



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

43rd PARLIAMENT, 2nd SESSION

Standing Committee on Industry, Science and Technology

EVIDENCE

NUMBER 046

PUBLIC PART ONLY - PARTIE PUBLIQUE SEULEMENT

Tuesday, June 15, 2021



Chair: Mrs. Sherry Romanado

Standing Committee on Industry, Science and Technology

Tuesday, June 15, 2021

• (1200)

[English]

The Chair (Mrs. Sherry Romanado (Longueuil—Charles-LeMoine, Lib.)): I will call this meeting back to order. We are still waiting for one of the witnesses to join, but I don't want to hold off any longer.

Pursuant to the order of reference of Wednesday, May 12, 2021, 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 would like to now welcome our witnesses. They are here today as a resource for the committee during its clause-by-clause consideration of the bill.

With us today we have Mr. Mark Schaan. Welcome back to INDU. He is the associate assistant deputy minister, strategy and innovation policy sector, and we are hopeful that Mr. Paul Morrison, manager, corporate, insolvency and competition directorate, will be able to join us.

I also want to give a little shout-out to our legislative clerk, Monsieur Jacques Maziade.

Welcome back to INDU, and thank you for your assistance.

(On clause 1)

The Chair: We had a speaking list. In the last meeting, when we left off, Mr. Poilievre had the floor, and we had Mr. Ehsassi and Mr. Duvall on the speaking list.

I see Monsieur Lemire has his hand up as well, so I will add him to the list.

I am just going to check and see.

Monsieur Poilievre, you had the floor. If you still need the floor, the floor is yours.

Hon. Pierre Poilievre (Carleton, CPC): I don't need the floor anymore, Madam Chair. Thank you.

The Chair: Okay, that is perfect.

We will now go to MP Ehsassi. You have the floor.

Mr. Ali Ehsassi (Willowdale, Lib.): Madam Chair, I have to confess that I am not quite sure why I had my hand up last time, but I am sure, as we go through today's session and we go through every one of the various clauses, there will be ample opportunity to flag some issues that may be of concern.

The Chair: Thank you.

I am just going to check with the clerk. Last time we had Monsieur Duvall here as a substitute, and I had him on the list. Because I can't see him in the room, I don't know if he is actually now in the room, or if it's Mr. Bachrach.

The Clerk of the Committee (Mr. Michael MacPherson): I believe we are waiting for Mr. Duvall to join us.

The Chair: Okay. I will keep him on the list, and as soon as he arrives I will give him the floor, but we will go to MP Lemire.

[Translation]

Mr. Lemire, you have the floor.

Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ): My goal, as you can imagine, was to make sure that we could move on to clause-by-clause consideration. As a result, Mr. Duvall's presence is particularly significant as we move forward. Given the circumstances, I'll ask a question.

How would the passage of Bill C-253 affect the government? We agree that there won't be any financial impact. Could it have other implications for the government, or is this purely ideological opposition from a party opposed to the bill?

Mr. Mark Schaan (Associate Assistant Deputy Minister, Strategy and Innovation Policy Sector, Department of Industry): Thank you for your question.

This bill will have many implications for the government.

First, the passage of the bill would affect the insolvency system in Canada. One of the government's roles is to manage that system. If a more significant change were made to the system, as proposed in the bill, there would be some implications for creditor communications and for the ongoing analyses of the impact on the financial sector, small and medium-sized businesses and creditors.

Second, the government is also a creditor in certain insolvency cases. This bill establishes implications for each type of creditor. These types of changes to the legislation would have a significant impact because the government is sometimes an unsecured creditor.

In short, this bill would have two implications for the government. The first concerns its role in managing the insolvency system [Inaudible—Editor] and the second concerns its role as a creditor.

Mr. Sébastien Lemire: Thank you.

The Chair: Thank you, Mr. Lemire.

[English]

MP Duvall, welcome to INDU. We had you on the list to speak last time. I will turn the floor over to you.

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

Thank you to everyone for being here.

I want to talk to Mr. Schaan. Last week, he mentioned that federally regulated pensions are protected, because they're required to be 100% funded. However, I understand there are a lot of federally regulated pensions that aren't 100% funded. Is that true?

If you look at Canada Post, are they 100% funded? Do you know what the deficit is?

Mr. Mark Schaan: I don't have the Canada Post unfunded liability currently before me. Maybe I can clarify, because I think I talked a little last week about how the process of a federally regulated pension was held.

The standard requires that the pension be [*Technical difficulty—Editor*] but then, obviously, there are actuarial valuations that actually determine the relative level of funding, and then a process by which to make up that gap.

To be absolutely clear, the federally regulated defined benefit pension plans are subject to the funding requirements that are set out in the Pension Benefits Standards Act of 1985 and the pension benefits standards regulations of 1985. Those plans are required to be 100% funded on a solvency basis, but with any shortfall paid by the employer within five years in order to help ensure that the plans have sufficient assets to provide for all benefits, both while the plan is ongoing and in the event of a plan termination.

