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● (1105)

[*English*]

The Chair (Mrs. Sherry Romanado (Longueuil—Charles-LeMoyne, Lib.)): I call this meeting to order. Good morning, everyone. Welcome to meeting 43 of the House of Commons Standing Committee on Industry, Science and Technology.

Today's meeting is taking place in a hybrid format pursuant to the House order of January 25, 2021. The proceedings will be made available via the House of Commons website. So you are aware, the webcast will always show the person speaking rather than the entirety of the committee.

The first hour today will be spent on Bill C-253, and then we will move in camera for the second hour to review our report.

To ensure an orderly meeting, I'll outline a few rules to follow.

Members and witnesses may speak in the official language of their choice. Interpretation services are available for this meeting. You have the choice at the bottom of your screen of floor, English or French. Please select your preference now.

As a reminder, all comments by members and witnesses should be addressed through the chair. Before speaking, please wait until I recognize you by name. When you are not speaking, your microphone should be on mute.

As is my normal practice, I will hold up a yellow card for when you have 30 seconds left in your intervention, and I will hold up the red card for when your time for questions has expired. Please keep your screen in gallery view so that you can see the cards when I hold them up. I don't want to cut anyone off, but we have a tight schedule today, so when you see the card, please take note.

Pursuant to the order of reference of Wednesday, May 12, the committee is meeting to continue its study of Bill C-253, an act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act.

I will now welcome our witnesses.

With us today, we have Mr. Mark Zigler, barrister, solicitor and partner at Koskie Minsky. From the Canadian Bankers Association, we have Charles Docherty, assistant general counsel, and Bill Kennedy, vice-president, special loans, with the National Bank of Canada. From Chrysler Canada Retirees, we have Cody Cooper, president and board chair.

[*Translation*]

We also welcome Gordon St-Gelais, president of the Comité des retraités de Mines Wabush, in Sept-Îles.

[*English*]

As well, we have from Insolvency Institute of Canada, Robert I. Thornton, lawyer and partner.

Each witness will have up to five minutes to present, followed by rounds of questions.

We will start with Mr. Zigler.

You have the floor for five minutes.

Mr. Mark Zigler (Barrister, Solicitor and Partner, Koskie Minsky LLP, As an Individual): Thank you very much, Madam Chair. It's good to be with you this morning.

I've been involved in this area for 40 years as a practitioner in a firm that represents exclusively pensioners, retirees, workers, insolvencies and of course other matters. In that time we've had some major cases and some major developments, but still we have a real problem with the protection of pensioners and disabled people, particularly in insolvencies. Most recently I've worked on the Nortel case and on the Sears case, or its beginnings, with my partner Andrew Hatnay, who also worked for the Wabush employees; I see they are also here. We've been involved in many of these insolvencies.

Regrettably, in 40 years of doing this, I've seen how hard pensioners get hit. These are unfunded future promises for their labour. Sometimes the corporations can fund them and sometimes they can't. Forty years ago we talked about surpluses most of the time. Now we talk about huge deficits, and also, a sign of the times, lower interest rates. That creates big problems for pensions and pensioners. When there's an insolvency, there is a big hit. We see pensions cut in half or even more, without any protection to speak of under our legislation.

I have to say that during those same 40 years, I and my colleagues have appeared before many committees of the Commons and the Senate. There have been many studies. I remember the first time, in the early 1980s, appearing before Senator Molson's Senate banking committee, when nothing much was being done. Now, at least, in the 2000s, since 2005 and 2006.... We had the wage earner protection program in 2009, and there have been some enhancements since 2018. This legislation has assisted mostly wage earners for lost wages, with maybe some current pension contributions as opposed to the big special contributions that represent the deficits in pension plans. It's helped active employees. It hasn't helped disabled employees who have unfunded disability programs, and it really hasn't helped pensioners in terms of special payments, but at least we made a dent in the early 2000s.

Regrettably, Canada stands way behind other OECD countries in this area. Even the U.S., with its more laissez-faire philosophy, has a pension benefits guarantee fund corporation that protects up to $60,000 U.S. a year in pensions. The U.K. Pension Protection Fund does even better. I think it's about 50,000 pounds. Here in Ontario we have a small guarantee fund that protects all of $1,500 a month in pensions. No other province has anything. The federal government has never acted. We created a wage earner protection fund for lost wages, but we haven't created a special fund for pensions.

In this respect, we are way behind other OECD countries. Other countries, besides the U.K. and the U.S., don't have this issue as much for another reason: They have much better public pension plans and social security programs than we do. Canada is really behind the times in this area. It is sad and an embarrassment, because it hurts pensioners. Having seen the devastation to people's pensions—you'll hear more about it today—we have to do something about it.

As an advocate, I recognize that insolvency is a zero-sum game, but the doomsday scenarios that are painted by those who say lending will dry up if you create a superpriority haven't proven to be true. We have a wage earner protection fund. We have a small superpriority for wages. Lending hasn't dried up.

