

March 16, 2009

**Via E-Mail: [pensions@fin.gc.ca](mailto:pensions@fin.gc.ca)**

Diane Lafleur  
Financial Sector Policy Branch  
Department of Finance  
L'Esplanade Laurier  
20<sup>th</sup> Floor, East Tower  
140 O'Connor Street  
Ottawa, ON K1A 0G5

Dear Ms. Lafleur:

**Re: Submission to the Committee Reviewing the Public Benefits Standards Act, 1985 –  
“Strengthening the Legislative and Regulatory Framework for Defined Benefit  
Pension Plans Registered under the Pension Benefits Standards Act, 1985”**

**1. Introduction**

A group of disgruntled former employees and pensioners of Marine Atlantic Inc. formed a committee in 2005 to represent more than 1400 Marine Atlantic employees and pensioners who were not afforded a distribution of the surplus which accrued in the Marine Atlantic Pension Plan (the “MAI Pension Plan”) at the time of their termination from employment with the Company during the period 1997 – 2000 (the “MAI Pension Committee”), commencing with the August 15, 1995 decision of the management of Marine Atlantic to implement a substantial reduction in the workforce over a five year period.

The undersigned is a member of the MAI Pension Committee, a former employee of the Company and is acting as one of its legal counsels in this matter. The undersigned is submitting this brief on the MAI Pension Committee’s behalf. **The MAI Pension Committee agrees to have its written submissions posted for public survey on the PBSA Review Committee’s website.**

This brief was previously submitted to the **Committee Reviewing the Public Benefits Standards Act, 1985** by letter dated September 15, 2005 to Ms. Diane Lafleur. The brief has been updated to include events which have occurred between 2005 and 2009.

The MAI Pension Committee will not make an oral presentation before your Committee.

## 2. **The History**

Three specific partial terminations of the MAI Pension Plan were submitted to the Office of the Superintendent of Financial Institutions during the 1997-2000 period as follows:

- (a) Partial Plan Wind-Up Report – March 1997 – Bay of Fundy Service;
- (b) Partial Plan Wind-Up Report – September 1997 – PEI Service;
- (c) Partial Plan Wind-Up Report – December 2001 – Labrador Service and Moncton Head Office;

The 1400 plus Marine Atlantic employees as represented by the above three groups were terminated by the Company without being provided with a distribution of their portion of the surplus funds in the MAI Pension Plan at the time of their terminations. At the time of the terminations the MAI Pension Plan contained a substantial surplus of funds. Rather than make allowance for the pension rights (including the existing surplus) accruing to the terminated employees, the Company, in 1999 and 2000 provided a “pension holiday” for then current employees of the Company as part of the wage negotiations between management and the employees during those years. Thus, the Company used the MAI Pension Plan surplus to satisfy wage and benefit demands of existing employees without making any payment or improved pension benefits to previous employees or pensioners whose contributions to the MAI Pension Plan in prior years gave rise to the surplus which was paid out in 1999 and 2000.

An attempt by the MAI Pension Committee to have the Office of the Superintendent of Financial Institutions (OSFI), the Federal Government agency responsible for monitoring all Federal Government pension plans, require Marine Atlantic to redress this situation was refused. In a ruling dated August 8, 2005 OSFI denied the MAI Pension Committee’s requests for an order requiring Marine Atlantic to:

- (a) refile the partial termination reports filed with respect to the PEI Service, the Bay of Fundy Service and the Labrador/Moncton Head Office Service during the period 1997-2000; and
- (b) include a calculation of the pension surplus available at those times; and
- (c) include a plan on how the surplus was to be distributed to the employees who were being terminated.

The MAI Pension Committee then applied to the Federal Court of Canada for a judicial review of OSFI's August 8, 2005 decision by application filed by the Committee's Toronto legal counsel, Mr. Ari Kaplan of the Koskie Minsky law firm. The application was heard before the Federal Court of Canada in Toronto by Justice Roger T. Hughes. Justice Hughes issued his decision on May 1, 2007. In his decision, Mr. Justice Hughes found that the claim of two of the pensioner groups was out of time having been commenced beyond the time period permitted by the legislation. However with respect to the remaining group of pensioners Justice Hughes determined that the PBSA should be interpreted in the same manner as the Ontario pension legislation which was the subject of the Monsanto decision. Thus a pension surplus under the Federal legislation must be paid out to employees as part of a partial termination of the pension plan when a structural termination of employment occurs.

