



House of Commons
CANADA

Standing Committee on Industry, Science and Technology

INDU • NUMBER 044 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, November 16, 2010

—
Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

Tuesday, November 16, 2010

• (1100)

[English]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Ladies and gentlemen, welcome to meeting 44 of the Standing Committee on Industry, Science and Technology.

We have quite a number of witnesses here today. They're listed on your orders. I know that some are stuck downstairs and they'll be making their way up. That means we have Mr. Rafferty and two witnesses here and of course plenty of members. We'll get started so we can try to stay on time.

Because of the nature of our meetings—they're so full with witnesses and we have so few—Mr. Rafferty, normally we'd have the mover of the bill give an opening statement and then respond to questions directly, but we're going to include you in the broader witness quorum so that we can move along.

Mr. John Rafferty (Thunder Bay—Rainy River, NDP): Chair, I'm quite happy not to answer any questions and just to give a brief statement, to allow more time for witnesses, because we do have a pretty packed schedule.

The Chair: Thank you, Mr. Rafferty. If you could keep your opening remarks to five minutes—

Mr. John Rafferty: Yes.

The Chair: —as will the rest of the witnesses, then you and the other witnesses will be subject to questions.

Please go right ahead, Mr. Rafferty.

Mr. John Rafferty: Thank you very much, Chair.

As parliamentarians we're charged with a high duty; that is, above all else, to look out for the public interest. To do this we must weigh the benefits of implementing certain public policies against the costs of inaction. It's a heavy responsibility, but I'm sure we can agree that when confronted by a social injustice we are necessarily compelled to act to remedy it.

What we have witnessed in recent years, during the economic downturn, is the emergence of a massive social injustice that went largely unimagined for a long time, largely because the conditions never existed. With the economic downturn we saw employers like Nortel, Air Canada, General Motors, and AbitibiBowater fail and the value of certain assets and investments sink on a scale not imagined in recent times. It was a perfect storm for workers. Employers failed, jobs were lost, and pension funds became insolvent. Lives were

decimated, and I have no doubt that some lives were lost during this crisis.

As parliamentarians we must bear the collective responsibility of having allowed these conditions to exist in the first place. But we bear an even greater responsibility today, and that is to ensure that such an injustice can never occur again.

Bill C-501 will do what, surprisingly, has not been done before. It would in most cases secure the pensions of all Canadians whose employers have fallen on hard times, have undertaken restructuring, have entered bankruptcy protection, or have collapsed entirely and had their assets liquidated. If passed, Bill C-501 will mean that every working Canadian can take comfort in knowing that their pension, their retirement, is as secure as possible.

We'll hear in these proceedings from those who will outline the dire need to implement these reforms. We'll hear from those who oppose such reforms. And we'll hear from others who are no doubt conflicted or have alternate prescriptions. In the end, I urge all members to remember that we alone have the ability and bear the responsibility to act in the interests of the people who have elected us to this place to govern on their behalf.

I believe it's time for Bill C-501 to become law. I believe the testimony of the witnesses will bear this out.

I ask all members of this committee who have thus far worked so cooperatively with me on this bill to continue to do so and to exercise our unique powers to ensure that such an injustice is never faced by a hard-working Canadian again.

Thank you, Mr. Chair.

• (1105)

The Chair: Thank you, Mr. Rafferty.

Now we'll move on to Mr. Laver.

I know you're setting up your communications. I need you to stay within the five-minute limit, please.

Mr. Ross Laver (Vice-President, Policy and Communications, Canadian Council of Chief Executives): Mr. Chair, honourable members, thank you for the opportunity to appear this morning.

I'd like to begin by acknowledging the efforts of John Rafferty and other parliamentarians on behalf of private sector workers who are covered by defined benefit pension plans.

The issue of pension benefit security is both serious and complex. Particularly in the wake of the global financial crisis, it has received a great deal of attention in Canada and throughout the industrialized world.

As you know, Parliament has already taken a number of important steps this year to strengthen protection for pension plan members. In the past, for example, a federally regulated company that terminated its DB plan would have been free to walk away from any deficit. As a result of legislation passed this year, such a plan will now have a claim on the assets of the corporation similar to that of any other unsecured creditor, the same level of protection offered to members of provincially regulated plans. Moreover, if the company is behind in its contributions or has failed to remit employee contributions, those amounts will be treated as super-priority claims. Both of these changes are fully consistent with OECD recommendations on pension benefit security.

On top of those reforms, plan sponsors are now also required to file actuarial updates every year rather than every three years. This is intended to reduce the size of future pension deficits by requiring that companies act sooner to make supplementary payments. Also this year, the federal government moved to restrict the ability of employers to suspend contributions when pension plans are in surplus, and to revise the previous tax rule that actually forced companies to halt contributions when the plan was more than 110% funded. Taken together, these changes represent a substantial and important overhaul of the rules surrounding defined benefit plans for employees of federally regulated companies.

Most provincial governments have implemented or are in the process of implementing similar reforms. So let's be clear. The pension system as it now stands is very different from the one that existed prior to the economic downturn.

The issue now with Bill C-501 is whether to go dramatically further by enacting changes that have not been tested in any other advanced industrialized country with a pension system similar to Canada's. Let me expand on that. The proponents of this bill have said repeatedly that most other developed countries already provide the kind of protection offered by Bill C-501. The truth is that most of the countries they cite have pension systems that are in no way comparable to Canada's because they rely predominantly on defined contribution or state-sponsored plans, as opposed to the private sector plans that would be affected by Bill C-501. On the other hand, Germany, Ireland, the Netherlands, Portugal, the U.K., and the U.S. do have pension systems similar to Canada's, yet in not one of these countries are pension deficits given priority over all other creditors in the event of bankruptcy.

Bill C-501, in other words, is an experiment. Before you decide to embark on that experiment, the members of the CCCE would urge you to consider the risks.

The most obvious risk is the impact that this bill will have on the cost and availability of credit. I suspect you're going to hear a lot about this during these hearings. The bill's supporters are going to tell you that the impact would be negligible, that you can go ahead and experiment with the pension system because the financial consequences would be minimal. That's not what the OECD says, however. In a 2007 study of pension protection, the OECD called the

idea of giving priority rights to pension creditors controversial—their word. The OECD report said, and I quote, that “assigning ‘super priority’ rights ahead of even secured creditors would likely have a major impact on capital costs, particularly given increasingly market based pension accounting and funding standards”.

Recently a number of independent studies in Canada have reached the same conclusion. I'll leave it to other witnesses to discuss the specifics, but they demonstrate convincingly that the cost to bond holders and companies would be in the billions. What's more, the impact of Bill C-501 would be greatest for precisely those companies that are most in need of credit to stay in business. Lenders would either refuse to provide more credit, or would demand punitive rates.

● (1110)

The bottom line is simple. If passed, this bill will almost certainly force into receivership and into liquidation companies that would otherwise have had a chance to survive. Far from helping workers, it would destroy jobs and hurt Canadian families.

In closing, let me again congratulate members of Parliament for the important steps you have already taken to strengthen Canada's system of private sector defined benefit plans. Bill C-501, however, is clearly a step in the wrong direction.

Thank you.

The Chair: Thank you, Mr. Laver.

Now on to Madam Urquhart for five minutes, please.

Ms. Diane Urquhart (Independent Financial Analyst, As an Individual): I'm going to speak technically this morning on the impact of Bill C-501 on the cost of credit.

My conclusion is that the cost-of-credit impact is small on investment-grade owners and corporations with defined benefit pension plans. By comparison, the impact is small relative to the high damages and costs to retirees and severed workers of maintaining the status quo.

With respect to the junk bonds, there is a higher impact, but these are speculative securities that investors recognize when they invest in them.

First of all, the impact of Bill C-501, based on my research, is that the overall bond market exposed to defined benefit pension plans will have an increase in the cost of credit of 20 basis points. This is consistent and in the middle of the range of the 12 to 29 basis points determined by Phillips, Hager & North, owned by the Royal Bank. In addition, my estimate of 20 basis points is consistent with the 25 basis points that has been the outcome of the research of Towers Watson. I believe both of those organizations will be before you.

This level of 20 to 25 basis points impact on the investment-grade markets is consistent with all of the international research that I have reviewed. The basis of my analysis is that the increase of 20 basis points is a calculable matter, as we have also seen with the other financial organizations, since the credit market is the present value of the impact of cash flows. What Bill C-501 does is to reduce the recovery rates for those corporations that do enter default; as a consequence, the risk premium needs to go up in order to compensate for the reduction in recovery rates. If we were not to take legislative change because there was a negative impact, then no legislative change would be undertaken.

The impact of a 20-basis-point increase in the cost of credit for the investment-grade markets is that all of the bonds that have exposure to defined benefit plans will go down only 1.5 percentage points. You'll hear later in this hearing that Phillips, Hager & North have done a roll-up of the top 60 bond issuers and they have determined that most of the bond issuers do have exposure to the defined benefit pension market. However, they too concur with my work that the degree of increase is approximately in the.... They say 12 to 29 basis points, and they consistently also agree that the impact on the bond market is only down 1.5%.

Based on the 20 basis points, the impact on the bond market as a whole is approximately \$3 billion, and that's consistent with what the Royal Bank has indicated the bond market impact is as well. There is also an increase in the cost for corporations. I'm saying that that cost is approximately \$3 billion, so the total cost of Bill C-501 on the Canadian economy, on a present-value basis, is approximately \$7 billion. Seven billion dollars is a nominal amount in relationship to both the bond market values outstanding and the corporate profitability dynamics.

What I'd like to note also is that with respect to pension funds the deficit today, on average, based on the Royal Bank analysis, is 20%. So what we're saying is that the bond market goes down by 1.5%, but for those companies that go bankrupt, the average deficit is 20%. Depending on what the value of the estate recovery is, that will be the degree to which the pension income must be cut in the case of the liquidations, and upon liquidation of corporations pension funds must be wound up.

As a consequence, I weigh the \$7 billion to the economy as a whole against the \$50 billion of deficits, of which a small proportion will have to be borne, and with fairly significant negative consequences, by the pensioners of companies that are in liquidation.

