



INTERNATIONAL LONGSHORE & WAREHOUSE UNION CANADA

180 – 111 Victoria Drive Vancouver, BC V5L 4C4 ♦ Tel: 604-254-8141 ♦ Fax: 604-254-8183 ♦ E-mail: officers@ilwu.ca

Mark Schaan
Director General
Marketplace Framework Policy Branch
Innovation, Science, and Economic Development Canada
235 Queen Street, 10th Floor
Ottawa, ON, K1A 0H5
By Email: mark.schaan@canada.ca

December 20, 2018

Dear Mr. Schaan

Submission to the Government of Canada by ILWU Canada Increasing Pension Security for Canadians

The most important thing the Government of Canada needs to understand is that pension contributions are deferred wages. Workers consciously put these monies aside to ensure that they have a secure, comfortable and dignified retirement. When corporations underfund or borrow against these contributions, they are essentially stealing those contributions that workers have put aside to protect them from financial hardship in their later years. This is one of the most egregious acts any company can inflict on its employees.

We agree with the Government that all Canadians deserve a safe, secure and dignified retirement, however in recent years company insolvencies have raised concerns about the security of pension, wage and benefit entitlements for workers and retirees.

While Canadian Retirement Income Security (RIS) has clear strengths, their long-term sustainability and effectiveness need to be protected from current and future developments. Current demographic trends, the global economic downturn in 2008, and low long-term interest rates have affected the pensions of Canadians. Funding pressures as a result of these trends have been particularly acute for Defined Benefits (DB) pension plans in which the promised benefit level is backed by the employer. In general, DB plans contribute to the retirement security of many Canadians by providing a secure and stable lifetime retirement income. Traditionally, DB plans have been the predominant type of pension arrangement among employers offering employee pension plans. However, some employers have responded to DB plan funding pressures by closing their DB plans to new hires. We are concerned that in the private sector DB plan membership in Canada has fallen from 2 million workers in 2007 to 1.2 million workers in 2017. Innovation in the DB pension space is required to make DB plans popular again. The current push towards Defined Contributions (DC) plans puts all the risk onto employees.

In addition to long-term funding challenges for employment-based DB pension plans, significant concerns have been raised about Retirement Income Security where the employer is at risk of insolvency and has unfunded DB pension liabilities. Some recent cases have resulted in significant pension reductions for retirees and workers. The risk of retirement income loss can be greater for employees in certain economic sectors that are vulnerable to market shocks, and which may also have large legacy pension and benefit obligations relative to their current workforce and earning potential. Furthermore, the negative impact of pension reductions in employer insolvency can be exacerbated by the termination of employee benefit plans, which provide health, insurance, and long-term disability (LTD) coverage. Benefits can be protected by ensuring plans maintain actuarially calculated reserves to match their liabilities. This is commonly done in the multi-employer benefit space.

The current legislative framework does not contain sufficient and legal remedies to protect pensioners from the negative effects of unfunded pension liabilities and employee exposures to employer insolvency.

Corporate law does not protect the interests of pensioners, rarely restricting payments to shareholders to maintain a corporation's financial integrity or holding executives to account for liabilities created by poor corporate practices.

The Government of Canada needs to address the approximately seven per cent of private pension plans in Canada that are federally regulated. Although changes to legislation will not protect all Canadians, it is a good start. We are encouraged that the Government is open to hearing views on potential enhancements to the federal pension and corporate governance frameworks.

A Balanced, Principled and Evidence-Based Approach to RIS Policy

Recent insolvency cases have raised significant stakeholder concerns about potential gaps in the pension, insolvency, corporate and employee benefit regulatory environment. We hope the Government will take these concerns seriously and take steps to protect the pensions of hard-working Canadian workers.

The Current RIS Environment and Responses to Challenges

We are encouraged by some recent moves by the Government, including restoring the age of eligibility for Old Age Security (OAS) to 65 in Budget 2016 and enhancing the Canada Pension Plan (CPP) to increase the maximum benefit by about fifty per cent over time. The Government has also taken some specific steps to enhance retirement security and better protect employees from the consequences of employer insolvency (as well as consulting on a wide range of potential policy options), including in the following areas.

▪ Pension Funding Rules

Federal pension law reforms since 2009 have enhanced protections for plan members and reduced funding volatility for employers. Federally regulated pension plans are required to be 100 per cent funded on a solvency basis, with any shortfall paid by the employer within five years in order to help ensure that plans have enough assets to

provide for all benefits, both while the plan is ongoing and in the event of plan termination. This serves to protect the rights and interests of plan beneficiaries. At the same time, employers are permitted to amortize deficits over a prescribed period in recognition that pension plans may have, at times, a deficit too large to address all at once without harming the financial integrity of the employer. In this way, federal pension plan funding standards strike a balance between benefit security for plan beneficiaries and flexibility for the employer.

Reformed pension funding rules to ease employer solvency funding requirements for pension plans under the federal jurisdictions would allow federally regulated pension plans more flexibility and would make defined benefits a more attractive option.

In the multi-employer space most plans have gone to a negotiated contribution model and jointly trustee boards. This allows employers to have cost certainty and employees to have a say in how the plan is run. Although pension payments are not guaranteed, a properly managed plan with a good funding policy and strong governance can reduce the likelihood of benefit reductions.

▪ **Insolvency Law**

In 2008-2009, the Bankruptcy and Insolvency Act (BIA) and the Companies' Creditors Arrangement Act (CCAA) were amended to require that outstanding pension contributions and unpaid wages and benefits (up to \$2000 per employee) be paid ahead of secured creditors. This was a good start, but more must be done in this area. Unfunded liabilities in some recent cases have greatly exceeded \$2000 per employee.