If the latest—

Mr. Scott Duvall: Mr. Schaan, I understand, but what I'm trying to get at is that Canada Post has a huge deficit. They've had a five-year plan, but they've also asked for extension after extension and they're not paying into it, so the deficit gets higher and higher.

Who is going to be responsible for that if something happens?

Mr. Mark Schaan: In the case of an amendment [*Technical difficulty—Editor*]. When an actuarial valuation occurs, the plan sponsor then needs to be making special payments on each of the subsequent five years to be able to make up that gap. Any variation from special payments needs to be approved by the pension regulator. In the case of the federal government, that would be OSFI.

If there is a plan that currently has an unfunded pension liability and the plan sponsor is not making that up, that's under the express approval of the pension superintendent for the purposes of extenuating circumstances, and that's the bar the regulator sets to ensure that it truly is extraordinary circumstances.

I talked last week about the fact that this is often in co-operation. In the case of Air Canada, for instance, which was a federally regulated pension, the deferral of continued pension payments was with the approval of the union for the purposes of allowing for a market rebalancing and a return to normal returns, which ultimately did oc-

cur and ultimately allowed for the plan sponsor to be able to make up that unfunded pension liability and return to good solvency.

● (1205)

Mr. Scott Duvall: Right, but at the same time, with Air Canada, I think it was Mr. Flaherty at that time who actually put limits on the dividends and the executive pay to stop such a large deficit until the fund was going.

My other question is this. The Canadian Centre for Policy Alternatives, which was the lion's share, illustrated that companies with defined benefit plans have the capacity to fund their pensions, but they just don't have to. Do you think, after listening to all the witnesses...?

They were saying that a change is needed, that it's time. If we don't do something, then companies are just not going to have to, because they're not obligated to. We have to put some pressure on them to make those payments.

Mr. Mark Schaan: As we discussed a little last week... I can point to the policy choices that have been made at the federal level. As indicated, the standard that companies are held to is 100% funded on a solvency basis, with a gap that needs to be made up over the subsequent five years.

I do think that companies actually are obligated, federally, to ensure that they are keeping their plans well funded and to continue to have to make payments. That's obviously not the case, necessarily, in all provinces, but we do think that there are significant unintended economic consequences of providing a superpriority as opposed to potentially looking at the solvency requirements that are held in other jurisdictions that would actually ensure that the plan is well funded while it is in operation, as opposed to trying to make up the difference for when it's in insolvency.

Mr. Scott Duvall: Mr. Schaan, do you have any data to demonstrate to me that Canadian companies with defined benefit plans are currently experiencing liquidity problems? How many companies are there? What is the dollar exposure?

Mr. Mark Schaan: Each province pension superintendent often provides additional information about the plans under their respective coverage. I don't have that information handy, but I can say that OSFI, for federal purposes, does keep track of the overall number of plan sponsors and those entities and their degree of fundedness. As indicated, in the case of a federally regulated plan, the federal plan requires an actuarial evaluation annually, should the plan be less than 100% funded on a solvency basis.

In terms of the general liquidity needs, I would say, obviously, that these are extraordinary times. We've just been through a global pandemic that's put significant challenges onto the overall economy. There are a number of additional liquidity measures that have been put in place to try to ensure that firms can stay active and solvent during this time period at all levels of sizes of companies, all the way from general liquidity measures that were available to all companies like the Canada emergency business account to very large companies that had access to bridge financing through the large employer emergency financing facility, so—

Mr. Scott Duvall: I'm sorry, Mr. Schaan, for cutting you off there, but we have very little time.

Indalex demonstrated, even given the pension deficit deemed trust status, it did not result in a tsunami of liquidations. I don't see, as Mr. Poilievre said, a lineup of business people here as witnesses protecting what they're saying, which is that the sky will fall. In fact, what I'm hearing is a lot of people saying enough is enough and that we need to change the law to protect pensioners from deferred wages that they worked for not to be taken up by the global market.

• (1210)

Mr. Mark Schaan: Yes, a deemed trust is a complicated piece of insolvency, so it's difficult to generalize on the basis of deemed trusts, and Indalex is an issue that remains an issue in a number of potential and current cases.

To your broader point, though, about relative levels of fundedness, it is worth noting that the current funded ratio for DB pension plans belonging to companies in the S&P/TSX composite index increased from 90.8% to 91.2% funded over the past 12 months. We are seeing high levels of fundedness, particularly for those plans that are held to high-funded solvency ratios like they are in the federal zone.

In terms of the economic rationale for the potential implications of a superpriority, which we discussed, I don't know if it was through Mr. Poilievre's urging or others', but we did, I believe, through the clerk receive.... We received and then, I believe, the clerk received an indication from the Association of Canadian Pension Management of their strong concerns about the economic implications of a superpriority.

Just to note, there has been some, but I can't speak to the others. All I can say is that we do worry about the potential implications of a decline in restructurings and not liquidations.

Mr. Scott Duvall: Right, and pensioners are really worried about saving their pensions and not losing them.