● (1115)

I'd like to make the point that there is a difference between liquidation and ongoing concern. When you have this small impact on the cost of capital, even in the fallen angels or junk bond part of the market, I'm saying that's 90 basis points. We are not saying that you must pay upfront the deficit in the case of a restructuring as an ongoing concern. That will still continue to be a matter of negotiation and determination with the liability remaining outstanding. The difference is, as in the case of Nortel, where the management decides to conduct a liquidation, there should be no basis where they've already determined to liquidate that the pension deficit isn't taken as a priority over the creditors at that point in time, the consequence of which is that it will have nominal impact on the

rest of the bond market and yet will be the right social policy as well as economic policy for the country.

The Chair: Thank you, Madam Urquhart. I'm sorry that I have to keep you tight to the five minutes because we have another panel coming in at noon.

Mr. Rienzo, for five minutes please.

Mr. Douglas Rienzo (Partner, Pensions and Benefits, Osler, Hoskin & Harcourt LLP): Thank you.

Good morning. My name is Douglas Rienzo. I'm a partner with the law firm of Osler, Hoskin & Harcourt.

I'd first like to extend to the committee our appreciation for the opportunity to appear before you and to contribute to the work of the committee studying Bill C-501. My colleagues and I at Osler believe we can provide this committee with a unique perspective on the issue of protecting pensions, which is the cornerstone of Bill C-501.

Osler is home to one of the largest groups of full-time pension law practitioners of any Canadian law firm through our teams in Toronto, Montreal, and New York. Our group represents a broad range of clients in the private and public sectors. Our clients sponsor some of the largest defined benefit pension plans in the country, regulated at both the federal and provincial levels.

My colleagues and I collectively have decades of experience in the area of pension law. We have worked with our clients in corporate Canada through years of constant change, from the times of pension surpluses to the present day when many are facing challenging pension funding issues.

Many of you have heard and read about the precarious health of private sector employer-sponsored defined benefit pension plans. The comments and concerns have come from employees, retirees, organized labour, and also from employer organizations. Consultants and academics have also expressed their views. The proposals that are put forward by these stakeholders are often conflicting, and the issues are extremely technical and complex.

One issue on which most commentators would agree, however, is that the health of a private sector defined benefit plan is entirely dependent on the financial ability of the employer to support it. This is particularly true in times of financial crisis, such as the one Canadian employers have been struggling with since 2008.

Although some may think that the financial crisis is now behind us, given the rebound in the stock markets over the last year, long-term interest rates are at a historic low and the impact of these low interest rates on pension plan funding is very significant. In fact, one might say that the current financial crisis facing pension plans results more from low long-term interest rates than it does from employer underfunding. In addition, market volatility has not disappeared and employers' contribution obligations continue to be onerous.

The stated purpose of Bill C-501 is "to ensure that unfunded pension plan liabilities are accorded the status of secure debts in the event of bankruptcy proceedings". That's from the summary.

Certain provisions of the bill appear to be limited to expanding the so-called super-priority status to all amounts that were required to be paid into the pension fund and are in arrears, including solvency deficit amortization payments. However, when the amendments to the Bankruptcy and Insolvency Act and to the Companies' Creditors Arrangement Act proposed by the bill are read in light of its stated purpose, the wording could result in the extension of super-priority status to the entire solvency deficit itself, and not just those solvency deficit amortization payments that are due but not yet paid.

Extending either super-priority or preferred creditor status to the entire solvency deficit would place significant additional burdens on the financial capacity of defined benefit plan sponsors and impede their ability to cost-effectively raise capital, adversely affect their ability to invest in Canada's economy and remain competitive, and negatively impact their ability to fund their pension obligations.

It is therefore critical that the amendments to the BIA and the CCAA proposed by Bill C-501 not be adopted.

A number of submissions to this committee have been or will be made showing the massive negative impact on credit markets in Canada that would result from granting priority status to solvency deficits. In addition to this impact, the proposed amendments to the BIA and CCAA could have the following results: first, the amendments could elevate billions of dollars of potential pension claims ahead of lenders in the priority ladder; second, the amendments could cause credit markets to re-value assets available for security and deduct higher-priority claims, thus resulting in a significant reduction of available credit; and third, the amendments could result in immediate default situations based on covenants in existing trust indentures restricting the existence of claims that would have priority over the existing lender.

The proposed amendments to the BIA and CCAA would, in certain circumstances, also result in the acceleration of the amortization of DB plans solvency deficits, which in most Canadian jurisdictions can be paid over a period of five years. In fact, it could be said that Bill C-501 is tantamount to mandating the permanent full funding of DB plans in certain circumstances, which is currently not required in Canada.

• (1120)

Let me briefly explain the current funding rules under both federal and provincial pension standards legislation.

While a plan is ongoing, every three years an actuarial evaluation has to be prepared, in some jurisdictions every year. The assets are valued and the liabilities are assumed to be fully settled. If the assets are insufficient, the deficit must be paid by the plan sponsor over a period of five years.

The proposed amendments to the BIA and CCAA would result in the acceleration of the amortization payments in certain circumstances by requiring a full deficit to be funded on a super-priority basis in the case of bankruptcy, or as a condition precedent to the approval of a proposal under the BIA or a plan of arrangement under the CCAA.

The Chair: Mr. Rienzo, I'm sorry, I have to hold you there. You can try to get the rest of your remarks in on a question.

Mr. McCracken, I'll have to keep you at five minutes.

Also, just before you start, Mr. McCracken, a welcome to the guests who are in the room. We're going to attempt to get some more chairs. There is a limit in this room as far as a fire code, so we're also checking to make sure that everybody is going to be safe as well. We'll bring in some chairs shortly.

Mr. McCracken, for five minutes.

Mr. Mike McCracken (Chairman and Chief Executive Officer, Informetrica Limited): Thank you.

I'll try to make my remarks cool, not set off any fires.

The Chair: Thank you. I appreciate that.

Mr. Mike McCracken: I was asked to comment on this, and I looked at some of the issues and some of the areas. I think the areas I can speak to are what I will call the macro effects, for lack of a better term. Is this going to shake the Canadian economy to its roots and lead to a doubling of the number of bankruptcies in the country or some other difficulty, or is it not?

In looking over the material, I guess the first comment is that as a result of what's already happened there has been an unfairness to pension recipients. The effect of that is going to have substantial macro effects. We haven't even addressed those in this discussion here.

It basically boils down to what a pension is. A pension is a delayed form of compensation negotiated with a group of workers, where they take that money later in lieu of current wages. This is of benefit to the company, which can then say it will pay that out of future earnings. It's a benefit to the employees, who postpone the tax until such time as they retire, with the mistaken belief that their tax rates might be lower than when they earned them.

It is in this event where we now have said we were kind of kidding; we're not really going to pay these pensions, or we're going to make it uncertain. It will be a crapshoot every time to see if you get your pension.

What's the reaction to that by people who are around the negotiating table? They're going to say "Okay, we'll take wages now. We'll put less value on the pension promises in the future, and as a result, you should expect wages to go up in the short run."

Some people I know are concerned about competitiveness. They're worrying about the cost of borrowing, as if that were a major element of competitiveness. The wage bill for most companies, the value added, is 60% or more. If that goes up, then you have pressures of a competitive nature.

Now, do you lose sleep over that? Some do, and some don't. Some would point out that there are other ways to improve competitiveness. Certainly it's a relative concept. From the corporate viewpoint, if a one-cent or two-cent depreciation of the dollar occurs, that should more than put you back on end in terms of competitiveness.

As you go through your deliberations on this, think about how this is going to change the dynamic of the way Canadians negotiate with companies.

It's unfortunate, but I don't think there's any way this move and this piece of legislation is going to restore trust between employees and companies. It is a very small step in that regard. I wish we had a more magic way of doing it. At least it's a step in the right direction, and it may mean that people are still prepared to accept pensions of one form or the other.

The other item I would quickly mention, to stay within my time limit, is that the debate here isn't in some sense about these macro terms; it's a debate among a group of people who are in a room and they're told to line up and we're going to give you a haircut. What's the order of that lineup?

We're saying that people who don't have experience on an ongoing basis in dealing with bankruptcies, as most creditors would, ought to be at the front of the line. Usually a pension is the single biggest financial asset, and now it's a loss for most individuals who are involved in it. There is an issue of what they should do. Where should they be placed in this haircut room?

It is likely—and this is something you probably cannot restore under this particular bill—that people will still have a haircut. Pensioners are still going to lose. The question is are they going to lose lots, or all of it, or less than they might otherwise? That's what this is about. It strikes me that a move in this direction would be a positive step, along with some of the other measures that were taken in recent legislation.

Thank you very much.

• (1125)

The Chair: Thank you, Mr. McCracken.

Now we're going to go to our questions. We're going to stick with five-minute rounds, and that way we'll get the maximum amount of questioning in.

We'll start with Mr. Garneau, for five minutes.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

I'd like to ask my first question to Mr. Laver. You represent a great many companies in this country. You've talked about the potential impact to credit markets and the cost of borrowing. You've expressed concerns from that point of view. I took it from what you said that basically we should leave things the way they are.

I'd like to ask you a very political question, if I may. What do you say to the Nortel employee who has contributed their entire career to a pension and who, in this particular case—and there will be other examples—risks getting only 70¢ on the dollar as a result of the way things are set up at the moment?

Mr. Ross Laver: Thank you for the question.

First of all, are we talking about a situation in which the employer did not make the required contributions to the plan, and did not forward the contributions made by the employees? The Nortel case is a tragic one. A lot has been said about it. It was the worst kind of perfect storm, if you will.

But the reason we are talking here about pension deficits and what to do about them is not that contributions are not being made on behalf of employees and employers. It is because the value of the investments in those plans and investments on behalf of employees in everything from bonds to equities and other securities fluctuates. The reality is that in the years we're talking about, every Canadian who invested in the markets, every Canadian who invested through an RRSP or a defined contribution plan took what Mr. McCracken correctly calls a haircut.

In the case of Nortel, unfortunately the music stopped for a variety of reasons, which I won't rehash right now—and we're talking about a company that was clearly badly run—but the music stopped at absolutely the worst point in the economic cycle, the time of a worldwide financial crisis and huge losses in equity markets.

• (1130)

Mr. Marc Garneau: Thank you.

If I pick up on what you said—that the company was badly managed and did not make the contributions that it should have—

Mr. Ross Laver: Sorry, I believe they did make contributions.

Mr. Marc Garneau: That's what I understood you to say.

Mr. Ross Laver: They did make the contributions, but I'm talking about the accounting scandals at that company.

Mr. Marc Garneau: So basically you're saying that in the case of a company that may have accounting scandals there's really nothing anybody can do. There's really nothing we as legislators should be looking at to ensure a greater level of protection.

