

Submission by
The Society of Energy Professionals
to the
Department of Finance Consultation
On Bill C-27

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The Society of Energy Professionals (The Society) is a trade union that represents close to 9000 professional employees at almost every public and private company employing a significant number of employees in the Ontario-wide electricity industry. Bill C-27 poses a serious threat to the retirement security of Society-represented employees of Bruce Power and the Nuclear Waste Management Organization. Both of these companies sponsor single employer defined benefit pension plans that are governed by the federal *Pension Benefits Standards Act*. The Society is also deeply concerned about the potential impact of Bill C-27 on our members who are employed in organizations that sponsor pension plans that are governed by Ontario's *Pension Benefits Act*. If enacted, Bill C-27 would almost certainly influence similar discussions around changes to pension legislation in other jurisdictions. Such discussions are already underway in Ontario. Finally, as a member of the Pension Advisory Committee of the Canadian Labour Congress (CLC) The Society has a deep interest in retirement security for all Canadians. For these reasons The Society is compelled to respond to the misguided initiative of the federal government that is Bill C-27.

Summary

Bill C-27 has two main components. The bill seeks to provide a framework for establishing new single employer target benefit (TB) plans. The bill also seeks to provide a process for the conversion of existing member entitlements in defined benefit (DB) plans into target benefits.

The Society recognizes that TB plans are a good and necessary retirement solution for workers with multiple employers or small, transient employers. Unions have been instrumental in the establishment and ongoing administration of such plans. The Society would not object to a legislative framework for new single employer TB plans that includes elements that have proven to be of fundamental importance for existing multi-employer TB plans. These essential elements include joint and equal union-employer governance, collectively bargained contribution levels, and the flexibility at the plan level to establish and adjust funding policies so that plan trustees are able to balance benefit adequacy against benefit security in a manner that makes sense for their plan. The Multi-Employer Benefit Council of Canada has developed a set of guiding principles for TB plans. A partial list is attached as Appendix A. Unfortunately, Bill C-27 represents a very different approach that is discussed below.

The second component of the bill is unacceptable. Fundamentally, The Society cannot support a framework that permits the conversion of accrued DB benefits to TB benefits. DB pension plans are the most efficient and effective means of providing retirement security for Canadians, as recently recognized by the federal government in its expansion of the Canada Pension Plan. Benefits accrued in a DB plan are earned entitlements to a secure lifelong retirement income and

should not be converted to less secure target benefits. The Society cannot support any measure that allows this promise to be broken.

Funding of TB plans under Bill C-27

Bill C-27 requires all TB plans to have a funding policy. The bill is quite specific with regard to the kinds of measures that must be included in a funding policy but is less clear about how the actual content will be established. The door is left open to have the actual content prescribed by the PBSA and future Regulations. This is a serious departure from the long-standing Canada-wide practice of allowing the trustees of TB plans to make these critically important decisions. Under Bill C-27, a funding policy will describe employer contributions and member contributions (if any). It will include plans for deficit recovery and surplus utilization which may be prescribed by Regulation. Most alarmingly, a funding policy must include the TB plan's "objectives of the plan with respect to pension benefit stability" *which cannot be amended*. It is unclear to what extent the Regulations will prescribe benefit stability standards. A disturbing bias is emerging in some jurisdictions that places benefit security over benefit adequacy by imposing a one-size-fits-all model known as "Going Concern Plus." This can take the form of required margins, prescribed limits on discount rates, or other measures that result in the de facto overfunding of TB plans so that plans are required to maintain what are really just excessively large surpluses that will never be used to provide pension benefits. It is not possible to fully evaluate the new regime proposed by Bill C-27 until the content of the Regulations is known. What can be said is that the optimal solution is to leave these decisions where they belong, in the hands of a joint union-employer board of trustees.

Governance of TB plans under Bill C-27

Unfortunately, Bill C-27 does not require a joint union-employer board of trustees. Its governance provisions represent a troubling departure from the historic practice of joint governance of TB plans with an equal number of representatives for the employers and the union(s). The bill requires TB plans to have a governance policy but leaves the establishment of the policy in the hands of the plan sponsor, i.e. the employer. Under C-27, a TB plan board of trustees is only required to have one representative for active plan members and a "prescribed" number for former members and survivors. This will likely leave the employer with majority control of the board. The interests of the employer and plan members cannot be reasonably balanced without the full and equal participation of plan members through their union. In his widely acclaimed 2008 Report of the Expert Committee on Pensions, *A Fine Balance* (Arthurs Report), Harry Arthurs repeatedly stresses the importance of equal representation on pension boards for plan members and their unions. He states in his report, "MEPPs [Multi-Employer Pension Plans] and JSPPs [Jointly Sponsored Pension Plans] both begin from the same point of departure: plan members bear significant risks and should therefore have a considerable say in the governance of their pension plan." Under Bill C-27, TB plan members would face at least as

much risk as members of MEPPs or JSPPs. The Arthurs Report includes the following recommendation that is directly applicable to Bill C-27:

