Section believes that the current vesting rules are adequate. However, provided that plan sponsors can delay membership in a pension plan, as is currently permitted, the phased-in approach suggested by Gunderson would be a reasonable alternative to the current rules.

26, 27. Unlocking of Pension Plan Benefits

The CBA Section agrees there is a need for more structured rules with regard to unlocking. We are concerned about having different locking-in rules between DB and DC plans. If DC plans are significantly more flexible with respect to how and when members can access their pension funds, this could further lead to the decline of DB plans in Canada. This is contrary to the Panel's stated goal of not favouring one form of pension plan over the other.

Generally, we support continued locking-in (subject to the exceptions noted below) to ensure that pension benefits accumulated on a tax deferred basis are used for their present public policy objective of providing a retirement income to plan members. We are concerned that the adoption of the Panel's proposed unlocking rules could again lead to decreased harmonization between Nova Scotia and other jurisdictions. In October 2008, CAPSA released its *Report on CAPSA's Work on Regulatory Principles for a Model Pension Law* [16](Model Pension Law Report). The Model Pension Law Report stemmed from an extensive consultation process in which CAPSA met face-to-face with over 300 stakeholders and received over 70 written submissions responding to its earlier consultation paper on the topic. One of the non-contentious principles CAPSA recommended in the Model Pension Law Report was that "Any amounts transferred from the plan on plan termination or termination of active membership must be locked-in to provide a pension on retirement."

The CBA Section supports the Model Pension Law Report recommendation that requires all funds transferred from a pension plan to remain locked-in, subject to certain limited exceptions, such as the existing exceptions for shortened life expectancy and economic hardship. We see no compelling reason to remove the financial hardship exceptions from the current legislation.

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16 North York, ON: Canadian Association of Pension Supervisory Authorities, October 31, 2008.

28. Phased Retirement

The CBA Section supports the Panel's recommendations concerning phased retirement. Plan sponsors and employee groups should be able to make independent arrangements on whether and to what extent phased retirement is offered.

30. Province-Wide Pension Plan

The CBA Section supports establishing broader pension plan arrangements, either on an industry wide or geographic basis (Supplementary Arrangements) to facilitate and encourage broader pension coverage, particularly in the private sector. The CBA Section suggests that the following principles should apply:

a) the Supplementary Arrangement should operate without public financial subsidy, other than the usual tax deferral associated with pension arrangements;

b) as a smaller province, Nova Scotia should focus its efforts on a pan-Canadian or multi-province arrangement rather than a single province model;

c) supplementary Arrangements should be voluntary and not mandatory. An approach where employees or members must opt-out to avoid participation is preferable to one that requires an opt-in;

d) any Supplementary Arrangement must avoid a deleterious impact on existing registered pension plans.

III. CONCLUSION

The CBA National Pensions and Benefits Law Section trusts that our comments will assist the Department in its work. We would be pleased to respond to any questions and to provide further information regarding any of the items addressed in this submission or otherwise in connection with the review.