

A CUPE BACKGROUNDER



Canadian Union of Public Employees Backgrounder

on

Federal Bill C-27

“An Act to Amend the Pension Benefits Standards Act, 1985”

November 2016

INTRODUCTION

Workplace pension plans for federally-regulated industries (banks, telecommunications, transport, Crown Corporations, etc.) follow the laws set out in the federal Pension Benefits Standards Act (PBSA). Before pension legislation like the PBSA existed, employees had no real pension protection: employers could make pension promises to workers and walk away from them without consequence. Thankfully, a half century ago, Canadian governments realized that workers needed their pension to be protected and legislation like the PBSA was born.

Resembling provincial pension regulations, the PBSA protects Defined Benefit (DB) pension promises that have already been made to workers in federally-regulated industries. Employers cannot walk away from pension promises they've already made. Pension promises rightly became legal obligations of employers under the PBSA. To secure these promises, pension legislation like the PBSA requires that an employer set money aside in a pension fund as pension promises are made to workers. The health of these funds are evaluated regularly and employers must balance any deficits over a period of time.

This is how Canadian pension law has generally functioned for the last fifty years. It's been remarkably successful at delivering the secure DB pension plans that workers have been promised during their working lives.

On October 19, 2016, the federal Liberal government quietly introduced Bill C-27, "An Act to Amend the Pension Benefits Standards Act, 1985". Bill C-27 is a radical upending of the traditional purpose of the PBSA. Largely modeled on the New Brunswick "Shared Risk" pension plan model, **C-27 would allow federally-regulated employers to pressure plan members into "surrendering" the DB pension plan promises they've already earned.**

HOW BILL C-27 WOULD WORK

Bill C-27 brings a particular "Target Benefit" (TB) pension plan framework to the federal jurisdiction. A TB pension plan is basically the inverse of a DB pension plan:

- **Defined Benefit (DB) Pension Plan:** Benefit promises that have already been made cannot be subsequently reduced. Since pension funds are invested in the markets which can over or under deliver, it's possible that a DB pension plan sponsor may have to put more (or less) money than expected into the pension fund. The price of secure DB benefits is contribution rate uncertainty.
- **Target Benefit (TB) Pension Plan:** TB plans are the opposite of DB plans. Benefits in a TB plan are not secure, legal obligations, but "targets" that can be legally reduced if the pre-determined contributions to the plan are not sufficient. Therefore, in a TB plan, benefits are insecure but contribution rates are certain. TB plans are much more like Defined Contribution (DC) pension plans: benefits are insecure, plan members bear the risks, employer contribution rates are pre-determined, and guaranteed to not increase beyond a certain point. This is why employers have been pushing to replace DB plans with TB plans.

C-27 permits federally-regulated employers to establish a new TB plan and to seek the consent of plan members to "surrender" the previously unreducible DB plan entitlement they have already earned and "exchange" it for a legally-reducible TB plan. Individual member consent is required for this "surrender-exchange" to take place. However, C-27 also says that "a bargaining agent may consent on behalf of a unionized member if the agent is authorized to do so." This could give employers the ability to table a bargaining demand that all union members agree to "surrender" their DB entitlements in "exchange" for TB aspirations. The employer could then press the issue to lockout to obtain the entire bargaining units "consent."

The newly-established TB plans would be required under C-27 to have clearly-established policies like "a deficit recovery plan" and plan goals for "pension benefit stability." Proponents of TB plans have tried to suggest these policies and requirements are so rigorous that the TB benefits, though reducible, are even "more secure" than DB plans. CUPE strongly disputes this notion and views TB plans as much riskier for plan members than DB plans.

IMPACT OF SURRENDER-EXCHANGE ON MEMBERS

If a member of a DB plan consented to this surrender-exchange, it would be as though this member *had always been* in a TB plan. This member may have worked for many years under a DB plan, trading their labour and their own pension contributions in exchange for a secure promised pension that they believed could not be reduced. Upon surrender-exchange, all of these past DB entitlements are **retroactively** transformed into legally-reducible TB benefits. Members now bear all plan risks not only going forward, but on a retroactive basis as well.