Marine Atlantic, the Attorney General of Canada and the MAI Pension Committee appealed Mr. Justice Hughes ruling on May 30, 2007. Marine Atlantic and the Attorney General appealed the partial termination ruling and the MAI Pension Committee appealed the timeliness issue to the Federal Court of Canada. The Federal Court of Appeal heard the appeals in Toronto on May 20, 2008 and rendered its decision on June 26, 2008. The Court dismissed the MAI Pension Committee's appeal on timeliness and overturned Justice Stevenson's decision on the partial termination issue. On the partial termination issue the Court found that a fair interpretation of the PBSA does not allow for a finding that a pensioner would be entitled to a partial distribution of the a surplus in the MAI Pension Plan in circumstances of a partial termination of employment. However the FCA decision only related to an interpretation of the wording of the PBSA. It did not address the wording of the MAI Pension Plan or its predecessor plan, the 1936 CN Pension Plan. If the wording of the MAI Pension Plan and/or the 1936 CN Pension Plan provides that the pensioners own the surplus in the plans upon termination of the pension plan then a strong argument exists that the surplus would have to be distributed in the event of a partial termination of the pension plan. The MAI Pension Committee is presently considering its future strategy with respect to its legal alternatives in consultation with its legal advisors at the present time.

The MAI Pension Committee sought leave to appeal the FCA decision but was denied leave on March 5, 2009. The MAI Pension Committee is presently considering its future legal strategy in consultation with its legal advisors.

Mr. Kaplan was involved in the leading case on the partial termination of pension plans in the Supreme Court of Canada, namely the 2004 *Monsanto Canada Inc. v. Ontario Superintendent of Financial Services*, which established the principle that employees involved in partial terminations of pension plans, as regards distribution of pension plan surpluses, must be treated in the same manner as pensioners and employees when a pension plan is totally terminated.

### 3. MAI Pension Committee Membership

The MAI Pension Committee is made up of the following former employees of the Company:

- (a) **Chairperson:** Donna Keith – Ms. Keith last held an administrative position at the Company's head office in Moncton and was terminated in 2002. She opted to remove her pension funds from the Pension Plan and invest them herself. She did not receive any portion of the Pension Plan surplus which existed at that time;
- (b) Philip Mountain – Mr. Mountain held the position of Operations Manager of the Bay of Fundy Service when he was terminated in 1998. He opted to remove his pension funds from the Pension Plan and invest them himself. He did not receive any portion of the Pension Plan surplus which existed at that time;
- (c) Mr. Dana Cousins – Mr. Cousins was terminated during the 1997 partial termination of the Pension Plan when the Bay of Fundy Service was closed. He did not receive any portion of the Pension Plan surplus which existed at that time;
- (d) Ms. Nancy Cousins – Ms. Cousins was terminated during the 1997 partial termination of the Pension Plan when the Bay of Fundy Service was closed. She did not receive any portion of the Pension Plan surplus which existed at that time;
- (e) Mr. Charles McNally – Mr. McNally was terminated during the 1997 partial termination of the Pension Plan when the PEI Service was closed. He did not receive any portion of the Pension Plan surplus which existed at that time;
- (f) Mr. Chris Kenny – Mr. Kenny was terminated during the 1997 partial termination of the Pension Plan surplus which existed at that time. He did not receive any portion of the Pension Plan which existed at that time;
- (g) Ms. Linda Waite – Ms. Waite was terminated during the 1997 partial termination of the Pension Plan surplus which existed at that time. She did not receive any portion of the Pension Plan surplus which existed at that time;
- (h) Mr. Jim Youden - Mr. Youden is a former corporate officer of Marine Atlantic Inc. His employment with Marine Atlantic was terminated on November 1, 1995 when Marine Atlantic, as part of the workforce reduction commenced in August 1995, closed the Law & Risk Management Department in its entirety. Mr. Youden left his pension funds in the Pension Plan and became a pensioner of Marine Atlantic in July 2002. The benefits in the

Pension Plan accruing to Mr. Youden were frozen as of his termination date (November 1, 1995) and he has received no benefit from the Pension Plan surplus which existed at that time, either by way of cash settlement or Pension Plan improvement;

- (i) Mr. Harry Pardy – Mr. Pardy was employed in the Labrador Service when his employment was terminated in 1997 as part of the closure of the Labrador/Moncton Head Office Services. He did not receive any portion of the Pension Plan surplus which existed at that time.

