Submission to Innovation, Science and Economic Development Canada, Enhancing Retirement Security for Canadians

December 21, 2018

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Unifor is pleased to offer the following comments to Innovation, Science, and Economic Development Canada in response to **Enhancing Retirement Security for Canadians: Consultation Document**, dated November 22, 2018.

Unifor was newly formed in 2013 as the result of the merger between the Communications, Energy and Paperworkers' union and the Canadian Auto Workers' union. Unifor is presently the largest union in the private sector with 315,000 members across Canada.

Unifor represents over 30,000 workers in federally regulated sectors including energy, transportation, media, telecommunications, and financial services. Our members participate in several of the 294 federally regulated Defined Benefit (DB) pension plans, which together hold over $100 billion in assets. The Office of the Superintendent of Financial Institutions (OSFI) in respect of the Federal jurisdiction only regulates 10% of workplace pension plans in Canada.

Nonetheless, numerous major corporations sponsor single employer pension plans (SEPP) plans in the Federal jurisdiction. Unifor negotiates such pension plans as sponsored by Air Canada, Canadian National Railway, Canadian Pacific Railway, St. Lawrence Seaway, Brink's Canada, Bell Canada among many others and our members stand to be directly impacted by the proposals under consideration.

Our Union welcomes the efforts of the Federal government to find innovative solutions to major challenges in the retirement income system. We especially encourage any attempts to strengthen the protection of pension benefits in the event of employer insolvency. Unifor workplaces have experienced the inadequacy of corporate governance laws, insolvency laws, and pension regulations at protecting pension benefits. As well, many of our members and retired workers have lost wages and post-retirement benefits in employer insolvencies.

The insolvency of Sears provides important context for these consultations. Unifor members participated in the Sears DB plan and face the tragic outcome of the pending wind-up of the pension plan and the CCAA proceedings. While the Province of Ontario regulates the pension plan, there are relevant lessons for these Federal consultations.

Since 2010, Sears had paid $1.5 billion to shareholders – 5.5x times more than it would have cost to top up the Sears pension and the $267 million shortfall. The Canadian Centre for Policy Alternatives (CCPA) report, **The Lion's Share: Pension Deficits and Shareholder Payments among Canada's Largest Companies**[1] revealed $10.8 billion in pension deficits at Canada's biggest companies. At the same time, shareholder payouts among those companies increased from $31.9 billion in 2011 to $46.9 billion in 2016. In other words, Canada's largest companies paid out four times more to shareholders in 2016 than it would have cost to fully fund their pension plans.

[1] https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2017/11/CCPA%20The%20Lions%20Share%20.pdf

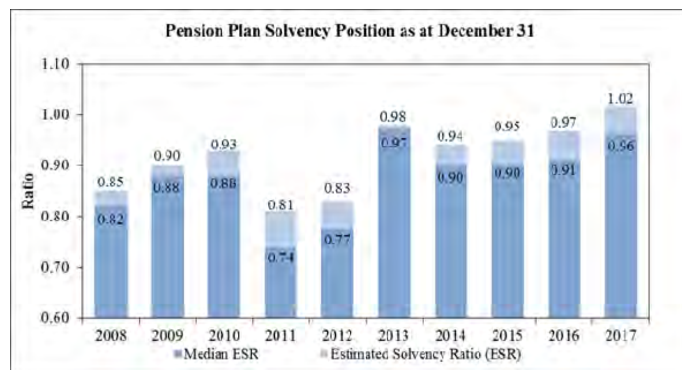
In our view, solvency funding relief should always be needs-based, consensual and contingent rather than indiscriminate and applicable to all plans. Regulators should also proactively monitor plan sponsors who receive solvency relief for the most significant risk facing the DB plan: the specific solvency risk of the employer.

