



Submission by:

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To the
Law Amendments Committee on
Bill 96: Pension Benefits Act
An Act Respecting Pension Benefits

December 1, 2011

Law Amendments Committee
Bill 96 - A New Pension Benefits Act

1. The Nova Scotia Federation of Labour and its affiliates support the efforts to modernize and update the *Pension Benefits Act*. We are pleased to see a new Act come forward in this Sitting of the Legislature.
2. Our Federation and its affiliates have been active participants in the consultation process over the last several years leading to the tabling of this Act. We prepared two submissions and met twice with the Pension Review Panel in 2008. We have attached a summary of our July recommendations to the 2008 Panel as Appendix "A".
3. The Federation has continued to respond to various discussion papers released by the Minister's Department. We responded to the Department of Finance's consultation process about retirement security. We have communicated regularly with officials in the Department about the possibility of legislation in 2011. We were represented at all three stakeholder consultation sessions held in June, 2011 about a new Act. Finally, we were represented in the initial stakeholder discussions in September, 2011 about draft regulations for a new Act.
4. *In general, we are pleased with a number of long overdue provisions in Bill 96. Some are "housekeeping" changes, some are important steps forward, and some are based on changes elsewhere, especially in Ontario. At the same time, we do not think the Bill goes far enough to provide the basis for retirement security for the people of Nova Scotia. Today, we will indicate what provisions we support, what provisions we think need to be changed, and how the draft Bill needs to be amended and strengthened.*

CANADA PENSION PLAN

5. We urge Finance Minister Graham Steele to continue to support an expanded and enhanced CPP. Minister Steele will soon attend a meeting of the Federal/Provincial and Territorial Finance Ministers in Victoria, December 18-19, 2011.
6. This is the first such meeting since the Federal election on May 2, 2011, and since the meeting in Alberta in December 2010. Just prior to that meeting, Prime Minister Harper rose in the House of Commons to announce that while he wished to continue to look for

improvements to the CPP, he did not wish to increase premiums at that time. He said as follows:

As for the Canada pension plan, I think all are agreed that while we will continue to look at improvements, now is not the time for CPP premium increases.

7. This statement put a real stake in the heart of pension reform at the December 2010 meeting of the Finance Ministers. However, the provincial Finance Ministers were undaunted and seven of them continued to support the expansion of the CPP and indicated they wished the policy to remain on the agenda. (British Columbia, Manitoba, Ontario, Newfoundland and Labrador, New Brunswick, Prince Edward Island and our Province, Nova Scotia)
8. Canadians have had a number of provincial elections since December 2010. We urge our Provincial Government to continue to insist the Federal Government move to amend the Canada Pension Plan, without unanimous consent. It is not required. So long as 2/3 of the Provinces which represent 2/3 of the population support the expansion of the CPP, the Federal Government can initiate legislation. The process will take some three years to wend its way through Federal and Provincial legislative assemblies. We should start now to ensure workers and employers can start contributing to a safe, reliable, effective, fully indexed defined benefit pension plan in 2015.
9. The Federation of Labour supports the expansion of the CPP because it:
 - Provides defined retirement benefits which are Inflation-indexed to CPI as well as survivor, and disability benefits for all workers in all industries across the country, including the self employed, regardless of the number of employers and number of jobs a worker has over her or his lifetime;
 - is jointly funded by employees and employers (currently 4.95% each – 9.9% combined) on earnings up to annual maximum of \$ 48,300 (in 201);
 - is actuarially sound for the next 75 years;
 - has administration fees of less than 0.05% of assets which are far lower than the management expense ratios for privately administered assets by Canadian financial institutions.

PRIVATE SECTOR WORKPLACE PENSION PLANS

10. Enhancement and expansion of the CPP is necessary because private sector employers have not held up their part of the bargain which created the CPP in 1966. Private sector employers promised to create and expand workplace pension plans to supplement the CPP. Private sector employers in Canada have gradually eroded their commitment to workplace pension plans. They need to be held accountable for this.
11. In Nova Scotia, the number of registered pension plans in the private sector in Nova Scotia actually increased from 385 in 2005 to 406 in 2009 with an increase in the number of pension plan members from 56,763 to 63,633.
12. However, despite the increase in the number of pension plans, these plans only covered 63,633 private sector workers in Nova Scotia in 2008.
13. The data released in the consultation paper of the Province last Fall indicated that as of 2007, 54% of Nova Scotia citizens between the ages of 18 and 71 will rely exclusively on CPP, OAS and GIS for their retirement security because they do not make any contributions to a workplace pension plan (RPP) or to an Registered Retirement Savings Plan (RRSP). The percentages were even higher for those citizens who earned less than \$30,000 per year in 2007.
14. Limited workplace pension plan coverage is not expanded by attacking private and public sector employers who actually provide a workplace pension plan to supplement the CPP. The Federation of Labour does not support bringing everyone to the lowest common denominator. Further, not every school board, not every municipality, not every long term care employer offers its employees a defined benefit pension plan. All employees in Nova Scotia should be able to belong to and contribute to a workplace defined benefit pension plan.
15. The solution for this deficient workplace pension plan coverage is to require every employer in Nova Scotia to create and offer a defined benefit workplace pension plan. To that end, the Federation of Labour suggests the *Pension Benefits Act* should be amended to require, over a three (3) year period, each employer in the Province to create a defined benefit workplace pension plan, with a minimum level of employer and employee contributions, and a jointly trustee model for the administration of the

