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Chair

Mr. David Sweet

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● (1100)

[*English*]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good morning, ladies and gentlemen. Welcome to the 46th meeting of the Standing Committee on Industry, Science, and Technology.

We have a large number of guests, so I hope you'll accept my apologies that I'm going to do away with the formalities in introducing the guests.

Also, I'd like to mention that many of the members who are not here are tied up in the House, from all parties. That's why I'm proceeding. We don't need a quorum to take evidence, so the members who aren't here can obviously go back and look at the blues for the evidence that's given prior to their arriving.

Without any further ado, I'm going to go to our video conference first.

Mr. Davis, we'll let you go ahead with your opening remarks, please. I'll have to stay pretty disciplined at five minutes or under.

Mr. Ronald Davis (Associate Professor of Law, University of British Columbia; Insolvency Institute of Canada): Thank you, Mr. Chairman.

Actually it's Craig Hill from the IIC who's going to be making the opening statement for both of us.

The Chair: Thank you very much.

Please go ahead.

I should say, for the record, so it's on the written record, that Mr. Hill is actually here in the room.

Mr. Craig Hill (Co-Chair, Task Force on Pension Reform, Insolvency Institute of Canada): I wish to thank the chairman and the members of the committee for the invitation to speak to these important hearings on Bill C-501.

It is clear that Bill C-501 creates a priority charge on all of a debtor's property for unpaid termination and severance pay and the full amount of any pension deficiency. The charge in Bill C-501 includes, and I quote, “any amount considered to meet the standards for solvency determined in accordance with section 9 of those regulations”—that is, the pension benefit standards—“that were required to be paid by the employer to the fund”.

The charge is not limited to special payments that are past due on the day of the insolvency proceeding. The honourable member for Thunder Bay—Rainy River said upon the introduction of the bill that if passed, Bill C-501 will mean that every working Canadian can take comfort in knowing that their pension, their retirement, is secure in its entirety.

The impact of Bill C-501 is not limited to an increased cost of borrowing in the bond markets. Smaller and mid-size companies borrow funds from banks for their operating lines to pay their daily expenses. Access to lines of credit is based on their available collateral. Most operating lines of credit are on a demand basis or have strict review provisions that will be triggered by the imposition of the priority charges created by Bill C-501. If Bill C-501 is passed, lenders will change the margin requirements and impose additional discretionary reserves on the borrowing base. This will remove from the calculation of available collateral dollar-for-dollar amounts of any priority charges.

This is precisely what occurred when the priority charges were granted for unpaid wages. However, in the case of termination pay, severance pay, and pension deficiency amounts, the carve-outs will be substantially higher. The impact will be to severely limit access to credit for all employers, particularly pension plan sponsors. Bill C-501 will materially affect solvent companies. It will be the death knell for many struggling or financially troubled companies.

The cornerstone of Canadian insolvency laws is the flexibility provided to financially troubled companies to attempt to restructure, and continuing is a going concern. That is the best way to attempt to protect employer-related obligations. Priority charges and mandatory criteria for restructuring add roadblocks to those objectives. They cause financial difficulty for employers who are already struggling and significant impediments to their ability to restructure. The result will be an increase in the number of insolvencies that have no alternative but to head straight to liquidation.

Substantial reforms are required in Canada's pension law to address the weaknesses that the economic events of the last decade have revealed. However, taking that agenda to insolvency legislation by expanding priority charges and setting bottom-line conditions for restructuring are commercially imprudent, ineffective, and inappropriate. The additional financial burdens created by Bill C-501 will worsen the situation for the vast majority of solvent companies, while providing only limited impact for employees of the minuscule percentage of companies that become insolvent. Bill C-501 will cause more insolvencies by generating the conditions for a tighter credit market and reducing the number of businesses that will be able to successfully restructure if they become insolvent. As importantly, the financial burdens placed on Canadian employers will impede their ability to compete in a global marketplace, all of which will occur in a sensitive stage of economic recovery for Canadian companies.

Mr. Davis and I will be pleased to answer any questions the members of the committee may have.

Those are my comments.

● (1105)

The Chair: Thank you very much, Mr. Hill.

We'll now go on to Mr. Farrell and Mr. Boychuk.

Will you be splitting your time?

Mr. John Farrell (Executive Director, Federally Regulated Employers - Transportation and Communications (FETCO)): Yes.

Thank you very much.

My name is John Farrell, and I am the executive director of Federally Regulated Employers—Transportation and Communications. I'm accompanied today by Mr. Michael Boychuk, president of BIMCOR, which is Bell Canada's pension investment manager. He is also the former treasurer of Bell Canada and BCE. He is well positioned to talk about these matters.

Federally Regulated Employers—Transportation and Communications consists of approximately 600,000 workers employed in the federal jurisdiction. The pension plans managed by these companies are worth approximately $75 billion.

In the last few days, in preparation for these discussions, I've had very interesting conversations with two recognized experts in the area of insolvency and restructuring. They are Mr. Bruce Robertson, who is the chief restructuring officer of AbitibiBowater; and former Judge James Farley, who is the pre-eminent insolvency and restructuring judge in Canada, responsible for the restructuring at General Motors and Air Canada most recently.

If time permits I will describe to the committee my conversations with both of these gentlemen, but at this point, because of time restrictions, I will turn the seat over to Mr. Boychuk.

[*Translation*]

Mr. Michael Boychuk (President, BIMCOR Inc., Federally Regulated Employers - Transportation and Communications (FETCO)): Thank you, Mr. Farrell.

Thanks the committee for this opportunity to address you today.

[*English*]

Simply put, elevating the creditor status of unfunded pension plan liabilities above unsecured creditors—which include most corporate bonds in Canada—would place an additional onerous burden on the financial capacity of defined benefit plan employers. In fact, Bill C-501 would hinder rather than protect the security of benefits for defined plan members.

The most immediate impact of elevated creditor status for unfunded pension liabilities would be felt by the holders of some $200 billion plus worth of bonds issued by these defined benefit plan employers. A significant percentage of these bonds are held by both Canadian pension plans and individual Canadians in their RRSPs, through either direct holdings or mutual fund investments. Canadians could not protect themselves from such losses, other than by selling these bonds before Bill C-501 becomes law. The result is that this bill would negatively impact millions of Canadians who rely on these securities to provide their retirement incomes.

Philips, Hager & North, one of Canada's pre-eminent fixed-income investors, has estimated that the average increase in borrowing costs across all investment-grade bond issuers could be as high as $17.5 billion. Higher borrowing costs for Canadian companies means less capital investment by these companies and fewer jobs for Canadians.

No other country with significant private sector defined benefit pension assets grants preferred creditor status to unfunded deficits in their defined benefit plans. Canada would set a dangerous precedent if it were to do so. Additionally, it would result in a cost-of-capital disadvantage for companies that sponsor such DB plans and those that do not, while at the same time cause huge inequities between members of DB plans and members of other types of retirement plans.

It is important to note that pension plans have not yet fully recovered from the recent equity market collapse of 2008, the worst collapse since the Great Depression. Second, long Canada bond yields—the very rates that underpin solvency actuarial evaluations—are mired at low levels not seen in over half a century. With very few exceptions, employers have been funding their pension plans and are making significant contributions to get their plans' funded status back to 100%. They are contributing in accordance with some of the most stringent funding rules in the world. Privately sponsored defined benefit plans in Canada must fund their deficits over a finite five-year period.

In reacting to the current underfunded status of the pension plans, it is important that this committee recognize the measures the federal government has recently implemented to protect members of federally regulated defined benefit plans, including the requirement for annual actuarial valuations, restrictions on employer contribution holidays, and a prohibition on benefit improvements for plans that are less than 85% funded. Most provincial governments are either considering or implementing similar measures to enhance members' benefit security. As a result of these measures, pension plan members are better protected today than they were two or three years ago.

In conclusion, the adverse implications of granting elevated creditor status to unfunded pension liabilities would be broad and significant, with vast unintended consequences impacting not only the employers that sponsor these plans, but also the millions of Canadians whose retirement savings have exposure to such bonds.

Elevating defined benefit pension plans' creditor status would impede sponsors' ability to cost-effectively raise capital, thereby adversely affecting their ability to invest in Canada's economy and remain competitive. As a result, it would hinder their ability to grow their businesses and hire more Canadian workers, or in some cases maintain current employment levels. It could also trigger insolvencies that might not otherwise occur. Ironically, this bill would make it more difficult for companies to fund their pension plan deficits. Each of these outcomes would negatively impact members' benefit security.

The basic premise underlying the security of pension plan members' benefits remains a financially strong sponsor.

● (1110)

The Chair: Thank you very much. I'm sorry that I have to stay brutal on the time.

Mr. Randle and Mr. Kennedy, you have five minutes.

Mr. William Randle (Assistant General Counsel and Foreign Bank Secretary, Canadian Bankers Association): Thank you, Mr. Sweet.

Good morning. My name is Bill Randle. I am the assistant general counsel at the Canadian Bankers Association. With me today is Bill Kennedy. He's vice-president, special loans, with the National Bank of Canada. We appreciate the opportunity to appear before the committee today to discuss Bill C-501.

We sympathize with Canadians who face a reduction in their current or future pension benefits upon the bankruptcy of their former employer, and we applaud MPs and senators who are championing efforts to find solutions. We believe that every effort should be made to attempt to prevent Canadians from experiencing such hardship, but we are here today to raise our concerns about the particular solution that is proposed in Bill C-501 and about its potential impact on the ability of employers who sponsor defined benefit plans to invest in research, new equipment, and expansion; on the ability of employers to successfully restructure and maintain jobs and operations when they themselves are in difficulty; and on the savings, including the retirement savings, of millions of Canadians who hold corporate bonds through their RRSPs, employer-sponsored pension plans, the Canada Pension Plan, and the Quebec Pension Plan.

There is a delicate balance that has been achieved over the years in the order of priorities in bankruptcy legislation. This balance aims to ensure that the rights of various creditors can be met while also ensuring that companies are able to access reasonably priced credit to fund their operations and make the investments they need in order to grow and be successful in an increasingly international marketplace. Changes to the order or priority in bankruptcy threaten to seriously undermine this delicate balance, with ripple effects across the economy.

Our major concern with this bill is that giving priority to potentially very large pension deficits will decrease the funds available to repay other creditors. As a result, both lenders and investors would experience a significant increase in their risk.

Financial institutions, as you know, manage risk very carefully, and the amount of risk they are allowed to take is closely regulated by the federal government. As the recent financial crisis highlighted, there are very good reasons for paying such close attention to the risk in financial institutions.