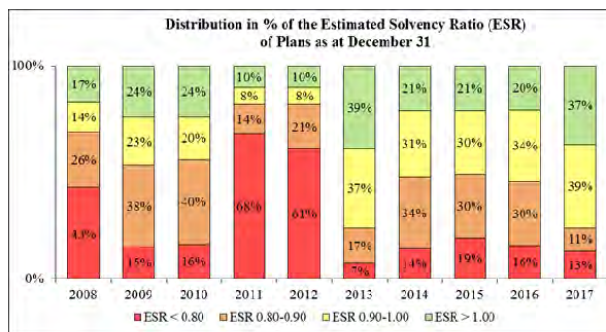
DB plans have faced significant challenges following the market collapse in 2007-2008. Indeed the successive rounds of temporary solvency relief in some provinces were important in supporting employer sponsors of DB plans. Yet, there is not substantial evidence to suggest that permanent and indiscriminate reforms, much less the elimination of solvency funding are necessary nor preferable to pension insurance or benefit guarantee arrangements. Although a number of jurisdictions have explored or are in the process of exploring changes to solvency funding rules there is abundant evidence to suggest that DB plans are approaching a period of improved solvency funding.

Regulators should be encouraged to take a moderate and gradual approach to address any pension funding challenges, which in the context of the 75-year funding cycle of a pension plan, are likely to prove more temporary than permanent. Indeed, the solvency funded status of federally regulated pension plans continues to improve in recent years most notably.

According to Issue 19 of **InfoPensions**[2], dated May 2018, the trend over recent years for federally regulated pension plans has been a notable improvement in solvency ratios, with the weighted average of 1.02 being reached at the end of the last calendar year:

> The median ESR for all pension plans was 0.96 as at December 31, 2017, up from 0.91 at the end of 2016. The weighted average ESR for all pension plans was 1.02 as at December 31, 2017, up from 0.97 at the end of 2016. The graph below shows the current and previous ESRs and median ESRs dating back to December 2008. The bar graph illustrates the distribution of the ESR results for Federal pension plans with defined benefit provisions as at December 31 of each year since 2008. It shows the percentage of pension plans with ESRs below 0.80, between 0.80 and 0.90, between 0.90 and 1.00, and over 1.00 in each year. The most recent ESR results indicated that 63% of defined benefit plans were underfunded as at December 31, 2017, down from 80% at the end of 2016. Also, there has been a decrease in the





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[2] http://www.osfi-bsif.gc.ca/Eng/Docs/ip/201805/index.html

number of plans that are more significantly underfunded (ESRs below 0.80) from 16% at the end of 2016 to 13% at the end of 2017.

Moreover, there are a dwindling number of plans that warrant vigilance and concern, with only 13 per cent of all plans reporting an estimated solvency ratio of les than 80 per cent in 2017.

A thorough review should be conducted of temporary funding relief measures across the various provinces before contemplating eliminating or permanently relaxing solvency funding rules. We especially encourage careful consideration of the value of the accountability built into consent provisions of the temporary solvency relief measures in other jurisdictions. Unifor has previously received requests from plan sponsors of single-employer DB plans registered in different provinces for temporary solvency funding relief. After an assessment of the relative balance of risk, we have typically provided consent in consultation with the desires of the member we represent.

The consent process is vitally important as it provides unions as well as retirees with a full and equal role in determining whether the risk of relaxing solvency funding rules is manageable and appropriate in the circumstances. The consent process also provides unions with an opportunity to negotiate in a broader context with employers in seeking an exchange of interests for the consent to the solvency relief.

In the current business environment where global corporations demand much of bargaining units in exchange for investing in workplaces, negotiations over solvency funding can play a key role in supporting jobs and protecting communities from employers terminating facilities. If solvency funding rules are permanently relaxed or even eliminated there are no guarantees that corporations will re-invest the solvency savings in Canadian facilities. The assumption that a quid pro quo will result from changes to existing rules without implementation of approrpriate checks and balances is imprudent.

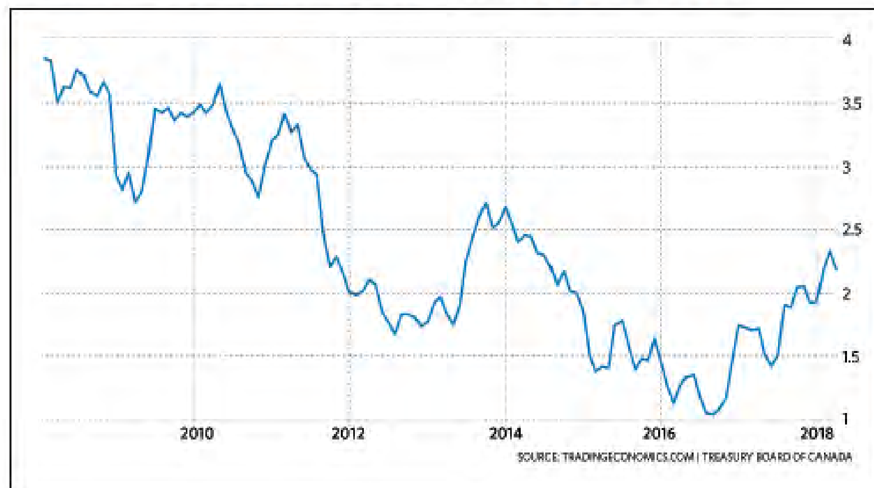
Achieving an Appropriate Regulatory Balance between Benefit Security and Solvency Reform

