

Website Update October 22, 2008

Our last update was in April, 2008 and as your Committee we would like to explain the delays we are encountering. We last advised that an application by National Trust for regulatory approval of the surplus sharing agreement had been deferred as a result of a Notice of Proposal issued by the Ontario Superintendent of Financial Services (the "Superintendent"), refusing to approve a surplus sharing agreement in a similar case (the "Montreal Trust case").

After various consultations with our legal team and counsel to National Trust, we decided to return to Madam Justice Lax, the Ontario Superior Court justice who approved the surplus sharing agreement in December 2007, to seek a revision to the existing Order approving the surplus sharing agreement. This was done to ensure, to the extent possible, the same regulatory obstacles faced in the Montreal Trust case do not occur in our case.

Our legal team and counsel to National Trust attended before Madam Justice Lax on July 10, 2008, and were successful in obtaining a revised Order. The Order makes it clear that the Plan amendments permitting the surplus sharing and payment to the employer and the members is permissible in the manner contemplated by the *Pension Benefits Act*.

Notwithstanding the revised Order, the sharing agreement is still subject to regulatory approval. Following receipt of the revised Order, the lawyers for National Trust wrote the Superintendent, seeking confirmation the revised Order is sufficient to avoid the obstacles encountered in the Montreal Trust case. In written reply, the Superintendent advised that the revised Order appears to resolve the problems encountered in the Montreal Trust case. At the same time, the Superintendent noted that he cannot definitively confirm, absent a full application for the withdrawal of surplus from the Plan, that regulatory consent will be granted in our case.

In light of the position taken by the Superintendent, your Committee has pressed National Trust for the final implementation of the surplus sharing agreement, including the wind-up of the National Trust plan and the application for withdrawal of surplus. Unfortunately, National Trust takes the position it still has not received satisfactory comfort from the Superintendent that the surplus distribution will be granted regulatory approval. National Trust has advised us that it will not proceed to implement the surplus sharing agreement until the result of the Montreal Trust case is known. It will be heard by the Financial Services Tribunal on October 17, 2008. This position is set out in a letter to the Committee, dated October 7, 2008, from Mr. R.L. Brooks, Chairman, President and Chief Executive Officer of National Trust Company, and Vice-Chairman of The Bank of Nova Scotia.

Your Committee strongly disagrees with the position taken by National Trust. We have been working towards implementation of the surplus sharing agreement for years, and are of the view the wind-up of the plan, and the application for surplus withdrawal should proceed **immediately**. On October 6, 2008 our counsel wrote to the Superintendent directly, seeking an advance ruling on the question of surplus entitlement on the basis of the plan's partial wind-up group in order to expedite this matter. We hope to receive a positive response from the Superintendent, and to convince National Trust to proceed with the final implementation of the surplus sharing agreement.

Your Committee and its counsel shares our members' annoyance with the slow progress of this matter through the regulatory stage, and remains committed to taking any and all steps necessary to expedite this process.

We will continue to keep you posted, via website updates, on the progress.