Submission on Bill C-27 an Act to amend the Pension Benefits Standards Act, 1985 to the House of Commons Standing Committee on Finance by the Congress of Union Retirees of Canada

The Congress of Canadian Retirees of Canada (CURC) represents through its affiliated chapters 500,000 retired union members and their spouses. On retirement benefits, CURC aims to secure good pensions for working people and retirees. Thus CURC is strongly supportive of increasing the Canada Pension Plan/Quebec Pension Plan (CPP/QPP) to 50% of the average wage: CPP/QPP covers all workers and thus has a large contribution base to draw on, making it more efficient to administer.

Employer-based plans, which are also essential to Canada's pension system, have higher costs to administer and likely a lower rate of return compared to CPP/QPP. One factor that has undermined employer-based plans is a decline in the number of active (contributing) members, i.e. the ratio of contributing members to retirees ("former members"). Through collective bargaining and other consultations, both employers and workers attempt to resolve such challenges. But the government has decided that the way forward is to increase protection for employers at the expense of workers, the active and former plan members. Bill C-27 will do this by allowing employers to limit their liability through Targeted Benefit pension (TB) plans.

Bill C-27 introduces into the federal jurisdiction these TB plans. They are to be instituted in two ways: (1) to enable unregistered pension plans to be converted to TB plans under terms set down in Bill C-27; and (2) to allow TB plans to grow up beside and then (partially or entirely) to supplant existing Defined Benefit (DB) plans. This submission deals with the latter, particularly (not exclusively) those workplaces which have DB plans in unionized workplaces.

TB plans subvert the principle, enshrined in DB plans that retiree benefits cannot be reduced; only benefits that are added during the life of a DB plan can be calculated in a way different from the way in which the plan was set up. The rationale for this is that pensions are deferred wages (already-earned benefit) and the payment of these wages is under terms set down in the pension scheme. There are provisions in TB plans to encourage benefit target levels to be achieved but the fact is that employers are not obliged to meet any target payments, leaving plan members (contributors) and former plan members (retirees) with a scheme that is inferior to an existing DB scheme. The risks of the plan not meeting targets are transferred entirely to workers and retirees, because they bear the brunt of a missed target.

Why would the government have introduced TB in Bill C-27? The reason is that DB plans are alleged to be in a state of crisis and the best way to address the crisis is by weakening employers' obligations to pay deferred wages under existing pension law. But this crisis is manufactured, usually in one of two ways. The first is by citing the "solvency deficit" of a plan, the amount by which a plan would fail to meet obligations to plan members and retirees if it were terminated (wound up). These solvency deficits are due to the abnormally low level of long-term interest rates. Thus Canada Post's plan is said to be in crisis because it has a solvency deficiency of $6.8 billion, even though it often has an operating surplus and there is no chance of Canada Post going out of business. The second way is to point to annual operating deficits ("going concern"), though most of these can be and are remedied by recovery schemes, such as special solvency payments. A sub-category of this second way is where employers have failed to pay their agreed annual contribution to the plan, e.g. as a "contribution holiday" (workers have their own contributions deducted from payroll).

The government has no power simply to convert DB to TB plans. So it has inaugurated a procedure whereby the employer sets up a TB plan and then offers both active and former plan members the opportunity to drop DB membership in favour of enrolment in the TB plan. When an individual does this, her or his "benefit" is transferred from the DB to the TB. Though Bill C-27 is not entirely clear, a plan administrator can apply to the Superintendent of Financial Institutions to terminate a DB plan under the terms laid down in Bill C-27, thus facilitating total suppression of DB in favour of a TB plan.

Here are the main faults of TB plans detected by CURC, as they appear in Bill C-27:

1. ***Workers have limited power to prevent the introduction of a TB plan in the context of an existing DB plan.***

In non-unionized workplaces, the employer can simply set up a TB plan and invite active and former DB plan members to switch from DB to TB. Provided there is little pressure to trade away the integrity of a DB plan, a unionized workforce can prevent the introduction of a TB plan. Where an employer goes ahead to introduce a TB plan in spite of union objections, he could be challenged under the Canada Labour Code (Part 1, Sec. 94, Unfair Labour Practices); but collective bargaining cannot always solve the problems where the greater part of the workforce objects to a TB plan.

2. ***Decisions to go over to a TB plan are individual and voluntary but there will be pressures on workers to "surrender" (the term used in the legislation) their DB pension benefits in favour of TB.***

The introduction of a TB plan provides a framework; there is a further issue in both unionized and non-unionized workplaces as to how the employer gets workers to subscribe to the TB plan.