Since the 2008 market collapse, most pension regulators have offered relief to employers sponsoring single employer DB pension plans (SEPP) in recognition of the extraordinary impact of the post-collapse market conditions and in line with the tremendous generosity offered to some of the very corporations that led the economy into the market collapse.

A critical element for central banks in particular throughout this period has been providing the stimulus of 'cheap money', in the form of low interest rates. Yet these same low interest rates had a devastating impact on DB plan solvency valuations. Solvency valuations for DB pension plans in Canada rely on two solvency interest rates (i.e., discount rates), based on the expected form of settlement of the pension benefit: for members eligible for a lump sum transfer out of the plan and another for members where an annuity purchase is obligated or expected.

The basis for the solvency rate for lump sum transfers is dictated by standards produced by the Actuarial Standards Board (ASB) and is based on Government of Canada bond yields[3]. The 10-year Canadian government bond rate shown in Figure 1 has significantly declined until the end of 2016 but for a brief pull-back in 2014.

Figure 1



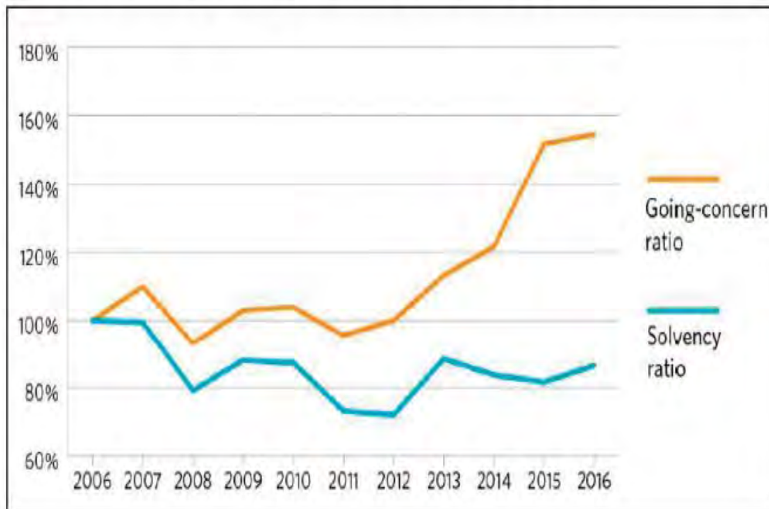
While the initial plunge in plan funded levels on a solvency basis no doubt owed a considerable debt to the decimation of asset values in the market collapse, the more recent decline of bond yields to around 1.0% was far more devastating for pension plans obligated to fully fund increased solvency deficiencies over a five-year amortization period. The response in most jurisdictions was to provide for a variety of temporary or ad hoc solvency funding relief measures.

Unifor has in this context as mentioned earlier generally supported temporary solvency funding relief measures, and particularly where member and Union consent was expressly required by the regulatory approach. To the extent that solvency relief shifted risk onto plan members and retirees, an assessment on a case by case permitted for an informed re-balancing or reasonable compromise of benefit security, relative to the continued solvency of the plan sponsor/employer.

It is obvious that DB pension plans have recovered sooner and more dramatically on a going concern basis that on a solvency basis, as indicated graphically by the chart at Figure 2. It remains however vital to safeguard members and retirees from the imprudent employer permitted (through indiscriminate solvency funding relief measures) to continue under-funding the pension on a solvency basis. Since most jurisdictions exclude certain benefits from the solvency valuation obligation, this further threatens plan members and retirees with a greater risk of insolvency and resulting benefit reductions.

