Written Submission for the Pre-Budget Consultations in Advance of the Upcoming Federal Budget

By: Canadian Federation of Pensioners

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Recommendations

Recommendation 1: That the government create a national pension insurance program that insures 100% of the pension liability and is fully funded by the plan sponsors.

Recommendation 2: That the government amend insolvency legislation to extend super-priority to the unfunded pension liability.

Recommendation 3: That the government, as a short-term measure, introduce a refundable tax credit equal to the amount of pension loss an individual incurs when a pension fails.

Recommendation 4: That the government enable the creation of a distressed pension facility, when a corporation becomes insolvent and the pension is underfunded, to avoid costly annuitization and provide the potential to improve pension payments.

Recommendation 5: That the government establish a commission with the explicit goal of determining the best way to ensure pensioners receive 100% of the pension they paid into and to which their employers committed.

Submission

The Canadian Federation of Pensioners (CFP) advocates on behalf of defined benefit pension plans and their members. Founded in 2005, the CFP is the united voice of 20 retiree groups, ranging from small groups like the International Association of International Air Transport Association Retirees to large groups like Bell Canada Pensioners' Group. Representing over 270,000 defined benefit pensioners, we work together to improve pension security for Canada's 1.3 million private defined benefit pension beneficiaries and their families and by extension all 4.2 million defined benefit plan members in Canada. CFP is affiliated with CanAge, CARP, FADOQ, l'Alliance InterOrg, the National Pensioners Federation and other groups who share our vision that pensioners deserve 100% of the pensions committed to by their employers.

For more than a decade, the Canadian Federation of Pensioners and other seniors' advocacy groups have participated in many pension consultations at both the federal and provincial level. We have put forward several proposals to address this problem in whole or at least in part. We do this because no other stakeholders have brought forward any proposals focused on ensuring pensioners receive 100% of their pension.

We are solution agnostic. Pensioners should receive 100% of the pension to which their employer committed.

Unfortunately, over the last five years, governments' response has been to lower/eliminate solvency requirements. Governments have deliberately chosen not to listen to pensioners when it comes to pension security.

This, in our view, is against the public interest and has prioritized corporate interests ahead of people.

We respectfully ask this committee to include measures to enhance pension protection in its pre-budget recommendations.

What is a Defined Benefit Pension?

- Over 1.3 million Canadian retirees and their spouses rely on private defined benefit pension plans.
- A defined benefit pension plan is part of an employee's total compensation package and is legally considered deferred compensation.
- A defined benefit pension consists of deferred wages that are earned while an employee is working and collected when they retire.
- The annual pension amount is calculated using a formula that reflects an employee's salary, length of service and age.
- Pensioners have planned their retirement based on their defined pension income.
- Pension income is taxable in the hands of pensioners.

Understanding the Pension Regulatory Framework

The pension regulatory framework in Canada is very complex. Canada has two tiers of legislation that directly impact pension security.

Eleven different jurisdictions are responsible for pension legislation and regulation.

Federal insolvency legislation enjoys paramountcy over pension regulations. In the event of a conflict, it supersedes other pension-related legislation.

In addition, pension security is impacted by business regulations and tax codes in 11 different jurisdictions.

While a company is operating as a going concern the risk to pensioners is a future possibility, there is no immediate negative impact on pensioners. The possibility of a pension crisis becomes a reality when companies file for insolvency under federal jurisdiction.

What Happens to Pensions When a Company Becomes Insolvent

When companies file for insolvency, the pension unfunded liability becomes an unsecured obligation and becomes one of the lowest priorities to be settled. This, despite the fact that in a number of provinces, the pension unfunded liability is a deemed trust with the highest priority of settlement. Insolvency legislation holds paramountcy over pension regulations and as it does not explicitly define the pension unfunded liability as a deemed trust, companies and their creditors are shielded.

