



## RESPONSE TO PETITION

Prepare in English and French marking 'Original Text' or 'Translation'

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PETITION No.: **421-00837**

BY: **Ms. JONES (LABRADOR)**

DATE: **OCTOBER 31, 2016**

PRINT NAME OF SIGNATORY: **SIGNED BY THE HONOURABLE NAVDEEP BAINS**

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Response by the Minister of Innovation, Science and Economic Development

SIGNATURE

Minister or Parliamentary Secretary

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SUBJECT

**PENSION SYSTEM**

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**ORIGINAL TEXT**

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**REPLY**

The Government of Canada would like to thank the petitioners for sharing their views on measures to strengthen protections for pensions and employee benefits. The petitioners call on the Government of Canada to:

- harmonize federal pension protection legislation with provincial pension legislation;
- require companies to make contractually-required pension payments;
- grant unfunded pension liabilities priority over all other creditor claims in cases of employer bankruptcy or corporate restructuring;
- require companies to maintain contractually-required post-employment medical and life insurance benefits to retirees; and
- hold non-Canadian corporations responsible for the unpaid employee claim obligations of their Canadian subsidiaries.

The Government welcomes input on these important issues.

The Government understands the importance of secure and sustainable pension plans. Towards this important objective, both federal and provincial pension laws contain similar measures to protect pensioners and regulate the funding of future pension obligations. Federal and provincial pension legislation both require that pension funds be held

in trust for the sole benefit of pensioners. Also, pension plan sponsors must comply with pension funding regulations and make periodic contribution payments based on actuarial assessments to the pension trust fund. If pension regulators find that a pension plan sponsor has unfunded pension liabilities (a deficit between a pension plan's current assets and its future obligations to pensioners), they may order the pension plan sponsor to make special payments to reduce the unfunded liability over time.

Private pension plans are regulated under the *Income Tax Act* and the applicable pension standards legislation, which can be either federal or provincial, depending on the employer's business operations. Plans sponsored by employers in federally regulated industries, which include banking, inter-provincial transportation and telecommunications, are regulated under the federal *Pension Benefits Standards Act, 1985*.

Although different legislation exists at the federal and provincial level, the funding requirements are largely similar across jurisdictions. Defined benefit pension plans are required to prepare actuarial valuations to determine the plan's liabilities, which in turn determine the required contribution levels. Should the value of a plan's liabilities exceed that of its assets, employers are required to remit to the plan additional funds to return the plan to fully funded status. Actuarial valuations are conducted using two different sets of actuarial assumptions: "solvency valuations" use assumptions consistent with a plan being terminated on the valuation date, while "going concern valuations" are based on the plan continuing in operation.

Federal insolvency legislation such as the *Bankruptcy and Insolvency Act (BIA)* and the *Companies' Creditors Arrangement Act (CCAA)* are important marketplace framework laws that enhance the ability of Canadian businesses to access credit, invest and create jobs for Canadians, while ensuring that creditors and other stakeholders, including employees and pensioners are treated equitably. Both the BIA and the CCAA contain provisions to protect pension claims and pensioners. The BIA has a limited "super-priority" that provides for the payment of outstanding regular pension contributions ahead of secured creditors. The CCAA provides similar protections for corporate restructurings. Canada's protection of pension claims in insolvency legislation is consistent with or exceeds the best practices of most Organisation of Economic Co-operation and Development countries.

The Government also understands the importance of secure post-employment medical, life insurance and other benefits. Post-employment benefits are provided under private agreements between employers and employees and take many different forms. They are intended to supplement basic protections offered by federal and provincial government social programs. Post-employment benefits are generally regulated by the jurisdiction mandated to regulate the employment relationship, and the extent of such regulation varies among federal and provincial jurisdictions and depends on the specific type of benefit offered. Funding of post-employment benefits also varies and depends on the terms of the agreement between the employer and the retired employees. Post-employment benefits can be insured, self-funded on a pay-as-you-go basis by the employer, or pre-funded through a trust fund paid for by employer and employee contributions. As post-employment benefits are usually a contractual obligation between the employer and employee, they are legally enforceable in accordance with their terms.

In the event of employer insolvency, post-employment benefits may continue to be paid if they are insured or pre-funded through a trust. In a CCAA proceeding, the court may determine that the suspension or termination of the restructuring employer's post-employment benefits is necessary for a successful restructuring that will maximize the recovery for all of the employer company's stakeholders, including pensioners and employees. The CCAA provides for safeguards to enhance the transparency and fairness of this process. Interested parties and stakeholders can make representations before the CCAA court on these and all other matters.

In some cases, Canadian companies that become insolvent or are wound-up with unpaid employee obligations may be the subsidiaries of foreign parent corporations. It should be noted that the Canadian subsidiary is required to meet the same obligations under applicable Canadian pension and employment standard laws intended to protect Canadian pensioners and employees as all other Canadian companies. While the Government has consulted on these matters, imposing new obligations on foreign parent corporations must be considered carefully, given the potential implications for Canada's international trade obligations and for the efficient operation of the Canadian economy.

Thank you once again for your interest in this matter and your proposals to improve pension and insolvency protections for Canadian pensioners and retired employees.