In this respect, I want to quote some of the academic studies in this area. because there's one thing you can do here. I understand that a totally open-ended situation like Bill C-253, where there's a superpriority for all pension special payments and disabled payments, can be problematic. Professors Janis Sarra and Ronald Davis of UBC's Faculty of Law have done several studies for the federal government. The most recent one was dated January 2019. There was a letter to the Innovation, Science and Economic Development Canada director.

This is not my idea, but I totally endorse it. You can create the superpriority, like Bill C-253, and put a cap on it. They recommend a $50,000 cap for an individual pensioner's liability. That will not dry up lending. It might increase some prices of lending, but we've seen that lending hasn't dried up. The other thing to do is to create a federally sponsored guarantee fund. I should note that you can create a cap and you can make them rank equally with secured creditors.

● (1110)

With respect to a guarantee fund, I understand there are federal-provincial issues, but you should create a study to have the provinces and the federal government work in this area. That is important.

My time is up, so subject to any questions, that's all I have to say.

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

We'll now go to the Canadian Bankers Association.

Mr. Docherty, you have the floor for five minutes.

Mr. Charles Docherty (Assistant General Counsel, Canadian Bankers Association): Good morning. My name is Charles Docherty and I am the assistant general counsel at the Canadian Bankers Association. With me today is Bill Kennedy, vice-president of special loans at the National Bank of Canada. We appreciate having the opportunity to appear before this committee today. The CBA has met with parliamentary committees in the past to discuss proposals similar to those contained in this bill, and we recognize this is a complex and difficult issue.

I would like to begin by briefly discussing the financial challenges presented by COVID-19.

When the pandemic hit in 2020, Canada's banks worked in lockstep with the federal government, the Bank of Canada and regulators to immediately implement a series of relief initiatives. Banks redeployed staff to create their own tailored support plans for individuals and small businesses to help them manage financial uncertainty and blunt the economic impact of COVID-19.

Canada's banks have helped close to 800,000 homeowners with mortgage flexibility and have provided more than 482,000 individuals with credit card payment deferrals. Banks worked with the Government of Canada to efficiently and securely deliver the Canada emergency response benefit to more than 3.4 million Canadians, and facilitated interest-free loans to more than 869,000 small businesses through the Canada emergency business account. Banks will continue to stand by their customers and bring tailored solutions to help foster a strong recovery.

Part of a strong recovery, and a factor that is equally necessary to achieve economic growth in normal times, is access to affordable credit for businesses to allow them to invest and grow. It is the perspective of lenders to businesses of all sizes across the economy that we bring to the committee's deliberations today.

A key part of banks' roles as lenders is to carefully manage risk, which includes being subject to a robust prudential regulatory regime. Canada's banks take very seriously their responsibility in this regard, making lending decisions based on a number of factors. The current legislative and regulatory framework is obviously an important factor in those decisions. That includes the provisions set out in the Bankruptcy and Insolvency Act.

A key objective of insolvency legislation is to provide certainty in the market to promote stability and growth. A very careful balance has been achieved over several decades in the order of priority in bankruptcy. When lenders decide to lend to a business, they have to account for the risk of the business not paying back a loan and, if the business goes bankrupt, how much can be recovered. The proposals contained in this bill would require banks and others who provide capital to businesses to factor in potential losses associated with unfunded pension obligations first in the event of bankruptcy when making lending decisions. This could mean less access to capital and higher borrowing costs.

It is very difficult for a lender or other secured creditor to understand its exposure to a pension deficiency with a superpriority, as it would depend on the availability of actuarial valuations, which are only prepared periodically. Actuarial valuations represent a snapshot in time, are based on actuarial assumptions that change based on economic conditions, and establish theoretical liabilities. This limits transparency and affects the ability of a lender or other secured creditor to assess its risk. Furthermore, other unsecured creditors, such as suppliers, many of them small businesses, would also be faced with a reduced likelihood of recovering any amounts they are due, which may put pressure on their own finances.

Ultimately, changes to the order of priority in bankruptcy threaten to seriously undermine the delicate balance, with ripple effects across the economy, particularly when proposed changes are not undertaken within the context of a broader and more complete consideration of the entire insolvency legislative framework.

We encourage the committee to examine other potential solutions, including the possibility of companies establishing solvency reserve accounts and pension guarantee funds, such as those established in the U.K., the U.S. and right here in Ontario.

Thank you once again for the opportunity to provide the perspective of Canada's banks as you consider the proposals in Bill C-253.

● (1115)

We would be pleased to answer your questions.

The Chair: Thank you very much.

We will now go to Mr. Cooper.

You have the floor for five minutes.

Mr. Cody Cooper (President and Board Chair, Chrysler Canada Retirees): Thank you.

I'm the president and chair of the CCRetirees organization for the non-represented salaried retirees of the former Chrysler Canada. As well, I'm the vice-president of the Canadian Federation of Pensioners.

The 23 member groups of the Canadian Federation of Pensioners total over 300,000 individuals, and with our alliances with CARP, CanAge and the National Pensioners Federation, we represent the voice of millions of Canadian pensioners.

