2019 Top 100 Pension Funds Report: Deconstructing pension protection, promises and priorities

Michael McKiernan | June 28, 2019

Though Trish McAuliffe didn't know much about pension benefits at the time, they were at the heart of one of her earliest working memories.

In the 1980s, McAuliffe was a new employee at General Motors of Canada Co., putting together automobile interiors, when she dutifully joined the picket line during an eruption of labour strife at the company's Windsor, Ont. plant. But she admits she wasn't the most engaged union member back then. "The strike was about increasing pension benefits and I remember wondering what the fuss was all about."

More than three decades later, and wisened to the subject by an entire working career, McAuliffe is ready to put the pension promise at the heart of her latest battle as president of the National Pensioners Federation.

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Her group has teamed up with eight other seniors' organizations to form Vibrant Voices, a group whose combined membership numbers in the millions. Its main aim is to make issues like pension protection and retirement income security the deciding factor in this fall's federal election.

Following a string of bankruptcies in which retirees with defined benefit plans were left to contemplate significant shortfalls in their future pension payments, the National Pensioners Federation wants to see plan sponsor obligations to members placed ahead of any others during insolvency proceedings.

"It's a very passionate issue for me as a new retiree," says McAuliffe. "These are deferred wages, and I firmly believe that pensioners should be at the front of the line of creditors in an insolvency, to ensure that they get the pension that was agreed, and that they put the time in for."

Laura Tamblyn Watts, national director of law, policy and research at CARP, says her office has been inundated in recent years by tragic stories from members struggling to get by on reduced pensions. "People are descending into poverty, losing their housing and choosing between food or medication, where they had expected to be able to live out their retirement in security. You can't have people paying into their own fund for 40 years, only to see the money dissipated one way or another in an insolvency. The poor pensioners are last in line for their own money, which is unconscionable.

"It has to change. And now," she adds.

Layers of protection

As harsh as it sounds, Joe Nunes, executive chairman of Actuarial Solutions Inc., says most retirees fundamentally misunderstand the nature of the pension promise.

"I don't think there's any sort of compromise that will satisfy pensioners, because they want their pensions fully guaranteed, which is not how our existing pension funding rules are supposed to work," he says.

Instead, explains Nunes, plan sponsors are only expected to fund their pensions to solvency levels that differ depending on the provincial jurisdiction. "There's always an understanding that the employer backs that promise, and if they're not around anymore, then the promise may not be delivered."

Read: Could solvency reform in Canada lead to a DB pension revival?

Indeed, Todd Saulnier, chair of the national policy committee at the Association of Canadian Pension Management, says Canadian DB plan retirees have a pretty good deal compared with some of their global counterparts, and especially next to the overwhelming majority of workers without a DB pension at all.

"In the case of an insolvency, all the money in the pension fund itself can't be used for anything other than supporting pensioners," he says. "Our regulations are pretty strong, and much stronger than other countries in terms of funding requirements."

In addition, Saulnier points out that Ontario plan members have an extra backstop in the form of the **pension benefits guarantee fund**, a government-run insurance program for plans with insolvent sponsors that guarantees pension payments up to $1,500 per month.

"You've got several layers of protection, which is way more than if you had no pension at all," he says. "If all you've got is [a registered retirement savings plan] and the stock market crashes, you're on your own."

But that's scant consolation for Tamblyn Watts, who remains convinced her organization and its Vibrant Voices partners can motivate an electorate —including those, like the younger McAuliffe, to whom such benefits are little more than a distant dream — to cast their votes with pension protection in mind.

"This is not just an older adult issue," she says. "Every working person should care about whether their pension is going to be there when they need it most."

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Saulnier isn't so sure. "I don't know that pensions are necessarily top of mind for the average Canadian, especially considering how few have defined benefit plans these days," he says. "Health care and the economy are probably higher up, so I don't know if it's going to be the main topic. But it is still important stuff."

A few years ago, Mike Powell might have reluctantly agreed with Saulnier's sentiments. As president of the Canadian Federation of Pensioners, another Vibrant Voices partner, Powell knows how easy it is for members of the general public to become blasé about retirees who lose a portion of their benefits.

His own federation once included a group of Nortel Networks Inc. retirees, before that company's sudden demise and protracted bankruptcy saw their expected pension benefits cut almost in half, thanks to a large unfunded deficit in the company's DB pension plan at the time it entered bankruptcy.

However, Powell says a smaller, more recent insolvency case may have changed the game in terms of public sympathies. "Sears seems to have resonated with Canadians, and made the issue much more real."

In the wake of Sears

Following its expansion to this country in the early 1950s as a joint venture with local retailer Simpsons, Sears Canada Inc. became a fixture from coast to coast. At its peak, it had more than 100 stores across the country. Even as it entered bankruptcy protection in June 2018, 74 large Sears Canada outlets were still in operation, plus more than 50 smaller or specialized locations.

In August 2018, its DB pension's $267-million deficit crystalized for around 17,000 plan members. It was underfunded by about 20 per cent, but pensioners' payments will be reduced by 30 per cent until the end of 2020, to compensate for previous overpayments, before reverting to the 20 per cent cut from 2021.

Read: A primer on Sears Canada employees' battle to protect their pensions

In line with an order of the Ontario Superior Court of Justice, the company also ceased providing post-retirement benefits, including life insurance and medical and dental benefits, while an administrator was appointed to run what remains of the pension plan.

Lawsuits launched on behalf of pensioners remain in progress, seeking the return of more than $500 million in dividends paid to Sears Canada shareholders in 2013, by which time the pension plan was already in the red to the tune of more than $100 million, according to court documents. Sears Canada, for its part, insists that all of its transactions were made within the law.

