

May 15, 2017

BY E-MAIL

The Honourable Bill Morneau
House of Commons
Ottawa, Ontario K1A 0A6

Dear Minister Morneau:

I am writing on behalf of the 643,000 members of the Canadian Union of Public Employees in response to your call for submissions regarding federal Bill C-27 "An Act to amend the Pension Benefits Standards Act, 1985."

CUPE is strongly opposed to this legislation and calls for it to be withdrawn. This is employer-favouring, anti-worker legislation that will erode, not improve, pension security in Canada. There is a better way forward in the federal pension space and we call on the government to sit down with workers and employers to find that path.

CUPE supports the submission of the Canadian Labour Congress in this process.

Our key issue of dispute with C-27, although not the only issue, is that the legislation permits federally-regulated employers to retroactively walk away from the pension promises they have already made to workers. In earning pensionable service, a worker has already made good on their end of the bargain with their employer. Their labour was exchanged for wages and a pension that was always said to be "guaranteed". If the employer, years or decades later, is able to walk away from these pension promises, the employer is effectively expropriating significant portions of past compensation back from their workers and retirees. Of course, these workers cannot have their labour retroactively returned to them. This deal-breaking is why C-27 is so wrong in principle. Canadians overwhelmingly reject the idea that employers should be allowed to walk away from past pension promises. Even if governments can get away with legalizing such behaviour by amending a statute, this does not make it right.

Canadian workers, of course, do not have the ability to walk away consequence-free from the mortgage, rent or car payments they are obligated to make. Workers hold up their end of the bargain, and there are legal systems in place to enforce this. Employers also continue to fully meet their obligations to bondholders and other creditors. It is a disappointing political choice for the government to rule that pension promises to workers are not real promises, when we live in a country where citizens believe deeply that "a deal is a deal".

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This year actually marks the fifty-year anniversary of the federal Pension Benefits Standards Act (PBSA), the first federal legislation that gave statutory protection to the fundamental principle that a pension promise is a binding legal obligation. It was the Liberal Party that passed this legislation in 1967 under the Pearson government. Then Member of Parliament, Mr. Jean Chrétien, your Party's spokesperson on pensions at the time, said the legislation was "designed only to prevent any lessening in the benefits of plans" and that once it was passed, "the pension will then be locked in forever. Even if the employees or the employer want to change it, there will be no possibility".¹

Prime Minister Pierre Trudeau believed strongly in expanding pension rules to better protect workers when they retire. In 1983, a Liberal-led federal task force concluded, unequivocally, that "we feel strongly that pension promises should be honoured".² The Liberals at the time pushed for *more* workers to fall under the accrued benefit protections of the PBSA, changes which were later legislated under the Mulroney Progressive Conservative government.

Your Party's actions and pledges *before* the 2015 election were entirely consistent with this history. Liberals were opposed to the Harper government's plans to introduce C-27-style legislation in 2014. Liberal spokesperson John McCallum said this legislation "would harm Canadian pensions".³ Prime Minister Trudeau's pre-election promises were clear and unequivocal: Liberals were opposed to giving employers an ability to retroactively change pension deals.⁴ The Prime Minister said changing past pension deals like this was "wrong in principle" and "unacceptable".⁵ Your election platform said *nothing* about this legislation, instead promising that "we will provide Canadians with a more secure retirement".

Because of this long history and your leader's clear promises, CUPE was shocked to learn that a Liberal government had quietly introduced C-27 to the legislature last fall. This legislation not only reverses your Party's long and principled history on this issue, it also breaks a clear contract with the voters who elected you to office. Your government does not have a public mandate to pursue this extreme legislation. Your Party promised "Real Change" but you are picking up where Stephen Harper left off with this unprincipled, anti-worker legislation.⁶

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¹ Jean Chrétien, Commons Debates, March 10, 1967.

² Report of the Parliamentary Task Force on Pension Reform, House of Commons, Issue #38, 1983.

³ Canadian Press, April 25, 2014.

⁴ Signed July 23, 2015 letter from Justin Trudeau, Leader of the Liberal Party of Canada to Gary Oberg, President, National Association of Federal Retirees.

