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'Cold comfort': Ottawa's plans to protect pensions not good enough, say critics

'Is it pension protection? It certainly isn't,' says retiree group spokesperson

Karina Roman · CBC News · Posted: Apr 21, 2019 4:00 AM ET | Last Updated: April 21

A shopper leaves a Sears department store in Oakville, Ont., on the final day of shopping before the store closed, on Dec. 17, 2017. Sears employees ended up with greatly reduced pensions. (Richard Buchan/Canadian Press)

comments

The federal government's latest proposed measures to protect pensions don't actually accomplish much, according to pensioner groups disappointed with the policy outlined in the

Trudeau government's omnibus budget bill.

In the wake of high-profile bankruptcies at Sears and Nortel that left former employees with greatly reduced pensions, the Liberal government promised action.

It undertook consultations last fall with stakeholders and looked at several options to protect unfunded defined benefit plan pensions.

In the March federal budget, the Trudeau government committed to strengthening various laws to better protect Canadians' pensions following a bankruptcy.

But what the government is offering now falls well short of what pensioner groups want.

"It feels like very first, tenuous steps towards positive reform. Is it enough? Is it pension protection? It certainly isn't," said Laura Tamblyn Watts, chief of public policy for CARP, formerly the Canadian Association of Retired Persons. "It's a profoundly missed opportunity."

The 392-page omnibus Budget Implementation Act, which will be debated and eventually voted on when the House of Commons returns April 29, outlines a number of proposed legislative changes to the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Canada Business Corporation Act.

Justifying C-suite bonuses

Prominent among those proposed changes is one that would make the directors of a corporation liable for any bonuses, incentive benefits or severance pay issued to executives, managers or directors during the year prior to a bankruptcy.

In practical terms, that means a judge in a bankruptcy proceeding could compel company executives to prove the bonuses were justified. If the judge finds that they were not, says the federal Department of Innovation, Science and Economic Development, "directors found liable for such payments may decide to seek recovery from the recipients of excessive compensation payments."

"Directors have the ultimate responsibility and powers to act in the best interest of the company," says the department. "With these amendments, we are encouraging increased

vigilance if a company is in financial difficulty and approaching insolvency."

News reports about executives awarding themselves big bonuses as their companies spiralled downward have triggered widespread outrage among Canadians. The aim of this proposed measure is to stop senior executives from paying themselves exorbitant sums just before a company fails.

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- **'It's going to be hard': Sears pension payments cut by 30% this week**

"I think it will certainly give directors ... pause and may make them look more closely at decisions at a more micro level than they otherwise may have in the past, because of the potential risk of liability that this provision would impose on them," said pension lawyer Jana Steele, a partner at Osler, Hoskin and Harcourt in Toronto.

That could mean more money remaining in the pot for creditors if a business does go under — which, in theory, could be used to top up an underfunded pension plan.

But since pensioners tend to be just one in a long list of creditors in a bankruptcy proceeding, and are never at the head of the line for repayment, the rule change might not be that useful.

"If there's no money left over in the end for pensioners, it's cold comfort indeed," said Tamblyn Watts.

Bankruptcy is not a problem for defined benefit pension plans when the pensions are fully funded — but often it's companies with pension deficits that run into financial trouble.

'Super priority' for pensioners rejected

Defined benefit plans are ones which guarantee pensioners a certain level of income at retirement, based on length of service and age.

Both CARP and the Canadian Federation of Pensioners had called on Ottawa to move pensioners up the creditor priority list, by giving them something called "super priority."

But federal Minister for Seniors Filomena Tassi said the government decided the risk of unintended consequences associated with such a move was too great.

"We do not want to make it difficult for companies in insolvency to restructure. We want to make it easier for them to restructure," Tassi told CBC News.

Minister of Seniors Filomena Tassi. "We want to make it easier for (companies) to restructure." (Justin Tang/Canadian Press)

She argues that super priority status for pensioners would discourage investors from trying to save a troubled company.

Pensioner advocates also have argued for some kind of insurance fund that pension plan sponsors would pay into, which could be tapped if a pension is unfunded and a company faces insolvency. Tassi said the government hasn't closed the door on that idea and others, but they need more study.

The budget implementation bill also states that those involved in insolvency proceedings must act in good faith. It says executives and directors of a corporation must act in its best interests, which must include the interests of retirees and pensioners as well as shareholders, employees and creditors.

"[The federal government is] acknowledging that the insolvency legislation in Canada is not fair, balanced or equal when it comes to dealing with pensioners," said Michael Powell, president of the Canadian Federation of Pensioners. "Unfortunately, their implementation doesn't really move the yardstick forward very far."

But pension experts say the federal government can only do so much, given the complexity of insolvency proceedings.

A regulatory patchwork

"I think the federal government is trying to find a middle ground," said Steele. "The proposed legislative changes, to me, are trying to strike a balance and trying to do something, but there's only so much you can do given all the different factors and all the different interests that are at play when an insolvency is happening."

Ottawa is also hampered by the fact that more than 90 per cent of pensions in Canada fall under provincial jurisdiction, so the rules on the degree to which those plans must be funded vary from province to province.

"The answer isn't, in my mind, that the federal government's just going to write the cheque on all these potential companies that end up in this situation," said Tassi. "The answer really is to work together with the provinces and territories to prevent this from becoming a problem in the first place."

Tamblyn Watts said that more still needs to be done and she hopes to see further commitments in political party platforms in the fall election, given that there are nearly six million seniors in Canada.

"What's most important is the lived experience of people who have been plummeted into poverty because this government hasn't taken action."