#### 4. **Political Intervention**

The MAI Pension Committee also complained about the Company's actions regarding the MAI Pension Plan surplus to the Minister of Finance, The Honorable Ralph Goodale. By letter dated June 26, 2005 Mr. Goodale advised as follows:

“On a related matter, you should be aware that the Department of Finance recently released a consultation paper entitled *Strengthening the Legislative and Regulatory Framework for Defined Benefit Pension Plans Registered under the Pension Benefits Standards Act, 1985, ...*

You should note that the paper addresses many issues related to federally regulated defined benefit plans including the distribution of pension plan surpluses and a range of options respecting pension plan terminations, which could result in legislative changes to the *Pension Benefits Standards Act, 1985* and its regulations. I would encourage you and your former colleagues to participate in this process by making a formal submission.”

In accordance with Mr. Goodale's suggestion the Committee submitted a brief to the 2005 *Pension Benefits Standards Act* Committee (the “PBSA Review Committee”) to provide the MAI Pension Committee's views on the distribution of pension surpluses in partial termination situations.

The failure of the Company to distribute the MAI Pension Plan surplus to terminated employees is not a new issue for Marine Atlantic employees and pensioners. A group of employees and pensioners from the PEI Service wrote to the then Minister of Industry, Mr. Brian Tobin, on 9

April 2001. They did not receive a satisfactory response and indeed no governmental action ensued as a result of this petition of assistance. A copy of this letter is enclosed herewith for your easy reference.

The MAI Pension Committee believes that the Company's actions with respect to the administration of the pension surplus are unfair and contrary to law. To date the Company has maintained an adversarial stance in its responses to the MAI Pension Committee's concerns. The MAI Pension Committee believes that it will require a court decision and Federal Government intervention to have this problem addressed equitably for all Marine Atlantic pensioners and former employees involved.

The MAI Pension Committee estimates that hundreds of former employees and pensioners of the Company's Halifax, Moncton, Yarmouth, St. John's offices and its PEI, Bay of Fundy and Labrador services could be affected by Marine Atlantic's failure to properly account for and distribute the Marine Atlantic Pension Plan surplus during the workforce reductions which took place in the 1995-2000 period.

## 5. **Submission**

Please accept this letter as the MAI Pension Committee's submission regarding its position relating to the pension surplus distribution issue arising under the *Public Benefits Standards Act, 1985*.

### Issue:

This submission deals with the distribution of pension plan surpluses when a pension plan is partially terminated as occurred on several occasions during the 1990's within Marine Atlantic Inc., a parent Crown Corporation of the Federal Government of Canada.

The issue being raised by the MAI Pension Committee is the same as that stated by the Ontario Court of Appeal in the *Monsanto* case as follows:

*"The central issue in this case is whether an employer who implements a partial wind up of its defined benefit pension plan has a legal obligation to distribute that part of the actuarial surplus then in the plan that is attributable to the members of the plan who are affected by the partial wind up."*

The Supreme Court of Canada addressed this issue and found in favor of the employees. A partial termination of a pension plan must be treated the same as a complete termination of a pension plan. The MAI Pension Committee believes the surplus in the Marine Atlantic Pension Plan at the times of the restructurings in the 1990s belonged to the employees. The discussion following addresses this position.

Background:

Commencing with a memorandum to employees dated August 15, 1995 the then President of Marine Atlantic Inc., Mr. Rod Morrison, outlined a workforce reduction scheme within the Company which would lead to a significant downsizing of the Company's workforce. The scheme was implemented immediately thereafter on November 1, 1995 with the closure of the Law and Risk Management Department. It continued with the closures of the Bay of Fundy Service, the PEI Service, the Labrador Service and the Moncton Head Office. Some of the employees affected left their pension funds within the Pension Plan while others opted to take their pension entitlement with them to invest as they saw fit in accordance with their personal circumstances. As the MAI Pension Committee understands the process at the time, no discussion was initiated by the Company with the terminated employees about the treatment of the surplus in the MAI Pension Plan at the time of the partial terminations of the MAI Pension Plan.