pension plan fund. The defined benefit workplace pension plan should be available to all employees, not only full time employees.

16. The Federation of Labour would maintain the proposed new preamble of the legislation and Section 13 of the Act which provide as follows:

AND WHEREAS the Government of Nova Scotia intends to promote and facilitate the implementation and continuation of pension plans;

13 (1) The Superintendent shall

(a) promote the establishment, extension and improvement of pension plans throughout the Province;

17. Employers can't have it both ways. If employers reject an expanded CPP to provide retirement security for Canadians, then they have to step up and provide workplace pension plans as the original 1966 commitment required.

POOLED RETIREMENT PENSION PLANS

18. RRSPs, defined contribution, or money purchase retirement schemes are NOT pension plans. They do not provide retirement security. They require employees to speculate on the financial markets. They force employees to hope the day they retire they can actually purchase an annuity to provide retirement payments with the money left in their retirement account. This situation will be exacerbated by the Federal Government's proposed legislation for "pooled retirement pension plans".

19. A PRPP will be worse than no workplace plan at all for workers, and will certainly be much worse than the current or expanded CPP in the following ways:

- It will not require employer contributions
- Employers will be able to force employees to contribute to a PRPP and will unilaterally set the amount of the employee contributions
- It does not provide survivor and disability benefits
- It will not likely be portable from employer to employer or province to province
- It does not provide a secure defined benefit to count on for retirement
- It does not provide inflation protection

- It allows banks and insurance companies to invest workers money, with the ability to charge somewhat reduced “management fees” but with no public oversight as to how those monies are managed or where they are invested unlike the CPP.
20. We urge our Provincial Government NOT to propose mirroring enabling legislation for workers in Nova Scotia.
 21. If the Provincial Government does introduce enabling legislation it should prohibit the conversion of an existing defined benefit workplace pension plan to a PRPP.

INVESTMENT DECISIONS – EXISTING PENSION PLAN FUNDS

22. The Federation of Labour believes the *Pension Benefits Act* and Regulations should be amended to explicitly allow pension plan administrators and investment managers to consider social, ethical, environmental principles when making investment decisions. Acting in the best interests of the pension plan beneficiaries does not mean searching *only for the highest return on the dollar*.
23. The NSFL believes that each plan should be required to submit an annual investment policy as is required under Schedule 1 of the Act. We also think Schedule III should provide a list of acceptable investments and quantitative limits on certain classes of investments.

PENSION PLAN FUNDING AND SOLVENCY ISSUES

24. The Federation of Labour will review the proposed regulations regarding solvency with care. The Federation of Labour believes all proposals to extend or otherwise reduce the solvency funding obligations should be subject to the approval of plan member trade unions (if any) or a two-thirds majority vote of plan members where no trade union exists.

LETTERS OF CREDIT

25. The Federation of Labour objects to the proposed Section 77 of the *Bill* which would allow employers to replace real special payment (deficiency) funding with “Letters of Credit”. The legislation proposes to limit the total value of such “letters of credit” to no more than 15% of the solvency deficiency [Section 77(3)]. The Federation of Labour would prohibit such “paper” contributions entirely.

26. In the event "letters of credit" remain, the legislation should be amended to require an employer to notify plan members and/or a trade union representing such members of its intention to avoid direct special payment funding through the use of "letters of credit". Further, they should only be permitted where the trade union consents, or where 2/3 of the pension plan members consent.
27. Section 77(10) should be deleted. The "fees and expenses associated with enforcing a letter of credit" should not be payable from the pension fund. Such fees and expenses should be added to the costs owed by the employer who provided the letter of credit.