Mr. Ross Laver: I think you'd probably agree with me that nothing in this bill will do anything for the Nortel pensioners. Those cases have already worked their way through the courts.

Mr. Marc Garneau: I don't want to get into that issue right now. I'm talking about any other company that will face a similar situation.

Mr. Ross Laver: The question is, if you want to, in effect, make people whole—whether it's Nortel or another company—you have to determine where that money is going to come from and who's going to pay for that. The money is not going to be invented out of thin air. If you're going to, in effect, repay into the plan the money that was lost through investments in equities and other instruments that have gone down in value, you have to figure out where that money is going to come from. The question is whether it is right that it come from, for example, the small-trades people who have debts with those companies or are owed money by those companies.

Mr. Marc Garneau: I want to get a second question in, so I'm going to stop you at that point.

This question is for Mr. Rienzo. Interpretation of what Bill C-501 actually says is problematic. You spoke quite a bit about it. Our interpretation of the bill is that it in fact makes changes to only a very small portion of what we call the “special payments” that were to have been paid by the company pension plan during the time between restructuring and actual bankruptcy. That’s our interpretation of what Bill C-501 actually does. It touches only that special payment part of it. So given that, would it be fair to say that maybe we’re making too much out of the predictions that this is going to throw the credit markets into turmoil as a result of what is actually contained in Bill C-501?

The Chair: As briefly as possible, Mr. Rienzo.

Mr. Douglas Rienzo: Thank you for the question.

I have two concerns about that. First of all, the bill could perhaps be clearer on the point. I understand that it could be interpreted just to apply to missed special payments at the time of bankruptcy. I have a couple of concerns about that, just from a technical point of view.

First of all, the stated purpose of the bill is very clear, and I think that’s why people are concerned that the intention is for it to cover the entire pension deficit. So we want to make sure that the submissions are made now, so that the intention as stated in the summary—

Mr. Marc Garneau: Never mind the intentions: how do you read what it actually says?

Mr. Douglas Rienzo: I understand what you’re saying and I understand that it could be interpreted to just apply to those payments, so there are two other concerns there. First of all, Parliament is already passing Bill C-9, which deals with other ways to strengthen the pension system, at least on the federal level.

There’s a provision in the bill which provides that if a company becomes bankrupt, then all the money needed to fund the deficit becomes immediately due and payable. So there’s a balloon payment due on bankruptcy. The concern there is that Bill C-501, in combination with Bill C-9, could cause the entire deficit to be due right on bankruptcy, and therefore that super-priority could apply to the whole deficit. So there’s a concern there.

The other concern is—

• (1135)

The Chair: That will have to be it. I’m sorry.

Mr. Douglas Rienzo: Ask me again. I’ll tell you the other concern.

[*Translation*]

The Chair: Mr. Bouchard, you have five minutes.

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Thank you, Mr. Chair.

Ladies and gentlemen, good morning. Thank you for being here this morning.

My first question is for Mr. McCracken.

If pension plans were to become the responsibility...

[*English*]

Mr. Mike McCracken: Excuse me. I’m not getting any interpretation through here, or just very faintly. Sorry about that.

[*Translation*]

Mr. Robert Bouchard: Mr. McCracken...

[*English*]

Mr. Mike McCracken: Okay. It’s better now.

[*Translation*]

Mr. Robert Bouchard: Thank you.

If the federal government were to take responsibility for pension plans, as Quebec has done to avoid pension funds being liquidated, do you think this move would provide better protection for retirees than that provided under Bill C-501, which is currently before us?

[*English*]

Mr. Mike McCracken: I’m sorry, but I’m just not getting anything coming through here that I can make sense of. Perhaps when we come back.... Or someone else can answer the question, or phrase it for me. That would be helpful.

The Chair: Can you hear okay on your headset, Mr. Rienzo? Okay, then, why don’t you—

Mr. Mike McCracken: Go ahead again.

Yes, that’s perfect.

I’m sorry, Mr. Bouchard. Would you please restate that?

[*Translation*]

Mr. Robert Bouchard: If the federal government were to take responsibility for pension plans, as Quebec has done to avoid pension funds being liquidated, do you think this move would provide better protection for retirees than that provided under Bill C-501, which is currently before us?

[*English*]

Mr. Mike McCracken: It’s hard to say. I do think that anything we can do to make companies responsible, with a longer-term view, for the obligations they’ve entered into would be a plus.

I would also point out that on this list of who gets what when, the federal and provincial governments are at the top of the list. They’re number one, the crown. What happens when a pension is not paid? Who loses? The pensioner loses. But for the pensioner, that income is subject to tax at this point, and roughly half that income will go to the crown.

So the crown sits here, they take any claims and then they look out and see what’s happening and they’re not terribly concerned about what’s happening, but they should be. They should be prepared to put on the table something to cause pensions to be paid and to help pensions be paid, since they’re going to get back 50% of it; and that 50% is a combination of income tax and clawback of OAS and GIS, etc.

So it strikes me there is a vital role, particularly for the federal government, in ensuring that pensions are paid out, and not just for the individual benefit of the people, the voters, but also from a fiscal viewpoint. As long as they make a contribution that's less than half, they're ahead of the game compared to just sitting there and doing nothing.

Does this bill do that? No. Will this bill help? Will it show a direction? Will it give you a sense that yes, we do have to look at the nooks and crannies of this system and we need to protect workers who otherwise are going to get a haircut that might be right at the neck? And we don't want that; I don't want that. So that's where I think there is a role for the federal and provincial governments to play strongly in this area.

• (1140)

[Translation]

Mr. Robert Bouchard: Thank you.

Ms. Urquhart, you anticipate that giving pension funds priority in case of bankruptcy would increase the cost of credit for companies. You even talked about a percentage between 0.16% and 79%.

How did you arrive at these figures?

[English]

Ms. Diane Urquhart: First of all, the impact is negative 1.5%, not what you just said. I said 20 basis points, so that's 0.20%. So if the mid-term bond now is at 3.25% interest rate, I'm saying that's going to go to 3.45% interest rate, so that's a difference of 0.20%.

When the interest rate goes up, the value of the bond goes down. So we can, through bond calculators, say that if interest rates go up by 0.20 percentage points, that means the bond value is going down under 2%. So it's in that context that I say that the damages of a full payment of the deficits that are currently in place would have only that nominal impact on the bond market as a whole. That compares to the average deficit today at 20%.

So with a 20% pension deficit, the bankrupt company results in the pensioner taking a 20% haircut. Fixing that problem with either super-priority or preferred status has only a very small impact on the value of current bonds. So we say that's a reasonable balance for this government to take as a matter of social policy.

If I had more time, I'd talk about some good business reasons to do it as well, but that is the answer to your question.

The Chair: Thank you, Madam Urquhart.

Thank you, Monsieur Bouchard.

Now on to Mr. Lake for five minutes.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): I'll start with a really quick question for Mr. Rafferty.

Do you agree with Mr. Laver when he says this bill does nothing to help Nortel pensioners specifically?

Mr. John Rafferty: It's difficult to say at this point, because we've just started the hearings. Some amendments may be put forward over the course of the next two weeks. There may be some changes or things that members of the committee put forward. I don't know quite yet.

The bill as it stands is not retroactive.

Mr. Mike Lake: Okay.

A question for Mr. Laver. Of course the Bankruptcy and Insolvency Act is the responsibility of the industry minister, and John Manley, one of the longest-serving industry ministers in Canadian history, has commented on this. I'll quote from a public letter that he wrote and then have you comment. He says:

...Bill C-501 would weaken the financial viability of companies that sponsor those pensions, as well as the financial well-being of many Canadians who do not have such plans.

Bill C-501 does nothing to help Canadian businesses avoid bankruptcy. Instead, it only increases the possibility that companies with private pensions will fail. Nor does the bill benefit Canadians who do not have access to private pension plans. In fact, it could potentially hurt Canadians who invest in corporate bonds directly or through their retirement savings plans.

Can you expand on these points and maybe address some of the testimony you've heard today in light of those comments?

Mr. Ross Laver: Thank you for the question.

As I said before, if we are going to find money to make whole people who belong to defined benefit pension plans that were appropriately managed but invested in the markets that have taken a nosedive so there is a large deficit... We are not talking here about a bill that's designed to simply ensure that companies make their lawful payments. If we're going to find that money it has to come from somewhere. As I think Diane Urquhart acknowledges, it will partly come from the value of outstanding bonds.

Pensioners and any Canadians who have RRSPs invested in balanced mutual funds, bond funds, or what have you, have money invested in the large pension funds, such as the Canada Pension Plan fund, the teachers' pension fund, the OMERS pension fund, and the Caisse de dépôt. They all invest billions of dollars in Canadian bonds.

Ms. Urquhart, if I understood her correctly, said this bill would not be a problem because it would only reduce the value of those bonds by \$7 billion. That's taking money out of investments held by other Canadians and using it to compensate the small minority of Canadians who belong to defined benefit pension plans.

• (1145)

Mr. Mike Lake: Mr. Rienzo, you had another concern to bring up on Mr. Garneau's questioning, or maybe Mr. Bouchard's. Do you want to elaborate on that now?

Mr. Douglas Rienzo: Sure. Thank you.

The concern is that even if we assume the bill as it may be amended is confined only to payments that are missed, pension plan deficits have to be funded over time. As we all know, restructuring can take a long time, so from the time a company goes under CCAA protection, it could be years before it emerges from that protection. If the court has approved suspension of special payments and those payments are missed, then drip, drip, they will go into this super-priority protection.

You really have a smaller example of the problem if the whole deficit goes into super-priority protection. If there's a \$1-billion deficit that's being paid over five years, hundreds of millions of dollars could fall into this super-priority protection as the company is under CCAA protection. It could make it more difficult to emerge from that protection, and may cause the parties to decide they might as well just have a bankruptcy declared on day one, because they don't want to expose themselves to this. Then you can't emerge from protection until those amounts are paid anyway.

You might think of it as going into protection with just the amounts owing today falling into the super-priority protection, but it could actually be a very substantial amount and a big proportion of the deficit if the restructuring takes place over a number of years, as has happened recently in Canada.

Mr. Mike Lake: Thank you.

The Chair: Thank you very much, Mr. Rienzo.

We'll go to Mr. Rafferty for five minutes.

Mr. John Rafferty: Thank you very much, Chair.

