National Association of Federal Retirees

Association nationale des retraités fédéraux

Submission by the National Association of Federal Retirees to the Department of Finance Consultations on *House Government Bill C-27 – An Act to amend the Pension Benefits Standards Act, 1985*

Introduction

The National Association of Federal Retirees (Federal Retirees) is the largest national advocacy organization representing active and retired members, as well as their partners and survivors, of the federal public service, Canadian Armed Forces, Royal Canadian Mounted Police (RCMP) and retired federally appointed judges. Federal Retirees' mission is to protect the pensions and benefits of its members, which they've paid for through their years of service to Canada. With 180,000 members including over 60,000 veterans and their families, the Association has been advocating for improvements to the financial security, health and well-being of our members and all Canadians for more than 50 years.

We are also part of the 21-member organization collaboration, the Canadian Coalition for Retirement Security, which represents more than five million working and retired Canadians who believe in retirement security and who are opposed in whole or in part to *House Government Bill C-27, An Act to amend the Pension Benefits Standards Act, 1985* (Bill C-27). This legislation seeks to introduce a target benefit pension plan framework in Canada's federal pension landscape.

Target Benefit plans, also known as "shared risk plans", shift the risk in pension plans from employers and plan sponsors to employees and retirees. In tough times, target benefit pensions can be reduced, providing less retirement security for their members, which is a concern for retirees. Target benefit plans are in some ways a new element in the Canadian pension landscape, however some provinces have moved forward with target benefit implementation in different ways. British Columbia confines target plans to multi-employer plans, while in Alberta it is more open. For the most part, pension standards legislation in Canadian jurisdictions protect accrued benefits earned under defined benefit pension plans. In Saskatchewan, Nova Scotia, British Columbia and Alberta, legislation does not permit the conversion of a traditional defined benefit plan to a target benefit plan on a retroactive basis. New Brunswick is the only province in which legislation allows this type of conversation (which has been heavily challenged by that province's retirees and labour organizations).

Bill C-27 would impact the accrued pensions of people employed by, and who have retired with many years of service, with Crown corporations and federally-regulated employers. Although Bill C-27 would not impact our members if enacted as-is, the potentially corrosive effect it could have on Canadians' collective retirement income security concerns us: the Bill is likely to erode the retirement security earned/accrued by Canadians in defined benefit pension plans.

Our concerns rest primarily with the Bill's proposed treatment of accrued defined benefits, the provisions for consent, and the recent consultation process around Bill C-27 and its October 2016 introduction in the House of Commons.

We believe there is a way forward for Canada's pension landscape where new options that may provide better retirement security are available, without taking away from the retirement security already earned by millions of middle class Canadians in defined benefit pension plans.

Defined Benefits and Retirement Security

Well-managed, disciplined defined benefit pension plans are proven to make retirement secure. A Boston Consulting Group (BCG) 2013 study suggests that large defined benefit plans provide Canadians with one of the strongest retirement income systems in the world and contribute significantly to national prosperity. In another study, BCG found that benefits paid out to defined benefit plan members cycle back into the Canadian economy in the form of consumer spending and taxes, generating business growth and employment. Retirees with defined benefit plans are also less likely to rely on government assistance, such as the Guaranteed Income Supplement; and solid retirement income security brings better health status and outcomes, which reduce demands on the health care system.

Defined benefits are the most effective means of generating retirement security, but unfortunately, workplace defined benefit pension coverage has been declining. Private sector employees, in particular, have seen a significant drop in defined benefit pension coverage, from 87% in 1993 to 37% in 2011 (Aon-Hewitt, 2015). There has been a significant shift to defined contribution plans, and many employers have eliminated their pension plan altogether. This is ongoing, although defined benefit plans are performing better on the short term and improving their long-term outlook. Aon Hewitt found that as of January 1, 2017, median defined benefit plan solvency was up to 94.9%, from 86.1% on January 1, 2016, while fully funded status increased from 10.7% of plans to 35.2% during the same period. This may signal a shift back from the edge for defined benefit pensions, brought on in part by the economy and post-2008 financial woes. The refrain that defined benefit pensions are "unsustainable" is simply not universally true.

Retirement income policy should focus on efforts that will make retirement more secure, including specific measures to safeguard a future for defined benefit plans. Elements of a strategy to achieve that future may include banning contribution holidays, discussing solvency funding requirements, and rethinking how plan surpluses are dealt with. The National Association of Federal Retirees would welcome the opportunity to discuss and contribute to a complete retirement security strategy that addresses existing and emerging challenges facing Canadians, particularly those without adequate pension coverage.

Government Policy Positions and Consultation

The current Liberal government differentiated itself in the 2015 federal election on a platform that included a fair, open, and transparent government; evidence-based public policy; and a focus on building better retirement security for Canadians in the form of an improved Canada Pension Plan, changes to Old Age Security, and other measures including investments in affordable housing and seniors' facilities.