The two decades of this century have been notable, with the carnage inflicted on pensioners and the ongoing lack of meaningful measures taken to protect the income security of those who have retired with a defined benefit pension.

In the press these pensions are often referred to as “guaranteed”. That would be news to those from Nortel, Sears and others, who have seen their retirement security eroded as they were left unprotected because of the legislative scheme.

Pensions are deferred wages, earned while working and payable upon retirement. The scope and the terms of the pensions are within the realm of the employer. No one forced the employer to make such arrangements.

Pensioners deserve the pension promised by their employer. Unlike others involved in bankruptcy, pensioners' loss is forever, as opposed to a note or a supplier credit from a contractor or plumber.

The responsibility to ensure pension protection falls upon the government. Pensioners have no control, input or approval over changes to their pensions. Several countries do a better job of protecting pensions than Canada—the United States, the United Kingdom and Germany come to mind—and somehow their economic activity continues.

There have been numerous consultations and submissions, including a request from the Canadian Federation of Pensioners, to study the best solution to ensuring full protection of pensioners in insolvency. To the best of my knowledge, there has been no response from government.

The current government touts its whole-of-government approach, issued after the latest consultations. This is the equivalent of rearranging deck chairs on the *Titanic*.

Bill C-253 represents the only credible solution on the table. This is a solution with zero cost to the taxpayer. There will be, and always has been, those who claim such measures would lead to more liquidations instead of restructuring. That Indalex was the law of the land and the business world continued indicates that this is just spin at best. Many of these opponents issued recent profit statements which belie the need to protect their interests at the expense of pensioners. Their assumption seems to imply that management would not alter its behaviour and treat seriously pension obligations and deficits.

Corporations make decisions and act within the law. The law enacted by government has generated ongoing hardship on pensioners and their families. It's your role to address the problems which have arisen from your legislative scheme. Please, no more studies, consultations or promises. A transition period is inevitable, but make sure it's not undue.

This is Seniors Month. Do something real, and do it now. Failure to act in a timely manner is the equivalent of senior financial abuse.

Please support and enact Bill C-253. Thank you.

● (1120)

The Chair: Thank you very much.

[*Translation*]

Mr. St-Gelais, you have the floor for five minutes.

Mr. Gordon St-Gelais (President, Sept-Iles, Comité des retraités de Mines Wabush): Good morning, my name is Gordon St-Gelais in Sept-Îles. I am president of the Comité des retraités de Mines Wabush with a company called Cliffs Natural Resources.

In May 2015, Cliffs put Wabush into bankruptcy. This resulted in the retirees losing their benefits, their drug and life insurance. Many pensioners, when they retire, stop paying for insurance because it costs more. So they keep the company insurance.

In December 2015, the actuary for the pension fund closed the fund because there was no more money coming in. Union retirees then lost 21% of their pension fund, and management lost 25%. People usually retire at about age 60 and normally have maybe 25 to 30 years to live. So the loss is huge because there's no more salary increase. Their pension is reduced by 21% or 25% all of a sudden for the rest of their lives. They also lose benefits. They have to pay more for medication and life insurance. The spouses are also affected. It's a big problem.

Since Sept-Îles is a remote community and everyone thinks we live at the North Pole, we set up a committee in May 2015 to make representations. We had the support of the United Steelworkers. In October 2017, we went to Ottawa to support the previous bill sponsored by our member of Parliament, Marilène Gill. I hope that this time it will go further, because it's hard for retirees to live on a small pension, which is reduced and never increases.

We went to Ottawa and made representations. Several MPs certainly saw us and heard our arguments. This trip was beneficial for us because Cliffs saw us. We were invited on television and we made some noise to show that we still existed. In fact, the Cliffs people didn't believe that a group of retirees, ranging in age from 65 to 85, could travel by bus to Ottawa to make representations.

As a result of that event, Cliffs contacted us to begin negotiations. This was beneficial to us as we were able to recover some of our benefits and some of our pension fund. We were looking at a 21% loss to the union members and it went down to 7%. You may say that's a lot, but you have to remember that the pension amount is still fixed and the life expectancy is 30 years.

Retirees contributed to their pension fund. As Mr. Cooper was saying, it's part of the workers' salary that they didn't get. Normally, in a negotiation process, the employer says it's a salary that the employees receive, but in truth it's money that the company invests. They don't contribute to the fund when they are in trouble. These companies are still rich. Cliffs Mining is not poor.

We are constantly fighting to get the most for our retirees so that they can live with dignity, despite their medical or family problems.

Thank you for your attention and have a good day.

● (1125)

The Chair: Thank you very much, Mr. St-Gelais.

[*English*]

We'll now go to Mr. Thornton.

You have the floor for five minutes.

Mr. Robert I. Thornton (Lawyer and Partner, Insolvency Institute of Canada): Thank you, Madam Chair, for this opportunity to address the committee.