I'll continue my questioning along the lines of Mr. Lake's.

I have two questions. One is for Ms. Urquhart and involves credit default swaps as they relate to forced liquidations. That will be my second question. My first question is for Mr. Laver.

Last year in November a COMPAS research poll was undertaken for BDO Dunwoody. It sampled CEOs right across the country, and many of your members, on how best to handle the issues of pension shortfalls, bankruptcy, retirement, and income security in general.

The findings of the study were summarized by the firm as follows:

Among potential new reforms being proposed by some opposition members, panellists are especially supportive of the idea of legal prioritizing of pension rights in the event of corporate bankruptcy.

I'd like to ask you a two-part question, Mr. Laver, and feel free to be brief.

Don't you think that Canada's CEOs really do care about the plight of workers and retirees of their companies and want something done?

Aren't you, Mr. Manley, and others really overplaying the level of opposition that exists among members of Canada's chief executive officers?

Mr. Ross Laver: Let me start on the issue of the poll you mentioned. I can absolutely assure you that none of our members were among the "CEOs" in that poll. That poll is notoriously misrepresented as a CEO poll. It is in fact a voluntary, web-only survey of members of small-town chambers of commerce.

Mr. John Rafferty: So BDO Dunwoody was very careless in....

Mr. Ross Laver: No, I would say that the news reports of those polls are careless.

In any event, you asked whether CEOs of large companies care about workers. CEOs of large companies are trying to remain in business and are trying to keep their companies operating. When they operate, they continue to employ people.

The issue here is that when a company is in trouble, when it's in distress—and it may be in distress because worldwide demand for newsprint has gone down, as in the case of AbitibiBowater, or it may be in distress because car sales in North America have fallen off a cliff and people aren't buying vehicles and can't get credit to buy vehicles—it needs credit to carry on and to pay its workers. If it cannot get those loans, then it has no choice but to go out of business and put workers out of their livelihoods.

• (1150)

Mr. John Rafferty: So you don't feel that you're overplaying the level of opposition you have to this.

Mr. Ross Laver: No, I don't feel I'm overplaying it, absolutely not. I quoted from a report by the OECD, an OECD working paper on benefit protection in 2007, which did a roundup of the forms of defined benefit pension protection in many countries and concluded that this was a controversial area. I suspect that's why no other country has gone this route.

Mr. John Rafferty: Thank you, Mr. Laver.

Ms. Urquhart, can you elaborate on your findings? You've done a lot of work on credit default swaps as they relate to forced liquidation.

Ms. Diane Urquhart: Yes, I was a financial expert in the asset-backed commercial paper bankruptcy, which was the largest bankruptcy in Canada. It involved \$220 billion of credit default swaps.

I have updated my analysis and have determined that there are \$4.5 trillion of credit default swaps on the global junk bond market. There are only \$2.5 trillion of junk bonds. The conclusion I reached is that credit default swaps are a form of insurance for the bond owners of the world. You can purchase credit default swaps, which have the impact that, should a company enter bankruptcy, you can get a cash settlement for all of the damage on the bond that the bankruptcy creates.

There is a serious problem in the bankruptcy laws of Canada and throughout the world, because there is no requirement to disclose your position in credit default swaps. You may be fully hedged or in fact short and yet drive a bankruptcy process.

The problem is this. In the 1750s you could buy insurance on ships you didn't own. Needless to say, many ships sank in the oceans. The reason for having this insurance is that you could collect on the insurance of the sinking ships and were able to make substantial profit. Exactly the same is happening today in the credit default swap markets affecting junk bonds.

We believe that if there isn't change in bankruptcy law, the credit default swap has the impact of substantially increasing the frequency of bankruptcies. It also has the impact of creating liquidation of companies without any effort to continue as an ongoing concern, which is what we saw in the Nortel case.

If we don't adopt Bill C-501, we have a situation in which more than twice the value of the junk bonds of the world is covered by credit default swaps, the impact of which is that you get to receive a cash settlement, you get to keep the bonds, you get to take the billions of dollars out of the obligations to top up the pension fund, the consequence of which is that you make a higher profit as a result of the bankruptcy and that you prefer a liquidation.

If we do Bill C-501, we believe it will be the stick that ensures you do not want to liquidate, because if you do liquidate you have to owe up all the billions that are owed. You would rather restructure.

So I have the opposite opinion from the council of CEOs.

Thank you.

The Chair: Thank you, Madam Urquhart.

I'm sorry to cut you off. I gave you a little bit of grace there, but we need to get on.

It's Mr. Rota's turn now, for five minutes.

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): Thank you, Mr. Chair.

Maybe I'll have a question for Mr. Laver, who said that Nortel was badly run. Later, Mr. McCracken said that we should move to protect workers from getting a haircut at the neck—pretty graphic.

With these comments, how can you suggest, Mr. Laver, that doing nothing is okay? I would tend to look at this bill and say that it really doesn't do a heck of a lot to solve the problem, but maybe you can explain to me how doing nothing is a solution.

Mr. Ross Laver: Doing nothing would not be a good move, and that's why I congratulated parliamentarians for all the steps that have already been taken this year: about half a dozen significant reforms that have been passed by Parliament and introduced through regulation. I don't think anybody can accuse the House of Commons or the Government of Canada of doing nothing about this problem. An awful lot has been done.

My point is simply that before we stray into untested territory to do something that no other country with a pension system like Canada's has done, maybe we should allow the effect of these reforms to be felt through the system.

When, as we are doing now, we are moving to a requirement for annual actuarial updates of pension deficits and for accelerating the new payments into the fund to make up any deficit, that's a significant step forward. I think it would be a mistake for anyone to suggest that Canada's done nothing here. Canada has done a lot.

• (1155)

Mr. Anthony Rota: Thank you.

I have a question for Mr. Rienzo, if you don't mind.

In looking at this and based on a lot of the calls I've had on this bill, it seems that former Nortel employees who are watching this bill with the hopes that... They were almost led to believe that this was going to be the messiah that was going to put their pensions back in place. In reading it, you realize—in my interpretation, and I guess some of the legal interpretation that came forward—that it only affects pensions from restructuring to bankruptcy.

As you mentioned earlier, that could be a very short period, based on the legislation that comes forward. It's an oversight, obviously, of those who put this together.

How would you fix this, or what would you propose to avoid the problem of going from restructuring to bankruptcy in a quick mode? Really, there is a very short series of payments.

You mentioned that the whole amount of the capital would be frozen. But the interpretation I have looked at said it would just be the payments that are made within that period, which still do not constitute a great amount. It doesn't help the Nortel people at all and it doesn't help anyone going into a bankruptcy with a pension.

Mr. Douglas Rienzo: Thank you for the question.

I won't comment specifically on the Nortel situation.

I'm not sure what you mean by what I would suggest in order to fix the bill. If you're saying that the problem with the bill—

Mr. Anthony Rota: How we solve the problem is what I'm looking for.

Mr. Douglas Rienzo: Do you mean the problem of protecting pensions?

Mr. Anthony Rota: Exactly.

Mr. Douglas Rienzo: I agree with Mr. Laver that Parliament has already done a lot, and most provincial jurisdictions are also embarking on very substantial pension reform. In my view, that's the way to go about it, to make sure that the ongoing pension system can address these problems, to make sure that deficits would perhaps not get out of hand.

There are reforms being proposed, for example, in some of the provinces whereby amendments could not be made if those amendments would increase the liabilities while the plan is in a deficit. Before, an employer could amend its pension plan, promise more benefits—perhaps trying to get something out of collective bargaining—even though the plan was already in deficit and this would only increase the deficit.

In my view, the way to go about this is through the steps that are already being taken, not only on the federal level but also at the provincial level, to strengthen the pension system we have.

The concerns we have about this bill are the unintended consequences. I don't think anybody would disagree that the idea of protecting pensions is a noble goal. It's the unintended consequences of this particular bill that cause concern.

The Chair: You have 30 seconds, so be very brief.

Mr. Anthony Rota: I'll just pass.

The Chair: Thank you, Mr. Rota.

I forestalled mentioning it, but I have a real problem with the analogy of a haircut.

Mr. Wallace, you have five minutes.

Mr. Mike Wallace (Burlington, CPC): First of all, thank you to the witnesses for being here.

I only have a minute or two, so I'd like a clarification. I appreciate the mover of the motion indicating that it is not retroactive, as is presently stated, so that those in the room who are thinking this is a panacea for Nortel issues will know it's not the case.

The other part of the bill on which I need some clarification from the witnesses....

Ms. Urquhart, it's nice to see you again. I'm on the finance committee, so I see you a lot.

One of the issues for me is that the bill talks about super status. Others talked, as I think you did in your presentation, about preferred status. There are four levels: there is super, there is secured creditor, preferred, and then the rest of the gang, including corporate bonds and suppliers.

Does your evaluation change at all based on the status that the bill reflects? The bill reflects super status at the present moment.

Ms. Diane Urquhart: Basically, I've looked at the market as a whole: all of the bank debt, all of the bond debt, the pension deficit, and then the equity in the economy. I think I've sorted out in my mind that for the economy as a whole, as long as the recovery is 40% in the bankruptcy, then the secured creditors and the pension deficit would be covered. As soon as the recovery goes below 40%, if the pension deficit goes ahead of the secured, the secured bank loans start to be impaired.

• (1200)

Mr. Mike Wallace: Thank you very much.

Ms. Diane Urquhart: So I think that gives a perspective.

Mr. Mike Wallace: I understand.

Mr. Laver, I appreciate your commenting in your presentation about the stuff that has already happened. As you know, it takes time around here for things to get implemented. They may get passed in Parliament, but by the time they get regulations and are put into the marketplace it does take a while.

What is the recommendation from your organization of how long we should see what the impact is of what has been already moved and put in place in the law before we move any further? And does your organization have any other suggestions you'd like to provide to this committee on what we could also be doing?

Mr. Ross Laver: The short answer, if there's very little time left, which I guess there is, would be to take a look at what other countries are doing. I think in many areas, Canada represents best practice as far as the protection of pensioners is concerned. There are other models.

There are, unfortunately, no magic wands to be waved to prevent something such as we saw in the markets over the last couple of years. I would say that, in terms of how much time we should wait to see, the issue here really is that if interest rates remain low—at the historically low levels that they are right now—we're going to have an awful lot of problems in this country, and the ones we've seen so far will only be the tip of the iceberg.

