ASSOCIATION OF DALHOUSIE RETIREES AND PENSIONERS

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The Laidlaw Ad Hoc Sub-Committee on Pension Indexation – Toni Laidlaw

This ADRP Sub-Committee was established by the ADRP Board, in recognition of a motion brought forward at the December ADRP General Meeting. The mandate of the Sub-Committee is to consider potential actions or courses of action that the ADRP executive or its members might pursue that would offer a reasonable prospect of overcoming the pension shortfall and improving the level of indexation of Dalhousie pensions. This Sub-Committee, consisting of John Barry (Secretary), William H. Charles, D. J. Wallace Geldart, Paul B. Huber, Toni Laidlaw (Chair) and Gilbert R. Winham, met seven times over the course of the summer. During this time, we received a number of suggestions from ADRP members as to possible tactics and strategies that the membership and executive might undertake to convince the University and pension fund trustees to make up the pension shortfall. We are planning ongoing discussions to consider and refine these suggestions.

The primary focus of the first seven meetings, however, was to develop for ADRP members a clear, concise and detailed picture of the events leading up to the indexation shortfall from 2002 to 2005, including the roles and responsibilities of the University administration and pension fund trustees. Through a process that included conducting background research, writing and rewriting, and engaging in animated discussion, the committee has produced a document entitled, *Our Story Re Indexation,* which follows. We look forward to receiving feedback from members about their response to this document. In this issue of the Newsletter, we will provide ADRP members with information on overall percentage losses, and examples of actual lost income resulting from the shortfall in pension indexation to date.

OUR STORY RE INDEXATION

The Laidlaw Ad Hoc Sub-Committee on Pension Indexation

Automatic Indexing

Sub rule 9(b) of the Dalhousie University Staff Pension Plan provides that if the Retirees Trust Fund (RTF) earns more than 5.05% annually over a three year period on average, the amount over 5.05% (called the excess earnings) will normally be used to fund indexing of pensions up to the amount of the increase in the Consumer Price Index (CPI). The calculations are based on the fiscal year of the Trust Fund, which ends in June; the actual increase in your pension takes place the following January. This so-called automatic indexing cannot exceed the CPI. On the other hand, if the fund earns less than 5.05% per annum over a three-year period, then not only is there no automatic indexation, but ”earnings arrears” accumulate, which under sub rule 9(e) of the Plan must be made good before new automatic indexation resumes.

Missed Indexing: The Lost Years

For the Plan year ending in June 2002, the RTF earnings were sufficient for only 0.3% indexation and we got behind by 0.97%. In 2003, earnings were only a little above zero, well below the amount needed for any indexation. In the following two years, automatic indexation was penalized by "earnings arrears," which were made good in 2005. Some partial indexation (0.62%) did take place in that year. The cumulative missed indexation for eligible pensioners over the period 2002 to 2005 has been estimated at 6.8%. It has also been estimated that it would cost approximately 10 million dollars to pay for these "lost years."

Example

This situation is illustrated by what happened in January 2005 when no indexing was possible in spite of the fact that the three year annualized excess return in the RTF for 2004 was 0.794%. Because earnings in 2003 had fallen short of the threshold of 5.05 by 4.976%, this had to be covered off by the 2004 annualized excess returns (above 5.05%). Since the 2004 returns only amounted to 0.794%, there was still a cumulative deficiency of 4.182% (4.976-0.794) - so no indexing for that year.

Automatic indexing was provided in January 2007 at 2.516% and in January 2008 at 2.192%.

Discretionary Indexing: The Use of RTF Surplus

In addition to the automatic indexing provision of sub rule 9 (b), the Dalhousie Staff Pension Plan also allows the Trustees of the RTF, at their discretion, to provide catch up or missed indexation by drawing on or using "up to a maximum of one half of a *surplus*, if any, identified in the Actuarial Valuation, to make up an insufficiency." (Sub rule 9 (f), our italics). There has been no discretionary indexation at Dalhousie since 1996.

The University has taken the overall position supported by a solicited legal opinion in 2003, that the term "surplus" as used in sub section 9 (f) means an overall surplus rather than an RTF surplus. This means, according to this interpretation, that there must be a surplus in both the Retirees Fund and the Pension Fund before the RTF Trustees can exercise their discretion and use some part of an RFT surplus for indexation purposes. The adoption of the University's interpretation, in effect, placed new limits on the RTF Trustees discretion.