I am the president of the Insolvency Institute of Canada, a non-profit organization comprised of Canada's most experienced restructuring professionals in the legal, accounting and financial fields.

The mission of the IIC is to promote excellence and thought leadership in commercial insolvency policy and practice in Canada. Speaking personally, I have been a lawyer who has practised exclusively in the restructuring arena for 37 years. During that time, I have been fortunate enough to have played leading roles in the restructuring of some of Canada's biggest employers having defined benefit, or DB, pension plans, including Air Canada, AbitibiBowater and Stelco, in the latter case, twice.

The views I am presenting today are not just my own. They represent the unanimous view of the policy reform committee of the IIC and have been endorsed by the board.

The goal of the bill is well intentioned, aiming, as it does, to protect vulnerable stakeholders such as pensioners from the consequences of insolvency. However, I regret to say that this particular legislative fix would have several material, adverse, unintended consequences.

First, if enacted, this bill would cause a contraction of credit for non-investment grade companies and could trigger some insolvencies that would otherwise be unnecessary. Second, the bill would likely increase the cost of capital, making Canadian employers with DB plans less competitive. Third, this bill would make successful restructuring more difficult, with adverse consequences for employees, pensioners and others.

There are other and better alternatives to satisfy the bill's stated goals that I will also address at the end, if time allows.

I'll turn first to the contraction of capital. Legislatively sticking pension deficits on top of the capital stack simply means that there's not as much value to go around to other creditors, including vulnerable, unsecured trade creditors. If passed, lenders would find themselves in a situation where they cannot make real-time, fact-based credit decisions. That's because a solvency deficiency is not a fact; it's a forecast of what might happen over time in the future based on factors over which the lender has no control. Lenders may simply refuse to lend to non-investment-grade companies with DB plans.

Consider the position of an operating lender. If this bill is passed, the lender would have to ask what the deficit is today and consider what it might be over the entire life of the loan. In Air Canada's case, its pension deficit was over $1 billion when it filed. No operating lender who wants to get a first charge on liquid assets like accounts receivable is going to loan into a situation where they might be behind a billion-dollar priority charge.

Second, the increase in uncertainty and risk faced by providers of capital will mean that the cost of capital will increase, making large Canadian companies with DB plans less competitive than their non-Canadian counterparts. Canada is already a high labour cost jurisdiction relative to the U.S. and certainly Mexico.

Third, restructuring large employers with DB plans is already challenging. If this bill is passed, it will be even more difficult, because it will hamper the availability of critical interim financing for distressed debtors. Such emergency financing, often called debtor-in-possession, or DIP, financing, is the lifeblood of restructuring. It allows going-concern value to be maintained, and it avoids the dire consequences of liquidation. DIP financiers will not lend without a guarantee that their new money is in first place.

There is before the Supreme Court right now in the Canada North case a challenge that statutory charges cannot be primed or overridden by a court order. If that decision goes against the lender, and if this bill is passed, that will signal a significant challenge to any emergency financing of distressed employers with DB pension plans.

The best solution for employees and pensioners of a distressed company is for that company to be restructured and returned to financial health such that it continues to pay wages and continues to make contributions to the pension plan. This bill, if passed, would lead in the opposite direction.

There are, however, alternatives. The first is to try to fix the problem at the front end and not the back. To limit or even eliminate shortfalls, you should require calculations of pensions funded status quarterly instead of annually or more. Second, you should require more transparency in reporting to stakeholder groups, including regulators, unions and pension groups. Third, you should require tighter timelines to achieve full funding. Catch the problem early and fix it while it is manageable.

● (1130)

I see that my time is running out. Thank you for this opportunity. I'd be happy to answer any questions.

The Chair: Thank you very much.

With that, we will now start our round of questions.

For our first six-minute round we will start with MP Poilievre, but before I turn the floor over to him, I'd be remiss not to wish him a happy birthday.

Mr. Poilievre, you have the floor.

Hon. Pierre Poilievre (Carleton, CPC): Thank you very much, Madam Chair, although there is a new study out from Harvard showing that too many birthdays is the leading cause of death, and I know you don't wish that upon me.

Mr. Thornton, you gave a fantastic presentation, very well reasoned. I'm going to challenge you on it, though, because I think we get to better answers when we have a good debate.

Your first point was that if we prioritize pensions over other liabilities, distressed companies could be forced more quickly into bankruptcy. Can that not be solved by simply having a transition period for the coming into force of this bill, during which time companies that are sub AAA and that have defined benefits could prepare themselves and repair their balance sheets in order to avoid that problem?

Mr. Robert I. Thornton: At the end of the day, it's a question of fairness. This bill does nothing to create value. When you put somebody artificially on top of the capital stack, it means that there is somebody who is a loser. This is not a balanced bill. It's not a give-and-take situation. It's a take situation.

Imagine, if you will, a stack of bricks in a tub of water. If you take one of the wet bricks out from the bottom and put it on the top, it doesn't mean that you suddenly have fewer wet bricks. It just means that someone else's brick has gone down under water. What's happening here is that this bill will crush recoveries for unsecured trade creditors, and they're the really vulnerable ones.

