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Lack of Pension Protection in Canada is Painfully Obvious

For the tens of thousands of Canadians who have suffered personal losses due to insolvency or bankruptcy, the 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, op-eds, opinion pieces have surfaced across all media. Organizations such as CARP, Leadnow, the Canadian Labour Congress, 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 long standing "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% 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 eleven regulatory jurisdictions in Canada requires

100% solvency funding. Their argument is that the only time 100% 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 policy makers, 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 policy makers, the public, and politicians nodded and agreed with the “experts”.

In short, pension regulators say the problem is so small it's not worth addressing; and those responsible for insolvency legislation say that if addressed it will have too great an impact and cause companies to collapse. So which is it?

As 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 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 policy makers, 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 a faster lower cost process
- it does not require additional bureaucracy

Policy makers and politicians ignore this grassroots concern at their own peril. No longer can they hide behind the industry "experts". Policy makers and politicians have to explain why they support legislation that says pension underfunding is nothing to worry about and, by the way, a looming disaster if we address it.

Put yourself in the shoes of retirees from Nortel, Wabush Mines, Indalex, Sears, and many others, Would you give up 20, 30, 40% of your income?