Therefore as the Company continued its workforce reductions in the years following 1995, no consideration was given to any distribution of pension surplus for the benefit of each of the terminated employees at the time of their termination from employment. As previously advised the Company's Bay of Fundy service was closed in 1997, its PEI service in 1997 and its Labrador service and Headquarters office in 2000.

The end result of these closures was that hundreds of employees of the Company were terminated and given the choice, if permitted, to leave their pension funds within the MAI Pension Plan or remove their funds from the MAI Pension Plan and invest these funds in accordance with each terminated employee's decision based on their individual circumstances.

However, all of the terminated employees are aware that Marine Atlantic, in 1999 and 2000, after the downsizing of the employee base in the 1990's, did provide a "pension holiday" for remaining employees of the Company. Thus these employees not only retained their positions within the Company, but they gained improved benefits to the MAI Pension Plan which occurred during their employment and, most gratifying of all, they received the added benefit of not having to contribute to the MAI Pension Plan for the basic benefits nor for any improvements to the MAI Pension Plan. The employees who were terminated in the 1990's and were forced to leave the

Company before they reached pension status, were not entitled to improvements to the MAI Pension Plan which may have occurred in the interim between their termination date and the date they became entitled to a pension. This is unfair.

Additionally, those employees who removed their pension funds from the MAI Pension Plan upon termination were denied their right to a distribution of the MAI Pension Plan surplus which had accrued to the MAI Pension Plan during their time of employment, and for which they contributed their share of the cost. Yet the employees who remained with Marine Atlantic, many of whom did not contribute in a meaningful way to the development of the surplus, received the benefit of the surplus in the guise of a "pension holiday". Where in the MAI Pension Plan is it stated that such a holiday can be permitted? What legal advice did Marine Atlantic obtain before deciding to implement this "pension holiday" policy? Also, where is the justice in favoring one group of employees over another group in this manner?

#### Specific Illustrations:

As an illustration, at the time of his termination on November 1, 1995, Mr. Youden left his pension funds in the MAI Pension Plan until his retirement date (July 21, 2002). He received no further improvement to his pension plan entitlement from the date of his termination on November 1, 1995 to the date of the commencement of his pension entitlement on July 21, 2002. In effect his pension benefits were frozen as of his termination date even though the MAI Pension Committee understands that the MAI Pension Plan had surplus funds at that time.

The MAI Pension Committee further understands that the MAI Pension Plan has undergone improvements to the benefits offered during the intervening period and, as well, current employees were given a pension contribution holiday (1999-2000) which was financed by the surplus in the Pension Plan which accrued during the years of Mr. Youden's employment with the firm. He has not received any benefit from the surplus in the MAI Pension Plan for which his personal pension contributions were at least partially responsible. As well, when one considers that the termination of his employment was a Company policy and not one voluntarily taken, the inequity is all the more apparent. No partial termination report was filed with OSFI; by the Company with respect to Mr. Youden's termination.

As one can appreciate the situation is even more unjust for those, such as Philip Mountain, who took his pension funds with him. These employees did not receive any portion of the MAI Pension Plan surplus which had accrued up to the date of their termination. The financial surplus in the MAI Pension Plan at the time of the termination of their employment should have been distributed to them at the time of their termination. This would have allowed these employees to make use of these surplus funds together with their other pension funds to build a retirement fund

to protect them in the future. They were denied the opportunity to manage their share of the MAI Pension Plan surplus accruing to them for their future retirement benefit. No partial termination report was filed with OSFI by the Company with respect to Mr. Mountain's termination.

With respect to the terminations of Ms. Donna Keith, Ms. Linda Waite, Ms. Nancy Cousins, Mr. Dana Cousins, Mr. Harry Pardy and Mr. Charles McNally, partial termination reports were filed by the Company with OSFI. However no consideration was given in those partial termination reports to a distribution of the then existing pension plan surplus to these entitled employees.

Discussion:

How was Marine Atlantic able to decide on this unilateral "pension holiday" decision without contacting or receiving the approval of the appropriate regulatory bodies, such as OSFI, among others? If Marine Atlantic did seek such approvals, on what basis were they granted by these regulatory agencies?