One of the main methods financial institutions use to manage risk is to carefully assess the amount that will be available to repay a loan if a company enters bankruptcy proceedings. As a result, if funding deficiencies in a company pension plan are given priority, as proposed in this bill, and therefore the amount a lender can expect to recover is reduced by the amount of the pension plan deficit, there will be a corresponding reduction in the amount a company will be able to borrow. Indeed, prudent lending practices, which require an abundance of caution, will probably result in further pressure on the availability of credit in order to reduce the risk of losses.

Large and well-established companies often turn to the financial markets to borrow funds. For investors who purchase financial instruments such as bonds, a change in the order of priority once again increases the risk that they will recover a smaller proportion of their investment if the company experiences financial difficulties. This increased risk means that investors will be more reluctant to buy a company's bonds, thus depriving it of financing, or would do so only if there was a higher risk premium on the bonds, making financing more expensive. In effect, higher risk means increased financing costs, which in turn will prevent some businesses from effectively financing their operations or expansions. Ultimately this leads to reduced economic growth and job creation.

Beyond the direct impact on the financial markets and the cost to businesses of raising funds, the super-priority contemplated in this bill will have a number of other negative consequences, including the following: first, companies with a defined benefit pension plan would find themselves at a competitive disadvantage either to companies without such a plan or to international competitors in other jurisdictions. This may provide a further incentive to employers to switch to defined contribution plans or to close their defined benefit plans to new entrants, to the detriment of younger Canadians. As well, other unsecured creditors, such as suppliers—many of them small businesses—will have a significantly reduced likelihood of recovering the amounts they are due, which may put pressure on their own finances. Since lenders and investors will be less likely to agree to advance funds to help save a company due to the additional risk, it may be more difficult for companies to restructure and ultimately avoid bankruptcy. Finally, by increasing the risk for many corporate bonds, a super-priority would have a detrimental effect on the investments and retirement savings of millions of Canadians.

As I noted earlier, the challenge for lawmakers and stakeholders is to find the appropriate balance in addressing the problem of unfunded pension liabilities without damaging the ability of companies to raise capital to invest in research and development or expand their operations, which may limit their growth and their potential success. In our view, amendments to bankruptcy and insolvency statutes are not an appropriate solution and will tip this balance in a way that could impair economic growth and ultimately be detrimental to workers when companies find it more difficult to restructure or invest in projects that could lead to job creation and higher wages.

● (1115)

We would be pleased to answer your questions.

The Chair: Thank you very much to all of the witnesses for your discipline on our time.

Now Mr. Dafoe, for five minutes, please.

Mr. Stephen Dafoe (Director, Corporate Bond Research, Scotia Capital): Mr. Chair and committee members, I want to thank you for the opportunity to appear.

I'll begin by clearing up some misconceptions that may be left from previous comments.

First, a billion dollars is a lot of money. If you want to make the denominator large enough, say the entire Canadian economy, almost any cost or loss can be made to appear small or manageable. But in the context of the Canadian corporate bond market, which is what I think we should be considering here, a few billion dollars would be very, very damaging. Even a billion dollars would be a very significant loss, and it wouldn't be easily recovered.

Corporate bonds are relatively safe investments, especially in Canada, where the vast majority are of investment grade. Investment-grade bonds have low volatility, which is what makes them safe compared to equities or trust units. If that low volatility means a 1.5% loss, or whatever the loss might be, it would be difficult, if not impossible, to be quickly and easily recovered.

On another matter, regarding credit default swaps, there's very little net CDS protection outstanding on the bonds of Canadian corporations. A characterization that there's more net CDS insurance protection than there are bonds outstanding is not the case generally, and it is certainly not the case for the Canadian corporate bond market.

These bonds aren't held by faceless speculators, or just by wealthy sophisticated individuals; they're mainly held by ordinary Canadians, both workers and retirees, through their savings in mutual funds, life insurance policies, and pension funds. They're managed by professional investment managers. These managers have a fiduciary responsibility to avoid undue risk and to be adequately compensated for the risks they do assume by holding these bonds.

As you know, the credit rating agencies made terrible mistakes with ABCP and other structured securities, and they have seen their reputations suffer for that. But the rating agencies by and large understand and evaluate corporate credit pretty well, so professional investment managers still pay attention to what the rating agencies have to say.

In discussing this bill the image has often been made of a queue, and the question is posed about who is at the head of the queue. This is exactly the way the rating agencies view the bankruptcy scenario. If through this legislation corporate bonds were suddenly placed behind pension liabilities, downgrades could ensue in many cases.

This would be virtually certain to happen, in my experience. I've worked at two rating agencies for twelve years, and I've been critiquing and predicting the actions of the rating agencies for the nearly ten years I've worked at Scotia Capital. If the rating agencies downgrade, and especially if the market agrees with the rating agencies' reasoning, the losses on outstanding bonds would be very significant and very hard, or impossible, to recover.

As well, because such bond market losses would be based on prudent estimates of possible future scenarios by managers seeking to avoid risk, there's no reason to think there's an even offset between the amounts lost because of downgrades and spread widening and the amounts gained by the relative few who stand to benefit from the bill. The losses could easily outweigh the benefits.

I've published research on the bond market effect of Bill C-501, and it's being submitted to the clerk of the committee. While it may seem technical, I respectfully wish that it will be of some use to the committee in understanding how the Canadian bond market could react to the proposed legislation.

I can tell the committee that the bond market professionals I've spoken to about my research in the past few weeks all agree that the bill is very concerning. While they understand it's been proposed with the best of intentions, it could have very serious unintended consequences.

Mr. Chair and members, thanks for the chance to appear today, and thank you for your attention. I'd be pleased to answer any questions.

● (1120)

The Chair: Thank you very much, Mr. Dafoe.

Now to our last witnesses, Mr. McKenna and Mr. Breton. Please go ahead and share your time as you wish, for five minutes.

Mr. John McKenna (Chair, Corporate Practice Committee, PricewaterhouseCoopers Inc., Canadian Association of Insolvency and Restructuring Professionals): Good morning, Mr. Chairman and distinguished members of the committee.

My name is John McKenna, and with me today is Jean-Daniel Breton, appearing on behalf of the Canadian Association of Insolvency and Restructuring Professionals, known by the acronym CAIRP in English, or ACPIR in French.

CAIRP is the national not-for-profit organization that represents some 900 insolvency and restructuring professionals in Canada. As licensed trustees in bankruptcies, receivers, monitors, and financial advisors, CAIRP members are, and they have been, involved in every major insolvency and restructuring filing in Canada, both on a corporate and a personal basis.

As such, CAIRP's comments on Bill C-501 come from experienced insolvency professionals who are called upon daily to apply insolvency law.

[*Translation*]

Mr. Jean-Daniel Breton (Senior Vice-President, Ernst & Young Inc., Canadian Association of Insolvency and Restructuring Professionals): Given its mission, CAIRP has cooperated closely in the insolvency reform since 1992 and, more particularly, as consultants on preparation of the act adopted in 2007. It was with that in mind that we prepared our brief on the various bills tabled in the House of Commons and Senate which contains our comments on Bill C-501, which is being examined today.

CAIRP acknowledges the importance of providing adequate protection for employees and former employees who constitute groups of vulnerable creditors—

[*English*]

The Chair: Mr. Breton, I can tell just by the translator's voice that they're having a hard time keeping up with you. Slow down just a bit, please.

[*Translation*]

Mr. Jean-Daniel Breton: —who constitute groups of vulnerable creditors who depend on their employers and who do not have independent means to monitor and control their risks of loss. It is important that the statutes as a whole be designed to limit the impact that employers' financial difficulties have on employees.

[*English*]

Mr. John McKenna: Essentially, Bill C-501 deals with three areas, all related to employee protection. Due to time constraints, we will not deal today with the third area, which relates to a change to the Canada Business Corporations Act to facilitate the processing of claims against directors.

Regarding the first area, the bill proposes that super-priority protection will be extended to any arrears of special payments. To the extent that this is the change that is contemplated, we would support such a change, as we see no substantial public policy reason that would justify a different treatment between the normal cost arrears and special payment arrears, and it could be accommodated with reasonable efficiency in insolvency proceedings.

However, to the extent that the intent is to create protection for the entirety of the pension deficit, CAIRP has identified a number of significant issues that would materially negatively impact companies sponsoring defined benefit pension plans. These issues are set out in detail in CAIRP's paper, but the net effect of these can be summarized as, firstly, to reduce by a potentially significant amount the credit available to all companies that have or are viewed as having defined benefit pension plan deficits. It may also make it impossible for an insolvent company to borrow to finance its operations during a restructuring.

Secondly, it could cause downgrades in the credit rating and/or in increased interest rates for such companies. Thirdly, it could accelerate the probability of insolvencies for such companies due to reduced availability of both secured and unsecured credit. Fourthly, it could make insolvency proceedings lengthier and more costly.

Finally, it could decrease the possibility of achieving a successful restructuring. In our view, this would be counterproductive to the interests of many stakeholders, such as current employees, suppliers, customers, and investors, as experience tells us that restructurings return more value to creditors and preserve jobs.

[*Translation*]

Mr. Jean-Daniel Breton: The purpose of the second measure is to extend statutory priority for salary claims to claims for separation pay. Parliament has previously considered protection for salary claims but specifically excluded severance and separation pay under the BIA and preferred to protect severance pay through the WEPP.

Our concern is not over the principle of a priority for severance pay but rather for the uncertainty it generates. The bill would grant priority status for all amounts owed, without monetary limit. However, severance pay may vary greatly depending on circumstances. Amounts owed under labour standards legislation alone may vary from a maximum of six weeks in New Brunswick to 42 weeks in Ontario.

Lenders and creditors consider priority claims in making their credit decisions. The variability in criteria for calculating allowances will likely lead them to take a generous reserve, which will result in a significant contraction in credit for all businesses.

● (1125)

[*English*]

Mr. John McKenna: To conclude, we feel it is important to ensure that the laws limit the impact on employees and former employees of financial difficulties sustained by their employers. However, in attempting to protect employee and former employees' rights, it is important that we do not compound the problem by affecting the economy in such a way that the resulting effect is an overall loss of employment in Canada, coupled with a loss in productive capacity.

That possibility exists if legislative changes are made that cause a contraction in credit for businesses in general, limit the opportunity for troubled businesses to restructure and emerge as going concerns, force otherwise viable businesses to become insolvent, or incent employers to discriminate against the very employees and former employees the bill is trying to protect.

Thank you.

The Chair: Thank you very much, Mr. McKenna and Mr. Breton.

Now we'll move on to our questions. We'll go with five-minute rounds again, committee, so that we get as much in as possible.

Madam Sgro.

Hon. Judy Sgro (York West, Lib.): Thank you very much, Mr. Chair.

And thank you very much to all of you this morning. Certainly the intensity of your comments solidifies your concerns about Bill C-501.

