Enhancing Retirement Security for Canadians: Consultation Document

Teamsters Canada submission, December 21, 2018

Teamsters Canada represents more than 125,000 workers in all sectors of the economy. Teamsters Canada is Canada's supply chain and transportation union, the largest private sector union representing workers in the federal jurisdiction. Teamsters participate in all forms of retirement income systems; DB, DC and RRSP schemes.

Teamsters Canada supports the Government's belief that "all Canadians deserve a safe, secure and dignified retirement". Company insolvencies have caused Canadians to question the security of pensions, and the willingness of Government's to protect workers and retirees. Federal-Provincial separation of powers results in about 7% of pensions falling under federal authority. The public does not discern or care which jurisdiction the unjust loss of pension and benefits falls, Canadians want the problem fixed.

Recommendation: Teamsters Canada urges the federal and provincial governments to work together like they did on CPP to create a model best practices leading to common legislation that will protect workers and retirees no matter where a pension plan is registered.

DB plans are the best retirement vehicle to ensure retirement income. DB plans have been replaced by different schemes from DC plans, Pooled Plans, to RRSP contributions which shifts the risk of adequate retirement income to employees. The investment manager's fees and administrative costs of these plans is much higher than DB plans, and a few basis points increase in costs means a significant reduction in retirement income. Legislating Management Expense Ratios (MER) or the administrative costs of running DC or Pooled Plans would be welcome. Teamsters Canada believes all pension funds, all registered accounts, should enjoy the same basic protection given to participants in DB plans.

Recommendation: Teamsters Canada supports enacting legislation to place a fiduciary duty on all firms and individuals in their dealings with groups and individual participants in the retirement income system. The fiduciary duty should apply to all Pension and Registered funds, for example, RRSP, RIF, RLIF. Enacting a fiduciary duty will ensure investment decisions and all dealing are in the best interest of workers and retirees and it would in the long-term decrease costs and increase pensions.

High profile insolvency, such as Nortel or Sears, with the resulting reduction in pensions and benefits, gets the attention of Canadians, as it should. Solutions for these rare occurrences start long before insolvency. Pensions are not a gift from companies, pensions are foregone wages. When pensions promises are not kept it is a form of wage theft. Companies insist the best way of guaranteeing a pension is the ongoing success of the firm. Teamsters Canada position is the only way to guarantee a pension is to ensure it is always adequately funded. In our more than 100-year experience as a union, companies come and go, industries come and go, and when they do go workers and retirees' pensions and benefits must survive.

Teamsters Canada participated in all consultations and proceeding over the past decade on pension funding rules. The federal rules based on 100% funding, smoothing and amortization provisions make it less likely that single employer pension plans will be inadequately funded if insolvency of the sponsor company occurs, and these rules give flexibility to plan sponsors. Where included in the pension arrangement, funding must be adequate to cover benefits such as health, insurance and disability coverage.

Recommendation: Teamsters Canada believes the best way to protect pensions of single employer pension plans is to ensure the adequate funding of these pension plans. Focus on keeping the funding of the plan whole, and one will not have to worry what happens when a firm enters insolvency.

Insolvency and Corporate law work to facilitate restructuring perhaps allowing a company to continue in business, create employment and continue to sponsor a pension plan. The consultation document refers to balance.

> "In its consideration of stakeholder proposals to strengthen the RIS legislative framework, the Government will follow a balanced, principled, evidence-based approach. The RIS regime includes both pension-specific legislation and broad marketplace framework laws designed to promote economic stability, growth and international competiveness for Canada, such as insolvency and corporate governance statutes."

Business, the managerial class, shareholders, creditors, employees and pensioners all have skin in the game. And, each may have different drivers in their decision making.

The managerial class, Executive Officers and Directors, are most often paid a salary and stock options. It is not always in their best interest to fully fund pension plans. Money diverted from the company and shareholders is not good for business, and their pockets. Shareholders like dividends and growth in stock value. The risk of pension liability is not often front and center in corporate reports to shareholders. A requirement for pension liability issues to be placed in the letter to shareholders and not buried in the back pages of a report would bring light to the issue and perhaps produce some market discipline. Large pension deficits may lead to falling share prices that should get the Executive Officers' and Directors' attention. Shareholders lose everything in insolvency, perhaps pension liability would be a warning sign that would encourage at least some of them to exit and save their money.

Employees in insolvency face loss of their jobs, pensions and benefits. On some occasions, there is a compromise for them to make. Do we keep the work and get a haircut on future pension and benefits? The "balance" the consultation document discusses really hits home for the managerial class and employees. If the company can be saved, perhaps work and income can be saved too. For this group there may be time to recuperate the losses, even though they may be large and difficult to overcome.

Pensioners in insolvency have no such luck. They are stuck with the haircut, pension slashed, retirement destroyed with no chance to recuperate the loss. Employees and pensioners pensions are foregone wages, wage theft is wage theft, no matter if it is on a weekly cheque or delivered in insolvency to pensions and benefits or retirees.