The ADRP has been provided with two legal opinions, both of which conclude that the University's interpretation of the term surplus in sub rule 9(f) is erroneous and that the term as used in that section refers only to a surplus in the RTF

The issue was presented by the ADRP, the DFA and the NSGEU to the Superintendent of Pensions in October 2006, as part of a 35 page submission. In her first response, the Superintendent agreed with the ADRP interpretation of the term surplus i.e. that it referred to a surplus in the RTF only. In subsequent correspondence with the President of ADRP, the Superintendent of Pensions re-iterated her earlier opinion by stating "the reference to surplus in sub-rule 9 (f) would appear to be a surplus held in the Retirees Trust Fund." However, somewhat surprisingly, she concluded that because there was no definition of surplus in the Plan, the term 'surplus' becomes the surplus as defined under the *Pension Benefits Act "*and that means consideration of the Plan in its entirety, not piecemeal." The reasoning leading to this conclusion is unclear and confusing.

Actuarial Evaluations of Defined Benefit Plans: The Dalhousie Procedure.

Provincial law requires periodic actuarial valuations of the assets and liabilities of all defined benefit plans to ensure that the various pension benefits guaranteed by the plan can be funded and are not in jeopardy. In other words, there must be some evidence that there are enough funds in the Plan to pay pensions as they are required. Because the actuary is required to determine the financial soundness of a General Pension Plan and not just the soundness of individual funds like the RTF and the PTF, Dalhousie's actuary combines the separate assessments of the RTF and the PTF in order to obtain an overall Dalhousie Pension Plan evaluation. A surplus in one fund can, therefore, help to offset or neutralize either in whole or in part a possible deficit in the other fund and allow the Plan as a whole to be in a surplus position and thus financially sound. In recent years the RTF has had a surplus while the PTF has run a deficit.

Reducing the RTF Surplus: The Effect on University Finances

At this time, the actuarial valuation of June, 2007 is expected to show the RTF with a surplus of 42 million dollars and the PTF with a deficit of nearly the same amount. With the RTF enjoying such a surplus, a withdrawal of ten million dollars to fund catch-up indexation would still leave a healthy surplus in the RTF. However, if the PTF were to suffer a larger deficit than it now has or, if the surplus in the RTF were to decrease significantly, it is possible that the Plan as a whole could move into a deficit situation. Were this to happen, the University would be required to contribute more money to the PTF to maintain the necessary and required financial soundness. This additional contribution would have to come from the operating budget of the University.

In the 2006 Complaint to the Superintendent of Pension, the submission suggested that to make good the entire 6.8% of the missing indexation would cost nearly $10 million of the RTF surplus. This would have increased the deficit in the overall pension plan and required an increase in contributions by the plan sponsor (Dalhousie) of about .64% of the payroll or about one million dollars annually. Limiting or reducing indexation allows the University to enjoy a larger operating budget after making required pension contributions.

By limiting the Trustees ability to exercise their discretion to use part of the RTF surplus to fund catch-up indexation and continuing their practice to use or borrow retirees' funds to defray PTF deficits, the University is able to save one million dollars per year. This is a significant involuntary, de facto contribution to University funds from retirees.

Role and Responsibilities of Trustees

It is worth noting that the trustees of the RTF are selected and appointed by the University. The University is under no legal obligation to provide for the representation of retirees by selecting and appointing a member of the ADRP as a trustee of the RTF.

It is also worth noting that the RTF Trustee Agreement which outlines the duties and responsibilities of the trustees clearly states that "At no time shall any part of the corpus or income of the Fund *be used for* or diverted to purposes other than *the exclusive benefit* of retired members of the scheme." (Sub rule 2, our italics)

By limiting the discretion of trustees to use part of the RTF surplus to fund "catch up" indexing by requiring as a pre condition a surplus in both the RTF and the PTF and, instead, using that surplus to offset a possible deficit in the PTF, the University appears to be in breach of the RTF Trustee Agreement.

Although section 14 of the Trust Agreement gives the University the right to amend the Trust Agreement from time to time, that same section makes clear that no amendment can "authorize or permit any part of the corpus or the income of the fund (RTF) to be used for or directed to *purposes* other than the *exclusive benefit* of retired members and their replacement..." (our italics).

It is difficult to see how using all or part of the surplus in the RTF to neutralize a possible deficit in the pension Plan as a whole and thus forestall the need for further University contributions can be a "use for a purpose to the exclusive benefit of retirees."

Ultimately, it is up to the trustees of the RTF to decide whether or not to use part of any surplus in the RTF to fund a catch-up indexation. However, that discretion should not be limited, as the University insists, to situations where there is a surplus in both the RTF and the PTF The language of sub rule 9 (f) read in the context of section 9 does not support such an interpretation and amounts to an unjustified amendment of sub rule 9 (f).