INDEXING

28. The Federation of Labour believes the *Pension Benefits Act* and Regulations should be amended to require every workplace pension plan to provide full indexing of pension benefits payable, including accrued/deferred benefits, matched to the Nova Scotia inflation rate. We believe that such a provision could be structured to allow a transition period for those plans currently facing funding deficiencies once the plan returns to a healthy funding balance.

PENSION PLAN FUND SURPLUS AND CONTRIBUTION HOLIDAYS

29. The Federation of Labour believes the *Pension Benefits Act* and Regulations should be amended to ensure pension plan fund surplus can only be used if the fund will remain at 110% solvency following the allocation of surplus, not the 105% proposed by Section 105(d) of the Bill which provides as follows:
- (d) the greater of the following amounts is retained in the pension fund as surplus:
 - (i) the sum of A and B where,
 - A is an amount equal to twice the normal cost of the pension plan, and
 - B is an amount equal to five per cent of the liabilities of the pension plan, determined in accordance with the regulations, and
 - (ii) an amount equal to twenty-five per cent of the liabilities of the pension plan, determined in accordance with the regulations; and
30. The 105% requirement could still be applicable where the surplus is used to provide for pension plan improvements.
31. The Federal Government has amended the *Income Tax Act* to increase the allowable "surplus" a pension plan might have to 125% so as to establish a greater "rainy day" fund. The Federation of Labour supports this. Contribution holidays will not be required "lessen" the notional surplus on a valuation report.

32. The Federation of Labour supports the notification requirements set out in the proposed Section 103(2) of Bill 96. When an employer seeks to obtain access to surplus, it must provide notice of the application to various employees, and in particular to each trade union which represents affected employees.
33. The Federation of Labour suggests the PBA be further amended to require the annual information statement to members to include particular information as is the case in British Columbia as follows:
- whether the pension plan actually provides for a contribution holiday;
 - the amount of the surplus assets on the plan as at the last review date;
 - the amount of the surplus assets proposed to be used to fund the contribution holiday;
 - a statement that, in the administrators opinion, the plan will continue to meet the new solvency requirements of ~~105%~~ (110%) after taking the contribution holiday;
 - a statement of the right of any person entitled to a benefit or the spouse of any designated beneficiary or agent of the person entitled to a benefit to examine plan documents.
34. Further, we propose the annual statement provided to plan beneficiaries should include the total of member contributions, employer current service cost payments, special payments and contribution holidays if any. Administrators are already required to provide this information to the Superintendent as part of the Annual Information Return (Sections 12 and 13, we believe). It would be quite simple to provide the information to plan beneficiaries.
35. The Federation of Labour is opposed to the provisions of Section 76 of the Bill which would permit "contribution holidays". Many of the pension plans which are currently experiencing solvency issues just a few short years ago took contribution holidays. For example, the solvency difficulties experienced by Air Canada are almost identical to the amount of money NOT PAID by Air Canada into the pension plan as a result of contribution holidays when market returns were good.
36. All the old philosophical arguments about an employer taking the "risk" of funding a pension plan and accordingly being rewarded to access to "surplus" and "contribution holidays" should be dismissed. It is no longer possible for any employer to seriously make this argument in the face of NORTEL and Abitibi pension plan disasters. The only people at wind up who are at risk of pension plan solvency difficulties are the beneficiaries.

37. Finally, the Federation of Labour submits the provisions of Section 86 of the Bill should be eliminated. We believe an employer "over contributes" in very rare situations. If such a situation actually exists, the employer should merely be given credit on future contributions. The "value" of the funds of a pension plan change from day to day depending on market conditions. Money should never be removed from a pension plan, even in these circumstances.

INFORMATION AND DISCLOSURE

38. The Federation of Labour supports the proposed amendments which allow for active disclosure of pension plan documents in Sections 38, 40, 41 and 42 of the proposed Bill. However, the Federation of Labour is concerned the language still uses the phrase "available for inspection".
39. The Federation of Labour disagrees with the proposal to limit the inspection ability to once per year. This limit is not imposed on trade unions, which the Federation supports. However, the Federation does not understand why the limit is imposed at all.

IMMEDIATE VESTING

40. The Federation of Labour supports the provisions of Section 53 of the Bill which allow for immediate vesting, or entitlement to a deferred pension. However, the Federation suggests the Bill should indicate a date for this entitlement, rather than leaving the right to some unknown date when the subsection "comes into force". Section 53 provides as follows:

53 (1) A member of a pension plan who is a member on or after XXXXXX the day on which this subsection comes into force and who terminates employment with the employer before reaching the normal retirement age is entitled to the benefit described in subsection (2) in connection with the member's employment after December 31, 1987.