"Sears was ubiquitous. If you didn't work there, you knew someone who did or had some personal connection with the place," says Powell. "When that happened, I think people in Canada finally stood up and refused to accept what they've heard from experts for years about the security of their pensions. They thought, 'That can't be right,' and it's not."

As the federal Member of Parliament for the Hamilton Mountain riding, the New Democratic Party's Scott Duvall has been on the pension protection bandwagon longer than most, since many of his constituents either currently or previously worked at the iconic Stelco Inc. steelworks in the city.

Despite their relatively stable financial position under the current ownership — solvency levels hit 85 per cent following a recent cash injection as part of a deal with the union representing workers, up from less than 75 per cent in late 2014 — the Stelco pensions have a turbulent history that have put them at the heart of negotiations each time the company flirts, and indeed proceeds, with bankruptcy.

Read: **Feds launch consultations on enhancing retirement security of Canadians**

But Duvall also credits the events at Sears Canada in part for prompting the **federal government's recent consultation on retirement security**, as well as for propelling the idea of super-priority for pensioners in bankruptcy proceedings into the mainstream — as proposed in his private member's bill, one of three similar efforts currently before Parliament.

Although **Duvall's bill** is currently languishing after passing first reading in the House of Commons, and is unlikely to move any further before Parliament breaks for the upcoming election, it does propose amending both the Companies' Creditors Arrangement Act and the Bankruptcy and Insolvency Act to ensure any pension plan sponsored by an insolvent employer is fully funded before any other creditors are paid.

In addition, Duvall's bill would bar companies from proceeding through either restructuring process without committing to the continuation of post-retirement medical benefits. "We're getting a lot of traction and making great headway," he says. "But the government seems to want to procrastinate."

Government steps

Following a consultation in November 2018, the Liberal federal government announced some limited pension protection measures in its 2019 budget. The measures aim at making the insolvency process "fairer, more transparent and more accessible" for pensioners and workers by requiring all involved to act in good faith, and providing courts with the power to review and reverse certain payments made to the leadership in the run-up to bankruptcy.

"It's a missed opportunity," says Duvall, describing the proposals as a "lot of mini tweaks."

Saulnier says the federal government should act with the utmost care when proposing any alterations that may disturb the teetering balance performed by Canada's insolvency laws. "I'd be cautious about any measure that weakens plan sponsors or makes it harder for them to continue to sponsor a defined benefit plan," he says, adding that even apparently minor corporate governance changes can cause larger ripples than intended.

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"We felt the process was already fairly transparent," says Saulnier. "When it comes to repayments from executives, I can understand that maybe it plays well with voters, but any time a company goes through an insolvency, they need strong people at the helm. If you're not able to keep them, then you can end up with a bigger problem."

Anything as drastic as super-priority for pensioners would play havoc with plan sponsors' ability to "borrow at competitive rates, or even at all" to fund day-to-day operations, capital-intensive projects or future growth, according to Saulnier, who welcomes the federal government's apparent refusal to bow to pressure on that issue.

"When you change the order of priority of payment, you're effectively changing the way capital flows," he says. "Lenders need to have some understanding about the probability they will be repaid. Even uncertainty about the priority of payments can have an immediate impact on the value of a corporation."

Failing super-priority, CARP wants the federal government to form a national version of Ontario's PBGF to cover pensioners in every Canadian jurisdiction, and to lift the $1,500 monthly cap on guaranteed payments.

Ontario’s fund works by covering the entire shortfall in the first $1,500 of every pensioner’s monthly cheque. For those due larger amounts, anything above $1,500 would still be subject to a reduction in proportion to the entire fund’s overall deficit.

“It doesn’t seem to have adversely affected business in jurisdictions with higher levels of insurance,” says Tamblyn Watts, who notes that most of Sears’ U.S. pensioners will be better off than their Ontarian counterparts. This, even though the U.S. pension had a much poorer solvency level of around 64 per cent when the PBGF’s U.S. equivalent, the Pension Benefit Guaranty Corp., took over responsibility for the fund.

Read: What do pension benefits guarantee fund changes mean for plan sponsors?
The PBGC’s maximum guarantee is US$5,608 per month for a 65-year-old, with a sliding scale limit that varies with the age of the retiree when they begin receiving benefits. The result is that younger retirees receive a smaller guarantee, while 70-year-olds can actually potentially receive even more each month.

Still, pension guarantee funds aren’t without their critics. In a 2007 study, an Alberta statistician found the existence of Ontario’s PBGF was actually either the cause, or highly correlated with, lower solvency funding levels in the province compared with other Canadian jurisdictions since its foundation in 1980.

According to Nunes, the PBGF’s risk-based approach to premiums performs an inadequate imitation of a real insurance program and fails to charge sponsors properly in accordance with the risk they pose. “I don’t think there’s much appetite to expand any guarantee at a provincial or federal level,” he says.

Saulnier says the federal government’s focus should be on measures that strengthen plan sponsors, encouraging a broader move away from solvency funding requirements in favour of generally less onerous going-concern valuations, as well as a wider embrace of solvency reserve accounts. Those would allow sponsors to overfund the pension in good times on the understanding that it may reduce their obligations should market conditions deteriorate in the future.

“The more tools we have to provide flexibility in funding, the better for retirement security,” he says.

Read: Ontario releases more details on funding cushion in new DB framework
All of these options would be steps in precisely the wrong direction for McAuliffe, whose group is already gearing up for the election by putting together lobby kits for members to present to local MPs, particularly those in competitive ridings or with high senior populations.

“Pensions can be kind of complex, so we are helping them talk about the issue in a passionate way to make it real to MPs,” she says. “We’re not letting this go. We’ve got the heat on, and we’re ready to turn it up.”

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