From this end of the table, of course, we're very concerned about the implications, but we're very concerned about trying to help people, such as the Nortel employees we have heard about this year, who have lost so much of their pension income. Just how do we go about protecting them?

Bill C-501 is very narrow as far as that special payment category goes. Mr. Rafferty has indicated that he would be moving to the preferred unsecured category rather than to super-priority status. It's only that special payment. We're trying to find some way to help some of the people who are clearly suffering as a result of the bankruptcies. I'm sure that you are all sympathetic. I've heard that in your voices. The question is how we change it. How do we fix it?

Can you suggest any way we can help the Nortels of the world? Will this bill help Nortel?

Mr. Michael Boychuk: I would respond to that by saying, Ms. Sgro, that the best security that can be offered to pension plan participants is to maintain a healthy, financially sound sponsor or employer. That is the best protection you can offer. Canada offers some of the best protections already with its CCAA insolvency rules, plus what came out from government reform recently, as recently as the beginning of this year. Those are strong protections.

We heard from Mr. Dafoe that whether you change it from super priority to priority or to preferred doesn't matter. For somebody to jump ahead of the institutions that fuel blood into the veins of our corporations, which go on to provide employment and create jobs, I think would be a big mistake.

In my opinion, keep a financial sponsor or a financial employer or an employer financially healthy so that they can continue to pay those defined benefit pensions, which, by the way, very few people are lucky enough to have, when you look at the rest of Canada. What would we do for those that had defined contribution plans or other retirement arrangements? The crash of 2008 basically obliterated their savings by as much as 60%. What are we going to do for those people?

Hon. Judy Sgro: Well, today we're trying to deal with what's happened to the people in this particular past year.

Mr. Michael Boychuk: And therein lies the inequity of what comes out of Bill C-501.

Mr. John Farrell: Ms. Sgro, if I could be of some assistance here, obviously these pension matters are very complicated. It's very difficult for the average Canadian, the average person, and the average politician to understand how pension plans work and how capital markets work. A great deal of work has to be done by the members of Parliament to understand the complexity of this issue.

It's unfortunate. I think that Mr. Rafferty has the best of intentions for his constituents, some of whom may be employees of AbitibiBowater, a company that's been in serious difficulty and is beginning to come out of it. But this is a knee-jerk reaction. This is a bill that is going to create far more collateral damage than any net good. So it really is incumbent, I think, on the politicians of this government and the politicians in all of the provinces to join together to effectively review the pension legislation that exists across this country, because it's not, strictly speaking, a federal matter. Find some reasonable approaches, understand the problem, and fix it. But if we engage in a knee-jerk reaction, such as Bill C-501, we'll end up with a situation in which we're worse off in the long run.

● (1130)

Hon. Judy Sgro: I appreciate your comments. It's amazingly complex and difficult for everyone to understand. I've been working for two years on this issue with an expert working group across Canada that put out a white paper with 28 recommendations. Much of it talks about changes up front, not changes at the tail end, which is what we're looking at today.

The reality is that we are trying to find a way, if possible, to help the people of Nortel. If this bill is passed, is it going to help people from Nortel? We heard the other day that it wouldn't. What's your opinion?

Mr. John Farrell: It is our understanding, collectively, that there would not be a provision for retroactivity. Unfortunately, Nortel employees will not benefit from this bill.

The Chair: Mr. Breton, can you do it in 20 seconds?

Mr. Jean-Daniel Breton: As Mr. Farrell said, because there is no retroactivity, this bill will not help the Nortel employees, unfortunately. The issue of pensions is one that permeates the entire economy. It's not only the Nortel employees. They're the ones who are in the forefront, and we hear of them more. But actually, the economic crisis affected everybody. Everybody's pension plan, their RRSPs or whatever, took a dip. It's a question of cyclical....

The Chair: Thank you, Monsieur Breton. Twenty seconds flies by fast.

[*Translation*]

Mr. Bouchard, you have five minutes.

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Thank you, Mr. Chairman.

Good morning and thank you for coming to testify this morning. In listening to you, we can see there is some similarity in your remarks. I believe we can say you are not much in favour of Bill C-501. I thought I heard the same reasoning from a number of you with regard to the cost of capital. I understand that the cost of capital, interest costs, would be higher if Bill C-501 were implemented. Perhaps I'll put my question to Mr. Farrell or to Mr. Boychuk.

Did you estimate how much it would cost if Bill C-501 became law, if it were adopted? What would be the cost of capital for businesses that would have to borrow?

Mr. Michael Boychuk: I'll try to answer that in French, but it's very specific to each organization. It will be costly for those at the bottom, what's called investment grade 3B, and that will be very, very specific. The cost is already estimated in a study conducted by PH&N on the impact on these classes of bond issuers. The study states that it will cost nearly $17.5 billion.

Mr. Robert Bouchard: Do you have the percentage figures?

Mr. Michael Boychuk: In percentages, once again, we're talking about basis points. I don't want to go too far into the technical details, but I can say one thing: most credit agencies do their calculations based on current events. We included some charts in our submission. I'm going to use a good example of what happened in the case of a company called Manulife so that everyone around the table will understand.

On August 5, Manulife reported its second quarter results. This is a company similar to a pension fund; it does asset liability management. Its earnings release resulted in downgrades by the credit rating agencies. In a very brief period of time, the cost of its credit on the 2018 bond rose by 55 basis points. That means more than half a point. That's just one case among many. I could give you examples of a number of other situations in which an event occurred. Perhaps Mr. Dafoe can talk more specifically about the events, about what would happen if Bill C-501 were poorly perceived by the capital markets.

● (1135)

Mr. Robert Bouchard: I'm going to move on to something other than the cost of capital.

I have a second question on severance pay. For example, a business is in bankruptcy, or protected under the Companies' Creditors Arrangement Act, closes a plant, employees leave and there are severance payments. Have you estimated how much that would cost if those payments became super-priorities or, at least, if those claims had to be protected more than the amounts owed to the banks or taxes payable?

I would like to hear what you have to say on that subject. I don't know whether Mr. Breton can comment on that. No one talked about severance.

Mr. Jean-Daniel Breton: I mentioned severance in my presentation, and there would indeed be a major impact on credit in general and it would be particularly pronounced—

Mr. Robert Bouchard: Of what magnitude?

Mr. Jean-Daniel Breton: We can't quantify it because we don't yet know how it would be interpreted by the market. What is particularly disturbing about severance is that we don't know how much there is. It obviously depends on the business and on circumstances; it could range from one week to 42 weeks' notice, and those are just the statutory amounts. Other amounts could also be owed under employment or common law agreements. We can't know; we can't really quantify them.

For that reason, we can't predict with any certainty what the impact will be on credit or on any contraction of credit. All we know is that it's a large amount. In the context of a business, 42 weeks of salary represents a lot of money. If a banker has to consider a reserve representing 42 weeks of salary in its credit decision, if it lends on an asset basis and cuts it back by the priority amount, that doesn't leave any borrowing room. So there will be no further possibility of guaranteed borrowing.

Perhaps Mr. Kennedy will be better able to explain this phenomenon, which occurs in the case of loans to all businesses. However, it's definitely something that could well affect all businesses in Canada.

[*English*]

The Chair: Thank you, Monsieur Breton. Thank you, Monsieur Bouchard.

We're over time. Unfortunately, if Mr. Kennedy wants to add something, he'll have to add it on another speaker's time.

Mr. Wallace, for five minutes.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chairman.

Thank you to our guests for coming this morning. Your messaging is very clear.

Ms. Urquhart, who we've heard before, talked about 30 other countries—I think she said 30—giving preferred status to pensioners in bankruptcy and so on. Maybe Mr. Boychuk could answer. Is this an accurate statement? Is that protection available in other countries? Is the pension system different? What is your opinion of Ms. Urquhart's testimony here?

Mr. Michael Boychuk: I think it's somewhat misleading, to be quite honest. To my knowledge, there are no major countries that offer preferred creditor status to unfunded pension deficits. There are several countries that offer it, as we do in Canada, to the current employer service costs, any employee service cost that has not been remitted, and as well the defined contribution plan side of it.

Again, I believe her comments are out there but pertain mostly to countries that have defined contribution plans, and with respect to this issue that's a rather moot point.

Mr. Mike Wallace: Because the DC plan is totally different from the DB plan.

Mr. Michael Boychuk: Completely.

Mr. Mike Wallace: Mr. Farrell, in your opening statement you mentioned something about AbitibiBowater. Could you give me a bit of background about yourself, first? And second, I know there's been some activity on that file recently. Are you able to fill us in on what's happening there, and what effect this bill could have had in this situation?

● (1140)

Mr. John Farrell: I can.

Among other things, in addition to my responsibilities for managing FETCO, I have been, and continue to be, involved in the pulp and paper industry. I'm responsible for working with the companies to coordinate the collective bargaining activities from the Manitoba border through to Newfoundland.

AbitibiBowater has been a member of this group that I manage for over 25 years. As a consequence, I know the officers and people at the company. Just yesterday I was speaking with Bruce Robertson, who's the chief restructuring officer of AbitibiBowater. Fortunately, after almost two years of restructuring at AbitibiBowater, the company is restructuring and is emerging from bankruptcy protection under the Companies' Creditors Arrangement Act, which is extremely good news for all the people who live in the communities where AbitibiBowater operates.

How did they get there? An arrangement has been made with the pension regulator in Quebec and Ontario to preserve the value in the pension plans for current retirees, so that the plan was not wound up, and it prevented the crystallization of the losses in the plan.

As well, the company and the union have agreed that in the future they will scrap the defined benefit plan and they will move forward with a form of target benefit plan, which is similar to a defined contribution plan, with far less risk. They have found a way to work with the regulator over a two-year period to sort out their restructuring. They fortunately didn't have to go bankrupt and they found a solution.

So I asked Bruce Robertson, "What if this Bill C-501 had been in existence two years ago?" His answer was that it would have increased the risk dramatically, that we would not have been able to achieve restructuring, and liquidation would have been almost certainly what would have happened. If liquidated, the company would have been forced to eliminate the employment of 8,500 direct jobs.

In a mill community, where the entire community is dependent on the operation of the mill, it's well known that every single job that's lost in a mill will cause the further reduction of four jobs in the community. So this would have resulted in the eventual demise of an additional 34,000 jobs, for a total of 42,500 jobs that would have been lost if AbitibiBowater was unable to find a solution to its pension problem and its restructuring issues.

The Chair: Now on to Mr. Rafferty, for five minutes.

Mr. John Rafferty (Thunder Bay—Rainy River, NDP): Thank you, Chair.

Naturally, I have lots of questions for all of you. Feel free to be brief.

I'm feeling very sorry for Mr. Davis, who is here and unable to answer any questions. So Mr. Davis, I have some questions for you. Mr. Hill, feel free to be part of this too.