Teamsters Canada believes that if the funding regime is working, and provinces would adopt similar strong controls as in the federal regime for single employer pension plans, funding levels of these pension plans would always be near 100% or at lease adequately funded that a shortfall would be small. Then the impact on creditors of placing pensioners in priority to other creditors would not be difficult for the system to absorb, limiting the potential impact on credit costs and availability. Otherwise, the current model builds restructuring plans upon wage theft from pensioners that have no means to either protect themselves or win work and income from the restructuring.

Recommendation: Teamsters Canada urges the Government to build consensus with provincial partners to guarantee full funding of pensions. Teamsters Canada would support placing pensioners in seniority to other creditors in insolvency.

Recommendation: Teamsters Canada supports piercing the corporate veil. Give regulators the ability to look back in corporate activity well before insolvency to examine dividends, executive compensation and asset stripping. When pensions are in deficit, give regulators the authority to divert some or all dividends, executive compensation and funds from asset stripping to the pension fund either at the time or through the power of the court in bankruptcy.

Recommendation: Teamsters Canada supports regulators or the courts having power to force disclosure of how much a creditor actually paid for the asset, for example a bond. Vultures will take the risk of paying 10 cents on the dollar hoping to earn more through the proceedings. Making creditors "whole" should not mean making pensioners poor.

Recommendation: Teamsters Canada supports imposing an express duty of good faith on all parties to the restructuring. Limit initial orders to the essential, give pensioners and employees the opportunity to participate in a meaningful way.

Recommendation: Teamsters Canada would support "the CBCA 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".

Corporate governance reforms should clearly understand and start from the premise that business only exists to make money for the business and shareholders. Business will throw pensioners under a bus with no second thought unless the law and regulations prevent them from doing so. Defined benefit plans are legacy plans. All employers who can have already moved to DC or hybrid plans. The consultation paper seems to be concerned that pension costs would damage economic growth and job creation. Teamsters Canada would hope the Government would be as concerned for what poverty in old age will look like, and answer the question on how businesses will make any money if retirees don't have any money to spend.

Pension Options

"Solvency reserve accounts (SRAs): A SRA is an account of the pension plan into which companies could remit solvency special payments to eliminate pension deficits. Once the deficit is eliminated and the plan is in surplus, employers would be permitted to recover portions of their special payments from the SRA, in the form of plan surplus, that are no longer required to secure pension benefits."

This looks like a scheme to allow employers to withdraw surpluses from a pension fund by creating two funds to remit payments. One is locked in (pension) the other is not (SRA). It looks like another method of creating pension remittance holidays for employers and give another method to take money from a pension fund. Some jurisdictions are already providing for SRA (for example, BC). We are of the opinion that, then again, if well managed, it can be an interesting option for managing volatility in a pension plan.

Teamsters Canada requires further information as to the intent and purpose prior to taking a position.

"Pension funding relief criteria: The Minister of Finance has the authority to provide employers with special pension funding relief…to enhance the Minister's authority in this regard and improve corporate responsibility, employers seeking funding relief could 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."

Recommendation: Teamsters Canada strongly supports this dividend prohibition and would extend it to asset stripping and corporate asset transfers and sales.

"Transfers to self-managed accounts: When a federally regulated DB plan is terminated, it must purchase annuities for retirees that replicate plan benefits. Where plans are underfunded due to employer bankruptcy, purchasing annuities leads to permanently reduced benefits. Retirees could be provided with an additional option to transfer their reduced pension amount, as a lump sum, to a personally managed locked-in savings plan.."

The purchase of annuities can be detrimental to beneficiaries when interest rates are low. Equally, for many individuals assuming the total risk of managing a locked-in savings plan can be burdensome and risky. Individuals should be given the option, however, there may be another avenue to take.

Recommendation: Teamsters Canada suggests looking at Pooled Pension Plans, allowing individuals to place their funds collectively with professional fund managers when it is not beneficial to take annuities. The fund, what is left it in insolvency, would be protected as much as it could be. If the market investments go up, there may be a time when annuities can be purchased, and the "new" plan unwound.

"Clarify benefit entitlement" sections of the consultation paper look to us like an attempt to revisit Bill C-27. "Flexibility" for companies to offer different benefits addressing "affordability and sustainability issues that may be critical to the employer."

Recommendation: Teamsters Canada said no to C-27, and Teamsters Canada says no to clarifying benefit entitlement as proposed in the consultation document.

In Conclusion, Teamsters Canada would like to see expansive changes to protect pension plans in insolvency. When pension plans fail due to insolvency pensioners face reduction in income. A company through insolvency evades its pension responsibility. If retiree income is reduced the possibility of GIS or other government programs may result. The taxpayer if forced to pick up the costs. This should not be permitted to occur. The Consultation Paper clearly shows the Government has a much more limited scope of action. The discussion is important, and Teamsters Canada congratulates Minister Tassi for undertaking the consultation. Teamsters Canada will be disappointed if strong action is not taken, but we will welcome positive changes that further strengthen the protection of pensioners benefits.

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