(2) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in the Province or in a designated jurisdiction,

- (a) under the pension plan in respect of employment by the employer after the later of December 31, 1987, or the qualification date;
- (b) under any amendment made to the pension plan after December 31, 1987; and
- (c) under any new pension plan established after December 31, 1987, for members.

(3) Subsections (1) and (2) do not apply in respect of benefits that result from additional voluntary contributions.

PART TIME WORKERS

41. The Federation of Labour believes part time employees must be members of any workplace pension plan. A growing percentage of the workforce is precariously employed and only works on a part-time or seasonal basis. Section 49 of the Bill requires "reasonably equivalent" pension benefits where an employer establishes a separate pension plan for part time employees.
42. However, an employer is not required to allow part time employees to join a pension plan. Further, Section 45 of the Bill expressly permits membership restrictions which require more than 700 hours of work per year, or earnings of not less than thirty-five per cent of the year's maximum pensionable earnings. Section 20(3) of the Bill also allows the new "jointly sponsored pension plans" to create a separate pension plan for part time workers. However, this permissive provision does not go far enough.

LOCKING IN

43. We are pleased to see the prohibition on "unlocking" vested pension entitlement remains in Section 87 of the Bill. We are concerned however about the provisions of Section 70 of the Bill which increase the amount from 10% to 25% for the pay out of the commuted value. We do not support this amendment and submit the language should remain at the 10% limit as is currently the case.

POWERS FOR THE SUPERINTENDENT OF PENSIONS

44. The Federation of Labour supports the increased supervisory, inspection and administrative powers provided to the Office of the Superintendant of Pensions. A regulatory regime is only as powerful as the powers provided to the regulator. In order to ensure financial solvency and transparency for pension plan members, the Superintendent of Pensions must be given adequate powers and resources to fulfil her statutory mandate.

PENSION BENEFITS GUARANTEE FUND

45. However, even with these supervisory powers, some businesses might fall financially while a pension plan is underfunded. To protect against the broken pension promises, the *Pension Benefits Act* should be amended to create a Pension Benefits Guarantee Fund like the one which exists in Ontario. It would be funded by contributions by all

workplaces in the Province to support the workplace pension plans. The benefit coverage should provide up to \$2,750 per month, and the benefits payable should be fully indexed.

FIDUCIARY LIABILITY

46. The Federation of Labour submits the legislation does not go far enough with respect to fiduciary liability. Section 33(4) and (6) of the Bill should be amended to impose fiduciary obligations and liabilities on all agents of a pension plan, not just the administrator.
47. The PBA should expressly prohibit any contract which proposes to place a limit on the liability of any service provider.

RETIREES

48. The Federation of Labour is concerned with the proposal to provide for representation for retirees on pension advisory committees in Section 18(4) and Section 36 of the Bill without a review of the regulations which will delineate how this representative will be chosen by the retirees. The regulations must ensure the "representative" cannot be unilaterally chosen by the employer. Further, retirees do not have a direct concern for the contribution rate paid by active employees. They are no longer working and no longer contributing to the pension plan. The Bill should contain some restriction on the ability of retirees to impose contribution increases on active employees.
49. Further, many large pension plans, such as those offered by the Health Association of Nova Scotia, provides benefits to many unionized employees represented by different bargaining agents, and non-unionized employees as well. How would representation of retirees who used to belong to the different unions be determined? This should be left to the decisions of the bargaining agents as part of a joint trust model of governance.

JOINTLY SPONSORED PENSION PLANS

50. The Federation of Labour suggests the Bill should allow "jointly sponsored pension plans" only where employees are represented by a certified bargaining agent. A number of provisions are contained in the Bill allowing favourable treatment with respect to funding requirements for such plans. Without a certified bargaining agent to represent

employees with resources, expertise and experience, the Federation is worried unrepresented employees might be taken advantage of in a JSPP situation. The JSPP would not be required to meet solvency requirements and the employees would be "jointly liable" for funding deficiencies.

51. For another example, a JSPP may be permitted to "opt out" of the now Section 97 "grow in" benefits. As previously indicated, grow in benefits have been found by the Nova Scotia Court of Appeal to be clearly intended to benefit employees, and particularly those affected by plant closures. The Federation submits this provision should only be "negotiated away" by a certified trade union – not a "representative" of a group of non-unionized workers: Section 97(8).

52. The Federation submits this provision should not be effective where employees are not unionized. For example, without the democratic structures of a union constitution, how would employee representatives be chosen? Without the duty of fair representation provisions of the Trade Union Act, how would employee "representatives" to the JSPP be constrained? These are serious questions. The Bill should not allow the JSPP provisions to simply be put into effect without addressing these concerns.