[3] http://www.cia-ica.ca/about-us/actuaries/ask-an-actuary/faq---pensions

Figure 2



Recent reforms have or propose to eliminate current solvency funding rules with enhanced going concern funding. In Quebec, Bill 57 replaced the existing solvency funding regime in favour of a 15% stabilization fund to enhance the going concern obligation, while in Alberta and British Columbia, solvency reserve accounts were created.

In Ontario recent changes require solvency funding only if below 85% but also require a funding cushion (provision for adverse deviation or PfAD). Presently, Nova Scotia, British Columbia and Manitoba as well as the Federal jurisdiction are actively consulting on proposals in regards to similar solvency funding changes as well.

Unifor has consistently called for the greater solvency risk assumed by plan members to be 'insured'. We insist that when solvency funding relief is offered, and a potentially greater solvency deficiency created, but nonetheless the insolvency was unavoidable, plan members could be guaranteed their promised benefits. Providing a pension benefit guarantee or insurance fund that insures against such insolvency underfunding at termination in the first instance (and increasing the PBGF limit in Ontario) from the risk of greater solvency deficiencies created through solvency funding relief would offset the risks to realizing the pension benefit promised.

We have also insisted on ensuring member and union consent mechanisms. Those directly affected should be permitted to determine their willingness and provide their consent to assume such risks. We have also insisted on conditional or case-by-case approval - rather than sweeping uniform or permanent solvency funding relief that would allow the most negligent employers access to methods to further under-fund the pension plan.

Without the guarantees offered from a PBGF, a SEPP DB plan simply becomes a riskier proposition for plan members with solvency funding relief options. We also support greater consistency and uniformity in pension legislation and regulation across Canada and encourage jurisdictions to work toward creation of a national framework for single-employer DB plans and a single trans-provincial pension law and regulator that addresses the major issues of funding and benefit security. An efficient and effective regulatory system for workplace DB pensions in Canada requires far greater uniformity and consistency across provinces. Reducing the inter-provincial variation in pension regulation would further enhance benefit security and reduce

the administrative burden on multi-jurisdictional SEPP and multi-employer pension plans (MEPP) plans.

Alternatives to Settlement by Annuity Purchases

Our predecessor union, the CEP had proposed to create a National Investment and Pension Fund (NIPF) to halt the liquidation of pension funds threatened by plan sponsor insolvency or bankruptcy and to protect our members' pension benefits. The NIPF as originally proposed would be created by the Federal government but recognizing our cooperative Federalism, could be managed based on Federal-provincial-territorial agreement as a new and separate division of the CPP.

Any assets of any insolvent or terminated pension plan would be transferred to the NIPF. The values of all accrued pension rights would be determined on a going concern basis, in line with the investment policy of the program.

The program would pay out the pension benefits to plan members based on a floor amount as determined by the original pension plan at termination or wind-up (including a downward adjustment for any insufficient assets, if any based on the going concern funded ratio rather than the wind-up or solvency ratio).

The NIPF as a division of the CPP would assume the ongoing administration of the plan and manage pension assets to provide pensions at retirement for plan members rather than needing to purchase annuities immediately at or after bankruptcy - which effectively crystalizes or realizes any solvency deficit in a plan.

The portion of pension at risk on a going concern basis would be subject to further guarantee in the same form as the PBGC in the U.S.; the Pension Protection Fund in the U.K. or the PBGF in Ontario. The labour movement in Canada has also called for the introduction of a national system of pension insurance; and one that could grow to assume the task of administering wound-up plans in deficit; financed by a Tobin-style financial transaction tax on the Canadian stock market.

The NIPF, as a division of the Canada Pension Plan (CPP) would also provide a logical entity to host a national 'missing participants' or 'orphan accounts' service to support pension plan sponsors and administrators in locating deferred plan members and retirees much like the Bank of Canada currently provides in the form of 'unclaimed balances' for bank accounts. This is yet another solution of universal benefit to all working Canadians that rely on existing public or non-profit agencies or utilities – where the private market has clearly fails.

Unifor has also recently called for the expansion of the scope of the Bank of Canada's "unclaimed balances" registry mandate as part of broader review by Finance Canada of policy

measures for the financial sector[4]. The Bank of Canada presently holds unclaimed bank balances; but this service is limited to accounts only held by banks.