This government worked quickly and effectively with the provinces and territories to improve the Canada Pension Plan (CPP) and make retirement income more secure for young Canadians. Indeed, it is arguable that the CPP is one of, if not the, largest defined benefit pension plans in existence. Under Prime Minister Trudeau's leadership, the government delivered on its promise to revert to 65 as the eligibility age for Old Age Security, and in the 2017 federal budget, seniors across Canada felt secure in knowing this government is taking meaningful steps to address homecare and affordable housing.

In 2015, Prime Minister Trudeau clearly promised to the National Association of Federal Retirees in a letter to then President Gary Oberg that defined benefit plans "which have already been paid for by employees and pensioners, should not be retroactively changed into [target benefit plans]".

Additionally, Mr. Trudeau was interviewed by Federal Retirees' Sage magazine in 2015[1], and was asked his position on accumulated benefits about the then Conservative government's intention to introduce a "voluntary target benefit option" for employees of federally-regulated entities. In response, Mr. Trudeau said, "I was relieved the government didn't move ahead on this. They probably made a smart calculation that taking away benefits from seniors that had been earned and accrued over years, retroactively, is unacceptable, would cost them too high politically, and it's wrong in principle… Changing the rules retroactively, unless there's a grievous error or unforeseen consequences, is unacceptable."

As we discuss below, Bill C-27 would permit precisely what Prime Minister Trudeau is clearly opposed to: a retroactive change to pensions that have already been earned by Canadians, including Canadian seniors. In addition, Bill C-27 is likely to erode Canadians' retirement security; this is counter to the government's stated objective to provide Canadians with more retirement security.

We would also briefly raise concerns with the process and consultation surrounding Bill C-27 to date. The former Conservative government launched public consultations on a target benefit framework in 2014, and indicated it was assessing target benefit plans for federally regulated employers in the 2015 budget. No further action was taken in 2015.

In October 2016, Canada's new Liberal Finance Minister, the Honourable Bill Morneau, introduced Bill C-27. Stakeholder engagement was not conducted prior to introducing the legislation; concerned organizations were invited to discuss their concerns and provide a written brief only after the legislation was introduced and concerns were raised. The consultations invited by Finance Canada following the bill's introduction in Parliament have not been communicated to the public.

[1] French edition available here.

This approach does not assure Canadians of fairness, openness, and transparency in developing public policy – particularly public policy that has far-reaching consequences on vulnerable segments of the population, such as seniors. However, we appreciate the government's response when concerns with the legislation and the process were raised: to pause and consult with concerned organizations and Canadians. It is our sincere hope that the submissions provided on Bill C-27 will help shape better public policy and improve retirement security for decades to come.

Bill C-27's Treatment of Accrued Defined Benefits

Over the past several months, government officials and Members of Parliament have tried to reassure Federal Retirees and its members that Bill C-27 will "broaden the scope of retirement savings opportunities available to Canadians."

In discussing the treatment of accrued defined benefits, the government has indicated that "existing pension benefits of plan members and retirees may be exchanged (*i.e.* converted) into benefits in a TBP [target benefit plan] but only with individual informed consent. Plan members and retirees who do not consent would maintain their existing defined benefit pension or defined benefit contribution pension benefits in their current plan."

Bill C-27 will not "broaden the scope" of retirement savings. The legislation is designed to effectively convert accrued or earned defined benefit pension plans to target benefit pension plans, which will be irresistible to employers with defined benefit plans, whether in the public or the private sector: employers may be able to simply walk away from pension promises they've already made to employees and retirees. In this respect, Bill C-27 is likely to erode the retirement security already earned by employees and retirees in defined benefit pension plans.

This is simply not acceptable. Defined benefit pensions are deferred compensation, and employees have already provided their services in exchange for them.

Defined benefit plans work best when there is robust plan membership that includes active contributors, or employees, as well as retirees. If active employees agree to move to a target plan, retirees who do not consent to be moved to that plan will be left in a defined benefit plan with no active or new contributors. Some retirees will be swayed to move to the target plan, leaving the defined benefit plan in a precarious position. This may result in additional consequences to those who opt to remain in the defined benefit plan; they may not "maintain their existing benefits". Further, we are concerned this aspect could be used as leverage by unscrupulous plan sponsors to push people to "surrender" their defined benefit pensions.

If improving retirement security is still a goal of the current government and of this legislation, we believe it can and should be advanced without eroding defined benefit pensions.

The National Association of Federal Retirees is not opposed to target benefit plans. Done fairly and in the right way, as new plans on a go-forward basis only, target benefits could make retirement more secure for some Canadians. Unfortunately, Bill C-27 will enable target benefit plans at the expense of good defined benefit plans and many Canadians' earned retirement pensions.

Bill C-27's "Consent" Approach

While Bill C-27 includes a mechanism for defined benefit pension plan members to "consent" to surrender their pension, we have serious concerns with it. The legislation would allow employees to "surrender and exchange" their defined benefit pensions. To do so, employees must consent based on a "written explanation" and "any other information that may be prescribed". This is different from what elected and department officials have described in correspondence and conversations since Bill C-27's introduction – which is "*informed consent*".