See also: Definition (y); Section 36(9) – JSPP not required to have advisory committee; Section 75(4) – member contributions to JSPP; Section 85(3) – application for surplus; Section 92(2) – wind up of JSPP; Section 97(8) – grow in benefits; Section 99(4) – requirement for employer to fully fund plan on wind up; Section 100 – wind up provisions for JSPP.

53. Further, the Bill should prohibit the transformation from an existing workplace defined benefits pension plan, with all of the funding requirements, to a JSPP without the consent of the certified bargaining agent. The new Pension Benefits Act should "do no harm" to existing defined benefit pension plans.

MULTI-EMPLOYER PENSION PLANS

54. Similarly, the Federation of Labour suggests the Bill should allow "a multi-employer pension plan" only where employees are represented by a certified bargaining agent. Section 18(1) (e) implies "MEPP"s will be established pursuant to a collective agreement; however the Bill does not require this. It expressly leaves open the possibility a MEPP could be created by a trust agreement, without a certified bargaining agent. Further Section 54(6) refers to a situation where a member of a MEPP is represented by a trade union. This implies other members might not be represented by a trade union.

55. Finally, Section 109 refers to a transfer of union membership, and again implies other MEPPs might not involve unionized workers.

56. Section 24(4) of the Bill will allow a multi-employer pension plan to make amendments to a pension plan which could reduce already earned benefits. The Federation believes employees must be represented by a certified trade union in order for the pension plan administrator to have this power. Further, in some jurisdictions, earned pension benefits may not be reduced even for a multi-employer plan. Nova Scotia should adopt a similar provision where no trade union represents employees: Section 57(4).

See also: Section (ab) – definition; Section 24(4) – amendments can reduce earned benefits; Section 36(9) – not required to have advisory committee; Section 41(2) – termination of membership; Section 45(4) – membership criteria; Section 54 – termination of membership; Section 55(8)(c) – commuted value computations; Section 57(4) – target benefits – other jurisdictions where benefits may not be reduced; Section 80(10) – contributions to be held separate and apart; Section 83 and 84 – bonding and transmission of information ; Section 86 – overpayment of contributions; Section 92 – wind-up; Section 93(g) – superintendent ordered wind-up; Section 109 – transfer of union membership.

TARGET PENSION PLANS

57. The Federation of Labour has reviewed the new provisions regarding “target” pension plans. The Federation of Labour supports defined benefit workplace pension plans. We believe the PBA should expressly prohibit an employer from converting an existing defined benefit pension plan to a “target” pension plan.

58. Further, Section 57 should be amended to restrict the situations where a target pension plan can actually reduce benefits to one where the funding or solvency situation requires it. The PBA should not simply allow the target pension plan to be able to reduce benefits without some criteria.

59. Finally, the Federation of Labour submits “target” pension plans should only be permitted where the pension plan is governed by a “joint trust” model with an express provision which requires the plan to be governed in the interests of the plan members, actives, deferred and retired beneficiaries. These interests must particularly govern decisions regarding benefit reductions, in the event they are required.

PHASED RETIREMENT

60. The provisions regarding phased retirement are repeated in Section 51 of the Bill. They were never proclaimed when passed in 2009 as part of Bill 48. We remain concerned about the potential for “favouritism” on the part of an employer and the potential to adversely affect wage rates paid to persons who return to work on pension. Perhaps this is something which should be permitted only where employees are represented by a certified bargaining agent to ensure their interests are protected. We will carefully examine any regulations regarding this provision.
61. The Federation also recommends the PBA requires plan administrators to provide a separate, plain language report of the actuarial cost impact of Phased Retirement systems on pension plans. Such a reporting requirement will protect against costly Phased Retirement systems being introduced only for some categories of employees (or favoured individuals), with costs paid inequitably by plan members who may never be eligible.

REGULATIONS

62. The word “prescribed” was used more than 100 times in an electronic “word search” of the Bill. The Federation of Labour is concerned a significant number of decisions are being left to the Regulation development process. The Federation of Labour suggests regulations not be enacted without a thorough consultation with the Federation prior to implementation. This is not without precedent. The Regulations made under the *Registered Nurses Act* included a requirement to consult with the bargaining agents representing Registered Nurses prior to amendment.