Unifor has called for the registry to be expanded to all other forms of retirement savings – including RRSP/TFSA or RRIF/LIF accounts or funds held by any type of financial institution or trust fund. Canadians should be secure in knowing they only need to check on-line with the Bank of Canada to locate any unclaimed balance held within existing registered pension plans and retirement accounts.

PENSION OPTIONS

Solvency Reserve Accounts

Unifor has reservations about the implementation of Solvency Reserve Accounts. These accounts would provide an opportunity for employers to access pension plan surpluses more readily than is allowed for by existing legislation. We generally take the view that pension plan contributions, particularly those impressed within a trust, are to be allocated and directed in the exclusive interest of the plan's beneficiaries.

Pension Funding Relief Criteria

Pension funding relief should, in our view, always be needs-based, consensual and contingent rather than indiscriminate and applicable to all plans. Regulators should also proactively monitor plan sponsors who receive relief for the most significant risk facing the DB plan: the specific solvency risk of the employer. We encourage provisions that would require employers seeking funding relief to agree to certain specified criteria or conditions, one of which would be a prohibition of dividend payments while pension funding relief measures are in place.

Transfers to self-managed accounts

Existing restrictions on the payment of pension benefits as a lump-sum for retired workers provide important protections, in our view. While the funded status of a pension plan at termination may require benefit reductions, the purchase of an annuity provides much-needed security. While a lump-sum payment could offer a retiree an opportunity to recoup losses, individual investors face significant challenges in this regard.

The cost of investing (mutual fund fees) and turning the lump sum into a pension (cost of purchasing a pension or annuity on an individual rather than group basis) significantly limit the likelihood of the retired worker seeing an improvement in their pension benefit. The establishment of a NIPF would offer a more effective solution as the values of all accrued pension rights would be determined on a going concern basis, in line with the investment policy of the program and retired workers would receive pension payments from the fund rather than an annuity.

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[4] https://www.unifor.org/en/whats-new/briefs-statements/unifor-response-review-Federal-financial-sector-framework-second

Clarify Benefit Entitlement

In recognition of the challenges facing DB plans, we are supportive of increased flexibility for DB plans to offer different benefits in different circumstances as this may allow for unions to negotiate changes with employers that benefit plan members and address affordability and sustainability issues.

CORPORATE GOVERNANCE OPTIONS

Restrictions on corporate behavior & Increased corporate reporting and disclosure requirements

Unifor supports restrictions on dividend payments, share redemptions and executive compensation packages where a company has a large pension deficit in place. We are also supportive of enhanced disclosure of policies that pertain to the interest of workers and retired workers and requirements for directors to promote the company's success for the benefit of all stakeholders.

INSOLVENCY OPTIONS

Enhanced "look-back" period

Unifor supports the proposals on the enhanced "look-back" period and powers to set aside executive bonuses and compensation increases where a company with unfunded pension liabilities enters insolvency within a fixed period. We also support proposals to enhance transparency in the CCAA process.

We encourage the Government also to support long-overdue Federal legislative action to elevate the priority status of claims for pension trusts or benefits in respect of unfunded plan liabilities. These would include ensuring unfunded pension liabilities are paid ahead of the claims of secured creditors, and employee and retiree claims for the termination of employee benefits in insolvency proceedings are paid before secured creditor claims (often referred to as a "super priority").

Enhanced transparency in the CCAA process

Increasing participation for pensioners and employee groups at the outset of proceedings by limiting the scope of initial orders

Initial Orders

The Union has been involved in a number of CCAA proceedings where it has not been provided with notice at the time initial orders were granted.

The terms of any initial stay order should be statutorily limited to those matters that are necessary to give effect to the intent of the CCAA, including the pre-emption of potential harm to the vulnerable debtor and assuring the existence of financing necessary to maintain operations until a come-back hearing.

Lack of worker representation at the time fulsome stay orders are granted can very rarely be undone at the time of come-back hearings. Far too many terms become entrenched, including the debtor's authority to override the terms of a collective agreement or employment contract during restructuring which might have an unwarranted deleterious effect on the Company's employees.

The initial order should provide for the granting of an administrative charge for interim DIP financing where required to maintain the operations of the Company during the period between the filing and the come-back hearing, at which time representations could be made on the terms of further DIP or other financing of the company's operations during the restructuring.