The CCAA was amended to codify judicial practices on interim financing and asset sales and prevent the termination of collective agreements while under CCAA protection. In a statutory review of the BIA and CCAA in 2014 – 2015, pensioner and employee groups advocated for priority status for unfunded pension liabilities and benefits, such as LTD programs. Although there was no consensus on this issue most people would agree that pensioners should not be the last creditors paid out when insolvency occurs.

▪ **Corporate Governance**

The Canada Business Corporations Act (CBCA) provides the basic corporate governance framework for approximately 310,000 Canadian corporations. In 2013 – 2014, the Government conducted public consultations with respect to the CBCA, based on a wide-ranging discussion paper. The consultations sought views from Canadians on several corporate governance issues that could impact retirement security, including executive compensation, greater accountability of corporate boards to shareholder and stakeholder interests, greater corporate transparency, the use of the oppression remedy, and corporate social responsibility. Recently passed legislative reforms provide for greater transparency and shareholder democracy, however the issue of executive compensation during periods of corporate financial stress have not been addressed.

While these changes will enhance retirement security for Canadians, we continued to press for further action in the areas of pension, corporate insolvency and labour law in order to better protect employee and retiree pension claims.

Options to Increase Pension Security of Federally Regulated Plans

We believe that further measures that could be adopted to enhance retirement security for employees and retirees affected by employer insolvency. The following steps would be a good start to addressing some of these issues.

The insolvency legislation should be amended to ensure that:

- 1) Unfunded pension liabilities are paid ahead of the claims of secured creditors; and
- 2) Employee claims for the termination of employee benefits in insolvency proceedings are paid before secured creditor claims.

Pension Options

Pension funding relief criteria:

The Minister of Finance should use his authority to provide employers with special pension funding relief to improve the long-term sustainability of their pension plans. This can help avoid the scenario of employer insolvency and the termination of an underfunded plan.

The Minister's authority should be enhanced in this regard and improve corporate responsibility, employers seeking funding relief should be required to agree to certain specified criteria or conditions, such as a prohibition of dividend payments while pension funding relief measures remain in place.

Transfers to self-managed accounts are not a great solution. When plans are underfunded due to employer bankruptcy, purchasing annuities can lead to permanently reduced benefits.

This only exposes retirees to further risks, such as investment losses and the possibility of outliving their retirement savings.

Clarify Benefit Entitlement:

Federal pension legislation provides that members are entitled to their accrued pension benefits, with the intent that the full pension benefits are to be provided regardless of whether the plan remains ongoing or is terminated. Nevertheless, it has been suggested that the legislation may be unclear in this respect, leading some plan sponsors to propose amendments that would provide for different benefits on plan termination compared to while it remains ongoing (e.g., indexation only payable on plan termination if enough assets remain in the plan). This could result in members experiencing reductions for those benefits if a plan is terminated underfunded, particularly in an insolvency situation.

In order to ensure that all pension benefits are afforded equal protection regardless of whether the plan is ongoing or terminated, the legislation should be clarified to provide explicitly that entitlement to pension benefits cannot be made conditional on the continued operation of the plan.

Alternatively, amendments would be required to provide flexibility for DB pension plans to offer different benefits in different circumstances in pursuit of plan-specific objectives, such as addressing affordability and sustainability issues.

Corporate Governance Options

Restrictions on corporate behavior: dividend payments, share redemptions and executive compensation packages should be restricted under the CBCA in cases where a company has a large pension deficit.

Increased corporate reporting and disclosure requirements:

The CBCA should be amended to require corporations to report on policies that pertain to the interests of workers and pensioners and require directors to promote the company's success for the benefit of all its stakeholders, including pensioners and employees.

Some or all the following suggestions should be considered.

Corporations with unfunded pension liabilities:

- 1) Should not be able to pay excessive compensation to corporate executives.
- 2) Dividends should be restricted to shareholders.
- 3) Assets should not be able to be sold off to pay dividends or executive bonuses.

Insolvency Options

Enhanced "look-back" period: The BIA allows a court to set aside dividend payments or share redemptions made by an insolvent corporation within one year of the bankruptcy. The BIA and CCAA also allow a court to set aside reviewable transactions (transfers at undervalue) by the debtor company up to five years before insolvency. In order to enhance corporate accountability and better align corporate decision making with pensioner interests, the "look-back" period in the BIA and the CCAA should be enhanced to include the power for a court to set aside executive bonuses and compensation increases where a company with unfunded pension liabilities enters insolvency within a fixed period. The proceeds recovered should be earmarked for funding pension obligations.

Enhanced transparency in the CCAA process: In CCAA proceedings, the debtor company can negotiate with its creditors under court supervision on an agreement to restructure its debts. Pensioner interests in restructuring proceedings may be affected by limitations in the current court-supervised process. To better ensure fairness and equity for pensioners and employees, as well as to enhance transparency, the following amendments to the CCAA should be considered:

- 1) Increasing participation for pensioners and employee groups at the outset of proceedings by limiting the scope of initial orders;
- 2) Enhanced transparency for all creditors by requiring creditors to disclose their real economic interests; and
- 3) Creating a more equitable process by imposing an express duty of good faith on all parties to the restructuring.

We hope the Government takes the issue of retirement security seriously and takes steps to decrease the chances of future Canadian pensioners having their hard-earned pensions stolen by corporations that have put profits ahead of their obligations to their employees.

Sincerely,



Bob Dhaliwal
Secretary Treasurer
ILWU Canada
604-254-8141
treasurer@ilwu.ca