

BILL C-27:  
Undermining Canadian Pensions

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Canadian Labour Congress

Congrès du travail du Canada





## Bill C-27, An Act to amend the Pension Benefits Standards Act, 1985

Bill C-27, *An Act to amend the Pension Benefits Standards Act, 1985*, was quietly introduced in the House of Commons on October 19, 2016. There was no press release from the government, no advance notice given to unions, pension plan members, or retirees, and no consultation with the public. For over a month, this Bill received no attention from the media or Parliamentarians, and the government made no mention of the Bill.

The Bill sets up a framework for target-benefit (TB) pension plans in the federal private sector and for Crown corporations. Currently, there are over 300 defined-benefit (DB) plans in the federal sector, with 489,000 members and \$100 billion in assets<sup>1</sup>. There are even more plans that have some combination of DB and other benefits.

Bill C-27 would allow employers to undermine DB pensions, and replace them with TB plans that carry far less risk, legal obligation, and cost for employers.

Bill C-27 will allow federal employers with DB pension plans to tear up their pension promise to workers and retirees. Under this Bill, employers would be able to rid themselves of the legal obligation to deliver promised and already-earned benefits. Employers would be permitted to convert a DB plan to a TB plan, with members' consent.

Bill C-27 would allow employers to establish a TB plan alongside the DB plan, and attempt to persuade individual active and retired plan members to "surrender" their DB benefits, in exchange for TB plan benefits. In either case, virtually all plan risks would shift from employers to active and retired members.

The federal Bill C-27 has serious implications for DB pension plans and for unions, for several reasons:

- Federal legislation would set an example across the country that provinces may follow. Private and public sector employers would push for similar changes in all jurisdictions, and the attack on DB plans would likely intensify everywhere.
- Permitting employers to encourage individual DB plan members to surrender their benefits has the potential to split the bargaining unit, and divide retirees against active members.
  - Retirees will have little incentive to surrender their secure DB pensions in exchange for more-risky TB benefits.
  - Active members may be persuaded to surrender their benefits, however, especially if the employer provides incentives to shift to the TB plan. Even if the DB plan survives in the short run, individual transfers may alter the plan's demographics, and eventually jeopardize the stability and sustainability of the DB plan.



## Defined-benefit vs. Target-benefit

### **Defined-benefit pension plan:**

Typically, the employer is legally obligated to fund the plan so that benefits earned by members can be provided.

Already-earned benefits (known as past-service or “accrued” benefits) are legally protected, and may not be retroactively reduced.

DB pensions are more predictable and less risky for workers and retirees.

### **Target-benefit pension plan:**

The legal requirement on employers to fund plan benefits is removed.

If the plan develops a shortfall, and contributions are not high enough to pay for the promised benefits, additional payments into the plan made by the employer may be capped, or not permitted at all.

Instead, benefits may be reduced on both a going-forward and retroactive basis, including pensions-in-pay to retirees.

TB pensions are less predictable and more risky for workers and retirees.



## Bill C-27 Poses Risks to Unions and Labour Relations Stability in the Workplace

The union's ability to speak on behalf of members is uncertain in Bill C-27. Although the decision to surrender DB benefits is an individual one, the Bill provides that "a bargaining agent may consent on behalf of a unionized member if the agent is authorized to do so." The effective meaning of this provision is far from certain.

TB plans would not be jointly governed by union- and employer-appointed trustees, and unions could be largely excluded from the governance of TB plans. This means unions would have less ability to defend and advance workers' pension interests.

Bill C-27 has the potential to fuel labour disputes. Employers have a large incentive in pushing workers to "surrender" the

pension benefits they have already earned. In a lockout or insolvency situation, workers may be pressured to agree to surrender their benefits and pension rights.

Under a DB plan, assets and liabilities must be recorded on the sponsor's balance sheet, allowing shareholders and investors to clearly see the pensions that the company is obliged to pay into the future. Under a TB arrangement, this obligation could quickly disappear. If the sponsor is not required to fund a deficit in the plan, a sponsor could be permitted to record only the fixed contribution to the TB plan, with no obligation to record any liability on the balance sheet. Billions of dollars in pension obligations could be made to vanish overnight, a prospect no employer could resist.