The granting of DIP financing and the terms relating thereto in initial orders, without the opportunity to review the financing terms and the repercussions to creditors resulting therefrom cannot usually be undone once granted. The Indalex case is a supreme example of a situation where the unions involved did not have an adequate opportunity to review the DIP financing agreement and make timely representations prior to the granting of the order approving the agreement. This situation led to years of litigation.

Increasing participation for pensioners and employee groups

Unifor is not in favour of statutorily mandated creditor committees made up of unsecured creditors. The multiplicity and divergence of interests of large creditor committees can result in stalemate with respect to negotiations and conflict in relation to the approval or rejection of plans of compromise. The Court's current authority to approve ad hoc committees or groups of like interest creditors works and creates a cost effective means of representation.

However, the Union cautions that courts have occasionally approved financial support from the company coffers for groups that should not be approved and refused reimbursement for other groups, such as unions. Certain distressed investors in the Nortel proceeding obtained financing to support their litigation efforts. On the other hand, requests for funding from the union in the CanWest insolvency were denied despite the fact that the union required the same additional, and likely outsourced, resources in terms of actuaries, financial advisors and counsel.

Automatic rejection of compensation requests on behalf of unions seeking the same assistance available to private counsel representing individual employees who form an ad hoc committee is unfair and puts an additional strain on some unions with limited membership and financial means.

As well, the statue or the courts must ensure transparency with respect to costs relating to ad hoc creditor groups through the disclosure of costs relating to such groups in regular Monitor reports. In the event the court becomes concerned with the costs related to one or more of the groups in a proceeding, it must have or assume the responsibility of appointing an officer to review and, if necessary, reject unjustifiable claims for compensation and disbursements.

Enhanced transparency for all creditors by requiring creditors to disclose their real economic interests

In Nortel, distressed investors held $4.2 billion U.S. in Nortel bonds issued by the Canadian Estate but also guaranteed by the U.S. Estate. These distressed investors made their investments subsequent to the CCAA filing at rates dramatically less than face value. In Canada, there is no statutory requirement that distressed investors provide disclosure relating to holdings and purchase price.

A lack of transparency as to holdings and the value of debt held by these distressed investors, or investors generally, made negotiations directed at the resolutions of certain singular issues, and potentially the larger picture, much more difficult. Conventional wisdom is that investors focus on the time value of money and seek the earliest and the highest rate of return. However, the delay in Nortel was of advantage to these cross-over bond-holders who determined that they were entitled to post-filing interest.

In addition, the existence of, among other things, credit default swaps, which are a sort of debt insurance not available to involuntary creditors such as employees and retirees, creates a decoupling of economic interests between distressed investors and the debtor. Pension plans and those who have lost sustaining benefits such as long-term disability payments are looking at increased personal hardship, poor health outcomes and years of uncertainty, as opposed to massive profits obtainable by anonymous and amorphous investor entities.

All of these issues relate to the extent to which creditor parties are working to obtain a result that not only meets their own interests, but the purpose of the CCAA, I.E., the restructuring of companies to ensure their continued operation. To address, although not entirely resolve these issues, Unifor endorses certain of the suggestions arising out of the Report of Janis Sara, including the following:

- all debt creditors must be required to file disclosure documents identifying the beneficial owner of the debt, the extent of their claims and the value of their investment. Such disclosure would include secondary market trading and each post-filing trade, reported at intervals throughout the proceeding;

- for the same reasons, creditors holding credit default swap protections or similar credit derivatives should also be subject to disclosure;

- all post-filing trading in debt and settling in relation to CDSs or other credit derivatives should be subject to a stay and court approval;

- the Court should look seriously at the real economic interests of parties in determining whether to approve a restructuring plan and should have the authority to reduce the voting value of claims where creditors have access to CDSs or other derivatives.

Creating a more equitable process by imposing an express duty of good faith on all parties to the restructuring

Unifor is in support of specific provisions in insolvency legislation requiring all parties to act in good faith. Parties will often take positions which may not have a solid base of jurisprudence upon which to ground a claim or position. However, that is not bad faith. For example, certain of the union's arguments regarding deemed trusts were upheld by the Supreme Court in the Indalex case, despite the fact that they had not previously garnered support in the courts. Nonetheless, the arguments were legally sound.

The difference between a position taken in bad faith and a sustainable position is the degree to which the argument in support of it can be legally articulated or defended on established principles. Mandating good faith on the part of those who will ultimately determine the success or failure of a proposed plan of compromise can only enhance the endeavour.