Hon. Pierre Poilievre: Right. I'm sorry but for those kinds of companies that are in a vulnerable position, could we not just have a transition period during which time they could get their balance sheet, including their pension viability, in order to comply with the bill and avoid bankruptcy?

Mr. Robert I. Thornton: Everybody tries to create value but not every company is successful at it. A period of time, while it might be beneficial, really does nothing to alter the fundamental mechanics of this bill.

Hon. Pierre Poilievre: Second, you said that the cost of capital will go up for companies that have defined benefit plans. This is actually, to me, a virtue of the bill, and let me tell you why.

I worry about the fact that CEOs have underfunded their pensions for a long time and have said that problem is for the next CEO or another CEO down the line. Then when the pension problem emerges, the CEO who caused it in the first place is long retired and on his yacht in the Caribbean while the workers are left holding the bag.

Doesn't this bill bring the real cost of underfunding a pension into the present by making it more expensive for companies that don't properly fund pensions to raise money?

Mr. Robert I. Thornton: At the end of the day, greater cost to capital simply means the company is going to be less competitive in a competitive world. My point—

Hon. Pierre Poilievre: Mr. Thornton, shouldn't that be the case? If I have a company and I'm not funding my pension plan and I'm leaving possible problems for a future management to solve, then shouldn't I take a whupping from the debt market? Shouldn't they say to me in the present, “Mr. Poilievre, you haven't funded your pension so we're not lending you money.” Wouldn't that create an incentive for me in the present to get my pension properly funded?

● (1135)

Mr. Robert I. Thornton: Possibly, but the solution I have proposed would do that even more directly and wouldn't risk putting the company in an uncompetitive situation to do it.

Right now the deficits are measured annually and sometimes only over three years, and then you're given five years to fund it. If you measure that quarterly as you can now, you can identify the problem while it's small and not this ogre that comes along to crush pensioners at the end. When it's small, you also put in tight timelines to fix it, so you bring the whole solution into the present.

Hon. Pierre Poilievre: I'll have to take a look at your proposal. I'm sorry and I don't mean to interrupt you, but we're very short on time.

Ms. Romanado, how much time do I have?

The Chair: You have two minutes.

Hon. Pierre Poilievre: Okay, I'd like to give that to Mr. Généreux.

[*Translation*]

Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC): Thank you very much, Mr. Poilievre.

Mr. Thornton, you are proof that there are always two sides to a coin. We have heard from a number of witnesses on this bill, and I agree with most of them. I am a businessman and I own a small business with 25 to 30 employees.

The pension funds of large companies are often undervalued. As I understand it, you are saying that, when the banks are deciding whether to finance a company, whether it is for day-to-day expenses or as part of the revival of a company that is doing poorly, they look at the facts. However, when it comes to pension funds, they would have to rely on an actuarial valuation, and there is a real difference between the two.

What could we fix and improve in this bill to ensure that pension funds can be better funded?

[*English*]

Mr. Robert I. Thornton: Yes. I am proposing that you do three things. Actually, there's a fourth as well, which my friend from Canadian Bankers Association mentioned.

The first thing is to put the measuring process into as close to real time as you can. It takes weeks to do the actuarial assumptions to figure out whether your pension is in deficit or not, but you do that quarterly, not annually. Then you identify shortfalls and tell the affected stakeholders—the pensions, the union groups and the regulator. Then you make the company fund it over a quicker period time.

You build that right into your pension legislation and inspire the provinces to do the same. In Ontario, FSRA is already looking at this kind of solution. It's a good fix for the problem without affecting the priorities.

[*Translation*]

Mr. Bernard Généreux: Mr. Zigler, you said that other countries have—

The Chair: Mr. Généreux, I'm sorry, but your time is up.

[*English*]

We will now go to MP Ehsassi.

You have the floor for six minutes.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you, Madam Chair.

Thank you to each of the witnesses. I found your testimony to be very helpful.

I will start off with Mr. Zigler.

Mr. Zigler, you did say that Bill C-253 can be problematic. However, you did offer some solutions.

We have heard that, should Bill C-253 be adopted, it will effectively discourage companies from having defined benefit plans going forward. What would you say to that?

Mr. Mark Zigler: I would say that horse left the barn three decades ago. Most new pension plans are defined contribution arrangements or a group RRSP. The problem is that you have hundreds of thousands of people, if not a million people, in private sector defined benefit plans in this country. This is the regime that we have.

I'm not worried about new plans. I'm worried about protecting the people in the current plans. I'm worried about the fearmongering, frankly, that says all lending will dry up, that everything will dry up if you create some kind of priority.

We created a superpriority for wages, a small one, 15 years ago. Guess what? They are still lending.

Lenders know how to study actuarial reports. They know how to study all aspects of a business that are problematic and depend on future sales, future developments, future interest rates or future mortality, which is what pensions are about. They are sophisticated. They can protect themselves. Other suppliers can protect themselves because they can spread their losses. Even workers can protect themselves to a degree: They can get another job.