Madam Chair, I'm just wondering. Are we going to be going clause by clause, or are we just going to be asking questions all day? I was hoping that in clause 1 that we're dealing with, we would start to have a vote on it and get down to business.

The Chair: We are doing clause-by-clause. I'm waiting to make sure that everyone who has a question regarding each clause has the opportunity to be heard. You were the last person on the list for clause 1, so I'm just going to ask if there are any other comments or questions regarding clause 1 before I turn it over for a recorded division.

Are there any other questions or comments regarding clause 1? I will turn it to the clerk for a recorded division, because I can't see everybody.

(Clause 1 agreed to: yeas 11, nays 0)

(On clause 2)

The Chair: Are there any questions or comments regarding clause 2? If so, please use the "raise hand" function, and if you're in

the room, please signal to me so I can see you, and I'll put you on the speakers' list.

MP Ehsassi, please go ahead.

Mr. Ali Ehsassi: Thank you, Madam Chair.

With regard to clause 2—and this is true of every clause we're considering today—there are potential impacts on beneficiaries, employers and on other creditors as well. I was wondering if we could ask Mr. Schaan to perhaps unpack the impact that clause 2 would have on all three of those groups.

Mr. Mark Schaan: Thank you for the question.

Clause 2 extends the superpriority for unremitted employee contributions and unpaid employer normal cost contributions owing to the pension plans to any unpaid special payments and unfunded pension liability. It also extends the superpriority for unremitted employee contributions and unpaid employer normal cost contributions owing to the pension plans to any unpaid special payments and unfunded pension liability.

As noted, this essentially creates a superpriority that would place unfunded pension liabilities and unremitted pension contributions.... It's worth noting that unremitted pension contributions—actually those contributions that would have been subject to a payroll contemplation in the lead-up to an insolvency—already have a superpriority. The major piece here is the extension of the superpriority to the overall, including unfunded, pension liability. This includes, in the federal case, those special payments that were required to be made over the subsequent five years to make up for the gap.

What that essentially does is place them above preferred claims in the case of a restructuring. It also places them above unsecured and secured creditors in the case of a restructuring. In many cases, this would essentially mean that the unfunded pension liability would take precedence, potentially leaving significantly less available in the estate for the purposes of secured and unsecured creditors.

In this case, because it's a superpriority, thereby meaning it's an automatic.... For the case of restructuring, this may mean that the unfunded pension liability is such that the assets remaining are simply insufficiently interesting or won't allow for a restructuring to occur. This would mean that the entity would proceed into liquidation and people would be paid on a pro rata basis. We would essentially be prioritizing the unsecured claim of unfunded pension liabilities above those of other unsecured creditors, which can include small and medium-sized enterprises, other suppliers and other providers of services and assets to the now liquidated entity.

In the case of clause 2, this is with respect to BIA liquidations. In a liquidation, this would essentially prioritize and provide that superpriority for the unfunded pension liability.

As discussed, we [*Technical difficulty—Editor*] impact on the cost of credit and the availability of the entity to proceed through restructuring, and then, should they be in a position to continue, to potentially allow them to access the necessary liquidity to do so.

• (1215)

The Chair: MP Ehsassi, do you have any other questions?

Mr. Ali Ehsassi: Yes, I just have a follow-up question.

You're essentially saying that this would be adverse in interest to the employees as well on certain occasions.

This is my fundamental question. Over the course of the past decade, we've seen many companies manage to work through a liquidation and actually manage to save the firm, if you will. What would the impact of this have been if it had been in effect? Some or all of these companies that we understand have restructured would probably not have had that opportunity. Would that be correct?

Mr. Mark Schaan: Yes, obviously we think that the general premise is that the best way to ensure the ongoing vitality and the security of retirement income is for a going-concern entity to be continuing to make pension payments and have its pension plan ongoing. Winding up at any given moment, just given the vagaries of the market, obviously you leave some risk that, on a solvency basis, they may not have sufficient funds. The best way to continue that is obviously to have the entity continue to be economically active, allow themselves to be restructured and maintain the jobs of the entity, as well as, then, the continued opportunities for pension payments.

Therefore, there are two considerations for a superpriority and the potential implications of the lack of restructuring. One consideration on the superpriority is that it's not in all cases necessarily the case that the assets at hand would still allow for full payment of the unfunded pension liability. There are actually instances where the unfunded pension liability exceeds that of the assets on hand of the entity. In fact, even in some cases with a superpriority, you still may actually have individuals who potentially will not receive the fullness of their pension promise.

There's obviously also an implication in terms of the considerations for active workers who are making active payments to the pension plan on the premise that they will one day be able to retire and, obviously, if the entity is unable to restructure and instead proceeds toward a liquidation, those individuals need to find new sources of active income and potentially with or without the pension. Even if there were a superpriority, as I said, it may be fully funded, but certainly it would only be fully funded at the contributions to date of their participation.