OTHER EMPLOYEE AND RETIREE ISSUES

Super-Priorities for Deemed Trusts

A report of the Standing Senate Committee on Banking, Trade and Commerce: **Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act** (2003), at p. 98; gave the following reason for not recommending changes to Canada's insolvency laws to better protect pensions and pensioners:

> The Committee believes that granting the pension protection sought by some of the witnesses would be sufficiently unfair to other stakeholders that we cannot recommend the changes requested. For example, we feel that super priority status could unnecessarily reduce the moneys available for distribution to creditors. In turn, credit availability and the cost of credit could be negatively affected, and all those seeking credit in Canada would be disadvantaged.

It cannot be that honouring the pledges made to retirees who built and sustained their employer, all the while deferring compensation by way of pensions, can be seen as simply a negative impact on the capital markets. This cannot be the reply given by the Government of Canada in response to why pensioners rank below other creditors who come to the game long after the promise to pensioners was made and they have commenced enjoying the fruits of their labour.

Insolvency legislation must be amended to provide that pension plan deficiencies must rank above secured creditors. Pensioners have no ability to contend with the potential losses they might suffer in the event their former employer becomes subject to insolvency proceedings. Pension deficiencies are more than simply debts, they are obligations, and failing to meet them places unrecoverable emotional and financial burdens on the elderly which Canadian society as a whole will have to bear so that they do not fall into the abyss.

Financial creditors, on the other hand, have the ability to make prospective determinations of risk/reward in light of the employer's pension obligations, among other things, and to make determinations regarding applicable lending rates based on that information. This, in turn might very well have salutary effects on an employer's determination to address pension deficits in a timely manner. In any event, capital markets will adjust – they always do.

Alternatively, lenders may require that employers maintain properly funded pension plans. In a larger sense, Unifor proposes further amendments to increase the benefits available under the Canada Pension Plan, which would provide a safety net available for all Canadian employees in the event their employer becomes insolvent. This proposal would ensure that catastrophic reductions in pension benefits would, at the least, have a floor under which no retired employee suffering the loss of their pension would fall.

In addition, Unifor also believes that the Federal Government should explore with the provinces the idea of a nationally administered pension benefit guarantee fund. Its implementation would clearly run into the wall that can be the federal/provincial separation of powers. On the other hand, the general fact of provincial authority over pension plans has created disparate treatment for Nortel employees whose primary differing characteristic is the province in which they worked. The differences in treatment have resulted in significant variances in entitlements on the winding up of the plans. Other countries, including the United Kingdom and the United States, both of which had resident Nortel employees, have such national pension benefit guarantee funds. In Canada, only Ontario has such protective legislation.

Self-insured Long-Term Disability Plans

Insolvencies can have a devastating effect on employees in receipt of long-term disability benefits that are self-insured by their employers. In the Nortel insolvency, those on Long-Term Disability had their LTD incomes eliminated entirely. As a result of Nortel's insolvency, payments on account of continuing disabilities ceased on December 10, 2010. Most of the Nortel disabled were eligible for disability payments under the Canada Pension Plan. However, this amounts to just over $13,000 per year. In many cases this is insufficient to pay for the drugs and other needed supports if those employment benefits are also lost, as they were in Nortel.

Hundreds of thousands of employees in Canada have disability benefits that are self-insured by their employers. As with Nortel, if a company with self-funded long-term disability benefits goes bankrupt, those employees have an actuarially determined claim for lost future benefits. They also have the same standing as any other unsecured creditor, which means they stand well behind the secured creditors whose position at the head of the line is protected by legislation.

The self-insured benefit plans in the Nortel, Massey Combines and Eaton insolvencies all left disabled claimants without long-term disability benefits. As a direct result of the Nortel insolvency, the issue has been addressed through federal and Ontario legislation requiring that LTD plans be insured by a third party. However, such is not the case in other jurisdictions, and

there are gaps in the Ontario legislation that may result in further instances of benefit loss in the event of an insolvency.

In 2010, Senator Art Eggleton sponsored Bill S-216: An Act to Amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in Order to Protect Beneficiaries of Long Term Disability Benefits Plans. The Bill was designed to protect beneficiaries of long-term disability benefits plans by simply granting preferred status of claims of those who have lost their LTD benefits due to their employer's insolvency. The bill was defeated in the Senate Banking Committee in an along party lines vote 6 to 5.