Pensioners can't do anything. If their pensions get cut, there's finality. So you have do something here. At least put a cap on this priority and really study the solution that even Mr. Docherty recommended. Create a viable guarantee fund. That's how you protect pensioners.

To do nothing, just because this bill creates a superpriority over everyone, is to ignore the problem and to let down the pensioners of this country.

● (1140)

Mr. Ali Ehsassi: Mr. Zigler, you said that the horse has left the barn, but is it not accurate to say that certain companies now have two-tiered systems where they have defined benefit plans for some employees, but they are now grandfathering those and for new employees they have undefined benefits plans?

Mr. Mark Zigler: Yes, that's true. Many have hybrid plans where they create defined contribution benefits going forward. In fact, that's what Nortel did during the last seven or eight years of its existence, but the vast majority of their liabilities were defined benefit ones.

Mr. Ali Ehsassi: Mr. Zigler, we have heard from Mr. Thornton. He has put something on the table, if you will.

What would your reaction be to the suggestions that Mr. Thornton presented today?

Mr. Mark Zigler: I believe, frankly, that they are not cognizant of what we have in this country.

Pension plans are already very strictly regulated. Valuations can be required more often than every three years if there are problems. We have pension regulators in this country in all provinces that try to make sure that pension plans are properly funded. What Mr. Thornton suggests is already being done.

The problem with insolvency is that a tsunami hits. Interest rates go crazy. Companies go out of business because their sales drop and their workforces drop. People live longer than the actuaries predicted. You will have a bankruptcy. There's no fixing this by looking in the rear-view mirror. You have to deal with the problem when the bankruptcy occurs.

Pension regulators already try to fix it. The solution Mr. Thornton has given you is a non-solution. At least Mr. Docherty mentioned a guarantee fund. That is a solution. Quarterly evaluations make no sense. It costs a fortune to have an actuary value a pension plan. They get done annually in many pension plans because the regulators order that. That's their job. That's a provincial responsibility. That's not something for this committee to do. This committee has to protect people once the bankruptcy occurs.

Mr. Ali Ehsassi: Thank you for that.

Mr. Cooper, how would you react to the recommendation that Mr. Thornton made?

Mr. Cody Cooper: I would tend to agree with a lot of it, but I also share Mr. Zigler's focus that this is why we're here. It's what happens when the shit hits the fan. Pardon me.

On the same point, the three people in the middle of my screen are also not telling you that every province basically is heading towards an 85% solvency level, which means that you're capped at 15% loss going in and you're still covering all the laws. Ontario did not increase its $1,500 payment at all, even though it should be almost $3,000 now, given inflation from when it started.

All of this arguing about the solutions has been going on for decades, but no one has ever implemented them, and when they go to the other forums they say that instead of 100% , we should have 85%, which is now basically the norm. I'm tired of hearing it from both sides of the mouth.

Mr. Ali Ehsassi: I understand that, Mr. Cooper, but just so I have a better grasp of what you are suggesting, you said there were certain elements of Mr. Thornton's recommendation that you agreed with. What are those certain elements?

Mr. Cody Cooper: If you had a uniform across-the-provinces establishment of the timeliness with respect to the evaluation, it would be appropriate. You could then judge things on a national basis, somewhat, even though it's provincially legislated. On the fact of having a plan three years out versus one year, you should get closer to one.

The Chair: Thank you very much.

[*Translation*]

Mr. Lemire, you have the floor for six minutes.

Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ): Thank you, Madam Chair.

It is a pleasure to be able to meet in person.

I would like to turn to Mr. St-Gelais, president of the Comité des retraités de Mines Wabush, from Cliffs.

Mr. St-Gelais, let me first give you my colleague Marilène Gill's warmest regards and congratulate you on your commitment to pensioners.

Bill C-253, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act (pension plans and group insurance plans), could also have been called the Wabush Mines Pensioners' Committee bill, in our opinion, to highlight your overall contribution to this debate.

First, how does having a bill that is not clear affect pensioners?

Bill C-253 is intended to protect 1.2 million Canadian workers and pensioners from the impact of corporate bankruptcies on the pension funds of retirees and workers.

Could you tell us what the impact of the Cliffs Natural Resources insolvency has been on workers and pensioners?

● (1145)

Mr. Gordon St-Gelais: You have to look at the pensioners' careers. Workers retire at about 55 or 60, with the idea that, after working all their lives, for 30 or 40 years—that was the case in our days—they will be able to count on the pension fund to which they have contributed and pay off their debts before retiring. They are guaranteed to have a pensioner's salary for the rest of their lives, usually until the age of 82 or 83. Some live longer and some live shorter.