There was a report a few days ago about the massive unfunded deficit in public sector defined benefit pension plans, which are in effect more pay as you go. So I think in terms of the defined benefit

private sector plans that this bill is intended to address, as I say, the changes that have already been made have significantly improved protection for pensioners. Yes, some of those effects will be felt as the measures are implemented over the next few years. I think if Parliament wants to take a look at what other countries have done in this situation, it might find some useful examples for us to follow.

Mr. Mike Wallace: Thank you very much.

Thank you, Mr. Chair.

The Chair: Thank you very much to the witnesses.

We're going to suspend now for a couple of minutes and have the next wave of witnesses come in.

• (1200)

(Pause)

• (1205)

The Chair: Ladies and gentlemen, in order to stay on time, we want to get started again.

We're going to start. Rather than introduce the witnesses and take up time, I think you'll see them on your orders.

I'll start with Mr. Hilton, who says he's ready. Mr. Hilton, please confine your remarks to a maximum of five minutes.

Mr. Robert Hilton (President, Canadian Federation of Pensioners): I'll endeavour to do that.

I'm here today as the former president of the Hamilton Specialty Bar Slater Steel Salaried Pensioners Association to talk about Bill C-501.

I want everybody in this room to be fully aware that nobody from the Slater Steel group is going to get any benefit out of this, because our plan has been wound up. What I would like to point out is that when our plan was wound up, while the pension side of the plan meant I lost 23% of my income, when you add to that the compounding effect that I lost all of the benefits that I was supposed to get for life, the net effect is 35% of my pension.

Now, my pension was better than average within the company.

I'm also the president of the Canadian Federation of Pensioners, and as president of CFP I'm here on behalf of the 15 pension associations, with memberships exceeding 150,000.

We as a group certainly hope that all members of Parliament in attendance today are here with a truly open mind, even though my own MP has issued an e-mail that indicates that's not truly the case for everybody.

There are some people in this country who think that pensioners on private pensions are fat cats, or, because some are or were members of unions, they don't deserve any consideration. Neither comment is either correct or fair.

I'm going to provide you some simple statistics from the Bell pensioner association. They total some 32,000 members in their defined benefit plan. Their pensioners' average age is 68. Their average annual pension is the grand sum of \$22,000. For the survivors, their average age is 74 years of age. Their average pension is less than \$15,000.

So let's put a little bit of an equation there: take \$15,000 and 10% is \$1,500; 20% is \$3,000; and 30% is \$4,500. Now, for most of the people in this room, if your income dropped by \$4,500, you would complain bitterly. But for those pensioners, if it dropped \$4,500, they're in a disastrous set of circumstances.

And I might point out that the Bell pension plan is more generous than most.

I would also point out that our pension plans are nothing but deferred wages. And I can state that at one point in time, when the marketplace went south for steel, the company did not give out salary increases. They said to the employees, "We can't give out salary increases this year, but we're going to modify your pension plan and improve it a little bit." That meant that they were giving a little bit, but they were delaying how they were having to pay it out.

Now, if you're protecting current employees at a certain level for that last little bit of their payments, their salaries, why should we be treated any differently? To do so is unfair. On that basis alone, we should in all fairness be granted "preferred" creditor status—and I read the word "preferred" as opposed to "secured" or "super-priority" for a very good reason. We certainly feel we should be ahead of the bond holders and the junk bond lenders or any unsecured creditors.

The other thing I'd like to point out is, as a member of a DB plan, there was a limitation that was placed on the amounts that we could contribute to registered plans, such as RRSPs. That limitation reduced the amount that we could have done compared to other people. Hence, if we're forced to take a reduced pension, then we're being victimized twice over: once on the pension itself and secondly due to the RRSP limitations.

I don't have to talk about what Diane Urquhart has said because she's been here today; you've heard it. Mr. Manley and his fellow CEO associates take exception to a lot of what has been said and they certainly would like to not change the plans. In fact, my MP has stated it could be as high as a 35% cost. Yet you heard this morning what Diane said. Interestingly enough, they haven't provided the studies that would say it would be much higher. Diane Urquhart has been very open about where her studies were done and how.

• (1210)

Preferred status is the norm in many countries. Yes, it's not the status in all countries, but in many of the countries where it is not the status there are other mechanisms put in place to take care of failed pension plans.

The Chair: Mr. Hilton, I'll have to cut you off there. We have a very tight timeframe of only one hour here and all these witnesses to hear. You will be able to try to make the rest of your remarks during questions.

Mr. Robert Hilton: Okay.

The Chair: Mr. Rutherford, for five minutes, please.

Mr. Brian Rutherford (President, GENMO Salaried Pension Organization): Thank you.

Thanks, Bob. And I thank the committee for seeing us.

I'm going to take a different twist at this. My name's Brian Rutherford. I'm the president of GENMO, which is an organization of salaried General Motors retirees. We formed and incorporated in 2009, when General Motors was in deep distress.

I will talk about the rights of deferred payment first.

Most business transactions have terms of payment, such as net immediate, net 25, net 30. Most of those terms of payment are deferred. The company I worked for had payment terms of second month, second day—there's a new one for you—that stretched the suppliers' payments to 45 days. As for the Companies' Creditors Arrangement Act, or CCAA, these deferred payments only to suppliers are recognized. Suppliers are unsecured creditors. After their obligations owing to the secured creditors are satisfied, the unsecured creditors have the opportunity to receive payments for goods or services that they provided to the insolvent company prior to and during bankruptcy protection.

Employee pensions are a deferred payment. Employees have contracts with their employers. It is a legal understanding that as an active employee, you will receive an agreed-upon compensation at a set frequency. You're also earning a deferred compensation that you will receive at a future date. This deferred compensation is normally in the form of a registered pension plan. As for federal and provincial pension laws, the employer as the plan sponsor is legally obligated to ensure that the pension plan is adequately funded. A healthy pension plan fund should be in excess of 85% funding on a solvency basis.

The suppliers and their deferred entitlements are recognized in CCAA as unsecured creditors. Pensioners, at the very least, should be no different. This is just.

Current bankruptcy legislation does not reflect the unique circumstances faced by pensioners. In bankruptcy proceedings the pension plan solvency deficiency—that is, a shortfall of assets on the fund as compared to the liabilities of the fund—is treated as an unsecured claim. This claim is addressed after all super-priority claims, secured claims, and preferred claims have been met. After these claims, if there are assets remaining, pensioners must share the assets with the rest of the unsecured creditors.

Pensioners are unlike most other creditors. Other creditors can amend their business plans to help make up for the loss of compensation they had been expecting from bankrupt companies. Current employees have the potential for securing employment elsewhere, albeit with some challenges. Most pensioners have no opportunities. Pensioners have already lived their lives of employment, a life where deferred compensation was promised.

While the provisions of Bill C-501 would not guarantee the pension promised, they would be an improvement over the situation that pensioners face under the current legislation. It is more than likely that a pension plan is in distress in CCAA. Current legislation would provide no aid for the plan. Preferred status, if as amended in Bill C-501, could provide aid for the plan and vulnerable pensioners. Pensioners' rights should be no less than the rights of other creditors.

My own experience with GENMO: The General Motors of Canada salaried pension plan, as of the report of the actuarial valuation as of September 1, 2009, has 12,445 members, of whom 7,361 are retirees and beneficiaries. The average yearly pension is \$22,007, which is fixed. The wind-up ratio of the plan was 5.99 at this point. A large portion of this deficiency was due to the Ontario government's 'too big to fail' legislation, which allowed the sponsor to underfund the pension on a solvency basis. Had General Motors of Canada followed its parent into bankruptcy, the value of the average yearly pension would now be \$13,182. The current wind-up ratio is approximately 0.8. At this rate, the average yearly pension will be \$17,606.

To make matters worse, there is an insufficient capacity in the Canadian insurance market to support the immediate purchase of annuities for all the plan beneficiaries who would want to retain the right to a monthly pension in the event of a plan wind-up. In bankruptcy, pensioners would lose all of their benefits, and that would be an additional financial burden. Most benefits are required, more so for the aged versus the young actives. For the current bankruptcy legislation, everything is stacked up against the vulnerable pensioner. There would be less income to support higher costs due to loss of benefit support and inflation. Independent and secured pensioners could now become a social and economic burden to society.

• (1215)

In conclusion, it is time for Canadian pensioners to enjoy similar protections for their pensions in bankruptcy as are enjoyed by pensioners in most developed countries in the world. Preferred status protection is the norm, not the exception. It is time that the Government of Canada passes legislation to protect pensions in bankruptcy. It is time for economic and social justice for Canadian pensioners.

Thank you.

The Chair: Thank you, Mr. Rutherford.

Mr. Cole, for five minutes, please.

Mr. Jim Cole (Vice-President, Fixed Income, Phillips, Hager & North): Thank you, Mr. Chair and members of Parliament. I do thank you for inviting me to meet with you today.

I'm a fixed-income portfolio manager with Phillips, Hager and North Investment Management. PH and N has been investing in corporate bonds for over 25 years and currently invests approximately \$18 billion in corporate bonds, many of which are held by defined benefit plans and other retirement vehicles.

We requested to meet with the committee today to express our views on the potential impact of Bill C-501 on credit markets, and we hope these comments will be helpful to the committee and all members of Parliament in considering Bill C-501 as a way to enhance the security of defined benefit pensions for Canada's workers and retirees.

The first point that we wish to make is that Bill C-501 has the potential to affect most of the significant issuers of investment-grade corporate bonds in Canada. Today 60 entities represent about 90% of the market value of all investment-grade corporate bonds outstanding; 54 of these issuers are corporations, and of those 54, 48

report having defined benefit obligations in their public accounts. The impact from a credit market perspective, therefore, is potentially broad.

Second, we believe the cost to existing bond holders and to the issuers of corporate bonds could be in the billions of dollars if unfunded pension obligations are given super-priority or preferred-creditor status. We estimate that existing bond holders could see the value of their investments decline by as much as \$4.5 billion. Corporations will also face higher costs for new debt issues, and we estimate that these costs could be in the range of \$7 billion to \$17 billion. We do not expect these costs would be shared equally across the market. Corporations with large pension liabilities, particularly those with lower investment-grade credit ratings—triple-B, for example—and the investors in the bonds of these corporations are the ones that stand to be most affected.

