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January 18, 2013

Via email: PensionReg@gov.ns.ca

Ms. Barbara Jones-Gordon
Executive Director Labour Services
Pension Regulation Division
Labour and Advanced Education
PO Box 2531
Halifax, NS B3J 3N5

Dear Ms. Jones-Gordon:

Re: Draft Pension Benefits Regulations Under Nova Scotia *Pension Benefits Act*

The National Pensions and Benefits Law Section of the Canadian Bar Association (the CBA Section) is pleased to comment on Nova Scotia Department of Labour and Advanced Education Draft *Pension Benefits Regulations* (Draft Regulations), issued on December 7, 2012. The CBA Section consists of members involved in pensions and benefits law 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.

The CBA Section participated in the review undertaken by the Nova Scotia Pension Review Panel and responded to the position paper in November 2008. The CBA Section also responded to the Department's Discussion Paper on Pensions in June 2010 and the Draft Pension Benefits Regulations on funding (Draft Funding Regulations) in January 2012. We welcome the opportunity to continue to participate in Nova Scotia's important work on pension reform.

The CBA supports harmonization of pension laws across Canada. Harmonization has also been generally supported by pension reform commissions in Alberta, British Columbia and Ontario. Pension regulation is multi-jurisdictional. Lack of harmony results in duplicative or unnecessary regulatory burden and cost, increased administrative costs for pension plan sponsors and unequal treatment of pension plan members in different jurisdictions. Harmonized laws 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 (CAPSA).

The CBA Section acknowledges the efforts of the Department to promote a harmonized pension regulatory system within Canada, by largely adopting the Ontario and Manitoba (as applicable) pension regulatory wording.

SUBMISSIONS ON SPECIFIC SECTIONS

Exemptions (Part 1, Division 1)

The CBA Section urges the Department to exempt plans for the exclusive benefit of “connected persons” from regulation under the *Act*. In the Draft Regulations (s. 3(13)), the exemption is limited to section 45 of the *Act*, addressing eligibility for membership. This had been previously raised in the 2010 Discussion Paper and supported by the CBA Section in our June 2010 submission. 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 these provinces is to apply a blanket exemption for plans for connected persons but preserve certain statutory requirements for those plans. The CBA Section suggests this approach should be followed 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.

Advisory Committees (Part 3, Division 2)

The Draft Regulations procedures and processes for the establishment of advisory committees are considerably more prescriptive than the legislation in Ontario (which forms the basis for much of the regulations) or other Canadian jurisdictions.

In subsection 14(5)(b), the Draft Regulations provide that a notice may only be sent by email if the member has previously requested information concerning the pension plan via email. This requirement of an actual request in writing will impose an unnecessary burden on an administrator. The CBA Section recommends that the language in subsection 14(5)(b) should parallel subsection 14(5)(a) and permit the administrator to use the most recent email address maintained in its records. This administrative burden is also continued by subsection 16(3) (when the results are announced), and subsection 17(6) (election of members)

Subsection 17(7) seems to be unclear. It suggests that the pension plan would establish the procedure and timing for a vote by secret ballot. It may be intended that the administrator would make that determination.

Pension Fund Investment (Part 3, Division 3)

Although we suggested in our June 2010 submission that the quantitative limits in Schedule III (Schedule I in the Draft Regulations) be removed, the CBA Section agrees that, if kept, they should be consistent with the Federal Investment Rules. The CBA Section therefore supports removing the current Section 10 of Schedule III on quantitative limits on investments in real property or Canadian resource properties.

Reporting (including new provisions on financial statements) (Part 3, Division 4)

The CBA Section questions the utility of subsection 24(2) which purports to permit the Superintendent to require filing the audited financial statements in less than six months after the end of the fiscal year. This requirement is not found in the Ontario regulations. The auditing firm must complete the audit in order for the financial statements to be complete for filing. Given the

volume of audit work that occurs in the first months of each year, it may well not be feasible for an audit to be completed earlier.

Letters of Credit (Part 4, Division 2)

The CBA Section is pleased that Part 4, Division 2 of the Draft Regulations are harmonized with the Regulations in Ontario on letters of credit. The CBA Section supports the inclusion of the Division in the Draft Regulations.

Commuted Value and Portability of Pension Benefits (Part 5, Division 2)

The CBA Section generally supports the proposed revisions to the rules governing the portability of pension benefits and the effort to achieve harmonization, particularly in respect of the materiality threshold in subsection 49(9).

Variable Benefits (Part 5, Division 4)

The CBA Section welcomes the additional option of variable benefit pensions in the draft Regulations. Part 5, Division 4 of the Draft Regulations are generally harmonized with the variable benefits provisions in the relatively recently amended *Pension Benefits Regulations* in Manitoba.

For subsection 61(1)(d), the CBA Section agrees with the proposed revisions to harmonize with the wording found in the Manitoba Regulations (subsection 6.4(2)(d)).

The Draft Regulations omit a subsection similar to subsection 6.7(5) of the Manitoba Regulations, requiring certain information to be provided to the administrator to whom a transfer is made. The CBA Section agrees with this exclusion as it is consistent with the other transfer-related requirements in the Draft Regulations.

Wind up of Pension Plans (Part 6)

As stated in its June 2010 submission, the CBA Section agrees with the approach in the new Act providing that funding shortfalls on wind up will be funded in accordance with the documents that create and support the plan. The same approach should be taken with surplus from the wind up of JSPPs. For consistency, subsection 84(4) of the Draft Regulations should provide that “any surplus shall be dealt with according to the terms and conditions of the pension plan documents that create and support the plan”.

DRAFTING ISSUES

This section notes minor drafting issues:

1. Throughout section 3, there appear to be a series of typos in the references to subsections.
2. Subsection 14(5)(c) has a typo. The reference to (c) should be eliminated
3. Subsection 22(10)(b) should state “...to the actuary”
4. Subsection 26(2) should refer to subsection (1).
5. The content of clauses 30(1)(c) and 30(1)(e) overlap and should be reviewed.
6. Subsection 33(3) has a typo – the reference should be to subsection (2).
7. In subsection 49(9), the reference should be to (6) and (7).
8. Subsection 53(a) refers to subsection 58(3) of the Act – Subsection 63(3) should be the reference.
9. Subsection 62(2) – the reference should be to “former member” in the initial line.

10. Subsection 67(4) – the reference to “clause (c) or (d)” should be changed to subsection (2) or (3).
11. Section 70 and Section 72 – the content overlaps and one could be removed.
12. Clause 75(6)(a) should reference subsection (5), not subsection (3).
13. Subsection 115(2) has an editing error. It appears that it should say “...permit variation in the terms of payment of a pension or deferred pension”.
14. In subsections 131(2), 132(2) and 133(2) , the extra parentheses should be removed in the references to “subclause 2 (ax)(iv) or (v)” in clause (c) of the definition of “A”.
15. Section 135 should refer to subsection 123(1) instead of subsection 71(1).
16. In Schedule I, subsection 2(a) should refer to Section 11, 12 or 13 instead of Section 12, 13 or 14.
17. In Schedule I, subsections 11(3) and 12(3), should refer to “subsection 24(1) of these regulations” instead of “subsection 12(2) of the Act”.
18. Capitalization of the word “Section” should be made consistent throughout the Regulations.

CONCLUSION

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

Yours truly,

(original signed by Noah Arshinoff for Michael Mazzuca)

Michael Mazzuca
Chair, National Pensions and Benefits Law Section