



Teamsters Canada
Submission to the
Department of Finance

Strengthening the Legislative and Regulatory Framework for Private Pension
Plans Subject to the Pension Benefits Standards Act, 1985

Financial Sector Division,

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Teamsters Canada is a labour organization with more than 125,000 members. It is affiliated with the International Brotherhood of Teamsters, which has 1,400,000 members across North America. We represent several industries, including transport (air, truck, rail and port), retail, motion picture, brewery & soft drink, construction, dairy, rail, graphic communications, warehousing, and more.

In our September 2005 Submission we stated:

“The private pension plan system in Canada, the U.S. and other G-8 countries is, we submit, entering a period of financial crisis caused by years of inappropriate practices by those responsible for the well-being of such plans. The financial deficit of the system is in the billions of dollars and may well be in the trillions of dollars. Those responsible include Government and Government regulators, Plan sponsors and professional involved with the operation of the plans, including actuaries, investment managers, accountants, lawyers and others.” (attached)

After 40 years of Regulation and more than a decade of unprecedented economic growth it is unforgivable that there is a pension plan crisis in Canada.

The level of risk an investor is willing to bear impacts on the choice of investments – risk/return. When companies boost income and returns to shareholders it pleases investors and fattens CEO compensation packages. Under the current regulatory regime, pensions are viewed by companies as just another investment to manage within its goal of maximizing shareholder returns. The risks to the company are minimal. If there is a surplus in the pension fund, take a payment holiday. If there is a solvency issue, claim financial problems and spread the solvency problem over 10 years. If the company goes bankrupt, the CEO will get a buyout and have to downsize to a 75' yacht – the underfunded pension plan means employees lose their pension. This is not fantasy. Teamsters are at risk of losing payments from the Nortel pension plan while the company is paying a retention bonus of \$45 million to its executive officers.

The decision of setting a level of risk must be removed from Companies. The only acceptable risk is that which the pension holders are willing to accept – zero.

“The only reason for a pension plan to exist is to deliver promised pensions to current and future retiree members of the plan. Funding requirements are a start; establishing the principle of delivery of pensions with a very high degree of certainty would be even better. Investment policies should be focused on this as a primary objective.” (Teamster Canada Submission 2005)

Eliminating the holiday for pension payments when a plan is in surplus would send the message to lower the investment risks. Accepting the fact that pension plans are foregone wages and giving all surpluses to the beneficiaries would further this goal. The argument that companies won't want to provide pensions, or fund pension, or provide pensions if the regulatory regime changes just doesn't add up. Under the current regime they can capitalize on pension funds in a company's good times, and walk away from their responsibilities in bad times. Companies are moving from defined benefit plans and transferring the risk to workers through defined contribution plans.

Companies complained about solvency of pension funds three years ago, in the middle of an era of unprecedented growth. The result was lengthening payment schedules and generally conditions favorable to companies. Teamster Canada made a suggestion during that round of consultations; during good times when profits are high, companies should pay the pension plan first. In these bad times, Teamsters Canada submits that pension plans must stand in priority to all creditors in bankruptcy other than employee wages and benefits, and during the recovery pension plans receive needed funding.

Teamsters Canada believes that plan sponsors must fully fund pension benefits when a plan is fully terminated. We do not see any method where funding could be spread over five years, nor how beneficiaries would agree to termination of an underfunded plan. This proposal would continue the current regime permitting companies to walk away from their contractual promises.

The concept on whether to eliminate the concept of partial termination from the Act but requiring immediate vesting of pension benefits for all plan members is interesting. We would require more information on the policy rationale as well as real world examples before responding in full.

Section 3(d) of the Consultation Paper asks about the need for disclosure. A Statement of Funding Policies would be a very good initiative, distribution by electronic means of disclosure items, and expansion of affected individuals contacted make sense. Our response to this section is yes as all the suggestions would in our opinion be helpful. The only concern is the suggestion to disclose to plan members and beneficiaries when a sponsor missed a payment. We agree in principle to this addition, however, the administration of the triggering event would require further discussion.

We addressed Section 3(e), “Contribution Holidays”, above. To be clear, Teamsters Canada opposes Contribution Holidays as they send the wrong message to plan sponsors when they assess risks to plan investments; it risks the survival of plans and places beneficiaries at risk. If there is a surplus of any significant amount it means the plan sponsor has taken unnecessary risks creating funds greater than needed to provide the promised pensions.

We have no comment on section 10.1(2) of the Act, Void Amendments. It appears to be a generally good proposal to regulate a prescribed solvency level restricting benefit improvements. We require more information on the proposal.



Defined Contribution Plans are becoming more popular, though they lack the security of a well run Defined Benefit Plan. It would appear that more regulation is needed to protect holders of defined contribution plans.

It is interesting that the Government is seeking views on the practicality and desirability of safe harbor protection – a default investment option for defined contribution plans 4(a). Why? Employers have a fiduciary duty and risk legal liability if a wrong option is taken. And of course the default option of cash may not be a suitable investment for plan members. Either this change or that proposed in 4(c) that would change the standard of care to good faith rather than “fiduciary”, would certainly ensure company plan sponsors would escape legal liability and responsibility. Teamsters Canada opposes both proposals – defined contribution plans exist solely for the benefit of the beneficiaries to provide whatever level of pension is promised, expected, or implied.

Allowing the payment of variable retirement benefits directly from the defined contribution account seems to be good suggestion. Issues surrounding the use of surpluses and administration of these plans will require more information prior to submitting our suggestions.

Flexibility of the Pension Act allowing employers and employees to come up with agreements has merit as long as there standards in place that must be met. Teamsters Canada has a unique pension plan arrangement involving many employers in one plan. Though it has been in place for many years, it does garner attention from regulators as it does not easily fit into current requirements. Rather than creating disincentives for such solvent plans, the legislation should provide a framework to permit these types of plans to expand and flourish. Protecting beneficiaries should be a priority rather than meeting technical niceties.

There are legislative impediments to the creation and operation of multi-employer plans, and the legislations should accommodate the unique circumstances that apply to multi-employer arrangements. This equally applies to Simplified Pension Plans that can be an appropriate method of providing pension arrangements especially for smaller employers.

Teamsters Canada position is the only reason for a pension plan to exist is to deliver promised pensions to current and future retiree members of the plan. In the early 1990's the investment rules changed from a “legal list” to a “prudent portfolio”. The totality of changes made to the regulations over the past decades has led to the pension crisis. Given the risks employers have taken with pension plan investments it would seem prudent to reinstate a legal list. At the very least, the quantitative rules must be re-examined and updated. Fiduciary responsibility must be maintained. The only risk that should drive investment decisions is that of the beneficiaries – zero. If pension plans were properly regulated Canadians would have received notice that their plans were secure even in a time of economic crisis. Employees, beneficiaries and Ministers would all be relieved, and taxpayers would not face a bailout of pension plans or increase costs that will result from the pension plan crisis.