In our case, Cliffs went bankrupt because it made mistakes in its mine purchases. They bought the Bloom Lake mine. It cost them a lot of money, because they paid $4 billion for one mine. To get rid of it, they bankrupted the Bloom Lake mine, waited three months, and then bankrupted the Wabush mine in my area, which opened in 1960 and was still very productive. Those retirees were left with a 21% to 25% loss of their pension funds for the rest of their lives.

We must not think of a retirement as striking gold. It's not a lot of money. If someone retired in 1980, the amount in 1980 and the amount in 2015 are not the same. There's a big difference between the two amounts. If they lose 21% of that amount, they end up with a tiny income that is almost equivalent to the poverty line. It's even worse if you take away their drug coverage or life insurance. In our case, the provincial government's life insurance is $2,500. After taxes, that gives us $1,800 to bury our dead. I live in a northern region, and I can tell you that it is extremely expensive.

Those are the problems it causes us. We believe that all pension funds should be equal. Bill C-253 would help level the playing field and ensure that we have a pension fund that values us.

Mr. Sébastien Lemire: Thank you very much for the poignant truth in your testimony.

I would also like to quote Dominic Lemieux, from the United Steelworkers, who appeared last Tuesday.

He said that pensioners come after banks in the bill, which is true. Consequently, the banks remain ahead of pensioners in the hierarchy. However, pensioners could come before school boards, for example. In your case, in Sept-Îles, this would have made it possible to address the shortfall. Is that right?

Mr. Gordon St-Gelais: Yes, that is absolutely true.

However, we obtained a settlement from the court regarding the Cliffs bankruptcy and the trustee managing that bankruptcy, FTI Consulting. We got a little over $10 million. When the town of Fermont and the school board found out about this, they went to court to assert their rights, like the pensioners. We had negotiated this settlement with the Steelworkers. I was part of the committee that took part in that negotiation.

Mr. Sébastien Lemire: Thank you.

Let me just ask Mr. Docherty a quick question.

Mr. Docherty, what do you feel about the pleas of Mr. St-Gelais and Mr. Cooper for urgent action? The measures in the bill do not refer to public funds and they maintain the priority given to the banks. However, we are talking about an issue that affects the dignity of our most vulnerable pensioners, who are also your clients.

What do you say to them?

● (1150)

[*English*]

Mr. Charles Docherty: Of course, we are incredibly sympathetic to what they are going through and what they've described. We're just here today to outline the negative consequences of this bill.

As a few of the other witnesses have testified, there are other solutions available that would help to avoid the negative impacts of this bill for companies that are trying to raise credit, have access to credit, restructure, grow their operations, employ employees, expand and all those great things that help generate a healthy economy.

The Chair: Thank you very much.

Our next round of questions goes to MP Duvall.

You have the floor for six minutes.

Mr. Scott Duvall (Hamilton Mountain, NDP): Thank you very much, Madam Chair.

I want to thank all our guests for coming here today on this important issue.

My first question is for Mr. Docherty.

Lenders and investors knowingly put their money into a business at some calculated risk. They do so with the intention of turning a profit. I see the workers as this type of investor, too. They invest their time and labour, and they do it in return for a paycheque and, in the case of an employer-sponsored defined benefits plan, for a deferred wage.

Do you agree that this bill, Bill C-253, would finally put a much-needed change to the standard and culture of how we look at pensions so that workers' investments in a deferred wage come before investors that do so at a risk for a chance to make a profit?

Mr. Charles Docherty: I have heard that term of deferred wages used during the testimony. Personally, wages are earned while you're working for a company, and you earn that. I think what we're here to talk about today is unfunded pension obligations, and why I'm here in particular is to speak to the broader economic impacts of this bill, if it were to be adopted, and the need to carefully study this issue, given the broader context and the potential negative implications on the broader economy.

Mr. Scott Duvall: Thank you.

Mr. Thornton, we've had a witness at committee who spoke to the matter of concerns around lending when it comes to the change of priority of claims during bankruptcy. In the case of Sun Indalex Finance versus United Steelworkers, the pension deficit was ruled to be a deemed trust by the Court of Appeal for Ontario. This ruling put pensioners higher than even what Bill C-253 is proposing. This ruling has stood for about two years. As far as we can see, the sky did not fall for borrowers and the sky did not fall for the lenders.

Can you share any past evidence of measures like those in Bill C-253 that negatively affected investors? Would we not expect investors to be able to easily adapt to this change that would bring fairness to workers getting their deferred wage?

Mr. Robert I. Thornton: Lenders, really, are not the issue here. They will find a way to adapt. They may charge more for the risk that they're taking and can't calculate, but the real people we have to talk about here are the unsecured trade creditors. Now a 79% recovery for a pensioner is a bad thing. They're expecting 100%. However, the trade creditors are going to get zero per cent under this bill. They are the ones at the bottom of the stack. Today there's often something there for them. There will be nothing if the pension deficit is large and it goes to the top of the stack.