The Insolvency Institute, you're all lawyers, right? You're made up of lawyers who process restructurings and insolvencies within whatever the laws of the land happen to be. Is that true?

Mr. Craig Hill: No. The institute is made up of a number of trustees. Fellow representatives from CAIRP are also in the institute. It includes people like Mr. Davis, who is a professor at the University of British Columbia.

Mr. John Rafferty: How does one become a member?

Mr. Craig Hill: You become a member by having experience in insolvency and restructuring.

Mr. John Rafferty: You're insolvency professionals, I guess. Would that be a good way to put it?

Mr. Craig Hill: Yes.

Mr. John Rafferty: But you're not bond-holders; you're not a corporation. You don't have any particular—

Mr. Ronald Davis: Except through our pension plans.

Mr. Craig Hill: We represent people as lawyers and financial advisers from the trustee receiver community. We represent all the stakeholders in different files.

Mr. John Rafferty: Why would you care about the Government of Canada's public policy governing pension plans?

● (1145)

Mr. Craig Hill: We have clients as law firms and as financial advisers. We have clients who retain us to advise them. We take an interest. It is not a completely disinterested look at their situation. You are trying to work through a restructuring and give them the assistance they need to come out of the process alive.

Mr. John Rafferty: I have one question, then. Mr. Davis could answer this also. I want to ask you your opinion on the Nortel situation. Is it reasonable for professional fees to be $275 million for the first 22 months of Nortel's proceedings under the CCAA , when some pensioners are going to take an enormous hit? I mean, $275 million seems like an awful lot of money for professional fees.

Mr. Craig Hill: Professional fees are an easy target. I don't know what has gone into all those professional fees. If you compare it with the cost to the pensioners, I'm sure it's an easy analysis to say that they're excessive. But that's not the way a restructuring would be viewed by the stakeholders. Professional advisers are necessary, and it is an expensive and complicated process. It's not a trade-off.

Mr. John Rafferty: Thank you for that answer.

Mr. Boychuk, you mentioned Ms. Urquhart and her report that she tabled. She has tabled a rather comprehensive report concerning countries with preferred or higher status. Would you be willing to table your own report in contrast to that? You said that hers was excessive.

Mr. Michael Boychuk: I could give you analysis of what the OECD countries have, and who has what in there. Most of the countries referred to in her report are countries that sponsored defined contribution plans, not defined benefit plans. None of the major countries that sponsor defined benefit plans—such as the United States, the U.K., Germany, the Netherlands—have preferred creditor status for defined benefit plans unfunded—

Mr. John Rafferty: Thank you, Mr. Boychuk.

Canadian Bankers Association, I'd like to ask you a question, and say on the record that you were very kind to meet with me a few weeks ago. I appreciate that. The message I got was that you could make improvements in the way you do things. I think that was part of it.

As you said in your statements, Mr. Randle, it's all about risk. That's really the bottom line—it's about risk. If amendments were made to this bill, that is, if it were diluted to cover unsecured debt, or preferred debt, would the Canadian Bankers Association be amenable to that kind of change? Would that change your opinion at all?

The Chair: We're over time now, gentlemen. You'll have to either save that for another questioner or give a written submission to Mr. Rafferty's question.

Thank you very much, Mr. Rafferty.

Now on to Mr. Garneau for five minutes.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

As a legislator, if I have a pensioner in my office and he or she tells me they have contributed to a pension plan during their working career and that they regard this as deferred wages, if their company goes bankrupt after they are on pension, it is probably true to say they have very little alternative but to absorb a loss of pension income. I understand that part. I also understand where many of you are coming from with respect to the importance of having access to credit for companies to prosper and grow, and having certainty in the market.

The fact is that this Bill C-501 is very limited in its scope, although it may not have appeared that way to many people. It does not talk about retroactivity, it simply deals with arrears in special payments up to the moment of bankruptcy. That period of time can vary from one bankruptcy to the next.

What I have been surprised by is the range of analyses and estimates as to the impact of that. I have heard that this is not really that big a deal and it is not going to cause bond market instability, while other people have said the hit is really big.

I am trying to get a sense of that. I haven't got that sense of it. As legislators, where we are talking about prioritizing and the impacts on different groups, whether it's the bond markets or pensioners, it would be good for us to have a real impact, since we need to make decisions like Solomon.

It seems to me, Mr. McKenna, you were talking about this issue. The special payments in arrears didn't seem to be an impossible thing to deal with. I'd like to hear a little more from you and others on that, as to where you situate the problem.

● (1150)

Mr. John McKenna: I think we would distinguish the special payments that are in arrears, that are designed to make up the shortfall that exists in the pension. To the extent that those payments that are required to be made under the relevant statutes are in arrears, we see no reason why those should not have super-priority status.

I think the problem, as we see it, becomes more significant if that priority extends to all the arrears.

Mr. Marc Garneau: It is your interpretation of the bill that it extends to other arrears?

Mr. Jean-Daniel Breton: If I may, the problem is not with Bill C-501, it is with the other legislation that would then push those special payments—

Mr. Marc Garneau: We're talking about Bill C-501. We're not talking about something that might come along.

Mr. Jean-Daniel Breton: Unfortunately, Bill C-9 is something that has already passed and is already law. Certain provisions of Bill C-9 could bring about an acceleration of the payments in an insolvency situation. That brings the entirety of the deficit into play at that point.

Even though we are absolutely in agreement with the fact that the special payments should be protected and should be afforded super-priority status, the other legislation that is out there extends the effect of Bill C-501 to things that are other than just the special payments amount. That is the difficulty.

Mr. Michael Boychuk: Mr. Garneau, if I could answer your question about the magnitude of the cost, I would just submit to you that the low end or the minuscule costs that you may have seen comes from people who do not understand and actively participate in the debt capital markets.

I believe you have now seen testimony over the last few days and submissions that have been made in the public domain of active capital market participants. Mr. Dafoe is a capital markets dealer. They bring issuers and investors together. You have heard from investors, such as PH&N. I can speak to you on behalf of issuers. I issued billions of dollars of debt in my role as treasurer of Bell Canada.

I think we can certainly tell you that having played in this market and knowing the way it works, the costs would be substantial.

Mr. Marc Garneau: Is that assuming the effect of both Bill C-501 and Bill C-9 and what it might imply, or is it strictly based on Bill C-501 and its focus on special payments?

Mr. Michael Boychuk: I'm talking specifically to Bill C-501.

The Chair: Thank you, Mr. Boychuk, and thank you, Mr. Garneau.

Now we go on to our last questioner, Mr. Van Kesteren, for five minutes.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair.

Thank you all for coming. It's been very enlightening.

I'm pleased to hear, and I was aware of it too, that AbitibiBowater has restructured and has come out of bankruptcy protection.

Much of the dialogue has the unfortunate premise that it's them against us. I think this is an obvious example of how that's just not the case.

I want you to tell the committee one more time why, in a situation such as this, it is important that we not force the hand, so to speak. Maybe you could share with this committee how many you would say, in today's market and considering that we've experienced some real tremors in that market, would be in the position, if a bill like Bill C-501 were enacted, under which the banks would have to pull the trigger? What would your assessment be, just quickly?

Mr. John Farrell: OSFI, the federal regulating agency, can advise you on the exact number of federally regulated companies that have solvency deficiencies and the percentage of those deficiencies. That data is available.

What would happen is that every single company that has a defined benefit pension plan and that will have a solvency deficiency will have greater difficulty raising capital when it needs to raise capital, because this bill will make their companies more risky.

If you are a company that has, like many of the companies in the pulp and paper industry, like many large Canadian companies in the mining industry, large solvency deficiencies, this bill will create a situation in which if they were on the cusp of bankruptcy they would not be able to get the funds that are necessary. As Mr. Robertson said to me last night, we would not have been able to restructure, if this bill were in place.

So in a sense, while it is intended that this bill protect employees and protect pensioners, it will unfortunately push over the edge companies that are scrambling to restructure, and there will be real losses in employment across this country. The other thing that will happen is that employees across the country who enjoy very handsome defined benefit pension plans today will not have them anymore, because their boards of directors will say, these plans now, with Bill C-501, have far more risks than they used to have, and we're getting out of them. So for hundreds of thousands of Canadians who have fantastic pension plans today and are working for companies that can sustain those plans forever, this bill will kill them, period.

● (1155)

Mr. Dave Van Kesteren: I guess we have some others who wish to speak. Just be very quick, because I have another question.

Mr. Michael Boychuk: I just want to add to Mr. Farrell's comments that, while you cannot be specific as to who these companies are for which you've requested the impacts, suffice it to say that once you fall out of the investment grade category, your access to liquidity becomes much more difficult, particularly in the Canadian marketplace, where there is not a very large what we call "high yield" market.

The important point here is that unfunded deficits today are not the result of employers not wanting to put money into their plans. I can assure you, my employer has put a ton of money into the plan since 2008, and the result today is due to our having been living in a very long, protracted period of very low interest rates, which are the underpinning cause of the actual valuation, coupled with what I would call a very onerous and stringent solvency test that companies have to perform on an annual basis now, and which is regulated by OSFI. It's as plain and simple as that.

Mr. Dave Van Kesteren: Mr. McKenna, did you want to...?

Mr. John McKenna: We've been talking about pension deficits. I would like to say that Bill C-501 covers severance and termination super-priority as well. That will impact every single employer across the country negatively. You heard from the CBA, who said that the availability of credit for smaller and mid-size companies is purely driven by the asset value—the recoverable value from those assets if liquidation is required. If there is a priority ahead of the bank's security, it will come off the availability they calculate, and every single employer will suffer.

Mr. Dave Van Kesteren: The question was asked: if the status were moved to preferred, would that change your position on the bill?

Could you respond very quickly, each of you?

Mr. Stephen Dafoe: If there is no one who has a super-priority, then the person who has preferred status effectively is super-prioritized.

Again the illustrations come up. Imagine a queue on the day of bankruptcy. Who is in the front of the line?

So preferred status unfortunately wouldn't be better than super-priority, because it still puts them ahead of the senior unsecured bondholders.

The Chair: Thank you, Mr. Dafoe.

Thank you, Mr. Van Kesteren.

Be as brief as possible, Monsieur Bouchard.

[*Translation*]

Mr. Robert Bouchard: Thank you, Mr. Chairman. My question is for Mr. Boychuk. I would like to go back to the topic of severance pay. You clearly explained to us the cost of the super-priority for pension funds. With regard to severance, if we compare the super-priorities, which costs the most? I believe that's quantified with respect to pension funds. Has it been quantified for severance?

Mr. Michael Boychuk: I didn't hear the last part of your question.

