

Powell: Sears shows it's time for serious pension protection

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When Sears went under, pensioners suffered. *SCOTT OLSON / GETTY IMAGES*

It was encouraging to see that extending super-priority to unfunded pension liability was a top-five policy at April's Liberal 2018 Convention. The grassroots gets it, sees a problem here.

For the tens of thousands of Canadians who have suffered personal losses due to insolvency or bankruptcy, the long-time lack of pension protection in

Canada is painfully obvious. But if you haven't been directly affected, it took the recent Sears insolvency to make it top of mind, not to mention front-page news.

This is why: Previous insolvencies happened to lesser-known companies, in most cases, to people you likely didn't know. Sears cut through this fog. Everyone had a Sears store nearby. Everyone worked for Sears at some time in their lives or had a relative, friend or neighbour who did. Many of us were regular customers. Concern was widespread and personal.

On top of that, pensions are complex and hard to understand. Pensions are surrounded by strange, confusing technical terms and trade jargon. It was easy to simply agree with the "experts" who said that while these insolvencies resulted at times in pensioners losing a significant portion of their deferred wages, it was necessary to maintain "balance and fairness." However, the basis of this "balance and fairness" was murky, never quite explained.

This time, the confusing technical terms and trade jargon were not enough to deter everyday, ordinary people from looking closely at what was happening to their friends and neighbours. What they saw shocked them: Details emerged of the special dividends paid, and executive bonuses awarded, while the pension was allowed to be underfunded. Public consensus was that this was obviously not just, balanced or fair.

When all was said to be in accordance with Canadian rules, the public got angry and vocal, and support grew for a change to the laws to better protect pensions in insolvency. This theme was and is being repeated by Canadians from coast to coast to coast. Articles and opinion pieces have surfaced across all media. Organizations such as CARP, Leadnow, the Canadian Labour Congress, the National Federation of Pensioners and the Canadian Federation of Pensioners have rallied their members to bring pressure to bear on MPs. Two opposition parties have submitted Private Members' Bills with proposed solutions.

This energy, released by the apparent fundamental wrongness of the treatment of Sears pensioners, not only has led to a widespread understanding that insolvency legislation must change to protect pensions but it has finally led pensioners, the public and politicians to challenge longstanding "truths" used in the past to maintain the status quo.

There is a clear contradiction between arguments raised against requiring full-solvency funding and those raised against extending super-priority status to the unfunded pension liability in an insolvency.

When we approach regulators and argue that 100-per-cent solvency funding should be required, the sponsors, financial community experts, and bureaucrats argue that this would be unreasonably onerous. Unfortunately, today, not one of the 11 regulatory jurisdictions in Canada requires 100-per-cent solvency funding. Their argument is that the only time 100-per-cent solvency is important is when a company becomes insolvent, and very few companies actually do file for insolvency protection. They claim “making all sponsors fully fund their pensions would “unnecessarily tie up capital that could be better utilized elsewhere.” In other words, pension protection is a small problem, has little impact, and is insignificant to the point that it really isn't worth addressing. In the past the policymakers, the public and politicians nodded and agreed with the “experts.”

When we address insolvency legislation and argue that super-priority status should be extended to unfunded pension liabilities, we get quite a different response from, often, the same sponsors, financial community experts, and bureaucrats. They now argue that pension protection is a huge issue. Protecting pensions would be “disastrous,” cause more companies to collapse, threaten commercial lending in Canada, and significantly constrain growth. In the past, the policymakers, the public, and politicians nodded and agreed with the “experts.”

In short, the same sponsors, financial community experts, and bureaucrats say the problem is so small it's not worth addressing as an insolvency funding issue; and yet say that if addressed in insolvency it will cause companies to collapse and threaten all commercial lending in Canada. So which is it?

Sears has opened the eyes of the public and politicians to high-level fundamental moral issues of balance and fairness in current Canadian insolvency legislation. They are now also looking at and challenging these past “truths.”

Pension protection cannot, at the same time, be both insignificant and an Armageddon-like threat to the Canadian economy. It is easy to see why sponsors and the financial industry have supported these conflicting positions: It is in their financial best interests. Lower funding at one end and

no financial responsibility at the other. Today the policymakers, the public and politicians are not simply nodding and agreeing.

The Canadian Federation of Pensioners believes the best, most practical solution is to extend super-priority to the unfunded pension liability. It is the best of the potential solutions because:

- It is entirely within federal jurisdiction;
- It does not involve taxpayer funding;
- It does not directly intrude or impose on business management;
- It takes pensions, one of the most contentious issues in insolvency, off the table, resulting in faster lower cost insolvency process;
- It does not require additional bureaucracy.

Policymakers and politicians ignore this grassroots concern at their own peril.

Michael Powell is President of the Canadian Federation of Pensioners.

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