Bill C-27 is vague in describing how individuals will be informed, and the type and format of information that must be provided. The term "informed consent" is not explicit in the legislation, nor have there been specific details on how informed consent would be achieved, or the recourse available if consent is improperly obtained. It is unclear what informed consent means in C-27's context, which is disconcerting as defined benefit pensions are a complex and significant personal financial asset, and a significant portion of the demographic affected by the legislation may be more likely to be vulnerable (*i.e.* retirees/seniors).

Typical definitions of "informed consent" include the following aspects. It broadly means that an individual agrees to follow a course of action with complete knowledge of all relevant facts including the risks involved and possible alternatives. Accurate, adequate, and relevant information must be provided truthfully in a form and language that the individual can understand. There are opportunities to ask questions and clarify all doubts. There must not be any kind of coercion, and consent may be revoked. Consent must be voluntary, made by an individual with the capacity to consent, and made only when the individual has been properly informed. Consent given under fear of intimidation, or where facts, risks, and alternatives have been misrepresented, can be held invalid.

It is unlikely that truly informed consent is achievable in this framework, and equally unlikely that all plan members who will be asked to surrender their defined benefit pension will understand exactly what they are consenting (or not consenting) to. This is especially likely to be the case for the senior population, which is more likely to include vulnerable individuals. Experience from New Brunswick, which introduced shared-risk plans in 2013, demonstrates that it is even more difficult to communicate clearly and simply about exceptionally complex target benefit plans without misleading plan members. Given that employers who are proposing a conversion will have a vested interest in achieving that specific outcome, it becomes even less likely that all plan members will get the chance to make a fully-informed choice, free from employer pressure and without exploitation of vulnerable populations.

Under Bill C-27, it is our understanding that unions can consent to "surrender and exchange" defined benefit pensions in certain circumstances on behalf of unionized plan members who are actively represented by the bargaining agent. Employers may try to obtain consent at the collective bargaining table, in cases where pensions are negotiated. Ugly labour disputes and lockouts are likely to be inevitable if the legislation proceeds. Labour disputes hurt Canadians, hurt the economy, and can potentially have negative consequences on retirees. Further, the ability for bargaining agents to consent on behalf of the individuals it represents also means that an employee that is on the verge of retiring, can see their defined benefit plan turned into a target plan against their wishes. Retirees are further disadvantaged in this equation, having little power to influence collective bargaining and the future of their defined benefit pension.

As mentioned, the retiree groups impacted if Bill C-27 proceeds will naturally skew toward the senior demographic. This will include many vulnerable seniors, from annuitants to their surviving spouses. If they are unfairly pushed to a target benefit plan that ultimately does not meet their financial needs, these individuals may be unable to return to work or find other means to supplement their income.

The complexity of pensions; the consequences and implications involved in "surrendering" one's earned pension, not to mention the fundamental unfairness of attempting to do so; the issues outlined with regard to consent and informed consent; the difficulties and consequences likely to arise in the labour relations context; and the realities of the seniors demographic, mean Canadian seniors will be disproportionately negatively impacted by this flawed framework.

Working Toward Solutions

As noted herein, the National Association of Federal Retirees is not opposed to target benefit plans – done fairly and in the right way as new plans on a go-forward basis only, target benefits could make retirement secure and dignified for some Canadians. Target benefits may enable plan members to benefit from risk and longevity pooling, and may provide a core or defined lifetime pension benefits, something not offered by most current alternatives to defined benefit pension plans. Target plans can certainly be a step above defined contribution savings plans and voluntary savings products such as Registered Retirement Savings Plans.

But as noted, Bill C-27 as it currently stands will erode retirement security for millions of middle class Canadians who have defined benefit plan coverage and accrued or earned defined benefit pensions. Enabling a new pension framework for target benefit plans should not be done at the expense of defined benefit plans and plan members – yet that is what this piece of legislation will likely do. Bill C-27 is unfair and inappropriate. It counters the government's stated objectives on retirement security, as well as Prime Minister Trudeau's stated position on target benefit pension plans and treatment of accrued defined benefits, and is likely to have longer-term consequences for Canada's economy.

There is a sacred trust for the federal government to protect the retirement income security that's already been earned by millions of Canadians in defined benefit plans. If improving Canadians' retirement security is the goal, establishing a framework that will enable the dismantling of good defined benefit pensions flies in the face of the government’s stated goal of improving Canadians’ retirement security.

The National Association of Federal Retirees respectfully urges the Right Honourable Prime Minister Trudeau to honour promises made to retirees in 2015. We ask Prime Minister Trudeau and the Honourable Bill Morneau, Finance Minister, to withdraw aspects of Bill C-27 that enable retroactive changes and reductions to defined benefit pensions. We further ask that this government undertake meaningful dialogue, involving employees and retirees, non-profit organizations, labour organizations, businesses, and others, to find the best solutions to protect and improve pension coverage and retirement security in Canada for generations to come.

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