

May 18, 2010

*Subject: May 26 vote on Bill C-501 An Act to amend the Bankruptcy and Insolvency Act and other Acts (pension protection)*

On May 26, members of parliament will be asked to vote on whether to send Bill C-501 to the House of Commons Standing Committee on Industry, Science and Technology (INDU) for study or to defeat it.

Bill C-501 proposes to amend the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* to grant creditor protection to pension plans. It also proposes amendments to the *Canada Business Corporations Act* to allow former employees of a bankrupt company to seek claims for compensation against the company's directors.

The policy intent of this bill and the other Private Members' Bills in the House of Commons and Senate is understood by Canadian businesses. However, we believe there are better approaches that should be considered.

There are several unintended and adverse consequences of granting creditor protection to pensions for employers, plan sponsors and many Canadians:

1. The erosion of the retirement savings of the millions of Canadians whose portfolios include mutual funds with corporate bonds issued by the companies to which Bill C-501 would apply, i.e., employers sponsoring Defined Benefit (DB) pension plans. For DB plan sponsors that issue corporate bonds, Bill C-501 will reduce the bondholders' security causing a drop in the value of these companies' corporate bonds.
2. Negatively affecting employers' current credit arrangements and compromising their long-term financial health by making capital more expensive. For weaker companies, it could make capital extremely difficult to obtain tipping them over the edge into bankruptcy. For employers undergoing restructuring under Companies' Creditors Arrangement Act (CCAA) protection, it would mean the risk of not surviving and being forced into liquidation. This would not be in the best interests of pensioners and other plan beneficiaries. The best protection for a pension plan's security is the financial health of its sponsor.

420 - 360, rue Albert St.  
Ottawa, Ontario  
K1R 7X7

613.238.4000  
613.238.7643

www.chamber.ca  
info@chamber.ca

3. If investors believe they will have to stand in line behind pensioners if there is a bankruptcy, they will add a premium to the cost of their capital to compensate for the additional risk. Companies need investment to be competitive and survive. Investors will put their money into operations they expect are going to pay them a return.
4. Canada's businesses are just starting to emerge from the recession. This is not the time to impose additional financial obligations on them and increase the cost of capital, particularly when they also face the prospect of several years of higher Employment Insurance (EI) premiums. The result could be a slower economic recovery and return to pre-recession employment levels. The outcome will be acceleration of the private sector's shift away from DB pension plans.
5. There is a growing public policy debate surrounding the chasm between DB pension plans and retirement savings options such as Defined Contribution (DC) pension plans and registered retirement savings plans (RRSPs). Granting creditor protection to Canadians covered by DB plans could serve as a lightning rod for this debate by further contributing to the imbalance between Canadians with DB plans and those with other retirement savings programs.

If the government wishes to protect workers with DB pensions should their employers go bankrupt, members of the Canadian Chamber of Commerce suggest other approaches be considered, including the Quebec model of permitting the third-party administration of stranded pensions.

In the interests of all Canadians' retirement savings and Canada's employers, the Canadian Chamber of Commerce urges you to vote to defeat Bill C-501.

Sincerely,



Shirley-Ann George  
Senior Vice-President, Policy

Minister of Finance



Ministre des Finances

Ottawa, Canada K1A 0G5

JUN 21 2010

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Ms. Shirley-Ann George  
Senior Vice-President, Policy  
The Canadian Chamber of Commerce  
420-360 Albert Street  
Ottawa, ON K1R 7X7

Dear Ms. George:

Thank you for your correspondence of May 18, 2010, written on behalf of The Canadian Chamber of Commerce, regarding the priority in bankruptcy for pensions.

Under federal and provincial pension standards legislation, defined benefit pension plans are required to be funded. Promised benefits are subject to a required actuarial valuation to determine the plan's liabilities, which in turn determines the required contribution levels. Should the value of a plan's liabilities exceed that of its assets, employers are typically required to remit to the plan additional funds to return the plan to fully funded status.

Pension plan assets must be held separately from the employer, and are not considered part of the employer's assets. Because plan assets are not considered part of the employer's estate on bankruptcy, they cannot be seized by creditors.

Canada's two main bankruptcy statutes, which are the responsibility of the Government of Canada and the Minister of Industry in particular, are the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*. The *Winding-up and Restructuring Act* is a third statute that is primarily used by financial institutions.

In bankruptcy law, an appropriate balance is sought between the competing interests of the debtor and the creditors and between the creditors themselves.

As bankruptcy law is the responsibility of the Minister of Industry, the Honourable Tony Clement, I have forwarded a copy of your correspondence to him for his consideration.

Thank you for communicating the concerns of The Canadian Chamber of Commerce.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Flaherty".

James M. Flaherty

c. The Honourable Tony Clement, P.C., M.P.

Canada