Bill C-27 is clear that this is an individual decision, not one of a group of workers. In non-unionized workplaces, it would be relatively easy for an employer to get workers to switch, though the outcome could not always be predicted. In unionized workplaces in which DB plan membership is a condition of employment, it would be a breach of the contract to try to induce workers and retirees (whether or not they are union members) to transfer to TB and thus subject to interest arbitration.

Where there is a contract clause making DB plan membership a condition of employment, the employer's gambit would be to have this condition removed in bargaining, leaving it open to inducing plan members to switch. Employers can exert all sorts of pressure and incentives for individuals to transfer to TB. Some of these could be in the form of benefits outside the pension scheme, so that a gain in this sort of benefit is exchanged for a loss of pension rights. One-time payments to compensate for increased risk are also a possibility. There is also the possibility of a split between contributors and retirees, since the latter, lacking bargaining powers as they do, are far less likely to surrender their pension benefits than active plan members. Further, new hires would be more likely to surrender benefits than more senior workers, a further source of conflict. Wherever there is a protracted industrial dispute or impending shutdown, workers may be pressured to agree to surrender their benefits and pension rights.

3. The governance of TB plans.

In the workplace, TB will be governed by a Board of Trustees or similar. Labour representatives on this body will be outnumbered and union influence minimal. There will be one representative of plan members and one of retirees if the number of the latter equals or exceeds a number prescribed in regulations. There is nothing to prevent the employer from being designated the "administrator" of the plan. This administrator is answerable to the Superintendent of Financial Institution for the proper administration of the TB plan, for its mandatory Governance Policy and for its Funding Policy.

Bill C-27 asserts that an authorized bargaining agent may under some circumstances consent to members' transfer to TB, a vague and dangerous provision, since a group transfer subverts the very terms of the legislation, in which transfer is an individual and fully informed decision. (The legislation suggests that bargaining agents may have powers outside the contract and the course of collective negotiations.) Group transfer would be an option in the settlement of a bitter industrial dispute, whereby workers would be pressurized to accept such a provision as the price of an agreement. The idea that workers cannot be pressured to give up pension rights is comparable in a limited way to United States labour law, where workers cannot be forced to take health and safety clauses off the bargaining agenda; these must be bargained to impasse.

4. The Limitations of the TB Funding Policy.

Every TB must have a Funding Plan approved by the administrator and in turn by the Superintendent. The Funding Plan must have a benefit formula which includes a target, a statement of employer and probably also employee contributions, a deficit recovery plan and a surplus utilization plan. Despite these provisions, there is no obligation on the employer's part to meet the stated target. Nor is there a proviso that employee contributions cannot be used in surplus utilization to subsidize future employer contributions to the plan. Nor is there any obligation of employers to disclose in corporate reports the extent of any funding deficits, only employer contributions. The reason is that a target is not a legal obligation so there is nothing to prevent pension liabilities from disappearing out of the books.

5. *The fate of DB plans when a TB plan is introduced*.

One condition of the health of DB plans is a high ratio of contributors to retirees. The lower the ratio of contributors to retirees, the more strain there is on the plan, since a large number of retirees is supported by a small number of contributors (active plan members). So the more contributors choose to opt out of DB -- or, more likely, are pressured to do so in favour of TB, the less viable the DB becomes. At this point, solvency deficiency becomes important, because any wind-up payout will be less than the value of a transfer in the DB plan before the introduction of TB. Remaining contributors to the DB plan will find that the value transferred to TB will be a fraction of their original value in the DB plan while a similar deficit in the retiree benefit will make it even more unlikely that the target payout in TB will be met. This is in spite of the elaborate provisions in BillC-27 to ensure that the remaining retirees in a DB plan get full or comparable benefits when the plan is wound up.

The most obvious way of remedying going-concern deficits is to raise funding to the DB as part of a deficit recovery plan – but this only provides a further incentive to transfer to TB and a further weakening of the DB plan! The flaws in the DB/TB transfer mechanism reveal the fact that, in the desire to destroy DB plans entirely, Bill C-27 has been badly thought out.

6. *Recommendation*

In view of such considerations, <u>the only solution is for Bill C-27 to be withdrawn in its entirety.</u> If we can step back a bit, we can see that the main flaw of Bill C-27 is that the decision to introduce the framework of a TB plan into a workplace with an existing DB plan is one made by employers and governments, not the workers, the beneficiaries of pension plans.