

December 6, 2011

By Fax: 424-0547

Mr. Gordon Hebb, Q.C.
Legislative Counsel
Ninth Floor
Joseph Howe Building
1690 Hollis Street –
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Halifax, NS B3J 2X1

Dear Mr. Hebb:

Re: Law Amendments Committee – Bill No. 96 – *Pension Benefits Act*

On Thursday, December 1, 2011, I appeared before the Law Amendments Committee on behalf of the Mainland Nova Scotia Building and Construction Trades Council and the Cape Breton Island Construction and Building Trades Council to make submissions on Bill No. 96 with respect to its application to jointly trustee, multi-employer pension plans in the unionized construction industry in Nova Scotia (“MEPPs”).

Following my presentation, Mr. Howard Epstein, the MLA for Halifax Chebucto, posed a question that I was not able to answer at the time. Mr. Epstein asked whether MEPPs in Nova Scotia have a dispute resolution mechanism in the event the Trustees are unable to agree on how to respond to a need to reduce the benefits provided by these pension plans. The following is my response to this question.

The Trust Agreements that establish each of the MEPPs in the unionized construction industry in Nova Scotia include a dispute resolution mechanism to resolve deadlocks amongst Trustees. Each Trust Agreement provides for binding arbitration in the event of a deadlock.

By way of example, one Trust Agreement includes the following:

(v) Questions arising at any meeting of the Board of Trustees shall be decided by a majority of votes. The Chairman shall not have a second or casting vote in the event of a tie. Union Trustees and Employer Trustees shall have the right to cast an equal number of votes, notwithstanding the absence of a Trustee at any meeting. Accordingly, each Trustee of the smaller group shall be vested with additional voting power to equalize the voting power of the two groups.

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A deadlock shall be deemed to exist wherever a proposal, motion or resolution made by any Trustee is neither adopted nor rejected by a majority vote. In the event of a deadlock, a meeting of the Board of Trustees shall be held no later than ten days after the deadlock has arisen for the purpose of resolving the matter in dispute. If the matter is not resolved at such meeting, the Trustees will attempt to agree upon the designation of an impartial arbitrator to whom the matter in dispute shall be referred for determination. If, within ten days after the meeting called to break the deadlock, no impartial arbitrator has been agreed to, then any three Trustees may request the Minister of Labour for the Province of Nova Scotia to appoint an impartial arbitrator. The impartial arbitrator shall immediately proceed to hear the dispute between the Trustees and decide such dispute. The written ruling of the impartial arbitrator so agreed upon or so appointed shall be consistent with the provisions of the Agreement, the Eligibility Requirements, the Pension Plan, and other Plans, and shall be binding on the Board of Trustees. The reasonable compensation of such arbitrator and the costs and expenses (including without limitation reasonable compensation of such arbitrator) and the costs and expenses (including without limitation reasonable counsel fees and reports' fees) incidental to any proceedings instituted to break a deadlock shall be paid by the Trust Fund.

Another Trust Agreement includes the following similar provision:

16.07 Consensus Decision-Making and Voting

Decisions of the Trustees shall be by consensus. However, where a consensus cannot be reached, a vote may be held upon the request of any Trustee and the Chair shall have the right to vote in any such situation. A tie vote results in a deadlock. Notwithstanding the number of Trustees present, the Union and the Employer shall be deemed to have the same number of Trustees present for the purpose of any vote.

16.08 Deadlock Resolution and Arbitration

In the event of a deadlock, a meeting of the Trustees shall be held no later than 10 days after the deadlock has arisen for the purpose of resolving the issue or such later date as may be agreed upon by the Trustees. In the event that the deadlock is not resolved at such meeting, the motion shall again be called by the Chair. If the motion does not pass, the motion shall be referred to arbitration at the request of any two Trustees.

16.09 Arbitration pursuant to Article 16.08 above shall be conducted in accordance with this Section. Within forty-eight (48) hours after a deadlock has been declared, the dissatisfied Trustees shall declare their intentions to remit

the matter to binding arbitration. Failure to advise all the remaining trustees in writing within forty-eight (48) hours shall mean that there is no objection to the decision taken by the Trustees and that no arbitrator need be appointed pursuant to this Article.

16.10 In the event that proper notice is given, then the parties shall refer the outstanding issue for final offer selection to the arbitrator on the list set out in Schedule C who is first available to hear the matter. The arbitrator shall only have the authority to select the position of either Trustee and shall not have the authority to modify the position of either party. The decision of the arbitrator is final and binding and not subject to review at any time by any court. The costs of the arbitration shall be borne by the Fund. Each Trustee shall bear their own costs.

I note that these binding arbitration provisions have never been used in Nova Scotia or, to my knowledge, elsewhere in Canada. I note, as well, that no MEPP in the unionized construction industry in this province has ever reduced pension benefits for retirees.

I trust the foregoing addresses Mr. Epstein's question. I would be pleased to provide further information or clarification.

Yours truly,



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c. Clients