Mr. Robert Bouchard: For example, AbitibiBowater closed its Dolbeau and Gatineau plants. Under the collective agreement, workers were entitled to an amount of money. Because the company had placed itself under the protection of the Companies' Creditors Arrangement Act, that amount became a normal claim.

If that money had been protected, if it had been a super-priority, would that have had an impact on costs? You said there was a capital cost in the case of pension funds. I would like to know what the cost of that super-priority for severance would be in the event of a plant closure.

● (1200)

Mr. Michael Boychuk: I think it would be better to put the question to someone in the restructuring field rather than to me.

Mr. Robert Bouchard: Mr. Breton answered on that point. Would anyone else have a response to offer on this point?

[*English*]

Mr. Bill Kennedy (Vice-President, Special Loans, Canadian Bankers Association): Perhaps I can answer that.

The wide-ranging effect would be that it would affect a lot more companies, because small and medium-sized companies generally borrow by what we call margined operating lines of credit. Generally speaking, there's a formula; in other words, a bank or a lender will provide 75% of accounts receivable, plus 50% of finished goods inventory, less priorities.

Right now we can define what the severance and pay is under WEPPA, the Wage Earner Protection Program Act: it's $2,000 per employee. That comes right off the top. Very simply, if you have a company that has 200 employees, at $2,000 per employee that's $400,000 of lesser availability that they would have on their line of credit.

If the total amount of severance—and it could be up to 42 weeks—becomes a priority, I would think it would constrain credit greatly and might even take away availability of credit.

The Chair: Thank you very much, Mr. Kennedy and Monsieur Bouchard.

I want to thank you very much, particularly for the last answer, which was very precise.

And to witnesses far and near, thank you very much for coming.

I'm going to suspend for two minutes for the next panel to come in.

●

(Pause)

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● (1205)

The Chair: Gentlemen, welcome back.

We're now going to hear from witnesses. I'm going to begin with witnesses who are from the same organization, but who are going to come from two different aspects. I'll begin with the national and then the local from the Communications, Energy, and Paperworkers Union of Canada.

I understand, Monsieur Caron, you'll be speaking for about two and a half minutes and then Monsieur Carrière will speak for about two and a half minutes.

Go ahead and begin, please.

[*Translation*]

Mr. Guy Caron (Director, Special Projects, Communications, Energy and Paperworkers Union of Canada): Thank you very much, Mr. Chairman.

Thank you, committee members, for agreeing to hear us.

You will not be surprised to hear that we support Bill C-501. We think the present system really works to the detriment of workers, as demonstrated by a number of examples from the great recession. I would like to talk to you about a specific example.

In some cases, we were able to salvage the situation. In the case of AbitibiBowater, for example, we were able to negotiate with the company to protect retirees' pensions. Of course, that required concessions on the part of workers, but pensions were protected during the major crisis, particularly as a result of the fact that it was possible to work with AbitibiBowater.

Fraser Papers is a much sadder story. A company, Brookfield Asset Management, owned a 70% interest in the business. It was one of the most viable forest companies. Fraser Papers was able to weather the crisis and to come out of it stronger than the rest of the industry.

And yet Brookfield Asset Management decided to place Fraser Papers under Bankruptcy Act protection. Under the restructuring plan that was adopted, a new company was created, the major shareholder in which was still Brookfield Asset Management, and it managed to secure repayment of the money that Fraser Papers owed it on paper and to repay secured creditors. Ultimately, what that meant for workers was that the Thurso plant shut down. Workers have yet to receive severance pay.

As for other retirees, their pay was cut by 30% to 35%, and all that was because Brookfield Asset Management had no remorse in shutting down a plant that was profitable and was doing better than other companies in order to secure its concessions under the Companies' Creditors Arrangement Act. That was a flagrant abuse of the CCAA for specific purposes that ultimately hurt the workers.

In that sense, the CCAA is currently an obsolete tool, and we advocate passage of Bill C-501. With regard to the issue of investors —I know that has been the subject of extensive discussion and that you have heard from companies and restructuring experts who tell you that's impossible—and we have a proposal, which I won't have time to present to you, but I invite you to ask me questions on the subject. I will be pleased to answer them.

● (1210)

[*English*]

The Chair: Monsieur Carrière.

[*Translation*]

Mr. Gaston Carrière (President, Local 142, Communications, Energy and Paperworkers Union of Canada): Good morning. I want to thank the committee, ladies and gentlemen, for hearing us. First I want to emphasize that we agree on Bill C-501. However, we sincerely believe that additions should be made to it to give it more teeth.

Why? Who is currently suffering most from the deficiencies of Bill C-501? The situation of AbitibiBowater's Gatineau and Dolbeau workers should be enough to bring about changes to Bill C-501. But as my colleague said earlier, we need more than that. What happened at Fraser Papers was abominable.

They took away 35% of total benefits from retirees who were already receiving retirement benefits, in addition to scrapping the pension plans, before other owners started the plant back up.

An even worse situation is that of White Birth Papers, formerly Masson Papers, where they are in the midst of negotiations. There too they are working to try to save pension plans and working conditions. Negotiations are underway, and a conciliation meeting is being held this morning.

The worst part of all that is having the courts sanction all the actions taken against workers in the pulp and paper industry. It has been accepted by the courts that our working conditions have been greatly weakened. The companies are entitled to do that in order to restructure. It's abominable and terrible. Let me tell you that the situation is extremely serious and a major concern because it's all being done with the courts' authorization under the Companies' Creditors Arrangement Act.

The companies now have a right and the opportunity to liquidate their debts. Do you think they hesitate to do so? No, not at all. That's why the act has to be revised and corrected in order to provide better protection for the amounts owed to workers, while equipping them to maintain their pension plans and so on. What's being done is abominable, abominable, and it's spreading to other sectors. Employers have found a crack because Bill C-501 is weak; it has deficiencies. They are weakening our working conditions, our pension plans, termination and severance pay, in addition to penalizing us for unemployment purposes. We'll have to pay money back.

Thank you very much.

[*English*]

The Chair: Now we'll move on to Mr. Markham for five minutes, please.

Mr. Ian Markham (Senior Consulting Actuary, Towers Watson): Thank you.

I'm the Canadian retirement innovation leader with Towers Watson, a global consulting firm. My colleague is Karen Figueiredo, who is the Canadian leader of the investment consulting practice. We're both actuaries with pension expertise. Our firm has already provided the committee with our submission, which was entitled "Granting Higher Priority to Defined Benefit Plan Deficits: Solving Problems or Creating Them?"

While we acknowledge that the need for protection for defined benefit or DB pension plan members is so critical in the event of insolvency, we are concerned that granting higher priority to the full DB deficit, whether super-priority or preferred, will have unintended and extremely negative consequences for Canadian employees, for capital markets, and for industry in Canada.

First, it will increase the cost of financing for many corporate employers with DB plans. For those employers who have the cash, this may divert cash into pension plans in order to boost the funded ratio and thereby avoid a downgrade in their bond rating, but this can be at the expense of job-creating capital investment. We expect it would dramatically accelerate the trend away from DB plans to defined contribution pension plans in Canada, thereby transferring risk from the employer to individual plan members and inevitably reducing their ultimate pensions, often dramatically. Out of all of the threats to the continuation of DB plans in Canada, this bill is by far the most dramatic.

Second, based on our recent survey of fixed income experts from 23 major investment firms and several large corporate employers with DB plans, we believe that this legislation will weaken the Canadian capital markets and drive away foreign investment. Increased interest rates on corporate bonds and additional volatility related to DB solvency funding positions will put many Canadian bond issuers at a competitive disadvantage relative to other bond issuers.

Third, it will make it more challenging for companies to restructure at a time when they might need it most. As a result, it could actually accelerate insolvency and place working Canadians who participate in DB plans at greater risk. Increasing interest rates on corporate bonds will also have a negative impact on Canadian investors, including pensioners, defined contribution plan participants, those with RRSPs, and other individual investors who have corporate bonds in their portfolios today that will go down in value.

It's no good expressing the potential impact of this legislation in terms of average costs, as some have done. As in many circumstances, using averages masks the real issues. It's like telling Ottawa residents not to buy a winter coat because the average temperature is 10 degrees during the year. A key lesson that we learned from our survey and related interviews with respondents is that determining the impact of changing bankruptcy priorities is a highly complex issue and is extremely difficult to predict in advance.

● (1215)

Ms. Karen Figueiredo (Member, Towers Watson): The cost of preferred creditor status is not evenly distributed among all employers who issue bonds. The impact of Bill C-501will depend on their credit rating, the relative size of their DB plan, their DB plan's funded position, and on prevailing economic conditions. Although the average impact on corporate bond interest rates may only be a quarter of 1% in normal market conditions—for example, moving from 5% to 5.25%—some companies will pay much higher costs than others.

Ian has a page that has the top 60 bond issuers in Canada, all of them investment grade, and visually you can see the ones in orange are the ones rated triple-B. It's those triple-B-rated companies with DB deficits that are likely to experience a downgrade in their credit rating and could see their financing costs increase by 2%, 3%, 4%, or even 5% as a result of the bill. If the rating drops them below investment grade, this would—as opposed to could—result in forced sale of their bonds by most Canadian pension plans.

It's important to note the dichotomy in the Canadian bond market. Most of the corporate bonds that are highly rated—i.e., that pay the lowest interest rates—are issued by financial institutions, whose DB plans tend to be less material relative to their corporate balance sheet and income statement, and by regulated utilities that arguably have an automatic ability to pass the pension costs through to ratepayers. Many triple-B-rated companies are household-name industrial companies, such as CP Rail, Telus, and Bell, where the DB plans are hugely material. In effect, it's Canada's industrial base that would take the majority of the hit if preferred creditor status or super-priority were given to DB plan deficits.

There will be increased volatility for corporate bond issuers, and that may deter foreign investors from investing in Canadian corporations with DB plans. Several fixed income experts indicated to us that they would develop new models to assess risks associated with DB plans, something that many foreign investor firms may be unwilling to do, given the time and complexity involved. By the same token, investment capital could focus more on investment opportunities outside Canada. While many DB plans face risk for their members' employers, market upheavals will happen. No one predicted how far along bond interest rates would affect DB solvency in the last five years. We can absolutely assure you that the best form of security for pension benefits of DB plan members is the existence of financially sound employers, combined with pension benefits legislation that enhances the funding of ongoing plans in a balanced and sensible manner.

The Chair: Thank you, Madam Figueiredo. I'm sorry that I have to interrupt you, but I'm over time.

We'll now go to Mr. Benson for five minutes.

Mr. Phil Benson (Lobbyist, Teamsters Canada): Thank you, Mr. Chair. Thank you very much for having us here.

The documents I gave are a snapshot of our activity on this file from 2005 to 2010.