Third, we believe there is a potential for perhaps unintended consequences that could result from Bill C-501. For example, some corporations could become at risk of a credit downgrade if unfunded pension obligations are given senior credit ranking in the event of insolvency. Credit downgrades increase the cost of borrowing to varying degrees, but as an example, a 150 to 200 basis point or 1.5% to 2% increase in the cost of debt would not be unreasonable for a triple-B rated company that is downgraded to below investment-grade status.

Corporations may also find that they're not able to raise debt when they most need to. Unsecured bond holders will be less willing to lend given a large senior claim that could rank ahead of them should the corporation default, or alternatively, they may demand a punitive interest rate on any new bond issues. Constrained access to capital markets could force more companies into bankruptcy.

I would like to conclude by saying that we do understand the importance of securing retirement benefits for Canadian workers and retirees and we appreciate the objectives of Bill C-501. We also believe that Bill C-501 will impact credit markets in meaningful and potentially unintended ways and we hope the committee will find our raising these points helpful to its deliberations.

Thank you for your attention, Mr. Chair and members of the committee. I look forward to answering your questions.

• (1220)

The Chair: Thank you, Mr. Cole.

Will it be Madam Clark-Stewart or Mr. Sproule making the opening remarks?

Mr. Donald Sproule (President, Nortel Retirees and Former Employees Protection Canada): I'll be speaking.

The Chair: Mr. Sproule, for five minutes, please.

Mr. Donald Sproule: Thank you, Mr. Chairman.

Let me begin with where I will end in five minutes. Since the spring of 2009, our Nortel group has been asking for pension deficits to receive preferred priority status, not the super-priority status as currently tabled in Bill C-501. We want pension deficits to be at the front of the line of unsecured creditors.

I'm a Nortel pensioner with 27 years of service. The NRPC, my organization, was formed in January of 2009 to protect the interests of some 20,000 former employees and pensioners who would be affected by this bankruptcy. We now have 8,200 paid members in our group, despite having to find people who were ill and unable to access e-mail. Basically, we've reached out as well as we can to that pensioner class. Within that group, there are some 11,700 pensioners in pay, with an average age of 74 years. I'm one of the younger guys, and that's why I'm here; I have the energy to do it.

The average pension is \$17,500. It is not a gold-plated pension by any standard. In addition, our retirees have been receiving health and life insurance benefits from the corporation. For the past 22 months, we've all been receiving 100% of our pensions and benefits.

Here is where I have to stand up and feel like the ghost of Christmas future. I know what's going to happen to the Nortel pensioners. First, at the end of this year our health benefits will be taken away. Second, some time early in 2011, the pensions will be cut back by 36%. There will be hardship for all Nortel pensioners, and poverty for some. A modified Bill C-501 could significantly improve that situation.

The assets of Nortel are being sold off. What we will get from them will be determined by how the global lockboxes into which all of the assets are going will be unlocked. The judges within the U.K., Canada, and the U.S. have to decide how to unlock them. We're going to get some money out of them, but we don't know how much or when. The problem, we think, is that the amount may be ten cents on the dollar—twenty cents on the dollar could be optimistic for us. But we're also appalled by the fact that the U.S. estate is probably going to get more than the Canadian estate. There's not much here to console Canadian Nortel pensioners who work in the service of a global Canadian company.

Again, we are looking at Bill C-501 as a mechanism to improve our lot within the Canadian estate.

To give you some idea of the magnitude of what's happening to the Nortel pensioners, approximately \$1.5 billion in assets will be taken away from us, with \$1.1 billion coming from the pension plan and another \$250 million in lost health insurance. When you take into account the combined loss of pension plan and health benefits, we calculate that some people, especially those outside of Ontario who don't have the pension benefit guarantee fund, will suffer a loss of 45% of their income.

How did the pensioners get into this sorry state? Nortel faltered during the economic crisis and meltdown, and the pension plan was collateral damage. From 2006 to 2010, the wind-up rate of the pension plan went from 86% down to 64%. While it's harder to prove, we also believe that the bankruptcy was strategic and probably driven by the junk bond holders, who had no interest in the

company actually resurrecting and restructuring itself. The gain of the junk bond holders would come on the backs of the pensioners. None of us pensioners—none of us, I repeat—ever figured out that we'd be in this situation. None of us ever thought that our registered pension plan was at risk. I had long discussions with our lawyer, saying no, this cannot be true, and he kept coming back and saying yes, it's true.

Let's compare the two competing classes of unsecured creditors, the bond holders and pensioners. Bond holders never want for sophisticated money managers. They negotiated bonds with a sophisticated corporation. The pensioners were not sophisticated, let me tell you. The bond holders can distribute their risk across many corporations, whereas the Nortel pensioners have all of their assets tied up in one single entity. Bond holders calculated the probability of Nortel going bankrupt—that's what it's all about—and they have many different instruments to manage their risk. The bond holders have cross-licensed their bonds between Canada and the United States, so if the United States estate paid out better, they'd do well, as they can double-dip in both estates. We in Canada are only dependent on what actually ends up in the Canadian estate—and it's a cash-poor Canadian estate, because we had the global headquarters and the global R and D, but none of the money.

The bond holders could actually buy credit default swaps and buy a form of insurance against a corporation going bankrupt.

• (1225)

Again, I have a list of many things the bond holders could do, but the pensioners were totally unprotected. So we never contemplated that we were going to go into default. In fact, our taking a pension was a form of risk mitigation: Would I live too long and not have enough money to carry into my retirement, or would I die too soon and my spouse not be looked after?

So our conclusion is that it is unfair and it's an uneven playing field when you pit pensioners against bond holders initially, and now against junk bond holders. That's why we're asking for Bill C-501 to provide preferred or higher priority to pensioners.

Thank you.

The Chair: Thank you, Mr. Sproule.

Now we'll move on to the Liberal Party.

Yes, Mr. Wallace.

Mr. Mike Wallace: Just as a clarification for our friends, Mr. Hilton lives in my riding. I am the MP he's talking about. He got the e-mail from me. I did not support this coming to committee, and my e-mail reflects that.

Thank you.

The Chair: Thank you, Mr. Wallace.

Mr. McTeague, I understand you're going to share your five minutes with Madam Sgro.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): I will, Chair.

I'll just assure Mr. Wallace I wasn't going to ask that question, but I'm glad he's clarified it for the committee.

Mr. Sproule, my party has made a number of recommendations, and my colleague Judy Sgro, who is our pension critic, has made 20 recommendations. I acknowledge what has happened to you and Nortel pensioners as something that has certainly seized Parliament and has created a lot of attention for us here, and we do want to try to find a way out of this. We know that the Supreme Court of Canada several times has said that retroactive changes to pensions are not possible. Each and every time a request has come, they have struck it down.

If you're looking for a modification, how would you go about it? We need the silver bullet here. We need your help. How are you going to be able to do this? You've suggested that the approach of Bill C-501 misses the mark. It goes for a super-process. You're looking for just the preferred status. Mr. Sproule, how do we do it?

• (1230)

Mr. Donald Sproule: State "preferred status".

Hon. Dan McTeague: That will not help your employees.

Mr. Donald Sproule: I understand. First of all, they're not my employees; they're my fellow pensioners.

Hon. Dan McTeague: Sure. I mean your colleagues. Thank you.

Mr. Donald Sproule: From day one—I go back a year—we knew that it was risky for the Nortel pensioners and that a bill that would actually help them out was a long shot. Hope springs eternal within our breast. But as I stated a year ago, if we didn't do it for Nortel, who would be the next poor suckers to come along and get whacked by the same stick we've been hit with? That's our position.

Hon. Dan McTeague: I'll pass this over to Ms. Sgro at this point, Mr. Sproule.

Hon. Judy Sgro (York West, Lib.): Thank you all very much for being here. I'm very sympathetic to your cause, to all of you.

You talk about pensioners having no other options. I think bond holders have lots of options, and other people have lots of options. But pensioners getting caught in this bind don't have any options, or have very limited options. I think we have been trying to find ways to address this issue.

I have a couple of straight questions. By the way, in the white paper I just recently released, which has 28 recommendations, most of those are up front, not at the end. If those changes were to be introduced and become part of government policy, I would hope they would go a long way toward preventing many other people here in Canada from having to undergo the terrible status that many of you from Nortel or otherwise have gone through.

The issue before us here is Bill C-501. Sadly, the bill is flawed, and there are some serious problems with it. It's not going to help the

Nortel people, as you've indicated, which is very sad, because I believe many of us wanted it to. But the other thing is that Bill C-501 helps only with special payments. We heard this morning that there would be a major financial crisis throughout this country and so on if Bill C-501 were passed. Bill C-501 goes only to those special payments that are announced, let's say, in June when insolvency is announced until the time that the bankruptcy is finalized. The special payments for six months or eighteen months is all this bill addresses.

One of the gentlemen this morning said that it wasn't clear enough. Everyone I have consulted says it's very clear. This bill—Bill C-501—only handles special payments. So maybe it's two years maximum until insolvency is finalized, but that's all it does. So the sun isn't going to fall out of the sky tomorrow. This is giving a little bit of protection—that's all it's doing—but we're trying to find ways of making a little bit of protection out there to help a few people.

Don or anyone who wants to can comment. How familiar are you with this? And do you realize that this covers only special payments?

Mr. Donald Sproule: The one thing I could address is the potential impact there could have been on Nortel pensioners. I think currently it's every three years that we have to go through an actuarial evaluation. The last one was done in 2006, and at that time the plan was 86% on a solvency basis. To that, Nortel was contributing \$20 million a year. In 2008-2009, we actually went through the downturn. Legally they had to file the next pension plan actuarial report at the end of 2009, which they did. That actually captured the full essence of what the losses were, and special payments might have gone from \$20 million to \$200 million. It could have been significant in the case of Nortel, especially if the actuarial calculations were now reduced to a yearly basis, rather than being on a three-year basis. So I do think even that small focus could help out pensioners.

Hon. Judy Sgro: But we can't make this retroactive.

Mr. Donald Sproule: I understand. I'm looking forward for other poor people.

The Chair: That's time. Thank you, Madam Sgro.

[Translation]

Mr. Cardin, you have five minutes.

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chair.

Good morning, ladies and gentlemen. Welcome to the committee.

Clearly, if retirees whose pension funds are taking a substantial hit had known in advance that this would happen, they would have planned their pensions differently and could have probably also contributed to the Registered Retirement Savings Plan.

However, if we look at Nortel's case, for instance, what was the main cause of solvency deficiencies in its retirement fund?