As a fiduciary of the MAI Pension Plan, does not the Board of Directors of Marine Atlantic have a duty to ensure that all beneficiaries of the MAI Pension Plan are treated in an even handed and equitable manner? One would naturally assume that the duty on the administrators of the MAI Pension Plan is to ensure that all beneficiaries share in the proceeds of any distribution of a pension surplus, and, at a minimum, that the interests of all parties be considered in any such distribution.

It is even more galling when one considers that the Company provided no recognition of the pension surplus by way of greater termination benefits to employees who were forced out of their employment with Marine Atlantic, but provided remaining employees a pension contribution "holiday" funded by this same surplus - a pension surplus which had accrued in the years when the terminated employees were full time employees! Thus long standing employees who were terminated by Company policy and mandate received no benefit from this surplus which they helped to create, while many employees who continued to be employed and did not contribute as long to the MAI Pension Plan, received a direct financial benefit by the pension contribution "holiday".

Under the *Monsanto* decision, terminations of pension plan raise the surplus distribution issue. The Supreme Court of Canada in the *Monsanto* decision determined that employees in a partial termination situation were entitled to the same right to a distribution of any pension plan surplus as employees in a total termination of pension plan situation. Although *Monsanto* dealt with provincial pension plans, the principle should still apply to Federal pension plans,

notwithstanding the recent *Cousins* ruling of the Federal Court of Appeal. Indeed OSFI participated in the **Monsanto** decision with contrary arguments and lost. OSFI has now rendered a negative decision to the submission by the MAI Pension Plan Committee seeking a distribution of the surplus accruing to the Marine Atlantic Pension Plan arising out of the partial terminations of the pension plan which occurred in the 1990's.

We understand that the request to OSFI by the MAI Pension Committee may have been the first submission of a partial termination of a Federal pension plan to OSFI.

The developed law on the subject clearly states that partial terminations of pension plans are to be treated similarly to complete terminations of pension plans. Therefore there is no good and valid reason to:

- (a) delay calculation of the MAI Pension Plan surplus during the relevant times; and
- (b) delay providing a list of the Marine Atlantic pensioners entitled to receive a direct financial benefit from such a pension surplus distribution. The surplus figures should be readily available from the pension records in the hands of Marine Atlantic. To date, Marine Atlantic has not provided these figures. The list of Marine Atlantic pensioners who should be entitled to share in this distribution should be also readily available from the Company's records. As you will note from the articles enclosed with the CMHC situation, the preparation of such a list of former employers and pensioners was not deemed to be an insurmountable obstacle for CMHC.

Clearly there cannot be any rational excuse to refuse a request from terminated employees for a proper distribution of a pension surplus which existed at the time of their termination when the same Company which terminated them saw fit to use the surplus to benefit remaining existing employees. Surely this "pension holiday" payment demonstrates that a surplus existed within the MAI Pension Plan and that the surplus should be distributed to employees? The Company therefore recognized that the surplus belonged to employees but only paid it to current employees and not to the group of employees who played the largest role in the accrual of this surplus. This group of employees received no benefit from the pension surplus distribution by the Company. How can the Company be entitled to use pension funds in this manner? The Company avoided having to pay raises from operating funds to current employees by giving them a distribution of a pension surplus trust funds to which these employees, at least in part, were entitled to receive in the first place!

The use by the Company of the “pension holiday” technique was a unilateral business decision to use trust funds in the MAI Pension Plan to pay for current employment wages. Of course, this enabled the Company to avoid negotiations with their current employees on salary increases and other employment benefits. The Company simply paid a wage increase to the existing employees out of monies which should have been distributed to already terminated employees. As well, the “pension holiday” was able to continue for a longer period of time because all terminated employees and pensioners did not receive their rightful share in this surplus distribution. This is just one example of the inequities that can arise when equitable principles are not followed.

This is not a new issue. By way of history and examples, The MAI Pension Committee encloses the following news articles and correspondence which set out the importance of these issues in Canada at the present time:

- (a) A letter dated April 1, 2001 from the Marine Atlantic PEI Pensioners Committee to the then Minister of Industry, Brian Tobin, which raised these precise issues, without result;
- (b) An article from the Business Reporter of the Halifax Chronicle Herald relating to a lawsuit launched by Royal Trust pensioners in Nova Scotia regarding rights to a pension surplus;
- (c) An article from the Canadian Press regarding a class action suit by Royal Trust retirees against the Royal Bank of Canada regarding ownership of the pension surplus;
- (d) An article from the Canadian Press regarding CMHC’s payment of its pension surplus to employees and retirees.