The unsecured trade creditors represent the micro, small and medium-sized businesses in the country that the World Bank estimates account for 80% of economic activity. They're the ones who are getting affected, and, no, they're not going to be able to protect themselves. They're going to still try to sell their products and services on credit and take that risk, and some of their customers are going to go down. Unlike now where they usually will get some recovery over time, they are going to get zero. For that reason, we should find the other solutions to this problem. Yes, it is a problem. Yes, it needs to be fixed. Inverting the capital stack with the priorities, as this bill purports to do, is not the right way to do that, in my opinion.

Mr. Scott Duvall: Thank you.

The problem is that I keep hearing about trade contractors and the creditors, and it all depends on what type of contract they have with that company.

My next question is for Mr. Cooper, and I want to thank him very much for his intervention.

Mr. Cooper, do you believe that the members who you represent go into these jobs and sign on to a pension plan knowing that they are going to get something for their years of service that.... When they sign on, do they know that they're doing so at a risk?

● (1155)

Mr. Cody Cooper: I'm going to try to be brief here.

When you sign on, you're probably in your late teens or early twenties, and you're not even thinking about it. When you get to the point of contemplating retirement, even if you're 10 or 15 years away from it, you are trapped because of the terms of the pension. It's probably based on your best five years, and you can't afford to go anywhere else. You are what we call a prisoner of pension. You have to stay there because it's too lucrative not to, and you're definitely staying with the idea that you're going to get what you were told.

Mr. Scott Duvall: Thank you. I agree with you 100%.

Mr. Zigler, do you believe that it's imperative that we make sure this bill somehow has to be identified, and work has to be done, to make sure that we're protecting our pensioners right across Canada? Do you believe that even though, over the years, many committees have been formed, it's time now that we act to make sure that Canadian pensioners are protected?

Mr. Mark Zigler: I fully agree after 40 years of trying. We learned 15 years ago that you can create a small superpriority for wages and create a wage earner protection plan. Why can't we do the same sort of thing for pensions as a start? The world didn't fall apart because we created a superpriority for wages. Let's create one for pensions, and let's create a guaranteed fund.

Mr. Scott Duvall: Thank you.

The Chair: Thank you very much.

That's our time for this study today.

Before I go to MP Baldinelli, I would like to thank our witnesses for being with us today.

[*Translation*]

Thank you very much for your testimony. It will be very helpful to us in our deliberations on Bill C-253.

[*English*]

With that, I will allow our witnesses to leave, and then I will turn the floor over to MP Baldinelli.

Mr. Tony Baldinelli (Niagara Falls, CPC): Thank you, Madam Chair, and thank you to our witnesses for being with us today.

The motion I shared with committee members last meeting proposes that our committee invite Monique Gomel to testify for no more than one hour. She is the newly appointed interim chairperson of the Canadian Tourism Commission, also known as Destination Canada. Last year the committee had the opportunity to call forward to testify Marsha Walden, the newly appointed president and CEO. Given the importance of our tourism sector and the devastating impact COVID-19 has had on this vitally important sector to our economy, I think it's important that we also have an opportunity to speak with Ms. Gomel.

As you know, budget 2021 commits $100 million to Destination Canada for marketing funds. As we go forward towards a recovery, it's crucially important to examine Destination Canada's role in the use of those funds and the assistance it can provide in the recovery that's critically needed for a sector that prior to COVID was worth $105 billion. We're looking at 1.8 million workers and 2% of Canada's GDP, and in my community alone, 40,000 workers and 16,000 hotel rooms. My community is the number one leisure destination for tourism in all of Canada, and we have about 2.4 billion dollars' worth of receipts.

It's crucially important, I believe, that we have an opportunity to speak with Destination Canada and Ms. Gomel in her new role, and I look forward to meeting with her. Of course as part of that, I propose we do this before June 23 and the recess.

The Chair: Thank you very much, MP Baldinelli.

You've all received the notice of motion, so I open the floor to debate.

[*Translation*]

Mr. Lemire, you have the floor.

Mr. Sébastien Lemire: Thank you, Madam Chair.

Clearly, I support my colleague Mr. Baldinelli's motion. Yes, tourism is a priority that must be maintained. We could ask questions about the related approaches. It is important, because we are getting to the end of the COVID-19 situation and, in the spirit of economic recovery, we must take a close look at those approaches.

I would like to point out that Bill C-272 has just been brought to our attention. I know we had two free days in our preliminary schedule, but I think we will have to be creative.

Madam Chair, I'm curious to see what plan you come up with.

● (1200)

The Chair: Is there any further discussion?

[*English*]

Are there any other interventions on the motion?

Seeing none, I'll go to the clerk.

Do we need a recorded division, or can we go with consent?

The Clerk of the Committee (Mr. Michael MacPherson): If there's consent, we will not need a recorded vote.

The Chair: Do I have the consent of the committee to adopt the motion?

Thank you.

(Motion agreed to)

Mr. Tony Baldinelli: Thank you, Madam Chair.

The Chair: With that, I'll ask MPs to kindly log off of Zoom and get back on Zoom for the in camera portion of the meeting so we can discuss the report. I will see you shortly.

[*Proceedings continue in camera*]