•(1235)

[English]

Mr. Donald Sproule: I think there are two aspects. One of them is what happened in the marketplace, and certainly that's been experienced by all pension plans. And also there is current regulation, where, again, in 2006 the plan was only 86% funded; so you put that in place, the drop in the market value, and on top of that the bankruptcy of Nortel, and it's the perfect storm, as somebody has stated. It's a confluence of events that has left us in this sad situation.

[Translation]

Mr. Serge Cardin: Over all these years, have there ever been any surpluses in the Nortel pension fund?

[English]

Mr. Donald Sproule: I do believe that in 2006, on an ongoing basis, they were actually overfunded in the late 1990s, as well as early 2000. They had 105% of that fund.

Ms. Anne Clark-Stewart (Nortel Retirees, As an Individual): They were actually overfunded in the late 1990s, as well as early 2000. They had 105% of that fund.

[Translation]

Mr. Serge Cardin: Under the law, if surpluses in pension plans exceed 10%, a moratorium must be declared on pension contributions. This may mean that, at times, the performance of several pension funds could have been much higher and resulted in much bigger surpluses.

Do you think we should look into the possibility of pension funds including a train-out fund or a reserve fund?

[English]

Ms. Anne Clark-Stewart: Yes, I do believe so. I know that the federal legislation has been changed to reflect that. It's been proposed that it goes up to 125% without penalties. I am sure the fact that it was only at a 10% level discouraged people from putting any more in it.

[Translation]

Mr. Serge Cardin: Given the current economic situation, funds are not performing that well, so there isn't likely to be much of a surplus. We witnessed what happened during the financial crisis. You depend on company management when it comes to pension funds. Pension fund managers and the large financiers are also part of the equation. We've only to recall the negative impact of asset-backed commercial paper on many people. So, there are a number of Canadian pension funds that are very close to being in the red if they are not already.

You talked about the consequences for Nortel. Let's imagine that Bill C-501 had been implemented. You feel that \$200 million should have been contributed to the Nortel pension fund as privileged debt. Is that right?

[English]

Mr. Donald Sproule: It is \$1.1 billion that is the deficiency in the pension plan.

[Translation]

Mr. Serge Cardin: Even if pensioners were at the top of the secured creditors list, would Nortel have been able to make up the shortfall?

[English]

Ms. Anne Clark-Stewart: They had \$2.5 billion in cash when they declared bankruptcy, or went into CCAA. They may not have been able to put all of that into a pension fund, but certainly if there was a priority to the pension fund, at least a portion of that should have gone into it.

One of the things I do want to mention, just to make it clear, we talk about the funded ratio. The way the laws are is that the funded ratio is the solvency ratio. But when you get into bankruptcy, then you have the wind-up ratio. Our pension is now at 65%, versus the 86% or 81% that is floating around on the solvency ratio. That gap in the law is what's really impacting us. When we talk about the fact that the pension plan is going to be wound up, it's wound up at the wind-up ratio, not at the solvency ratio.

The Chair: Thank you, Madam Stewart.

[Translation]

Thank you, Mr. Cardin.

[English]

Now we'll go on to Mr. Brown for five minutes.

Mr. Gordon Brown (Leeds—Grenville, CPC): Thank you very much, Mr. Chairman.

I did support this bill coming to committee, because I think this discussion is something that all Canadians are interested in, and my riding happens to have a population that is a little older than many others across the country. It's just south of Ottawa here along the St. Lawrence River: Brockville, Gananoque, Prescott, and areas like that. Many of the Nortel pensioners actually do live in my riding, so I have heard from many of my constituents who have been impacted by this.

But the bill is actually about super-priority. Mr. Hilton mentioned that many other countries—and I've learned quite a bit about this, much more than I ever anticipated—do have a preferred status for pensioners.

Mr. Hilton, you also mentioned that there are other measures, in addition to preferred status, that some other countries have. Maybe you could elaborate a little bit on that, please.

•(1240)

Mr. Robert Hilton: I'm not fully cognizant of all the details, but in the United States there are certain aspects of pension plans that are guaranteed by the government, so that if certain types of pension plans go into a bankruptcy situation, the federal government in fact picks up the cost.

Mr. Donald Sproule: Just to elaborate on that, I've been well aware that in the U.S., the Pension Benefit Guaranty Corporation will protect the assets of the pensioners up to \$54,000 a year in bankruptcy. That's \$54,000. In Canada, with the exception of Ontario, it's zero.

So there's a fallback mechanism, a safety mechanism for pensioners in the U.S., and in the U.K., where it's 28,000 pounds a year. That's probably why they don't have higher-priority status in bankruptcy: because they don't need it in the U.S. The land of free enterprise actually protects the pensioners.

Mr. Gordon Brown: Mr. Sproule, you mentioned that the U.S. estate was going to have more assets for their pensioners than the Canadian. Maybe you can explain that, because I'm not sure that a lot of members of the committee quite understand what you're saying there.

Mr. Donald Sproule: All of this is subject to negotiation and working its way through the bankruptcy courts, but certainly I think the Canadian estate on a cash basis is being depleted and is probably heading towards zero. There is a large amount of cash sitting in the U.S. estate. I forget what the number is—\$300 million or \$600 million. Actually, some of that has been depleted as well.

When the final reckoning is done, the assets that were sold off will actually get divided, but included in that will be the cash assets themselves. Everything we are hearing is saying that the U.S. estate is going to get significantly more than we're going to get in Canada.

Mr. Gordon Brown: Maybe some of our other witnesses could explain how they see that the government could help protect pensions in addition to a preferred status.

Mr. Brian Rutherford: Well, you do it through two ways. You do it through regulation, and we're discussing that with the Ontario government now, because 80% of the pensions are regulated out of Ontario. That's where we'll be tomorrow. You also do it by amending the Bankruptcy and Insolvency Act. Currently, pensions have no rights in bankruptcy, so you have to get them to the table, just like the bondholders and the suppliers. Why should they be treated any differently? I mean, I've talked about deferred payments. A pension is a deferred payment.

In reference to what is going on in the rest of the world, a study that was done in September on global competitiveness and was published in the *Star* shows that of the ten top countries in the world, Canada was number ten. There were Switzerland, Sweden, Singapore, United States, Germany, Japan, Finland, Netherlands, Denmark, and Canada. As for the only countries that did not have any bankruptcy protection, Canada has a meagre one, and Singapore has none. The rest of those countries all have either preferred status, or an insurance status, or, in the case of Denmark, super-priority status. This is nothing new. This is not groundbreaking. This is just trying to put the Canadian pensioners where the rest of the world is and give them some protection in bankruptcy.

The Chair: Mr. Walsh, please, just briefly.

Mr. Jack Walsh (Provincial Vice-President, Canadian Federation of Pensioners): I will just add a comment regarding your own riding, Mr. Brown, and the other ones. To put you in the picture, the Canadian Federation of Pensioners was formed five years ago when we looked down the tunnel and we didn't see the light at the other end: we saw a freight train coming. The freight train was the ineffective regulatory regime here with regard to bankruptcy, mainly in Ottawa, and in the provinces and the Province of Ontario as well.

Immediately we ended up with 15 members, including Chrysler and IATA. These folks all have members in each of your ridings and

they are very, very concerned. These are: Chrysler, IATA, Sears Canada, Bell Canada, Ciba-Geigy, DuPont INVISTA, Stelco, General Motors, Slater Steel, Air Canada, OPG-Hydro, and of course Nortel, just to make that point.

•(1245)

The Chair: Thank you, Mr. Walsh. I'm going to have to cut you off there. Our time has run out. Thank you very much.

Mr. Rafferty might actually allow you to continue on.

We'll have Mr. Rafferty, for five minutes.

Mr. John Rafferty: I will actually, but I do have a question first.

I would like just a very brief answer from Mr. Hilton and Mr. Sproule, in particular.

You've already indicated that this bill is not going to help you at all.

Mr. Robert Hilton: Certainly in my case it won't.

Mr. John Rafferty: Things have, in your case, wound up, and Nortel is very far along.

I just want to clarify for everybody in the room here that no one, neither the Liberal Party, the NDP Party, me, my staff, or anybody else, has ever said or made any promises that this is going to help your cause. That's just so we're clear, because there seemed to be quite a few questions about it. I just wanted to be sure that everybody is on the same page.

I would like to continue that line of questioning.

Mr. Walsh, that was the first time you had to chat. I'd like to give you a moment extra.

Mr. Hilton and Ms. Clark-Stewart, I'd also like to give you a chance to speak. Do you have anything further to say to this committee or to your individual MPs who are not here today about Bill C-501?

Mr. Hilton, go ahead.

Mr. Robert Hilton: If I may, first of all, when we asked our governments to bring forward legislation to improve the situation, we asked them to do it in a way that would not do harm. And while we support very much what has happened at the federal level, there has been harm done at the federal level, and that harm is in fact the extension of the time span for a company to bring their pension plan into a state of balance. The harm has been done to the pensioner. It has been to the benefit of the company. It has been to the benefit of the bond holders. It has been to the benefit of the government. But it has been to the detriment of the pensioners.

Very simply, if you are required to prepay \$200,000 over five years, you have to pay, let's call it \$50 million, over five years. So you have to pay it back at \$10 million a year. But if you have to pay it back over ten years, you have to pay it back at \$5 million, right? That's a big difference.

Now, you take the pensioners. In year five, if you've only paid back half of it, the pensioners are still going to lose the other half they would have lost if the company had failed before. So that's the additional harm.

It was mentioned that federal legislation truly only affects 20% to 25% of the pensioners. That's true from the pension aspect, but it is not true when it comes to bankruptcy. Your bankruptcy act supersedes all provincial legislation. So when a company goes into bankruptcy, it's the federal law, but that's not going to create any additional payments for the companies. Okay? I think that's important. Twenty percent, maybe 25%, is federal. The rest is provincial.

Now, federally, Air Canada, in trouble, talked to the union and their associations, and they negotiated up to ten years, because they felt that it gave a better opportunity for them. But should the government institute that rule, or should the pensioners and the active employees who will eventually collect a pension have a right to have a say in that? I think we should have a say in it.

Mr. John Rafferty: Thank you, Mr. Hilton.

Mr. Walsh.