OTHER ISSUES

63. The Federation of Labour suggests the Bill should use “subtitles” as were used in the existing legislation for ease of reference.
64. The Federation of Labour is pleased the Bill retains the right of “grow-in” benefits on partial or full pension plan wind up in Section 97. These provisions have been a matter of significant litigation in our Province. The Nova Scotia Court of Appeal held the current Section 79 (now renumbered to Section 97) was clearly intended to benefit employees,

and particularly those affected by plant closures: Hawker Siddeley Canada Inc. v. Nova Scotia (Superintendent of Pensions), 1994 CanLII 4141 (NS CA)

65. We are concerned about the "transfer" provisions of Section 108. It is possible the successor plan will be an inferior pension plan. It leaves all of the details regarding the transfer to the employers. The beneficiaries only receive "notice" of the various intentions. The Federation is concerned employees, and their unions, and beneficiaries, will be the "last to know" about their pension plan and its benefits in a sale or transfer situation.
66. Further, the Federation is concerned the prior employer could be entitled to "surplus" while the employees continue to work under the provisions of a successor plan which, as indicated, could provide inferior benefits.
67. The Federation of Labour is concerned about the effect of the provisions of Section 111 regarding the **Companies Creditors Arrangements Act** and the **Bankruptcy and Insolvency Act**. Often times, unions or employees do not get adequate notice of these types of corporate proceedings and are unable to make submissions regarding their pensions, or the solvency issues regarding their pension plans. We do not want the *Pension Benefits Act* of our Province to give greater priority to creditors than beneficiaries under pension plans. We would like to see the Regulations proposed for this provision prior to proclamation.
68. The Federation of Labour supports the amendments which eliminate the process of applying for "reconsideration" of a decision of the Superintendent of Pensions, and further, supports the appeal to the Labour Board, with proper provision for judicial review of any subsequent decision. (Section 115 of the Bill).
69. The Federation of Labour does not agree with the provisions of Section 23(2) of the Bill which will allow amendments to be made retroactively. The Federation suggests this should only be permitted where the Superintendent determines the amendment will not have a negative effect on the beneficiaries.
70. The Bill makes a distinction between an "administrator", an "advisory committee" [Section 18(3)(c) and Section 36] and a "pension committee" [Section 18(3)(b); Section al] with different degrees of legal and fiduciary responsibilities. The Federation is concerned employees receive sufficient and tailored education to ensure they

understand the nature of their responsibilities. This is particularly the case in a situation where employees are not represented by an exclusive bargaining agent.

71. The Federation of Labour supports the provisions of Section 63(2) and Section 67 of the Bill to provide 100% of the benefit to survivors/widows.
72. The Federation of Labour is concerned the provisions of Section 34 might allow an employer to charge for its bookkeeper out of the assets of the pension plan, merely by amending the pension plan to allow for such payment.
73. We support the provisions of Section 56 of the Bill which appear to allow defined contribution plan beneficiaries to purchase Life Income Funds upon retirement, rather than "capitalizing" the pension account on a day when the "market" value might be significantly lower.
74. Section 73 of the Bill should be amended to delete the reference to "Old Age Security". Pension benefits are often integrated with CPP benefits. However, the Federation is opposed to "clawing back" OAS benefits from a workplace pension plans.
75. Section 13(c) contains a typographical error – it should say "OF THIS ACT", rather than "OR" this Act.
76. We are concerned Section 104(9) is missing some words between (7) and the word "prevails" as follows:

104(9) Before entering into a written agreement described in ss (7) xxxxxx prevails over any document that creates and supports the pension plan and pension fund, over subsections (2), (3) and (4), and notwithstanding any trust that may exist in favour of any person.
77. The Federation of Labour thanks the members of the Law Amendments Committee for this opportunity to suggest amendments to the *Pension Benefits Act*.

APPENDIX "A"
NOVA SCOTIA FEDERATION OF LABOUR
JULY RECOMMENDATIONS TO THE 2008 PENSION REVIEW PANEL

1. The NSFL proposes that the Pension Review Panel should reiterate the established consensus regarding the security of, and preference for, secure, defined benefit type pension plans.
2. The NSFL proposes that the Pension Review Panel recommend feasible approaches for expanding workplace DB plan coverage and/or ways in which to initiate a broad-based debate on the necessary expansion of the public pension system such that all ~~Ontarians~~ Canadians have financial security in retirement.
3. The NSFL proposes that the Pension Review Panel directly address the corrosive effects of privatization and P3s on pension plan coverage in Nova Scotia. Further, it is important that the Pension Review Panel call for the clarification of statutory and common trust law as it applies to pension investment in order that decisions by pension fund trustees to expressly avoid investments in P3s and other forms of privatization that threaten unionized, public sector employment (and the pension coverage that such employment generally provides) are clearly permitted. Further, the NSFL proposes that language be added to the PBA, making it legitimate for pension trustees to consider social, ethical and environmental principles.
4. The Nova Scotia Federation of Labour strongly believes that full indexing should be mandatory under the Nova Scotia Pension Benefits Act (PBA) and urges the Pension Review Panel to so recommend. Indeed, the PBA already contains a provision to provide indexing protection, but successive Nova Scotia governments have never introduced the regulation required to enact it.
5. This indexing protection should extend to accrued and deferred pensions as well.
6. The NSFL proposed that the Pension Benefits Act be amended to provide that there be no contribution holidays unless there is a surplus margin of a least 10%. Second, any use of surplus, whether improvement or contribution holiday, should be subject to the approval of all bargaining agents (if any) and/or an appropriate majority vote of affected plan members.