⁵ *Sage Magazine*, Fall 2015, p. 19.

⁶ The Harper government consulted on a Target Benefit framework in 2014 and Conservative spokesperson Kevin Sorenson repeatedly stated that the legislation would have a consent mechanism built into it.

We know government is justifying C-27 by referencing the consent mechanism built into the Bill. Consent in the labour relations world can be obtained by locking workers out until they agree to an employer's bargaining demand. And employers will, not surprisingly, be deeply committed to successfully breaking past pension promises to workers, if indeed the federal government permits them to move the bargaining goalposts in this way. The result will be greatly-increased situations of labour strife. CUPE and other unions know that workers will fight to defend their pensions. Workers involved in C-27 related disputes will, however, have to make the offensive choice between feeding their families or "surrendering" the guaranteed pensions their employer had promised them in exchange for work they have already done. This is not a choice the federal Liberal Party should force on Canadian workers.

CUPE also has serious doubts that consent would be based on neutral and "understandable" information. Pensions are already enormously complex. The contingent benefit, complex funding policy and probabilistic modeling contemplated in C-27 would clearly make pensions even more complicated. Given that there will be significant employer interest in convincing plan members to "surrender" their claim to their promised pension, we have serious doubts that this information could truly be neutrally-delivered as intended. The only other jurisdiction in Canada to introduce such legislation is New Brunswick and CUPE has first-hand experience with the high-degree of misinformation that was used to "sell" plan members on accepting conversions of their defined benefit plans in that province.⁷

On this point, your own government has been selling target benefit plans to workers as "sustainable", without even explaining what this appealing term means in this context. There is, of course, no actuarial definition of "sustainable". What is sustainable to one side of the table may not be sustainable to the other. Employers see target benefit plans as "sustainable" because their contributions are fixed, they book no liabilities and plan members ultimately bear risks, as the plan can reduce their benefits (even in retirement) without limit. Plan members, understandably, may not find this so "sustainable". Yet government has deployed an entirely employer-friendly version of this appealing word in an effort to sell C-27 to workers. The ability of target benefit plans to reduce plan members' benefits (arguably *the* key feature of target benefit plans) is never discussed in government communications about C-27. Instead, it is argued in a misleading way, that these plans are "flexible". How can we credibly believe government can regulate plain-language and honest communication about these plans when government itself is already engaged in misinformation before C-27 is even passed?

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⁷ CUPE New Brunswick, "6 Myths About the Shared Risk Model," <https://nb.cupe.ca/files/2015/11/6-Myths-About-the-Shared-Risk-Model-revised-dec-2-2014.pdf>

Employers will not be the only winners if C-27 passes. Actuarial firms stand to gain significant amounts of valuable billable hours if this legislation passes. Defined benefit plans generally need to file actuarial valuations once every three years. But the target benefit plans contemplated in C-27 require filing of much more complex valuations *every year*. Morneau Shepell pointed out that this variant of target benefit plans is "more complex from a plan administration standpoint" and noted the "excessive operating costs associated with the probabilistic risk management approach" in its submission to the 2014 Harper government consultation on target benefit plans.⁸ The benefit to actuarial firms was not noted when Morneau Shepell publicly called on the federal government to introduce target benefit legislation in the summer of 2016.⁹

CUPE remains strongly opposed to C-27 and calls for this fundamentally flawed piece of legislation to be withdrawn.

Like the Canadian Labour Congress, CUPE remains willing to discuss reforms to federal pension law that will protect defined benefit plans and increase pension coverage elsewhere. Given our experience in other jurisdictions, we know that better solutions are available that the federal government has inexplicably chosen to ignore.

Yours truly,



MARK HANCOCK
National President

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⁸ Morneau Shepell, "Response to Department of Finance Canada's Consultation Paper, Pension Innovation for Canadians: The Target Benefit Plan," June 23, 2014.

⁹ Frederick Vettese and Joe Blomeley, "A Canada Post pension compromise," *National Post*, July 15, 2016.