Mr. Jack Walsh: Just to finally wrap up, our pensioners and their widows from these companies I outlined to you are very deeply concerned about the pension scenario as it's developing in this country. They also are aware of the critical role that getting Bill C-501 right could play when other companies start to hit the wall, which I'm sure is going to happen over the next couple of years. We haven't seen the end of this Nortel kind of scenario. That's one thing we all have to be concerned about.

We thank you legislators, first of all, for listening to us. This is kind of rare. Normally, pensioners are completely ignored, so it's good to see that parliamentarians are finally saying that they want to listen to the people who are being affected. That's terrific, but we look forward to you really pushing and getting Bill C-501 right so that we can go back to our people and tell them that we're on the right track and that this thing is going to get fixed.

● (1250)

Ms. Anne Clark-Stewart: I just have two points I'd like to make.

First of all, Mr. Laver talked about the issue of all of the legislation being put in place to change pension laws. That is all federal. That's 7% of the pension funds in Canada. It doesn't affect us one little bit. It doesn't affect one private pension plan. They're all federally-regulated plans.

On the issue of retroactivity, I did a lot of examination of the retroactivity of laws, because when I had a meeting with Minister Baird, he indicated to me that it has never happened, or it couldn't happen. Well, in legislation, the only way retroactivity is not allowed to happen is in criminal law. Even though the Supreme Court may have made some rulings on some previous legislation, there's no reason in law why they can't make this law retroactive.

The Chair: Thank you, Madam Stewart. I'm sorry, the time is our biggest enemy here, and I did allow you to go over a bit. Somebody might allow you to complete your point.

Mr. McTeague, for five minutes.

Hon. Dan McTeague: Yes, I'll share my time with Ms. Sgro again.

You've raised a very interesting point, Ms. Stewart, about the question of retroactivity. It sounds to me, from all you've said, that

Bill C-501 won't do all the things that we need to do to address the problem down the road. It will only go so far.

Mr. Hilton, your point about extension of time, for instance, I think speaks to the need for the government to actually take a proactive position with a larger, more comprehensive and detailed piece of information.

Mr. Sproule, if I have you correctly, I just want to make sure we understand that this will do nothing for your colleagues and pensioners with Nortel.

Mr. Donald Sproule: Hope springs eternal, but we understand what the current legislation states.

Hon. Dan McTeague: I think the committee, in learning what it is learning from all of you here.... It's not about giving false expectations and creating a scenario where people believe this is the silver bullet that will help. I think we all agree to that.

Mr. Rutherford, you've come up with some very good points, as has Mr. Hilton. Has there been any body, organization, round table, or departmental discussion about putting all of these elements together in the hope of formulating a bill, a policy, driven by government, that will address some of the problems you've raised? Has there been any initiative at this point? Or is this really the first attempt?

Ms. Anne Clark-Stewart: I've been in discussion with Minister Baird, Minister O'Connor, and I'm trying to get a meeting with Minister Clement. It hasn't happened yet, but it's on the books. We have been talking to them and the government ministers have indicated to us that something is in the works. That something has not been defined. We have given them all of our input on the things that we see need to be addressed. Minister Clement did come back to one of our members who was a constituent of his and indicated that something would be happening soon. We've been hearing that since last Christmas. But as Don says, I'm very positive. Hope springs eternal that something will happen to help us out.

I'm the one who receives the phone calls. I'm in communications with this group. I receive the phone calls and the e-mails and the letters from the widows who are desperate. Ten percent of our population are widows with pensions under \$1,200 a month.

The Chair: Thank you.

Mr. Rutherford, a comment, if you wish.

Mr. Brian Rutherford: I just want to comment that I taught my girls, "Life is not black and white; life is grey". You all have an opportunity to put some legislation forward that's going to give some protection to pensioners in bankruptcy. Super-priority...I know you don't like it, but I think we can all live with "preferred". You've got to talk about it, and you are the ones who have to make it work. If you don't make it work, there's going to be a lot of hurt out there for pensioners who get involved with bankruptcy. There's no reason that pensioners should be treated any differently from any other part of the economy in this country. That's the point I want to make: you have an opportunity to fix a wrong, and I hope you do it.

Hon. Judy Sgro: The difficulty is that Bill C-501 isn't doing that. That's the problem we're facing today. And we wanted it to do it. At least I'm speaking for us, as the Liberals. We wanted this to be able to do that. The bill is crafted in such a way that it can't be amended to accomplish what we need to accomplish, both on retroactivity, as well as being able to widen it so that it's not just special payments. This is that narrow window of special payments that this would help if it was passed, or at least that's what we're led to believe.

The question is what are we doing to move forward? As a result of all of what many of you have gone through, I hope we do end up with changes, which is the reason for the 28 recommendations I put out in the white paper last week. So you don't have to do the changes at the end of the process in the Bankruptcy and Insolvency Act. You do the changes at the beginning.

I believe that pensioners should not be treated like everyone else. I think pensioners have a special place, because you've contributed and you're not getting an equal voice at the table, which is why you're ending up where you are now.

What else can we do? I appreciate Mr. Hilton's comments, but what else can we be doing in the future, since this isn't going to help the people we want to help today?

• (1255)

Mr. Robert Hilton: Certainly there will be opportunity for amendments to the bill. I believe that the proposer of the bill is open to amendments. Secondly, our association will be having a formal meeting of our board on November 22. We will take a good look at your proposed changes and we will certainly spend time looking at those, and we will respond accordingly.

I'd like to point out that there are 13 steps from the basement of my house to the main floor, and we don't get from the basement to the main floor unless we climb the 13 steps. Some of us can do them two at a time, but some of us can't.

The Chair: Thank you, Mr. Hilton. I appreciate that analogy.

Now we're going to the last questioner, Mr. Lake, for five minutes.

Mr. Mike Lake: Our goal as legislators is to make sure that as you start to climb those steps you don't fall on an unstable step and crack your head on the floor or something like that instead. We want to make sure that as we move forward we have a system that makes sense, that we avoid unintended consequences. There's been a lot of talk of unintended consequences. It seems to be a theme in this committee, even going back to the last legislation that we discussed.

Mr. Sproule, you said you're looking forward for other people, I think the quote was. One of the things I've noticed in my conversations with Nortel pensioners is a lot of that sentiment, that you recognize there's not an opportunity through this process maybe to fix things for yourselves, but you want to make sure we make the system better for others. I appreciate that, personally.

There's a lot of talk of bond holders here. I think, Judy, you made the comment, and I wrote it down, "bond holders have lots of options". I just want to get clear, and maybe Mr. Cole can help me with this. You talked about bond holders in a lot of cases being other defined benefit plans, for example.

Mr. Jim Cole: That's right.

Mr. Mike Lake: Maybe you can give a little bit of a description around the bond holders that you're talking about when you say that.

Mr. Jim Cole: I can certainly speak to the nature of our client base. We invest in total maybe in the order of \$50 billion to \$60 billion of fixed income assets in Canada. Of those assets, the vast majority of them are defined benefit pension plans, whether we're hired by a trustee board or the pension committee of a plan sponsor. The others are obviously individual workers saving for retirement through RRSPs, whether it's on a group basis with their employer or on their own, and lastly it would be obviously individuals who are already in retirement and drawing an income from those bonds.

Mr. Mike Lake: Okay.

I don't know if you can do this or not. Some of the defined benefit plans that you may represent, are they publicly known? Is there a way you could actually attach names to them for us, or is that asking too much?

Mr. Jim Cole: Unfortunately, I'm not able to divulge the names of my clients specifically. However, they would be a range. If you look through the list of the top 60 investment-grade issuers that is very readily available, those would be the typical types of clients. The other important piece of our client base is actually what's referred to as a jointly trustee pension plan. It's an amalgamation of employers and employees, typically in the union sector, that would be receiving contributions from their members and the employers they work for and then managing that pension plan. The trustee board manages that pension plan.

Mr. Mike Lake: I don't know if it was Mr. Rutherford, but one of the witnesses here talked about a lot of hurt for those pensioners who are impacted by bankruptcy. It seems to me that our goal here, in terms of what we do on the whole, is to minimize hurt for anybody who is impacted by bankruptcy or anything else. Obviously bankruptcy by its definition hurts many people. It hurts pensioners, it hurts the workers who lose their jobs, it hurts suppliers, and it obviously hurts shareholders. I think there are many Canadians out there, for example in the Nortel situation, who had large portions of their RRSPs invested in Nortel and are impacted from their own pension standpoint.

As we work through what opportunities or options there are for us as we move forward, what unintended consequences do we need to be most acutely aware of as we move forward? What are the biggest pitfalls, in your mind?

• (1300)

Mr. Brian Rutherford: Are you talking to me?

Mr. Mike Lake: I was looking at Mr. Cole, but—

Mr. Brian Rutherford: Because it's definitely his question.

Mr. Mike Lake: I'm looking at Mr. Cole. I was referring to your quote, but I'm looking to Mr. Cole for the answer if I can.

Mr. Jim Cole: So the question is what sorts of pitfalls might you want to....

Mr. Mike Lake: Might we, as legislators from all parties as we consider how to react here, be aware of.

Mr. Jim Cole: I think the big thing, speaking to Bill C-501 as an investor in bonds, is that as bond holders what we really took to and what we don't like is uncertainty. If changes are made in legislation that change the pecking order of who receives assets and liquidation and what not, we can respond by pricing that into.... If we're behind other secured creditors, we will price the demand that we require in the way of an investment accordingly. The challenges are things like this that come in on existing bond holdings. We can't respond to that because we've already made investments on behalf of clients.

The second one is that I know there have been some comments made about the clarity in the minds of others about what this bill represents, but we have seen a lot of market commentary with this impression or understanding that it applies to the entirety of the

unfunded pension liability. As a bond holder, while certain legal opinions are expressed that, no, no, it just applies to past service payments, we on the other hand have to rely on how the courts will interpret it. That lack of clarity creates uncertainty in our minds. That's a challenge.

The Chair: Thank you very much, Mr. Cole.

Thank you, Mr. Lake.

Thank you to all the witnesses, both this panel and the last. I see some of them are still here. I appreciate that. And I apologize that we had such tight timelines, but it was necessitated because of the number of witnesses.

Have a great day.

The meeting is adjourned.

MAIL  POSTE

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

Lettermail

Poste-lettre

**1782711
Ottawa**

If undelivered, return COVER ONLY to:
Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,
retourner cette COUVERTURE SEULEMENT à :*
Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and
Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the
following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les
Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à
l'adresse suivante : <http://www.parl.gc.ca>