It is the Committee’s hope that this unjust and inequitable situation can be rectified before many of the present pensioners who should have benefited from this MAI Pension Plan surplus die.

The MAI Committee herewith requests that the PBSA Review Committee recommend to the Federal Government to take immediate steps to clarify this unfair situation by amending the PBSA to ensure that the rights provided to pensioners on a partial termination of employment under the Ontario legislation be provided to Federal workers as well. The Cousins decision of

Diane Lafleur  
Financial Sector Policy Branch  
Department of Finance  
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the Federal Court of Appeal should not be permitted to allow a pension plan administrator to treat Federal employees differently than provincial employees.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,

**METCALF & COMPANY**



James D. Youden

Encls.

9 April 2001

The Honourable Brian Tobin  
Minister of Industry  
C.D. Howe Building  
235 Queen Street  
Ottawa ON K1A 0H5

Dear Minister:

We are writing to seek your support on several matters of deep concern to pensioners of Marine Atlantic Inc. We believe we have been dealt a severe injustice by this Crown corporation, and as senior regional minister for Atlantic Canada we believe you may be in a position to intercede on our behalf.

It may be useful to review the corporate evolution of Marine Atlantic. As you will recall, prior to 1985 the primary federally-funded ferry services in this region were entrusted to Canadian National. Actual operation was performed through a subsidiary known as CN Marine.

By Order in Council, effective 1 January 1985, CN Marine became a separate Crown corporation. The company was retained following passage and proclamation of the enabling legislation. Among other things, the employee pension plan was separated from that of the former parent company. Initially, it was identical to that of CN, but with the passage of time both plans have evolved.

At the time, there was a commitment made that Marine Atlantic people would be treated no less favourably than their former colleagues at CN.

Over the years the Marine Atlantic pension plan prospered, and a significant surplus accumulated in the fund between 1986 and 1998.

During the last round of collective bargaining, pensioners were shocked to discover that Marine Atlantic was using this surplus to, in effect, buy a settlement with its unions through a two year pension contribution holiday for active employees.

We, the pensioners, feel that this contribution holiday was tantamount to a distribution of pension surplus to those who have the least invested in the plan. All these active employees have received approximately six percent of earnings in each of the two years with no recognition of service or time invested in the plan. In a true distribution of surplus, all members, including pensioners, should share in the surplus utilizing an equitable formula giving recognition of time and contributions invested in the plan. The majority of all members should have say in such distribution.

This principle guided a recent distribution of surplus at Canada Mortgage and Housing Corporation, where all members of the plan including pensioners shared in the surplus by way of lump sum payments. In the case of Marine Atlantic, the existing pensioners are the largest single stakeholder in the plan, yet they had absolutely no input to this action by the company.

This injustice has resulted in considerable discontent among existing pensioners, and has resulted in the formation of Marine Atlantic pensioners organizations in North Sydney, Port aux Basques, Lewisporte, St. John's, Prince Edward Island and Moncton. We have attempted unsuccessfully to arrange a meeting with Captain Sid Hynes, chairman of Marine Atlantic. He did ask Mr. Vince MacLean, chair of the pension management committee, to meet with us. We met with Mr. MacLean on March 26<sup>th</sup> and presented our concerns. He indicated some sympathy for our position and promised to do his best to ensure pensioners are treated fairly, but he offered no specifics. We did appreciate his taking the time to meet with us, but we are seeking something more concrete.

While this particular matter is the event which galvanized us to action, it is not the sole issue for our associated groups. Our overall concerns can be summarized as follows:

1. We are seeking some form of compensation from the company in recognition of the inappropriate distribution of the pension fund surplus. There are a number of forms this could take, but it should be consistent with the principles outlined above. The precedent established by CMHC is an excellent model, and it is also noteworthy that our former parent company has recently made adjustments to pensions in recognition of improved financial performance of their pension trust funds.
2. Marine Atlantic has declined to make negotiated pension improvements applicable to existing pensioners. We feel this is unfair and this practice should change. Again noting an example from CN, a number of improvements have been made to their plan in areas of survivor benefits and the indexing formula, all of which applied equally to their pensioners. Therefore, we request that future improvements to the Marine Atlantic plan be extended to its pensioners as well, to be consistent with the commitment made in 1985.