7. The NSFL proposes that Pension Review Panel recommend that the current disclosure requirements of the PBA be expanded to require that copies of the documents that must be disclosed to plan members be provided to all plan members so requesting in a timely fashion. The concept of providing a copy for "inspection" on the employer's premises should be discontinued. Further, we propose that the content requirements for the members' annual statement be expanded to include the same annual disclosure of surplus applications to meet employer current service cost as is currently required for the Annual Information Returns.
8. The NSFL proposes that the Pension Review Panel explicitly recognize the important regulatory and enforcement role played by trade unions within the existing framework of pension plan governance. For example, where trade unions represent plan members and elect to establish a Joint Trust, we feel that the pension legislation *should make such governance improvements mandatory. This will necessitate a program of trustee education and provisions to protect members trustees with respect to the whistle blowing requirement discussed in Section 10 of this submission.* Even in the absence of trade union representation, we would recommend expanding the scope for plan member representation on pension committees (alongside the improvements to disclosure and communication advocated elsewhere in this submission). Finally, we propose that the role and mandate of the pension regulator be fully reviewed and that the Pension Review Panel ensure that the Office of the Superintendant of Pensions is provided the resources and mandate to fulfill its obligations.
9. The NSFL believes that the PBA should be amended to require immediate vesting when an employee joins a pension plan. Immediate vesting is already the law in the province of Quebec. In support of the same principle of "locking in" entitlements, we are opposed to moves to unlock or otherwise weaken the vesting system in Nova Scotia. In recognition of the growing percentage of the "non-pension covered" workforce that is precariously employed and part-time, we also recommend that pension plan participation be made compulsory for part-time workers where it is compulsory for full-time workers.
10. The NSFL proposes that the Pension Review Panel recognize and support the fundamental security provided by the existing funding framework, and consider mechanisms to require that any proposals to extend or otherwise reduce the solvency funding obligations be subject to the approval of plan member trade unions (if any) or a two-thirds majority vote of plan members where no trade union exists. The NSFL is

opposed to any proposals that will allow administrators to replace real special payment (deficiency) funding with alternatives such as Letters of Credit. Finally, we urge the Pension Review Panel to recommend that the regulatory framework be amended such that the role of trade unions in situations of funding difficulties be enhanced and facilitated.

11. The NSFL recommends that Nova Scotia follow the Québec model on the fiduciary responsibility of plan agents, and amend the PBA such that all agents of a pension plan be listed and named as fiduciaries under the Act. Second, we also recommend that the Act prohibit contractual limitations on the liability of service providers. Third, the NSFL proposes that comprehensive whistle blower protection be provided in the PBA.
12. The NSFL recommends that the PBA be amended such that the value of the accrued pension, once an individual stops participation in a plan, is protected through the mandatory extension of any indexation provided to those pensions that have been deferred. Second, the NSFL recommends that the Pension Review Panel initiate a discussion on how to make the transfer option more practical and viable in private sector plans. In plans that currently allow reciprocal transfers there needs to be a consideration of ways to ensure transferring members do not lose pension value.
13. The NSFL believes that a properly funded program, similar to the PBGF in Ontario, would provide security to Nova Scotians who are members of underfunded defined Benefit Plans. However, any program of this nature should be indexed, and we recommend that the coverage, in the range of 2,750 per month would be more appropriate.

APPENDIX "B"

SUMMARY OF DECEMBER 1, 2011 PROPOSALS OF THE NOVA SCOTIA FEDERATION OF LABOUR

1. The *Canada Pension Plan* should be expanded by way of a phased in implementation of a replacement rate of 50% of the average wage to be funded through a seven year phased-in gradual increase in mandatory employer/employee contribution rates to the CPP to pay for this increased replacement rate.
2. Within three years of the proclamation of the *Pension Benefits Act*, every employer in Nova Scotia must create and offer a defined benefit pension plan to **all of its employees** (including part time employees) with a minimum level of employer and employee contributions, and a jointly trustee model for the administration of the pension plan fund.
3. Nova Scotia should not introduce enabling legislation for "pooled registered pension plans".
4. If enabling legislation for "pooled registered pension plans" is introduced, the legislation should prohibit the conversion of an existing defined benefit workplace pension plan to a PRPP.
5. The *Pension Benefits Act* and Regulations should explicitly allow pension plan administrators to consider social, ethical, environmental principles when making investment decisions.
6. The *Pension Benefits Act* and Regulations should require an administrator to file an annual investment policy, within a list of acceptable investments provided by the Act and Regulations.
7. The *Pension Benefits Act* and Regulations should require all proposals to extend or otherwise reduce solvency funding obligations should be subject to the approval of plan member trade unions (if any) or a two-thirds majority vote of plan members where no trade union exists.