Then when we actually look at some of the restructurings that have occurred, those active pension plans have allowed for the continuation of those payments to both retirees and active workers. There are a few successful restructurings that have involved a significant number. We've talked of Air Canada [*Technical difficulty—Editor*] of the employees, this was over 29,000 employees who were covered by the plan and as a function of that restructuring there was a plan of compromise and arrangement that allowed for the pensions to continue to be paid without reduction. In the case of AbitibiBowater, this was again another 10,000 employees covered by the plan, where a restructuring plan of compromise and arrangement allowed for the pensions to continue to be paid without reduction.

Even in some cases where there potentially wasn't the allowance of a plan to allow for its continued operation, for instance in the case of Hollinger, the plan was 100% funded on a wind-up basis as a result of the distribution from the plan of arrangement. The re-

structuring produced significant financial outcomes in terms of asset sales and other measures that allowed for the plan to be terminated and ultimately for it to be 100% funded on that wind-up basis.

There are a number of these indications where we have seen companies enter into restructurings and allow for the ongoing participation of the plan. That is the potential concern vis-à-vis the potential superpriority of unfunded pension liabilities as a disincentive.

• (1220)

Mr. Ali Ehsassi: Thank you.

The Chair: I have MP Jaczek, and then MP Lemire.

MP Jaczek, go ahead.

Ms. Helena Jaczek (Markham—Stouffville, Lib.): Thank you, Madam Chair.

I want to pick up a little bit on where Mr. Duvall was going. There's no question that, during the hearings that we've had at this committee, the overwhelming majority of witnesses were very firmly in support of this bill. Quite honestly, I'm a recipient of OMERS, a defined benefit plan, a very fortunate recipient of that pension plan, and I have received a number of pieces of correspondence from OMERS in support of this bill.

You, Mr. Schaan, are clearly not in favour. You've detailed your concerns, but to what extent have you consulted? Can you give us some examples of support for your position? I don't want to in any way question your credibility, because you're obviously extremely knowledgeable, but it would be really good to have some specific examples of organizations, banks, lenders, quite honestly anybody who is opposed for the reasons that you have given us.

Mr. Mark Schaan: It should be clear that this is an analytical view and not a personal one. I come to this from the perspective of simply the analysis that we have been able to undertake as the government department responsible for this statute. I'm trying to bring to bear what we have heard, seen, analyzed and understood through the research and other that we've undertaken.

It is worth noting that, leading up to the changes we made to the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act, alongside significant changes, as well, to the Canada Business Corporations Act, as part of the retirement security project in 2019, we held significant cross-country consultations that actually were wide-ranging in terms of the number of options and considerations that we raised vis-à-vis the possibilities for enhancing retirement income security. Those retirement income security consultations did look at a number of potential options for implementation, including that of a superpriority for unfunded pension liabilities.

We heard from insolvency professionals, from the Canadian Bankers Association and from the Association of Canadian Pension Management. We had submissions from FETCO, various federal employers, pension experts, [*Technical difficulty—Editor*] pension benefit experts, credit unions and others.

The subsequent piece of legislation that emerged from that was clear in terms of the consultations, so I think it is worth going back to the many entreaties that were made as part of that. Obviously, many of them were similar to what you heard in the witness testimony, suggesting that there is positive support for a superpriority for unfunded pension liability, sometimes with some caveats around the notion that, obviously, recognizing that—

• (1225)

Mr. Scott Duvall: I have a point of order, Madam Chair.

I'm just wondering if we could have some precise questions and answers and not be going on. We have to finish this, but we're just going on and on, and time is running out. I think it's just proper that we do this clause by clause.

Of course, there are important questions, but we don't have to be going on with the long answers.

Thank you.

The Chair: We have not had a chance to have officials prior to last week and this week, so I want to make sure that all members have a chance to ask their questions.

I'll ask that your questions be succinct with respect to the clause we're on, if possible, so that we can make sure that we can get through it.

I will yield the floor back to MP Jaczek.

Mr. Schaan, could you wrap up a little bit on that response? Then we'll check if MP Jaczek has any other questions before we go to the next MP.

Thank you.

Mr. Mark Schaan: I think the summary is just that I think it's worth looking at the consultations that were held in 2019. Then there was a similar statutory review of the act in 2014 that also yielded significant amounts of consultation and response.

Ms. Helena Jaczek: Would I be correct, then, in saying that you're going to look carefully at those consultations and at, potentially, other ideas to support workers in this potential situation of losing their pensions, their defined benefit? Where are you in that process?

Mr. Mark Schaan: [*Technical difficulty—Editor*] changes to the law in 2019 as a function of significant consultation. It did make changes to the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Canada Business Corporations Act, amongst others. Those projects of law are actually in their infancy. They've only been implemented for a short period of time. They included a duty of good faith in insolvency proceedings. They required for boards of directors and officers to contemplate and have the capacity to consider additional issues of well-being and the financial value vitality of their organizations, including that of their pension plans. It specifically indicated that companies will have an obligation to comply or explain, with a requirement to bring before their shareholders, the measures by which they are contemplating and considering the well-being of their workers and pensioners in their ongoing operations.