### How employers could try to persuade workers and retirees to surrender their secure DB benefits in exchange for risky TB benefits

In 2014, the Canadian Bar Association proposed a number of ways that employers could encourage workers and retirees to give up their DB benefits in exchange for at-risk TB benefits. These methods included:

- Lump-sum cash payments representing a portion of the value of the increased risk members would take on by switching to a TB plan
- One-time benefit improvements and/or salary adjustment
- Increased paid vacation or sick days
- Improvements to non-pension benefits (e.g. health, medical, dental, or insurance coverage)
- New or increased employee discounts on employer products and services
- Wellness programs "such as a gym or babysitting services at the employer's location."

*Source: Canadian Bar Association, National Pensions and Benefits Law Section, Pension Innovation for Canadians: the Target Benefit Plan, June 2014.*

## New Brunswick's "Shared Risk" Plans

The only place in the country where employers are able to strip away the legal protections for DB plan members' past-service benefits is New Brunswick. Introduced in 2012 by the Conservative government of David Alward, New Brunswick's legislation allowed conversion of both private sector and public sector DB plans to so-called "Shared Risk" TB pension plans. The New Brunswick Public Service Pension Plan converted, as did several New Brunswick hospitals plans and the New Brunswick Pipe Trades Pension Plan. The City of Saint John's Pension Plan also converted to a "Shared Risk" model.

Although deceptively termed "Shared Risk" plans, the plans transfer virtually all risk from employers to plan members and retirees. DB plans were converted in their entirety to TB plans, and the DB benefits of all plan members and retirees were converted TB plans. In important instances, where unions and retirees "consented" to convert their benefits, "consent" was far from unanimous and was based on incomplete disclosure and misleading information.

Plans that converted to TB plans were often in crisis, with severe funding shortfalls and in some circumstances, having been underfunded by the employer for years. During the conversion process, employer contributions were often increased, but benefits were also sharply reduced. Plan members were led to believe that their new benefits would be "virtually guaranteed," when in fact, they had just lost the legal protection guaranteeing that their past service would not be retroactively reduced. As actuary Clare Pitcher put it, "The SRP [Shared-Risk Plan] story is one of broken promises, a flawed model and misleading communication".<sup>2</sup>

Many New Brunswick plan members and retirees felt they were misled and misinformed about what plan conversion would mean for them. As a result, plan conversions in New Brunswick have resulted in class action lawsuits and constitutional challenges. As well, the number of DB plans in New Brunswick has fallen sharply. Since the beginning of 2012, the number of DB plans registered in the province has fallen from 100 to 87, and DB plan membership has fallen by almost 3,000 members, a drop of over 14%<sup>3</sup>.



# The Stephen Harper Government Consultation on Target Benefit Plans

In April 2014, the Conservative government of Stephen Harper launched public consultations on introducing a TB plan framework federally. Several private and public sector unions and retiree associations mobilized, flooding the consultations in opposition to the initiative. The government subsequently retreated, deciding not to proceed with framework legislation for TB plans.

In the 2015 general election, the Conservative Party was forced to issue letters to

constituents in the National Capital Region, reassuring voters that the DB benefits of members of the Public Service Pension Plan were not at risk.

During the same election campaign, on July 23, 2015 Liberal Party leader Justin Trudeau wrote a letter to Gary Oberg, head of the Federal Superannuates National Association, stating that “DBPs [defined-benefit pensions], which have already been paid for by employees and pensioners, should not retroactively be changed into TBPs [target-benefit pensions].” The Liberal government doesn’t just lack a mandate for this extreme legislation, having excluded any mention of it from their campaign promises. They actually told voters that they would protect the pension rights that Bill C-27 would tear up.

Although supporters will present Bill C-27 as offering new and superior options for workers with no or inferior pension plans, Bill C-27 is squarely focused on conversions of DB benefits. It is designed to allow employers to attack and undermine DB pensions, and replace them with TB plans that carry far less risk, legal obligation, and cost to employers.

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#### Sources:

1. Office of the Superintendent of Financial Institutions
2. H. Clare Pitcher, “There’s More to New Brunswick’s Shared-Risk Plan Story,” *Benefits Canada*, 2 October 2015
3. Statistics Canada





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2841 Riverside Drive, Ottawa, ON K1V 8X7  
613-521-3400 | politics@clc-ctc.ca

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