3. Pensioners clearly represent the majority of the members of the Marine Atlantic plan, and in order to protect our interests we feel that the two pensioner representatives on the Pension Board that were left vacant and subsequently abolished be reinstated. Furthermore, pensioners should also have representation on the Pension Management Committee in much the same way as the bargaining agents do. It is also recommended that the pensioner nominees to the above be made by the pensioners.

We appreciate your taking the time to consider the above matters. Marine Atlantic pensioners believe that our proposals are reasonable, and certainly not without precedent. We look forward to a favourable response.

Yours truly,

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# Pension dispute could involve up to 50 people in Nova Scotia

By Bruce Erskine  
Business Reporter

A lawsuit launched by Royal Trust pensioners may involve as many as 50 Nova Scotian retirees.

"That's a guess," said Jim Beasant, 66, of Halifax, who worked at Royal Trust for 38 years before taking early retirement.

"It's difficult coming up with a number."

Royal Trust pensioners from across Canada launched a class-action suit in Ontario last week, asserting their rights to a massive pension fund surplus, estimated at \$150 million.

About 200 retired trust company employees formed a group, the Association for Pension Enhancement at Royal Trust, to spearhead the lawsuit.

The association represents an estimated 2,500 members of the Royal Trust plan.

Mr. Beasant, who was a branch manager at one of Royal Trust's three Halifax offices, said the action was launched because the Royal Bank refused to discuss the pension surplus issue with a committee representing Royal Trust retirees.

The committee is "trying to

determine who owns the surplus of the pension," Mr. Beasant said. "The Royal Bank has forced the hand of the committee."

Mr. Beasant said he hasn't heard from any other local Royal Trust retirees about the pension issue or the lawsuit.

Paul Starita, a spokesman for the retiree association, said it had no choice but to take the matter to court.

"The Royal Bank has indicated to us that it is not prepared to do anything unless we force them through the courts," he said Tuesday in a release.

Mr. Starita, a former president and managing partner of Royal Trust Investment Services (later part of the Royal Bank), said the suit is two-pronged.

"First, we want the court to establish once and for all, our rights to and ownership of our pension plan surplus — ownership which we believe to be very clear in all legal documents related to the pension plan," he said. The second issue relates to the overall management of the pension plan.

The lawsuit says Royal Trust and Royal Bank, which took over Royal Trust in 1993, breached their fiduciary duties by, among

other things, failing to carry out the terms of the pension plan, failing to calculate and pay benefits on a two per cent per year of pensionable service formula, and making unlawful and adverse amendments to the plan.

The suit, which makes 12 specific allegations, also claims punitive damages against Royal Trust and Royal Bank for "oppressive, arbitrary and high-handed conduct."

Royal Bank spokesman Graham Harris said the bank's position is that the surplus belongs to the pension plan, which is still in effect.

"We see the suit as without merit," he said, noting that the surplus benefits plan members by stabilizing the pension plan against market volatility.

Mr. Starita said the pensioners group doesn't know the exact number of retired employees affected by the suit.

"We have been unable to obtain this information and thus have not been able to contact them all."

The retiree group is trying to notify Royal Trust pension plan members of the court action. Plan members can call (519) 672-9330 or visit [www.apert.net](http://www.apert.net)

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Paul Starita,, spokesman for about 200 former Royal Trust employees, answers questions during a news conference in Toronto on Tuesday. The Royal Bank faces a lawsuit by Royal Trust retirees over what they say is a \$150-million pension-plan surplus that is rightfully theirs.

# Royal Bank faces \$150m suit over employee pension surplus

By Paula Arab  
The Canadian Press

Royal Trust retirees have launched a class-action suit against Canada's largest bank over the explosive issue of who rightfully owns their pension plan surplus.

A statement of claim made public Tuesday against the Royal Bank, which took over the trust company in 1993, seeks payment of the roughly \$150-million surplus along with punitive damages of \$50 million.