<u>Addendum to "Our Story"</u>

"Our Story", as described above, gives all the important background details of the ADRP struggle in this matter. However, we felt that one or more examples of the impact of the indexation shortfall would help in producing a real live picture for our members.

This example is based on real figures, but not on a specific person.

Consider the situation of a Dalhousie staff member who retired around 2002, with 35 years service to the University, and whose salary record shows a best three year average salary of $34,000. He/she would then be entitled to a pension salary calculated thus:
2% x years of service x average salary – or 70% of $34,000, which results in a pension of **$23,800/year**.

For the next five years (up to and including January 2006), she/he would have **NO** automatic indexation, the income from the RTF being insufficient to allow for such indexing during those years.
His/her pension, therefore, continues at $23,800, but the Consumer Price Index (CPI) rises year by year, and the shortfall from the CPI over this time (conventionally referred to as the cost of living increase) amounts to **6.8%.**

In dollar terms, by 2006 this person's pension would require an increase of $1,618, or a total of $25,418 to maintain the purchasing power of his/her pension.

*Meanwhile, the RTF Trustees were informed by the University Administration in 2003/04 that they cannot consider the provision of **ANY** increase to such person's pension, to make up the shortfall, despite the existence of a large surplus in the RTF (3-4 times as much as would be needed to make up **ALL** the shortfall of **ALL** similar Dalhousie pensioners who retired at 2002 or earlier).*

By January 2007, the RTF average annual return was now adequate to provide a pension increase to match the CPI increase of 2.52%, and similarly in January 2008, to provide a CPI-matching increase of 2.2%.

These two increases in January 2007 and January 2008, would be sufficient to raise his/her pension from $23,800 to **$24,934, but** if the RTF surplus had been used to remedy the earlier 6.8% shortfall in 2005, and the CPI increases for 2007 and 2008 similarly applied to it, he/she would now be receiving **$26,629**.

In summary, his/her pension in 2008 falls short of keeping up to cost of living increases by almost $1,700/year.

A similar calculation for another hypothetical retiree with an average pensionable salary of $46,000, if retiring in 2002, would have an initial pension in 2003 of **$32,000**. The CPI increases for 2007 and 2008 would give him/her an increase to **$33,528**, but if the 6.8% shortfall had been made up in 2005, he/she would be receiving **$35,822**. **His/her shortfall in the buying power of his/her pension is thus $2,294.**

Similar calculations can be made, using higher or lower average salaries, fewer years of eligible service, or smaller amounts of known pension.

Next Steps

We hope that you found the information in 'Our Story' and following examples to be useful and informative. Your Board is most anxious to hear your comments and your reaction to 'Our Story'. Unless your Board has a clear picture of your concerns, and knowledge of your reaction to these matters, we cannot fairly represent you and your concerns and interests to the broader University community, and to the University Administration.

At the ADRP General Meeting in December 2007, several members indicated that they would remove bequests to Dalhousie University from their Wills, and others stated they would cease or hold their charitable donations to Dalhousie.

The discussion led to a motion (which you will find quoted in my President's Report in the April 2008 Newsletter) which requested Dalhousie Retirees and Pensioners to consider eliminating or reducing their donations and bequests to Dalhousie. This motion was passed at that meeting without dissent.

We know that some of our members have followed through on this recommendation, but we do not know how many did so.

NOW, HERE IS YOUR QUESTIONAIRE !

Please consider the questions below very carefully, then call the ADRP Office at 494-7174 and leave a message with your 6 yes/no answers. No need to give your name or any other details. We really need to know your views. If you prefer, your answers can be sent by mail to the ADRP Office, Room 2831, Life Sciences Centre, Dalhousie University, Halifax, NS B3H 4J1.

1. Do you receive a Pension from Dalhousie University? YES or NO

2. Did you eliminate, reduce or hold back any planned Donations or Bequests to Dalhousie as a result of the December 2007 ADRP motion? YES or NO

3. Did you consider possible action as in question 2, but did not do so? YES or NO

4. Did you write to any person in the University Administration to voice your concern/disagreement with their action to effectively block any remediation of the Pension indexation? YES or NO

5. Now that you have read the 'Our Story' information and examples, would you consider elimination, reduction or holdback of planned donations, and/or bequests to Dalhousie? YES or NO

6. Would you now consider writing to the University Administration, as described in question 4? YES or NO