There have been a number of shifts in the law, but we do, obviously, continue to look back to those consultations and continue to hear and meet with intervenors and stakeholders to make sure we are canvassing for any and all good ideas that would improve the overall state of retirement income security and the well-being of pensioners and workers.

Ms. Helena Jaczek: Thank you, Madam Chair.

The Chair: Thank you very much.

[*Translation*]

Mr. Lemire, I see that you have raised your hand as well.

Mr. Sébastien Lemire: The goal of my remarks, Madam Chair, is similar to the purpose of Mr. Duvall's remarks. Out of respect for workers and retirees, and perhaps even for the tens of thousands of people who have sent emails that you received, as I did, in support of this project, we must complete our process. To that end, today's meeting is essential.

I would sincerely urge the witness, whose objectivity was called into question by Ms. Jaczek's preamble, to give shorter answers so that we can get to the end of the agenda.

Thank you, Madam Chair.

The Chair: Thank you for your comments. It isn't really a point of order. All members should have the opportunity to speak and to ask the witnesses questions.

Do any other members have questions about clause 2?

[*English*]

Seeing none, I will turn it over to the clerk for a recorded division.

(Clause 2 agreed to: yeas 6; nays 5)

(Clauses 3 to 5 inclusive agreed to: yeas 6; nays 5)

• (1230)

The Chair: We have a new clause 6 in the amendment by MP Poilievre.

With that, I'd like to open the floor for any questions or comments with respect to that. I believe it was circulated by MP Poilievre at the last meeting, so we all have it in front of us.

Mr. Poilievre, would you like to speak to it?

• (1235)

Hon. Pierre Poilievre: Yes, it just gives a grace period of three years for its coming into force. This will allow companies that might be in a difficult financial position to ready themselves, to bolster their balance sheets and to properly fund their pension fund plans in order to stay solvent.

My worry is that if we go ahead with the bill without any coming into force delay, you will have some companies that are on the verge of bankruptcy that will no longer be able to borrow money, because lenders of lower-grade debt will say that the risk is too high, given that the pension obligations would come before the loans. If that happens, what might occur is that the company would just go bankrupt now. Ironically, the pensioners would be in a worse position than at present.

If a company has an underfunded pension and it goes bankrupt because it can't secure lower-grade debt to stay a going concern, then not only would the workers all lose their jobs but there would be no time for the company to recover its financial position and bolster the pension. You could lose jobs and pensions if the change in this law is too abrupt.

Some of the witnesses agreed this was the best solution, including witnesses who supported the overall bill. This is just to have it coming into force in about three years, so that businesses can focus aggressively on bolstering their pension plans, perhaps buying an insurance product, a large-scale strategic insurance product that will back up the pension, thus reassuring lending markets that their loans are in safe hands.

I think this is a good amendment. It would make the bill more successful. It makes the bill stronger, not weaker, and it's good for pensioners. I encourage everyone to support it.

The Chair: We'll open up the floor for debate on the amendment.

Are there any questions or comments with respect to that?

Go ahead, MP Jaczek.

Ms. Helena Jaczek: Thank you very much, Madam Chair.

We certainly did hear some testimony talking about a three-year transition period. Could Mr. Schaan give us his opinion in relation to this as a possibility?

Mr. Mark Schaan: An unfunded pension liability, as we've noted, particularly depending on the jurisdiction, could be quite large. Three years is not a lot of time, depending on the nature of the markets at the time.

There are a few things that should be considered.

One is, obviously, that employers that are already in financial difficulty could have difficulty reducing their unfunded pension liabilities during that transition period. Lenders who face the risk of nonpayment from borrowers with a large unfunded pension liability, when the superpriority comes into force, may use the transition period not to actually put pressure on employers and the plan sponsors to make pension payments but instead [*Technical difficulty—Editor*] reducing that unfunded pension liability, so that when the transition period ends, they are essentially made whole rather than the pension fund.

The other is that employers may actually decide to discontinue defined benefit pension plans or group insurance plans during the transition period to avoid the impact of higher insolvency priorities on credit availability by either winding things up or closing health insurance, dental or other plans, because that would impact their

bottom line. Lenders with exposure or employers with unfunded pension liabilities or group insurance plans may pressure employers to take such action before an insolvency.

It is also worth noting that one of the things.... There are three categories that are of superpriority within this bill. There are unfunded pension liabilities. There's also the claim for terminated group insurance plans, but there's also severance pay and, obviously, severance pay can include many things, including the potential for severance for significant executives.

One thought is also that, if this is ultimately going to lead to a liquidation, you may actually see some gaming behaviour wherein people increase their overall severance payments, particularly for a particular cadre of their employees, because they're recognizing that they potentially might be heading toward a liquidation and their severance pay would have a superpriority above all secured and unsecured creditors.

• (1240)

Ms. Helena Jaczek: If I could just follow up, would it be possible for an employer to shift from a defined benefit plan during that time period? How does that work? Can an employer do that in just the normal course of events?