There are several means of ensuring that those who have lost disability incomes due to insolvency are less likely to fall in to abject poverty and lose homes savings. The first is to provide universally available CPP disability benefits at a rate that would not leave such individuals with the potential of falling into abject poverty.

There is, of course, also the possibility of providing a super-priority for self-insured LTD income benefits. Such a measure would incentivize the remaining provincial legislatures to pass legislation requiring insured LTD income benefits. Alternatively, in the face of such a super-priority, lenders might require that borrowing employers have such insurance.

Federal Wage Earner Protection Program

Unifor has, unfortunately, extensive experience in relation to employee attempts to access and obtain the benefit of the Federal Government's Wage Earner Protection Program (WEPP). WEPP was developed to ensure the timely payment of at least part of the monies owed to workers when employers become bankrupt or are subject to receivership. There are numerous problems with the administration and application of the WEPP.

Under the WEPP, employees are entitled to a payment of for part of their unpaid wages, vacation pay, termination pay, and severance pay that an employee earned or became entitled to in the last six months before a bankruptcy or receivership. Particularly in the case of vacation pay, the six month limitation means the amount accrued to the employee during the six-month period before the receivership, not the total amount that they are owed at the time of the receivership/bankruptcy, is the subject of the claim.

For example, where a collective agreement states that employees accumulate 10% of wages annually for vacation pay, the employees are eligible to receive only 5% as part of their claim because of the 6 month limitation. An employee should be entitled to a WEPP claim for all of the monies owing to them, not just that which accrues in the final 6 months of employment.

In addition, the ordering of priorities under the Regulations eliminates avenues of redress for employees vis-à-vis directors. Under the WEPP, a post-filing payment made to employees by a receiver/trustee on account of unpaid wages and vacation pay is deducted from any WEPP payment available. Any such payment is allocated first as outstanding wages, with the remainder allocated to unpaid vacation pay.

In the event there is a remainder, the employee could normally make a claim against directors for unpaid wages, except the WEPP has already made the allocation for wages, which provides fodder for directors to argue that wages have already been paid, and they are not liable for vacation pay;

There should be no ordering of payments under the WEPP, to permit employees to seek what redress they can to recoup the greatest amount possible for the losses they have suffered. Further, if the member does apply for and receive a WEPP payment, and if the member receives Employment Insurance, a large portion of the amount they will receive under the WEPP will become an E.I. overpayment and will have to be repaid to Service Canada, the administrators of the E.I. program. As a result, the employee ends up with a WEPP payment of much less than their claim. On the other hand, after recouping the overpayment from the employee the Government of Canada still has a subrogated claim for the full claim as against the debtor under the WEPP.

Additionally, *s*ubmitting a proof of claim to a receiver/trustee is required before an applicant can complete his or her application for a WEPP payment benefits so that the Government of Canada can pursue recovery of WEPP payments as a subrogated creditor. In bankruptcies and receiverships, Unifor has usually completed this task for members to ensure the claim is made in a timely manner and to ensure that all members' claims are submitted. The authority to do this is set out in the BIA.

Overall, the process of a bargaining agent filing proofs of claim on behalf of members makes it easier for both the members and the Trustee as there is one point of contact and issues that arise can be addressed quickly. At times, Unifor has had to file grievances and proceed to expedited arbitration to obtain the documentation necessary to file these claims.

Trustees should be specifically authorized in their appointing orders to provide such documentation to a union to facilitate disclosure of information necessary to file a claim on behalf of its members;

In addition, Service Canada, which administers the WEPPA has not allowed the Union to file a group WEPP claim on behalf of all of the members. This means that each of the members have to file their own on–line or mailed in forms and have had to follow up on their own when a Trustee has not filed the proper forms or provided Service Canada with all of the necessary information. This creates delay and anxiety for the members. For the same reasons provided in relation to the filing of proofs of claim, either by amendment to the legislation or by administrative determination, Service Canada should permit the filing of WEPPA documentation by the employees' union.

Unifor welcomes this opportunity to provide comments to Innovation, Science and Economic Development Canada in response to the consultations on Enhancing Retirement Security for Canadians and urges legislative action on our proposals.