8. The *Pension Benefits Act* and Regulations should prohibit the use of "letters of credit" to replace real special payment (deficiency) funding. Section 77 of Bill 96 should be deleted.
9. The *Pension Benefits Act* and Regulations should require every workplace pension plan to provide full indexing of pension benefits payable, including accrued, deferred benefits, matched to the Nova Scotia inflation rate, with a transition period to allow for pension plans currently in financial difficulty to return to a healthy funding balance.
10. Unless the expenses are for pension plan benefit improvements, the *Pension Benefits Act* and Regulations should be amended to ensure pension plan fund surplus can only be used if the fund will remain at 110% solvency following the allocation of surplus, not the 105% proposed by Section 105(d) of the Bill.
11. The *Pension Benefits Act* should require administrators to provide funding and payment information to pension plan members on an annual basis, similar to what administrators are already required to file with the Superintendent on an annual basis.
12. The *Pension Benefits Act* should be amended by deleting Section 76 which permits contribution holidays.
13. Section 86 of the *Pension Benefits Act* should be eliminated as we believe an employer very rarely "over contributes".
14. The *Pension Benefits Act* should indicate a date for the entitlement to a vested deferred pension in Section 53 of the Bill, rather than leaving the right to some unknown date when the subsection "comes into force".
15. Section 70 of the Bill should be amended to remain at 10%, rather than increase to 25%.
16. The *Pension Benefits Act* should be amended to create a Pension Benefits Guarantee Fund like the one which exists in Ontario. It would be funded by contributions by all workplaces in the Province to support the workplace pension plans. The benefit coverage should provide up to \$2,750 per month, and the benefits payable should be fully indexed.
17. Section 33(4) and (6) of the Bill should be amended to impose fiduciary obligations and liabilities on all agents of a pension plan, not just the administrator.

18. The *Pension Benefits Act* should expressly prohibit any contract which proposes to place a limit on the liability of any service provider.
19. Section 18(4) and Section 36 of the Bill regarding representation by retirees should prohibit a unilateral appointment of a retiree by an employer. Further, the Bill should restrict the ability of retirees to impose contribution increases on active employees. Finally, where employees are represented by bargaining agents, they should deal with the issue of representation of retirees.
20. The Federation of Labour suggests the Bill should allow "jointly sponsored pension plans" only where employees are represented by a certified bargaining agent.
21. Similarly, the Federation of Labour suggests the Bill should allow "a multi-employer pension plan" only where employees are represented by a certified bargaining agent.
22. The Federation of Labour submits "target" pension plans should only be permitted where the pension plan is governed by a "joint trust" model with an express provision which requires the plan to be governed in the interests of the plan members, actives, deferred and retired beneficiaries. These interests must particularly govern decisions regarding benefit reductions, in the event they are required.
23. The PBA should expressly prohibit an employer from converting an existing defined benefit pension plan to a "target" pension plan.
24. Section 57 should be amended to restrict the situations where a target pension plan can actually reduce benefits to one where the funding or solvency situation requires it. The PBA should not simply allow the target pension plan to be able to reduce benefits without some criteria.
25. The *Pension Benefits Act* should require plan administrators to provide a separate, plain language report of the actuarial cost impact of Phased Retirement systems on pension plans.
26. The proposed regulations should not be enacted without a thorough consultation with the Federation prior to implementation.

27. Section 23(2) of the Bill should prohibit retroactive amendments where the Superintendent determines the amendment will have a negative effect on the beneficiaries.
28. The Bill should require education for employees who will become members of an "advisory committee" [Section 18(3)(c) and Section 36] or a "pension committee" [Section 18(3)(b);Section al] particularly where employees are not represented by an exclusive bargaining agent.
29. Section 73 of the Bill should be amended to delete the reference to "Old Age Security".
30. Section 13(c) contains a typographical error – it should say "OF THIS ACT", rather than "OR" this Act.
31. Section 104(9) is missing some words between (7) and the word "prevails."