Surely it's part of union negotiations that there is a defined benefit plan. Could you elaborate on that piece?

Mr. Mark Schaan: It's going to vary on a case-by-case basis, and it's going to vary based on the pension regulations they are being held to. Plan sponsors can ultimately make a determination, dependent on their unique circumstances, to terminate and close a plan or potentially to propose to their workforce to convert a plan from a defined benefit to a defined contribution, or to some other retirement scheme.

They are obviously on the hook for the pension payments that have been made to date to those individuals. The reality is that active workers within one of those organizations may potentially find themselves no longer having access to a defined benefit pension plan but a defined contribution plan, so that the employer can essentially minimize the risk of the unfunded liability that's been accrued to date for those workers.

On health benefits, it really depends on the nature of the negotiation between the workers and the employer. There are often changes that can be made to planned sponsorship in those regards, so the employer could simply say—as a function of these ongoing liabilities and the risks that they pose—they've chosen to scale back benefits or, potentially, to change the nature of the insurance plans that are on offer.

Those can be made as a function of a collective bargaining agreement, but depending on the employer sometimes that may not be required.

Ms. Helena Jaczek: It's possible they can do it arbitrarily in some instances.

Mr. Mark Schaan: In some instances it is possible. It is obviously dependent on the nature of the situation. If it's deemed to be extraordinary they may very well find other mechanisms to justify it, but in the case of collective bargaining, it may also be used as a negotiating tool to say, "This is my approach, now articulate the best potential outcome," knowing that the plan may potentially die and wind up or potentially be converted, either in the case of insurance or in the case of a pension.

Ms. Helena Jaczek: In other words, this three-year transition period poses all sorts of risks to the workers and to the pensioners possibly.

Mr. Mark Schaan: My colleagues at the Department of Finance would be far better placed to comment on some of this, but I know there has been contemplation from time to time, for instance, about shortening the time period for special payments—whether special payments should go from a five-year payback period to a three-year payback period. There has been a strong push from plan sponsors that five years for special payments are required because one needs enough runway to have [*Technical difficulty—Editor*] kinds of folks who are aiming to continue the ongoing operation.

If one knows that a superpriority is coming, as I say, it may very well reward particular types of economic actions to maximize one's return, either as a lender, as an executive or potentially as a sponsor.

Ms. Helena Jaczek: Thank you.

The Chair: We have MP Lambropoulos and MP Ehsassi.

Go ahead, MP Lambropoulos.

Ms. Emmanuella Lambropoulos (Saint-Laurent, Lib.): Thanks, Madam Chair.

Mr. Schaan, thank you for your responses.

One of the questions I have had since the last meeting, but did not ask until now, is what the major difference is between smaller and bigger businesses. Is there actually a difference when it comes to this bill? How would they be impacted differently, or does it impact everyone pretty much the same?

• (1245)

Mr. Mark Schaan: There are probably two contemplations of that. One is the small employers that are plan sponsors. Those are increasingly infrequent. Then there are large employers for which we see the vast majority of defined benefit pension plans being the norm. Those, obviously, are on offer for all.

It's worth noting that there are two considerations for a small and medium-sized enterprise that are different from a large employer. Obviously, if a small or medium-sized enterprise was a provider of a service or other economic transaction that was not paid at the time of a restructuring or a liquidation, this would see them moved to become an unsecured creditor and would be behind the superpriority. If there's nothing left by the time we get to unsecured creditors as a function of superpriority, we might see small and medium-sized enterprises significantly asymmetrically impacted as a function of the role that might play within their overall well-being.

The second is that severance, which is the third component of this, is a superpriority regardless of enterprise size. While we might not see small and medium-sized enterprises have a pension, they

may have either benefit plans or severance pay. That would now have superpriority over all other unsecured creditors and potentially secured creditors.

That severance or the benefit plans.... If people were being very worrisome, they might say that a small or medium-sized enterprise that was offering something like a health or dental plan, now potentially, knowing that's a superpriority, may see increased cost of credit because lenders will now need to factor that into the considerations they have when lending. There's similar things on the severance side.

In terms of size of firm and the potential impacts, it would vary based on the three categories, which are unfunded pension liabilities, group insurance plans and severance pay. We'd have to think about it from both their role as sponsor and also, potentially, as creditor.

Ms. Emmanuella Lambropoulos: With regard to severance pay, [*Technical difficulty—Editor*] priority. Obviously, pension plans are different because that has to do with interest. People do receive a severance regardless and this is already being done.

Can you correct me if I'm wrong or if you have anything to say about that?

Mr. Mark Schaan: Unpaid wages are currently a superpriority. Unpaid wages that go essentially up to a maximum are automatically provided a superpriority in both a restructuring and a liquidation context. As I indicated last week, for unfunded wages, in the case of a liquidation or a restructuring, the federal government actually takes the spot of the employee to be able to pay them out immediately and then allow for the restructuring or liquidation to continue. Ultimately, the government would be recouped the portion that's currently a superpriority, which is \$2,000.