The year 2005 is relevant because that's the first time corporations came asking for relief for pension funds with pension deficits underwater and things like that, and that was at the end of the longest boom time we've ever seen in the western world.

The years 2009 and 2010 are relevant because that was when the latest round of consultations on pension issues took place. We would like to thank Mr. Menzies and Minister of Finance Flaherty for including Teamsters Canada so meaningfully in those discussions. We would also like to recognize the action the government has already taken. As an example, one of our major companies, CP, has put $850 million into their pension fund in the last two years, and that will go a long way toward relieving the problem.

I think what we're really talking about here is costs and risks. The people who oppose this bill are really saying that they want somebody else to bear the cost and the risks. This bill is about closing the barn door after the horse has bolted, and I agree that most of this fix has to come from our consultations on how we can fix it before, not after, the horse bolts through the barn door.

We've been discussing this before three committees in the last year and a half. In one of them, one of the corporate executives stated that they couldn't put money into pension plans because they needed it to build their business. Really, that's what people are saying. They need cheaper interest rates to build their business, they need this to build their business, they need that to build their business, yet workers and pensioners are the only group of all these creditors or lenders who have a trusted relationship with a fiduciary duty applying.

When I examined that and looked at fiduciary duty, I didn't see anything that said I can use the money to build my company. At the end of the day, we're really asking whether it is acceptable for government policy to say that the risks of running a business should be transferred onto pensioners and workers, that the importance of building our economy is so great that we have to transfer it onto pensioners and workers, and that the need for bondholders to make their money is so great that we're going to transfer that risk onto our pensioners and workers.

In a marketplace it's usually much more efficient to have the costs properly allocated. That's how we get efficiency. It's not through artificial means, and what we have here is really an artificial means. We have banks basically lending money.... Let's imagine it was a mortgage. They lent money to people for mortgages, but they didn't look at their entire financial background because they didn't have to. That's what happened in the U.S., wasn't it?

Here what we have is a situation of people saying that because they do not have to look at it, they do not have to put the cost factor in. I'll tell you that for an efficient market and for bringing discipline to the market, it's something that should be done.

I think the arguments opposing this bill may be a matter of timing. Should the front end be fixed first? It might be an issue of phase-in, it may be an issue of capping, but surely it's not government policy. It can't be the policy of Parliament to say “We want to transfer risks onto the people who can least afford it”.

In our case, we have worked with the Nortel people and the Nortel people's group of teamsters, Flextronics. They're getting 26¢ on the dollar. They just got a letter last week cancelling all of their policies. Everything else is cancelled. Do you think that's fair? That's not a good answer in front of a committee, but do you think that's an efficient running of the marketplace? We'd submit it isn't.

What we'll say to you is this: if this isn't the right bill, what's the right bill? We will tell you that we will work with the government, with the opposition, and with our employers. We'll work with anybody who's interested in getting something that will achieve the ends we want, whether it's closing the gate with the horse in the barn or afterwards, but I think this is something that we must do. It's something we have to do. The argument that says that we want to transfer risks and costs onto workers and employers simply doesn't wash.

Second, though I heard today their grave concern about employees, when we deal with employers they are usually more concerned about driving up share values and making money for themselves and for their shareholders. If rules and regulations aren't in place, they will not put into the pension funds. That's what happened. I will give credit to the government for taking some steps to force companies to do the right thing—not do the right thing, because they don't, but to do what is required: to treat that trust document, that relationship, with the sincere responsibility it requires and to respect fiduciary duty.

Thank you.

● (1220)

The Chair: Thank you very much, Mr. Benson.

We'll go now to Madam Bastien for five minutes, please.

Ms. Leigh Ann Bastien (Partner, Mercer (Canada) Limited): Thank you for the opportunity for Michel and me to speak today.

I'm Leigh Ann Bastien. I'm a pension lawyer. I have expertise in pension legislation across Canada, including the Pension Benefits Standards Act, as amended by Bill C-9.

Michel St-Germain is a pension actuary. He has 36 years of experience providing advice on the funding and design of employer pension plans.

Our statement today, in simple terms, is that defined benefit pension plans are good things. They deliver pensions to many people through most market downturns and through most downturns in an employer's business. But the retirement system is struggling. Governments are trying to strengthen the defined benefit pension plans and to strengthen the retirement system. Bill C-501 would work in the other direction, making plan sponsorship less viable for employers.

Private sector sponsors of defined benefit pension plans will likely change the funding and design of their plans or leave defined benefit plans entirely if the bankruptcy laws change to make the pension deficit a fully secured creditor.

I'll turn it over to Michel, who will provide more details.

● (1225)

[*Translation*]

Mr. Michel St-Germain (Actuary and Partner, Mercer (Canada) Limited): Thank you, Ms. Bastien, Mr. Chairman.

As Ms. Bastien said, pension plan sponsors are currently going through tough times.

We estimate that more than 90% of pension plans are in a deficit position and that 30% have a shortfall of more than 20% of their fund. In a number of cases, the shortfall exceeds $1 billion.

In addition, pension plan shortfalls are highly changeable and can easily vary by more than 10% in the course of a year.

[*English*]

If the order of priority of a pension deficit on bankruptcy is changed, the reaction of plan sponsors, our clients, will depend on the action taken by lenders. We will see a reduction in the security of their loans, as some unsecured debts will jump ahead of the others. If the lenders increase the interest rate charged to companies that sponsor defined benefit plans to compensate for their additional risk, they may refuse to lend to those that have large defined benefit plans or may add additional loan covenants restricting all company investor pension assets.

The change in those rules will have unintended consequences. The effect on some sponsors will vary, but in my opinion they would be most significant for those with large DB plans and deficits, for those for whom the bond credit rating is just above the investment grade, and for those who need access to capital to operate. The effects will include increases in borrowing costs and a reduction in their ability to borrow money.

The competitiveness of those companies that sponsor defined benefit plans will also be reduced, as they will face higher borrowing costs to run their businesses compared to those for sponsors with defined contribution plans or with no pension plans at all. Furthermore, their foreign competitors, in particular in the U.S. and the U.K., are not subject to legislation that ranks pension deficits ahead of other creditors. Those foreign competitors will have lower borrowing costs.

Shareholders are already concerned about defined benefit pension risks, and in response many companies have taken measures to reduce such risks by replacing their DB plans in part with defined contribution plans. If the shareholders of those companies see an increase in borrowing costs, with additional strings attached, shareholders will put even more pressure on companies to replace their defined benefit plans with DC plans—defined contribution plans—with a corresponding transfer of investment risk to employees. We expect that the pace at which defined benefit plans are replaced by defined contribution plans, for both new and current employees, will increase significantly. You and I should be concerned about such a transfer of risk to employees.

Those who rely on defined contribution plans and RRSPs suffered significant losses in 2008, whereas the great majority of those participating in defined benefit plans are receiving and will still receive their full benefits, unaffected by the poor stock market returns.

Sponsors in distress situations, including those covered under CCAA, will be particularly affected. Those sponsors may need urgent access to financing to operate, and many of those sponsors operate in traditional sectors with large defined benefit plans. Lenders will not approve a loan to a distressed sponsor if there's a risk that their loan will be diverted to a large pension deficit.

Mr. Chair, the security of defined benefit plans can be improved by encouraging plan sponsors to better fund their plans. This can easily be achieved by allowing plan sponsors to confirm their surplus entitlement if they conservatively fund their pension fund.

Plan sponsors are requesting a—

The Chair: Mr. St-Germain, I'm sorry, I have to interrupt you. We're over time again. The clock is our enemy often.

Now we'll go on to Madam Sgro for questions, for five minutes.

● (1230)

Hon. Judy Sgro: I'm going to share my time with my colleague Mr. Garneau.

Very quickly, I'm going to speak a bit on behalf of my party. As the critic, I can tell you that we are working to look at strengthening the pension system. How do we get more people into a pension system, preferably a DB pension? How do we strengthen the pension system in this country of ours and encourage companies to participate?

In 26 years, we're going to have another 10.9 million seniors. The impact on the fiscal capacity of our country I think is going to be enormous. So it's imperative that we get some things right. And the issue of pensions—how to protect them, how to encourage them, and how to strengthen them—I think is critical. We're all here because of the issues that have arisen this year, especially with Nortel, and we are all looking for a way to fix this.

I put out a white paper with 28 recommendations. If this bill isn't right, and you're telling me that it will have a huge impact and will destroy the credit market and the rest of it, then if not this, what? What do we do?

Mr. Michel St-Germain: I'm glad, first of all, that you're concerned about the plight of defined benefit plans. To me, to resolve the Nortel situation and other situations, government should introduce measures to encourage plan sponsors to better fund their pension plans. The Canadian Institute of Actuaries, and many other players, have suggested special funds to achieve this goal. For example, if plan sponsors would fund their pension plans conservatively—no pun intended—they would have some sort of guarantee that if those excess contributions were no longer required, they would have access to them.

Mr. Phil Benson: We couldn't agree more.

There are three points we raise consistently. One is that Bill C-501 is some kind of approach. But that's to close the gate. Before it happens, we have to put in rules and regulations to ensure that money is invested more like an insurance company, with more in bonds and bond equivalents, and second, that they're adequately funded. We should never have a situation where a company can get up and say "Rather than giving the money I should to my pension fund, I need the money to run my company".

I think if that were in place, this bill would not be onerous, because the marketplace would have taken care of it. We have to get the horses in line, but this is certainly part of our three ideas for fixing it. And I think it's needed. Whether it's this bill, the next bill, or some other time, this will eventually have to become law.

Mr. Ian Markham: I'll just add to that point. We already have a number of actions taking place across the country. The federal government has already taken action through Bill C-9 and some regulations to enhance the funding of pension plans. We're seeing the same happening in various other jurisdictions. And I think it's inevitable that it will happen right across the country, curtailing the ability to take contribution holidays, curtailing the ability to give benefit increases when there's a poorly funded plan, and making actuarial valuations more frequent. So I'd say that things are already happening that are going to help.

[*Translation*]

Mr. Marc Garneau: Mr. Caron, when you completed your presentation, it seemed to me that you wanted to say something else. So I'm offering you the opportunity to do so.

Mr. Guy Caron: Thank you, Mr. Garneau.

We understand that there are concerns among the companies, investors, actuaries and pension plan managers, and a proposal that we submitted last year could address those concerns.

In fact, in the middle of the crisis last year, 70% of our members were working for a company that was under the protection of the Bankruptcy Act or the Companies' Creditors Arrangement Act.

Our proposal provides for the creation of a national investment and pension fund, somewhat similar to what there is in Quebec, and we discovered in the meantime that the two concepts were very similar. The federal government could establish a fund without investing any money. The fund would be administered by the Canada Pension Plan, separate from the plan itself, and we could have a guarantee that the assets of the companies that have put themselves under creditor protection could be invested in it in order to grow. At that point, those funds would no longer be subject to a plan termination and could be managed less conservatively than the funds of insurers. So we're talking about a mix of stocks and bonds that would permit a higher return.