The idea of pushing for workers to "surrender" their pension promises should be shocking to Canadians. We are told that we live in a country where a "deal is a deal" but C-27 upends this principle, but only for pension plan members.

Employers and governments continue to make good on their promises to other creditors and bondholders, but pension plan members inexplicably fall into another category where this principal does not apply.

IMPACT OF SURRENDER-EXCHANGE ON EMPLOYERS

Employers will be very interested in pushing surrender-exchange on their plan members.

For many years, employers in Canada have been focused on a goal of pushing conversions to Defined Contribution (DC) pension plans on a go-forward basis (or for "new hires only"). If employers were successful in a go-forward conversion to DC, they would still remain liable for their past DB promises (because of legislation like the PBSA), but go-forward risk would be transferred to plan members.

However, if an employer surrender-exchange under C-27 is successful, employers would not only shift all future risks to plan members, but risks associated with past employer DB plan promises as well. Employers will then try to simply strike these liabilities from their balance sheets with the stroke of a pen – working people do not have this option with their mortgage

and car payment obligations. This is clearly a better outcome for employers than a DC plan conversion. Employers will, not surprisingly, be emboldened to pursue surrender-exchange relentlessly at bargaining tables.

HARPER'S UNFINISHED BUSINESS & TRUDEAU'S BROKEN PROMISES

The Harper Conservatives consulted on a similar structure in 2014. CUPE, the labour movement and retiree organizations pushed back hard, arguing that past pension promises must continue to be honoured, and that the government should not enable retroactive conversions of DB plans into TB plans.

Harper clearly saw the political dangers of this legislation, as the government shelved it with the 2015 federal election on the horizon.

In the leadup to the 2015 election, Trudeau was asked about his position on retroactive DB conversions to TB plans. In a signed letter from July 2015, Trudeau stated: *"I continue to believe that while they may make sense in certain circumstances, any changes to [DB plans] should be made on a going-forward basis. [DB plans] which have already paid for by employees and pensioners, should not retroactively be changed into [TB plans]."*

The Trudeau Liberals did not campaign on the issue in the election and their platform is silent on TB plans.

Exactly one year after being elected, however, the Trudeau government quietly introduced C-27 – no press release or statements. C-27 permits precisely the types of conversions Trudeau clearly stated he was against before the election. In doing so, they are pursuing legislation that was developed by the Conservatives, but seemed to be too anti-pension for even Stephen Harper. The government's broken promises, and its failure to campaign or consult on the issue clearly shows they have no mandate to legislate these drastic changes.

CUPE'S POSITION

- **CUPE is strongly opposed to Bill C-27**, just as we were when Harper examined the issue in 2014. The Canadian Labour Congress (CLC) and other affiliates like Unifor and the Public Service Alliance of Canada (PSAC) are also strongly opposed and will be pushing back against C-27.
- The idea that DB pension promises that have already been made by employers can be "surrendered" and "exchanged" for an insecure pension is offensive and should be rejected. Canada is a country where a deal is a deal and employers should not be permitted to walk away from their pension promises.
- Federal pension legislation has traditionally existed to protect workers' pensions from employers. C-27 would upend the historical purpose of the PBSA by suddenly allowing employers to abandon the pension promises they've made to workers.

- C-27 stacks the deck in favour of employers and will likely trigger labour disputes and legal challenges. While the government may portray it as just another pension "option" designed to increase pension coverage, C-27 is clearly an attack on DB plans.
- While C-27 only directly affects federally-regulated employers, it would be an important national endorsement of a troubling pension model which other jurisdictions may follow, putting the ongoing security of all DB plans in Canada potentially at risk.
- The Trudeau government has no mandate to complete Harper's unfinished business on pensions and Trudeau has broken his promise on retroactive conversions of DB plans.

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