The problem of underfunded pensions, be they large ones like Nortel, small ones like Co-op Atlantic or ubiquitous like Sears, has roots in the failure of regulators to ensure pensions are 100% funded on a solvency basis. There are practical reasons for this, but regulators are exacerbating the problem by offering permanent solvency relief, as has happened in Quebec, Ontario and BC, or temporary solvency relief, as introduced by the federal government on April 15, 2020. A critical distinction is that Nortel, Co-op Atlantic, Sears and others left behind underfunded pensions when the solvency target was 100%. Today, a majority of defined benefit pensions are operating to a target of 85% solvency or less, so the impact of an insolvency on pensioners will be dramatically worse now.

The Federal Government Must Act Now to Protect Canadian Pensioners

To protect pension security, the CFP is calling on the federal government to:

1. Create a national pension insurance program that insures 100% of the pension liability. This should be fully funded by the plan sponsors.

2. Amend insolvency legislation to extend super-priority to the unfunded pension liability. While this would not guarantee pensioners would receive 100% of their pensions, it is an action the federal government should take to provide increased pension security to all pensioners of companies entering insolvency.

3. As a short-term measure, introduce a refundable tax credit equal to the amount of pension loss an individual incurs when a pension fails. This is a stop-gap remedy in the absence of a pension insurance program and amendments to insolvency legislation.

4. When a corporation becomes insolvent and the pension is underfunded, enable the creation of a distressed pension facility to avoid costly annuitization and provide the potential to improve pension payments. Today, pensions of insolvent companies are annuitized. Typically, when the pension funding level is at its lowest and annuitization costs are at their highest, thereby reducing the amount of pension income realized by pensioners.

5. Establish a commission with the explicit goal of determining the best way to ensure pensioners receive 100% of the pension they paid into and to which their employers committed. This must not be an open-ended discussion that has so often in the past focused on barriers to achieving this goal. Pensioners must have a voice in this process, along with industry stakeholders and federal and provincial regulators.

Government Has a Duty to Act in the Public Interest and Protect Pensioners

Governments have, through legislation, taken control of pensions from pensioners. Pensioners have no ability to influence or control what happens to their pension and their future financial security. When governments change legislation to reduce solvency requirements, they do so unilaterally. Pensioners do not get a vote; they don't even get informed. However, when an insolvency happens, governments suddenly disappear, leaving pensioners without any tools to protect their financial security.

When the federal government chooses not to fully address the inequality pensioners face in insolvency proceedings, it does so unilaterally. Pensioners are only recognized in an insolvency proceeding at the judge's discretion.

These are important points, if not legally, certainly from an optics perspective. Governments have made decisions that negatively impact the future financial security of seniors without direct consultation, consent or even communication. This is not in the public interest and must be remedied now.

In the last parliament, Bill C-97 included some positive changes for pensioners in federal regulations. As we commented at the time, while we appreciated that these changes were

positive and did represent the federal government recognition that the playing field was far from level, they did not go far enough.

Combined, these changes didn't move much closer to ensuring the 100%, and they have not yet been defined in regulations, let alone implemented. The time for action is overdue.

With Insolvencies Looming Due to Covid-19, Inaction Is Not an Option

Canada is facing challenging economic times due to the COVID-19 pandemic. There are likely to be waves of insolvencies with underfunded pensions left behind. When we look back to Nortel, Co-op Atlantic, Sears and the impact on those pensioners, we must keep in mind that those failures were all under a 100% solvency target regime. Governments have eroded even that level of protection without adding any level of protection for pensioners to compensate.

There is precious little time to implement a significant change, an elegant solution.

However, the alternative to addressing the problem now is to wait for the next Sears. Except this time, the fallout will almost certainly be worse, and people will, rightly, look at who allowed this to happen.

The answer to that is government.

We urge the government to immediately and seriously address this issue before it becomes a headline. We respectfully ask the FINA Committee to carefully consider our recommendations through the lens of protecting pensioners, rather than focusing on the obstacles to enhancing pension security. The financial security of over 1.3 million defined benefit pensioners and their families is too high a price to pay for inaction.

We would appreciate the opportunity to present our recommendations to the FINA Committee.