That would subsequently assist the companies because, when restructuring, they would ultimately no longer need to calculate their shortfall on a solvency basis. They could consider the shortfall on an ongoing basis since we would have a guarantee that the plans would not be terminated.

I know it takes quite a long time to explain, but I have inserted the explanation in your documents. This kind of fund would help allay the companies' fears about this and it should be an essential partner for Bill C-501, which is still absolutely essential in protecting workers and retirees.

● (1235)

The Chair: Thank you, Mr. Caron.

Now it's the Bloc Québécois' turn for five minutes.

Mr. Robert Bouchard: Thank you, Mr. Chairman.

Good afternoon, ladies and gentlemen. My first question is for Gaston Carrière.

Mr. Carrière, could you tell us why the pension funds and severance pay should become protected super-priorities in the event of claims or bankruptcy?

Mr. Gaston Carrière: First of all, because employers have to stop taking advantage of workers and commit to complying with provincial and federal legislation, to paying workers' severance, separation and pension plans. Yes, we want to be secured creditors. Our severance and termination pay must be secured claims. I repeat: what they're doing is abominable.

Since when are workers paid in shares? The multinational is going to pay us our separation and severance in shares, up to 36.5% of what it owes us. Find me a Metro store, an IGA store, a car dealership, a city, that will accept shares as payment? That's how the multinational wants to pay us, 36% and not 100% of the value of our separation and severance pay.

The multinationals aren't penalized by Bill C-501. This one doesn't have enough teeth. It has to be given some. The multinationals come after our materials and don't invest in infrastructure. They transport them to other countries, if not to other continents. Bill C-501 is so weak that three-quarters of Canada's forest mills are under the protection of the Companies' Creditors Arrangement Act. It's not just AbitibiBowater, Fraser or White Birch. There was Smurfit-Stone. Some are lining up to be placed under the act's protection, Domtar, Catalyst Paper, in the west, or Cascades. They're all lining up. The entire sector will be under protection because these companies won't be able to compete with the companies that are restructured under the CCAA, not to mention all the other sectors of the Canadian industry that will want to take advantage of the same opportunity. This is one of the reasons why the bill has to be given some teeth.

I've also heard it said many, many times that what happened in the case of the renewal of AbitibiBowater's collective agreement is good. We saved the pension plans. It should not be forgotten that the Quebec Pension Plan overrode its provincial regulations. Instead of repaying the $1.3 billion in balance benefits over five years, it has extended them over 10 years.

There's also the fact that we've always stayed in a benefit plan. We stuck with the traditional system, but they're starting a new plan at AbitibiBowater through the CEP. It's still a benefit plan. Workers and employers will pay more. I'm not a banker, but everyone knows that it takes 15% to administer a plan. They're going to allocate 18% to it and 3% will be held back. The employer will no longer be exempt from paying premiums. It will have to continue paying its fixed share into the plan to rebuild its solvency.

Workers have abandoned the equivalent of 17% of their working conditions when the last collective agreement was renewed in 2010, 10% of payroll and 7% benefits, not to mention what the Government of Quebec did to protect this multinational. Don't come and tell me that, if we put some teeth into Bill C-501, we're going to force the multinationals into bankruptcy. That's false. In the case of AbitibiBowater, what the Quebec Pension Plan and workers did, no banking institution would have been able to do. If the Quebec Pension Plan and workers hadn't done it, that would have been the end of AbitibiBowater.

To thank us, company officials want to award themselves bonuses. Fortunately, the media are reporting this morning that the restructuring of the business has been accepted in the United States. We know why that was being blocked. The Americans didn't want Canadian managers to award themselves bonuses. These companies come and exploit our natural resources in Canada. They have no right—no right—to dump workers. These are Canadian citizens, and they have no right to dump them as they've done. It isn't happening just in Gatineau, but in Dolbeau, Beaupré, the Belgo plant in Shawinigan, in Mackenzie, Grand Falls, Newfoundland, and Thunder Bay as well. It's not true; it isn't clear. They don't have to do that.

For all these reasons, gentlemen, we think Bill C-501 has to be given some teeth, for the workers' sake.

Thank you very much for listening to us.

● (1240)

[*English*]

The Chair: Merci, Monsieur Carrière.

That's all the time, Monsieur Bouchard.

Now on to Mr. Lake, for five minutes.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

Mr. Markham, it seems as though, in a lot of the testimony we've heard, there's been a concern that we seem focused on the end, in a sense. I guess that's what this bill clearly does. It does seem, though, that by focusing on the end, by changing rules relating to bankruptcy, ironically we might be bringing in significant unintended consequences for companies and workers who are not at the end, who are not in bankruptcy. It seems like a bit of irony there.

Secondly, by focusing on bankruptcy law we may even be inadvertently forcing more companies to have to use bankruptcy law. That's what we've heard in testimony.

Maybe you could comment on what these unintended consequences are; what this bill might do; your thoughts on the impact on companies' ability to hire workers in the first place, to make those investments that are so critical to help them avoid bankruptcy in the long term.

Mr. Ian Markham: My remarks earlier were predicated on the idea of strengthening the ability of employers to have a balance. Having a balance allows them to put more money into their pension plan over the long term and allows them to keep their companies in business over the long term.

What we are very concerned about as a result of that survey and the subsequent interviews, and listening to various plan sponsors who are very concerned, is that we want to make sure they continue their defined benefit plans, effectively forever. In order to do that, they have to be in existence.

Bill C-501, with its ramifications for effectively putting the whole deficit ahead of other unsecured creditors, means, from what we understand, that the ability for lenders to charge decent interest rates to the employers is very much in jeopardy. It's not just a case of 25 basis points—in other words, 0.25%; there are some where it could be very considerable.

Our worry is that in order to help those who are already in bankruptcy proceedings, or who are about to go into them, it's going to put a number of other organizations—some very large ones, especially ones that are triple-B rated—into a worse position. Some of them may go under, and there are a lot of workers involved.

In order to be able to channel moneys into those businesses, it does unfortunately mean that there may be some individuals who upon bankruptcy in the immediate future will not get their full amount of money. It's a very sad situation.

Mr. Mike Lake: So what do we do? As legislators, we're sitting around the committee and we've heard that said time and time again. We've heard other things said as well.

Mr. Benson said the government is moving in the right direction in certain areas to do with pensions, particularly with some of the changes we made. Mr. Benson, you also said if this isn't the right bill, then what's the right bill to take? Well, I'd change that a bit and ask what is the right action to take.

Mr. St-Germain and Mr. Benson, what are your ideas in terms of strengthening the system?

Mr. Michel St-Germain: Thanks.

I want to start by saying that no private plan sponsor is forced to have a defined benefit plan. It's something they decide themselves, subject to labour negotiations. It seems to me that you have to encourage private sector sponsors to set up and maintain their defined benefit plans and to fund them properly. Make their lives easier by having more flexible and better regulations. Encourage them to put more money in the pension plan by telling them if they put too much money into the pension plan they will not lose it.

This bill, Bill C-501, makes the lives of plan sponsors more difficult. It doesn't encourage them to maintain pension plans. It encourages them to terminate their pension plans.

● (1245)

Mr. Phil Benson: The whole issue of defined benefit plans is interesting. For about 40 years of regulation the goal was to encourage defined benefit plans. Quite bluntly, I don't think we'll see another one come into being unless it's through negotiations, collective agreement, or some other thing. It's been an abject failure.

When we're talking about risks and costs, I support the idea of putting funding more securely—more like insurance companies: get out of the marketplace. There are lots of things that can be done in that regard.

There's also another risk, but I didn't talk about risk and cost. I'm at the tail end of the baby boomers. When we all retire, if those pensions that were promised aren't there, we're also going to transfer that risk and cost onto taxpayers. At the end of the day, if some of our members are going to get 26 cents or 36 cents on the dollar, they'll be getting guaranteed income supplements, HST credits, GST credits.

That's another thing for you to think about as the legislators. Bill C-501 is one piece of the pie; it's not the total fix. But I think it's something that will have to be done eventually, if not now.

The Chair: Thank you, Mr. Benson.

Mr. Phil Benson: Thank you.

The Chair: Mr. Rafferty.

Mr. John Rafferty: My thanks to everyone for appearing here.

I have a question for Ms. Figueiredo.

You talked about a lack of models and you talked about risk. But how is it that so many countries in the world—over 30 of them, according to the report that's been tabled—have either preferred or super-priority status for their pension funds, and yet have well-functioning debt markets? Australia might be the closest to us in how they operate. We heard earlier that this is a real concern, and yet these 30 countries seem to be managing just fine.

Ms. Karen Figueiredo: I have read Ms. Urquhart's report, and it seems extensive and comprehensive. We have a report prepared by the OECD. I think assigning the priority status is something that needs a bit more research. Certainly the OECD report would not suggest the extensiveness that Ms. Urquhart's report implies. I am not an expert on all of these countries and what they provide in the way of protection, whether it's severance, pensions, or wages. I think a little more definition would help to clarify the issue.

On the question of what governments can do, one of the biggest challenges is that the federal government's jurisdiction is fairly limited. That's the challenge that you have here today. I would encourage the government to work closely with the provinces. That has been a challenge for 40 years. You can legislate for federally regulated plans, but—

Mr. John Rafferty: Thank you, Ms. Figueiredo.

Ms. Bastien, you and Mr. St-Germain were talking about encouraging DB plans to terminate. That might be one of the consequences of this bill. In fact, there's been much talk about the demise of DB plans, or changes or alternatives to them.

Let me just throw this out to you as a suggestion. We have a good model in Canada. We have the best pension plan in this country, and that is CPP. It's well funded. It's huge. Even in the last recession, it took a blip, but not the bump that RRSP-holders suffered.

The added bonus with CPP is that it's run by a not-for-profit board. It's a well-run organization. Maybe the best thing is that, unlike EI, the government of the day can't get its hands on it. That's an important point to remember.

What if DB plans wind down or terminate, and part of the negotiating procedure with employees and employers becomes “Let's make our DB plan a CPP plan”? I'm thinking five, ten years down the road.

Your thoughts, please.

Ms. Leigh Ann Bastien: CPP is an important pillar of our retirement system. Arguably, it could be strengthened somewhat, but it's a one-size-fits-all. It's an excellent plan that will provide a basic benefit to every Canadian who participates. But there's something special about employer defined benefit pension plans, and that is that they can work in a dynamic and positive way as an element of the compensation offered to the workforce.