Recommendation 8-27 — The sponsor of a single-employer pension plan may enter into an agreement with a trade union, or other union-like organization that represents plan members, to establish a jointly governed target benefit pension plan. *Such plans should (a) be governed by a board of trustees or comparable body on which representatives of plan members and retirees should comprise not less than one-half of its members, (b) offer target benefits, and (c) be funded on the same going concern basis as multi-employer and jointly sponsored plans.* [Emphasis added]

It is also troubling that Bill C-27 leaves the door open to having the qualifications of TB plan trustees prescribed in the Regulation. There are some who believe that representatives of plan members are not competent to serve on pension boards. Pension board trustees should of course become knowledgeable and should avail themselves of expert advice as required. But it would be a grave mistake to replace member representatives with outside experts for whom there is little at stake. The Arthurs Report, in embracing the concept of equal representation for members through their union, makes the following recommendation:

Recommendation 8-3 — Unions that seek and accept a role in plan governance should be encouraged to ensure that both active and retired members have a voice in decisions that affect them. *Unions should also develop the technical and analytical capacities necessary to support effective member participation in plan governance.* [Emphasis added]

Conversion of accrued DB benefits under Bill C-27

The federal government has been quick to point out that plan member consent is required in order to convert accrued DB benefits to TB benefits. Bill C-27 also says, “A bargaining agent may consent on behalf of a unionized member if the agent is authorized to do so.” While it is not entirely clear what this means, it is reasonable to assume that a union is “authorized” to consent on behalf of its members by virtue of its role as the exclusive bargaining agent.

Why would a plan member or his/her union consent to a DB to TB conversion? Under a TB pension plan the employer has a fixed contribution so the only way to address an underfunded plan is reduce benefits. For this reason a DB to TB conversion will almost always be an unattractive option for plan members. The only reason why plan members or their union would agree to conversion is if the employer is able to persuade them through the use of tactics such as lockouts or threats of insolvency that the DB to TB conversion is the better of two bad options. A conversion from DB to TB could also be the outcome of interest arbitration. One way or another, the very real concern of The Society is that employees may be coerced into accepting DB to TB conversions.

The implications for labour relations are serious. Employers will be highly motivated to do whatever they can to achieve DB to TB conversions because under a TB regime, contribution

volatility and the requirement to fund deficits would be eliminated entirely. The accounting implications are significant. Employers who are currently required to show pension deficits on their balance sheets may be able to fulfill their pension accounting obligations with a single entry of the fixed contribution on their operating statement. With stakes this high on both sides, battle lines will be quickly drawn.

Recommendations to the Minister

The federal government should respond favourably to the request from the CLC to enter into discussions about providing some relief from rigid solvency funding requirements for DB plans.¹ DB plan sponsors would benefit from alternatives that pose less risk to retirement security than conversion to TB. Several other Canadian jurisdictions, including Ontario and Quebec, have introduced both temporary and permanent solvency relief measures in response to a persistent low interest environment that is making solvency funding very costly.

The federal government should eliminate the solvency funding requirement for existing Multi-Employer Pension Plans in the federal jurisdiction. These plans have a low risk of windup so solvency funding is an unnecessary burden. The requirement is sufficiently onerous that it may be driving some MEPP trustees to consider accepting the unreasonable constraints of Bill C-27 just to get out from under solvency funding.

Finally, The Society invites the federal government to enter into a dialog with the CLC with a view to developing a framework for single employer TB plans that a) does not permit DB to TB conversions, b) requires joint and equal representation for employer and employees/union, c) provides for funding policies that are established through collective bargaining and are not unduly constrained under a Regulation, and d) leaves the task of balancing the often competing objectives of benefit adequacy, benefit security, and intergenerational equity, in the hands of a joint board of trustees, rather than being prescribed through Regulation.

¹ Hassan Yussuff, Letter to Minister of Finance Bill Morneau, December 11, 2015

A summary of the Multi-Employer Benefits Council of Canada's guiding principles with respect to target benefit Multi-Employer Pension Plans

1. The primary objective of a target benefit MEPP should be to provide an adequate lifetime income to those with a history of attachment to the industry.
2. Target benefit MEPPs should not be subject to solvency funding.
3. Target benefit MEPPs must have the flexibility to balance benefit adequacy against benefit security.
4. The obligation to manage any intergenerational equity issues must rest with a target benefit MEPP's board of trustees.
5. The primary financial measure for a target benefit MEPP is the relationship between contribution income and actuarially calculated cost.
6. Target benefit MEPPs should not be obligated to offer transfer values. If mandated by legislation, transfer values should (1) reflect the funding level of the plan; (2) reflect that the recipient is no longer subject to the risk of benefit reductions; and (3) be computed identically in all jurisdictions (or at least be computed identically for all participants in a single plan).
7. Target benefit MEPP boards of trustees must retain the responsibility for establishing the treatment of affected benefits when an employer terminates or reduces its participation.
8. Margins should be required only for purposes of determining any potential benefit changes.