I'm looking at Mr. Morrison to make sure that I'm correct on that. He's nodding yes. That's excellent.

Under the wage earner protection program, the employee is able to get paid severance up to \$7,200. As I said, it's a superpriority.

This would essentially take severance more generally and apply a superpriority to it. Severance goes well beyond unpaid wages. It also includes potential severance payments and things like separation payments. In some cases, as we've indicated, that may actually be subject to that of executives. If the severance is actually a very large portion of the employee pay packet in terms of a separation piece, that would now be subject to a superpriority.

There's no delineation in this piece of legislation between the two. There's no cap on it. There's no discussion of that in severance pay.

Ms. Emmanuella Lambropoulos: Thank you very much.

I see there are several other hands up. I may be back, but I leave the floor to someone else.

The Chair: On the speaking list we have MP Ehsassi, MP Lemire, MP Badawey and MP Poilievre.

MP Ehsassi.

Mr. Ali Ehsassi: Thank you, Madam Chair.

What I heard from Mr. Schaan was very helpful. I have no doubt that the intention behind this amendment is a good one, but again I'm very much concerned about the unintended consequences. The unintended consequences, as we heard from Mr. Schaan, are several.

First of all, as it relates to employers who already are in difficulty because of their large unfunded pensions, it's not good for them. It obviously doesn't change anything for lenders, who face the risk of nonpayment.

I believe the third point Mr. Schaan made, and this is a true concern, is that employers may very well decide to discontinue with defined pension plans, which obviously is not a good thing, and I don't think anyone on this committee would look forward to it.

In addition to that, if memory serves me well I do recall that among the witnesses we heard from during the course of our deliberations, some of whom were representing retiree groups, some had indicated that there were a number of concerns as well that providing this potential transition period could reduce some of the consequences, whether it was with respect to credit, or making restructuring very difficult.

Given all of those concerns, which are obviously unintended, I was wondering, as Mr. Schaan did suggest, if we could go to the Department of Finance and ask them for some clarification as well as to what the consequences of providing a three-year transition period would be.

• (1250)

Mr. Mark Schaan: Madam Chair, I'm not sure if that was directed at me. I would simply offer that, yes, the Department of Finance is the policy authority and in fact the regulator, as it relates to the Pension Benefits Standards Act. Given their role in the PBSA and obviously being responsible for the overall macroeconomy, as opposed to the Department of Innovation, Science and Economic Development with responsibilities for the microeconomy, there are macroeconomic considerations that I wouldn't be able to offer an opinion on in terms of the degree to which this may impact things like credit markets or lending.

We've spoken earlier about cost of credit. That's based on analysis that we've been able to do in concert with respect to the superpriority, but in terms of a three-year transition period or others, as I've said, they have considered and contemplated that in their role of pension regulator in the past as it relates to special payments. However, I wouldn't be in a position to provide any clarity or granularity as to the potential implications of that.

Mr. Ali Ehsassi: Madam Chair, I'm sorry. Is Mr. Morrison not here from the Department of Finance?

The Chair: Mr. Morrison is here.

Mr. Morrison, would you like to respond to MP Ehsassi?

Mr. Paul Morrison (Manager, Corporate, Insolvency and Competition Directorate, Department of Industry): Thank you very much. I'm actually here as a representative of the Department of Innovation, Science and Economic Development in support of Mr. Schaan. I'm not with the Department of Finance.

Mr. Ali Ehsassi: Okay, my bad.

Mr. Maziade...?

The Chair: MP Ehsassi, he's the law clerk, but if you're looking for—

Mr. Ali Ehsassi: It was my understanding that we had a witness from the Department of Finance as well. You have my apologies.

The Chair: Mr. Ehsassi, if you're looking for additional answers with respect to the Department of Finance, perhaps we could communicate with them through the clerk to see if there's something specific that we could...or if there is something outstanding.

I'm just going to turn to the clerk.

Is there a possibility of getting that question to finance officials to answer?

The Clerk: Yes, the committee is always free to ask for information from the departments if we have a letter from the chair or even an adopted motion here in committee. It wouldn't, obviously, be today, so there's that consideration.

• (1255)

Mr. Ali Ehsassi: Madam Chair, things being what they are and given that Mr. Morrison has graciously appeared before our committee, I wonder if he would have anything to add to what we heard from Mr. Schaan.

Mr. Paul Morrison: Thank you, Mr. Ehsassi. I take it that your question is in respect of the transition period that is before us in the amendment.

As Mr. Schaan points out, there is the potential for unintended consequences as a result of the transition period. I would also note that in addition to what Mr. Schaan pointed out, I'm not a legislative drafter, but there does appear to be a discrepancy in the drafting of the bill with respect to the treatment on royal assent and the treatment on coming into force.

There is not a specific coming-into-force clause in the bill, so there is some discrepancy that might require some additional drafting or correction.

Mr. Ali Ehsassi: Thank you.