The case illustrates an issue that's being raised more frequently as pension funds reap benefits from a bull stock market and lower costs, said Murray Gold, former chairman of the Canadian Bar Association's Ontario pension unit.

"Surpluses are big and growing," he said. "Employers want to use them either to reduce employer contributions or to make their current employees happy with improved benefits."

Gold called for legislation that mandates indexed pensions — ones that pay out more as inflation rises.

"These are people who have worked hard all their lives. . . They have no more bargaining clout with their former employers," he said Tuesday after the

Royal Trust pensioners went public with a battle that's been brewing since 1997.

Ken Schofield, Royal Trust's former regional manager of finance for Eastern Canada, reflected that sentiment at a

See also: N.S. news conference. residents take "After 30 years, my company was taken over, my job was taken over, what I thought was going to be my pension after a full and gainful employment life was rather drastically slashed," he said, referring to changes in the plan that saw his benefit reduced by several thousand dollars a year.

"But I feel rather fortunate because I'm here. There's a lot of them that aren't here. I think of one who passed away just recently, she could have used (the pension surplus)," said the 59-year-old, who opted for early retirement.

Lawyers will argue the surplus is there for the benefit of the plan's original members and their beneficiaries.

About 250 pensioners formed the Association for Pension Enhancement at Royal Trust in 1997 to represent the interests of about 2,500 employees who were members of the plan when it closed in 1989.

They sought court action only after failed talks this spring with Royal Bank management, said Paul Starita, the former president of Royal Trust Investment Services who agreed to be the group's spokesman.

Starita, who says he has little to gain as he only paid into the plan for three years, slammed the Royal Bank for "forcing" the pensioners to court.

"When you make a profit in less than two months equivalent to this surplus, and you say, 'I also want this surplus,' there's something wrong here. There's something fundamentally wrong."

The lawsuit "is one little tiny way of redressing that kind of a corporate attitude," said Starita, now director of executive education at B.C.'s University of Victoria.

In its latest quarterly report, the Royal Bank announced a profit of \$574 million for the three months ended July 31, up 22 per cent from a year earlier.

The bank's position is that "the suit is without merit" because the Royal Trust plan continues to operate as it did before the takeover, said Graeme Harris, a senior communication adviser for Royal.

• See Royal / B2

# CMHC pays pension fund surplus to workers, retirees

By Gord McIntosh  
The Canadian Press

Ottawa

In a precedent-setting move, Canada Mortgage and Housing Corp. is disposing of some of a huge pension fund surplus by handing out \$44 million to 4,500 workers and retirees.

The Crown corporation is acting in sharp contrast to its sole shareholder, the federal government, which argues that public servants are not entitled to any of the \$30-billion surplus in their employee pension fund.

CMHC officials said Wednesday the lump-sum payments are not so much connected with what to do with the surplus but are

intended to enhance compensation to attract and keep good staff.

"The fund's good financial health allowed us to give enhanced benefits at no cost to employees and employer," said Claude Poirier-Defoy, vice-president of housing support and legal services.

He added that a significant portion of the surplus is being left in the fund to ensure it could withstand any sudden downturn.

Unlike most Crown corporations, CMHC has never belonged to the federal plan but has managed its own fund since 1946.

The plan now has more than \$13 billion in assets and is believed in the retirement industry to have a surplus of more than \$200 million.

Agency officials said the corporation intends to use about \$70 million of the surplus for its own purposes and \$50 million for the payments and enhanced benefits.

Legislation to seize the federal pension surplus and future surpluses to pay down the national debt stalled in the Senate before Parliament broke for the summer last month.

The government could feel embarrassed by one of its Crown corporations sharing part of a pension surplus.

As a result, CMHC officials were reluctant to discuss the payments.

But on average, payments would work out to slightly less than \$10,000.

The Public Service Alliance of Canada was quick to seize on the CMHC move as demonstrating that employees are entitled to a share of something that was built up in part by their contributions.

"They are recognizing that workers of the company are entitled to some of the benefits at least," said Daryl Bean, PSAC president.

He added that the CMHC decision along with the Senate harking at the federal pension legislation might prompt the government to rethink its position.

Michael Cohen, a principal at William M. Mercer, a Toronto-based consulting firm, said payments like those CMHC is making may start a trend in the public sector.