● (1250)

Mr. John Rafferty: But could you not offer that compensation through CPP, that it's protected and you have to pay into it?

Ms. Leigh Ann Bastien: I'm afraid that would be far too complicated to meet the objectives that employers often have in offering a DB plan.

Mr. John Rafferty: One last question to Towers Watson.

Your work estimates that this bill would increase the corporate bond market. I know you didn't want to talk about basis points, but you say 12 to 29 points. What you say is certainly in line with other testimony that we've heard. Philips, Hager & North, which I guess you're familiar with, and Monsieur Carte, whom you're also familiar with, both estimated a quarter-point hit in the corporate bond market, about $3 billion to $4 billion in investment-grade bonds. And these are the ones that are preferred. These are the secured ones.

So when we speak of Bill C-501 and we talk about investment-grade corporate bonds being approximately $300 billion—I think that was the estimate in this report—we're really talking about a 1% hit on investment-grade bonds, $3 billion to $4 billion.

The Chair: If you want that question to be answered, you'll have to leave it there.

Mr. John Rafferty: Oh, I'm sorry.

The Chair: So quickly ask it.

Mr. John Rafferty: Okay, I'll ask it very quickly.

During the last recession, Canadian banks and others created the subprime mortgage business, and we were talking about 250 basis points that they took a hit on. Is this bill not proposing, in terms of total moneys—I hate to use the term—small potatoes, compared with what has gone on before?

The Chair: Be as brief as possible.

Ms. Karen Figueiredo: The answer is that we really don't know, and I think that was discussed at the previous session. What we're concerned about is the unintended consequences. The reality is that it's during an economic crisis that the cost is going to be the highest, and that's the time when the employers who are sponsoring DB plans or simply employing employees will have the most difficulty obtaining the financing.

The real issue is that it may be an average, just as the average temperature in Ottawa is 10 degrees, but it's at the time when it's coldest that you need the most help, when you may not be able to afford it. Our concern with this bill is that some of the organizations that otherwise could restructure successfully may not have the opportunity to do so.

The Chair: Thank you very much.

Now we go on to Mr. Garneau, for five minutes, please.

Mr. Marc Garneau: Thank you, Mr. Chair.

I'd like to ask my question to Madame Bastien.

I know you were here in the previous session, so you may have heard me asking a question of Mr. Breton. It was concerning the issue of arrears and special payments. That seemed to be what Bill C-501 was addressing. I was asking how much effect that would have, really, on the markets. He brought in the fact that it wasn't just Bill C-501; it was also Bill C-9.

I heard you mention that you're familiar with Bill C-9, so I was wondering if you might shine some light on the linkage, to show why it's a bigger thing than perhaps I've appreciated.

Ms. Leigh Ann Bastien: I can make a couple of observations, first about Bill C-501.

The stated intention for Bill C-501 is that the entire deficit become one held by a super-secured creditor. The words in Bill C-501 are less definite. I would say that when you're doing your clause-by-clause, it's very important to be sure that the words match what you think they ought to mean.

Bill C-501 refers to regulations made under the Pension Benefits Standards Act. It defines the liability that it's targeting by way of a regulation. Under Bill C-9 that regulation has yet to be rewritten; it's going to be rewritten.

So you have a moving landscape. That's my first observation.

Secondly, what we see in Bill C-9—in the statute itself, prior to seeing the regulation—is that there are special payments that are due up until the date of a plan termination. I think I heard a reference to this earlier today. Some think this is the intended scope of Bill C-501. But Bill C-9 introduced a new element to pension plan funding. That's an obligation to fully fund the deficit after a plan is terminated and to fully fund it over five years.

In my view, the language in Bill C-501 is not clear enough to tell me with any certainty that this liability has been excluded. In fact, I think you can even read it to say that the entire deficit is captured, even though Bill C-9 doesn't require a full deficit funding in one moment but requires it over five years.

● (1255)

Mr. Marc Garneau: Thank you.

Mr. Markham, you wanted to add to that.

Mr. Ian Markham: I just wanted to add that the earlier conversation was talking about the other countries, 30 countries and so on. You have to be very careful in looking at those studies to decide whether what's covered is what is in arrears—in other words, the special payments that should have been made in accordance with the Pension Benefits Standards Act by the time the company went under—or the full deficit. I think, if you look through the entire list of countries, there are precious few that actually put the whole deficit ahead of the bond-holders, rather than just the special payments in arrears.

You also have to look at the maturity of the pension system in those countries. You need to look at ones where the pension assets are a very large proportion of total corporate assets, and we come down to there being virtually no other examples.

Mr. Marc Garneau: What you're saying is that if one is looking at the 30 other countries, most of them are only really dealing with a very limited.... They're looking, as in Bill C-501, at special payment in arrears, and really at just that.

Mr. Ian Markham: I need to clarify that we personally haven't done all this research; we're reading others' reports. I think it's imperative that to answer this question you make sure you pick out what really is covered by all of these other countries, because it's too easy to say that they cover the full deficit. Just make sure you know which ones do and which ones don't.

Mr. Marc Garneau: But you seem confident enough to say that you doubt whether it's the full deficit in those 30 other countries.

Mr. Ian Markham: Certainly from what I've seen, I doubt it very much.

Mr. Marc Garneau: Okay.

I guess the last part is that if none of the things that are to be rewritten for Bill C-9 occur, does the impact of Bill C-501 change for you?

Ms. Leigh Ann Bastien: Are you asking what the case is if that regulation I referred to is not redrafted? No, my comments don't change, because Bill C-501 is worded in such a way that it can do more than Bill C-9 does by itself.

The Chair: Thank you very much.

On that suggestion from the last witness, I've instructed the researchers to distribute the OECD report to all members prior to clause-by-clause.

Before I go on to Mr. Braid for five minutes, I also want to remind you, because I think members are going to leave pretty quickly afterwards, that we are doing clause-by-clause on Thursday. If you have any amendments, please get them in by noon tomorrow. Even then, it's a short period of time to process them, but get them in by noon tomorrow so that we can deal with them.

Mr. Braid, you have five minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

If possible, I'll see whether I can bring us to less than five minutes. My questions will be primarily for the representatives from Towers Watson and Mercer, starting with you, Mr. Markham.

It's a high-level question about the approximate percentage of Canadians who are covered by pensions or who have pension plans.

Mr. Ian Markham: In the private sector, I think it's 28% who are covered by defined benefit and defined contribution or hybrids. For the public sector I've forgotten what the number is; it's probably 85% or something like that.

Mr. Peter Braid: Okay. Focusing on the private sector, then, it's 28%, and that's for both defined benefit and defined contribution plans.

Mr. Ian Markham: Yes. Of the 28%, my recollection is that something like 16% was defined benefit, 9% is defined contribution, and 3% is hybrid. I may have the numbers a little bit wrong.

Mr. Peter Braid: Okay, so 16% have a defined benefit. Is that percentage increasing or decreasing, and why?

Mr. Ian Markham: The percentage has been going down. If you go back maybe ten years or so, everything was some 5% higher than the numbers I've just given you. It went from, say, 35% down to 28% in total. These are ratios. It's something divided by something else; any ratio is that.

The actual number of workers has throughout the whole of the last five to ten years remained roughly stable in these plans. But the number of workers who are working was increasing; therefore the ratio of people covered by these plans has been dropping.

● (1300)

Mr. Peter Braid: I see. Okay.

What about the decisions by plan sponsors, though, to choose defined benefit or defined contribution plans or to transition from a defined benefit to a defined contribution plan? That's a trend that we're seeing increasing, isn't that correct?

Mr. Ian Markham: Yes, it is.

Mr. Peter Braid: Please go ahead and explain why. Then I have a final question for Madame Bastien.

Mr. Ian Markham: It used to be that defined benefit plans and all pension plans were really seen as an element of human resource management, of attraction and retention. Because of the size of defined benefit plans and because of the solvency funding rules that came in during the late eighties and early nineties, the impact of the market and the growing size of these plans has meant that finance has effectively been making many of the decisions on the future of these plans.

Finance sees these plans significantly as a financial subsidiary that has to be managed along with all the other financial subsidiaries they're dealing with. This financial subsidiary invests in all sorts of assets, including equities. It's highly volatile, and when it's a very large sum of money that we're looking at, these swings are driving the fortunes of the organization up and down. At some point they can't stand it any more, and whether it's finance or the board, they're saying you have to do something.

Look at the U.K.; look at the U.S. They have frozen many of their defined benefit plans, not just putting new entrants into defined contribution plans but also saying to all the current workers: from now on, you're in defined contribution. That may be the trend, and our worry is that this bill could accelerate it.

Mr. Peter Braid: A final question for Madam Bastien.... For those remaining defined benefit plans, we have talked about risks to employers in terms of access to credit, increases in interest rates, impacts on markets. What about the relationship between the plan provider, the pension provider, and the plan sponsor?

If Bill C-501 is passed, will that create risk for the plan provider that they will want to cost and pass on to the plan sponsor?

Ms. Leigh Ann Bastien: It's hard to answer, because the terms “plan sponsor” and “plan provider” usually mean the same person.

Mr. Peter Braid: Okay, let's say “insurer”. I'm including, as the provider, the insurer. So the insurer is perhaps recognizing an increased risk. Will they pass that cost along to the owner of the plan?

Ms. Leigh Ann Bastien: In a defined benefit context, there isn't really a plan insurer. Generally, you have the funds in trust, and it's the employer of the employees who is responsible for underwriting the liability. So you're really talking about the employer.

And yes, the employer will have more stress on its business and that will have its effect on the employees, as would any other financial stress on a business.

Mr. Peter Braid: Thank you.

The Chair: Mr. Braid, you're correct, you came careening in at 15 seconds less. Thank you very much.

I have been advised in advance of a point of order. I will dismiss the witnesses.

Mr. Lake.

Mr. Mike Lake: This will be really quick, actually.

At the copyright committee we had earlier today, the legislative committee on copyright, one of the few things it seemed there might be some agreement on was Mr. McTeague's suggestion that we might suspend our industry committee meetings to allow us to focus on copyright and potentially have more meetings on copyright. He expressed that somehow he had heard there was some reluctance on our side to do that. I guess what I want to do, because it would need to be discussed at the beginning of the next meeting, is explore whether there's willingness on the part of all parties to accommodate that sentiment.

The Chair: Is this after Bill C-501?

Mr. Mike Lake: This would be after Bill C-501, yes, for sure, so not including Thursday's meeting. It would be starting next week.

The Chair: We will put that briefly at the beginning of the agenda, before the clause-by-clause—unless, of course, there is spontaneous unanimous consent.

Mr. Marc Garneau: There's no spontaneity again.

The Chair: Okay, then we will consider that we will deal with that for the first couple of minutes before clause-by-clause on Thursday.

We are adjourned.

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