The Chair: Okay. We'll now go to MP Lemire.

[Translation]

You have the floor.

Mr. Sébastien Lemire: Thank you, Madam Chair.

I would like to ask that we finish the testimony so that we can vote on clause 6.

The Chair: We can't do that.

As long as members want to ask questions, we can't end a debate. Members still have their hands raised and they have the right to speak.

Do you have a question, Mr. Lemire?

Mr. Sébastien Lemire: I have a point of order.

Why can we do this for ordinary witnesses, but not for government witnesses whose credibility is being called into question by a government official?

The Chair: If I were to end the debate, I wouldn't prevent the witnesses from speaking. Instead, I would stop the members who still want to ask questions. Some members still have questions. Asking questions is part of their privilege and I can't prevent them from doing so. I must give the floor to the members who still have questions.

Do you have a question, Mr. Lemire? If not, I'll turn the floor over to Mr. Badawey.

Mr. Sébastien Lemire: Thank you.

[English]

The Chair: Mr. Badawey, you have the floor.

There is a point of order on the floor. Mr. Duvall.

Mr. Scott Duvall: Madam Chair, on a point of order, thank you for what you've just explained to us. We don't mind the questions, but they're repeating themselves and we're getting repeat answers. It's just going over and over to run out time. I think that's very unfair to the Canadians who are looking for us to do the proper work and protect their pensions.

If they have anything that's relevant to ask, that's fine, but why are we getting the same questions and the same answers, over and over?

The Chair: MP Duvall, I appreciate it, but this is a new amendment that was circulated and just moved in committee about 20 minutes ago by a member of Parliament.

It's the right of all members of this committee to ask questions and debate the amendment that has been put. I completely understand the time constraints, but we also have to be mindful of the fact that it is the right of members of Parliament to debate the amendment that is before the committee. Thus, I have to rule that out of order.

I will turn it back over to MP Badawey, who has the floor on this amendment.

Go ahead, MP Badawey.

Mr. Vance Badawey (Niagara Centre, Lib.): Thank you, Madam Chair.

I have to confess that this is my first time dealing with this issue, this bill, on this committee, but I do appreciate the opportunity to weigh in. It is, in fact, something that I've been working on for quite some time, since being elected to the House in 2015, dealing with organizations such as CARP and others that have a great concern with respect to protecting their pensions.

I have to ask a question to Mr. Schaan that begs to be asked with respect to some of the dialogue that has been undertaken already at this meeting, albeit he's probably the most professed in this area of the dialogue and I appreciate his involvement and the—for lack of a better word—definitions today that he's provided the committee.

In budget 2019, the government introduced amendments to the Pension Benefits Standards Act. It prohibits a pension plan from providing that benefits and members' entitlement to benefits be affected by the termination of said plan.

How does that approach differ from the approach offered here, which we're discussing overall with a broader, holistic view but also specifically with this amendment?

• (1300)

Mr. Mark Schaan: I would defer to my colleague, Mr. Morrison, to discuss the changes to the Pension Benefits Standards Act that were part of the 2019 package related to retirement income security. I would invite Mr. Morrison to indicate what those changes included.

Mr. Paul Morrison: I believe the amendments that you're speaking of are the clarifications in the Pension Benefits Standards Act that confirm that upon the wind-up or termination of a pension plan, the benefits that will be paid out under that plan will not be amended. It confirms the rights of [*Technical difficulty—Editor*] on termination to entitlements that they would be on a wind-up or a termination. They clarified what some people saw as a legislative gap that could have allowed for such an interpretation and potentially acted to the detriment of pensioners.

There were also I believe some other amendments that related to the ability, under the regulations, to have employers convert pension liabilities and have them assumed by insurance companies, which would allow them to remove it from their balance sheet and, with the pension regulator's approval, have the ability to have greater security for the pensioners and not be at the same risk of employer insolvency because it was backed by the assets of a highly regulated insurance firm.

The Chair: Thank you so much, Mr. Morrison.

I apologize to Mr. Badawey. I'm jumping in because I'm getting the signal from the clerk that we have to stop as we can't continue with translation services.

We are on the amendment by MP Poilievre. I'm going to take note of the list. Right now, we still have Mr. Badawey on the list, Mr. Poilievre, MP Jaczek, MP Jowhari and MP Lambropoulos. I believe MP Ehsassi has his hand up as well.

I'm going to take note of that so that when we come back again next meeting, we can continue where we left off.

I want to thank everyone for being here and thank you for your patience. We're trying our best to get everything done. I will work with the clerk to see when we can get this brought back to INDU, and we can go from there.

With that, I want to thank everyone.

[Translation]

I want to thank the witnesses for their testimony and the interpreters for their ongoing hard work, as well as the two clerks and the technicians.

[*English*]

With that, I will call the meeting adjourned.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the Copyright Act. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the Copyright Act.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: <https://www.ourcommons.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la Loi sur le droit d'auteur. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre des communes.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la Loi sur le droit d'auteur.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante :
<https://www.noscommunes.ca>