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Chair

Mr. David Sweet

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• (1105)

[English]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good morning, ladies and gentlemen. *Bonjour à tous.* Welcome to the 48th meeting of the Standing Committee on Industry, Science and Technology.

We will be going until noon today. We were supposed to have two witnesses, but I see that we only have one, Anne Clark-Stewart. Hopefully Mr. Benson is on his way.

For the purposes of time, we'll begin now.

Madam Stewart, please go ahead for five minutes.

Ms. Anne Clark-Stewart (Member, Nortel Retirees and former employees Protection Canada): Good morning, members of the committee.

First of all, I would like to thank you for making the amendment as outlined in the reference document submitted by Mr. Rafferty. We are pleased to see the inclusion of the unfunded liability or solvency deficiency in the amendment to Bill C-501. We feel, however, that these changes do not go far enough to secure pensions for Canadians caught in the lack of justice for employees and retirees in bankrupt companies.

Why do I refer to justice? It's because justice underpins every functioning society. Justice allows us to cooperate, to subjugate our self-interest for a greater common good, knowing in the end that not only we will be treated fairly, but that we will all be better off. And it is our laws that must deliver the justice that we are commanded to seek. In a nation's laws, one finds its true soul.

Professor Sandel of Harvard in his class on justice defines justice as "getting what you deserve". Let's use that definition to look at how current federal bankruptcy law treats our pensioners.

Once a company files for creditor protection, that law pushes all pension and employee claims to the very bottom of the creditor heap. The elderly and disabled are forced to slug it out with sophisticated junk bondholders for the last scraps of company cash.

Is this justice? Is everyone getting what they deserve?

We believe all employee-related claims, for pensioners, the disabled, and terminated employees, should have preferred status in bankruptcy.

The proposed amendments are correct to require the funding of unfunded liabilities or solvency deficiencies. To be clear, once a company enters CCAA or BIA, the solvency deficiency is the

amount to be addressed. By definition, "unfunded liabilities" assume that the company is a going concern, which is not the case once CCAA or BIA has been invoked.

Once a company enters CCAA or BIA, solvency deficiencies can be very large, and under current rules, top-up by the company is not mandatory and pensioners are left holding the bag.

The amendment refers to inclusion of the solvency deficiency as determined at the time of bankruptcy. To be clear, it should be specified that such payments must be for the full amount of the deficiency under windup assumptions, and the full responsibility must be attributed to the company as soon as it enters CCAA or BIA, should be fully payable before it exits CCAA or before it ends its responsibility for the pension plan, and must be based on current valuations of the plan.

In the case of Nortel, the gap between the solvency deficiency and the windup deficiency will be in the range of \$1.2 billion on a \$2.5 billion funded pension plan, a huge impact to pensioners.

Our former colleagues in the U.K. and the U.S. have virtually 100% pension protection, because all their pension deficit is covered. Their governments have recognized the fundamental immorality of depriving pensioners of their retirement incomes, which are in fact deferred wages.

Canada must be no different. We are actually one of the few major industrialized countries not to have pension protection for all workers in bankruptcy, another black eye for Canada on the world stage.

Bill C-501 as it stands will not help Nortel pensioners, because it does not apply to companies already in the bankruptcy process. Minister Bairdhas been recorded as saying that it would be unconstitutional to make Bill C-501 retroactive.

Our legal advice says he is wrong. A recent Supreme Court of Canada decision, in *British Columbia v. Imperial Tobacco Canada*, has authoritatively resolved the constitutional ability of any legislature, either federal or provincial, to enact retroactive legislation. The Supreme Court clearly and unequivocally held that except in the area of criminal law there is no constitutional requirement of legislative prospectivity. The court confirmed that if the intended retroactive effect is expressed sufficiently clearly, the statute is effective according to its terms.

The Supreme Court acknowledged that retroactive legislation can overturn settled expectations and may sometimes be perceived as unjust. Nevertheless, it is held that except in the area of criminal law, there is no constitutional impediment to retroactive legislation.

To save time, I have e-mailed copies of this ruling to the clerk of the committee for your information. Therefore, if the political will exists within this room, retroactivity could be added to Bill C-501 and Canadian pensioners would receive justice in bankruptcy.

However, legal precedents and numbers don't begin to describe the desperation spreading across the country. Angry widows and pensioners, led by Gladys Comeau, whom I know you all know, are withdrawing funds from the Royal Bank and changing their Bell-related services, as they don't like the attitudes their representatives presented at INDU, the industry committee, in hearings earlier this month. They hope their gesture will stimulate the banks and big business to have a change of heart regarding the passage of Bill C-501.

This bill represents a significant step towards protecting pensioners from a harm that many other civilized countries have already recognized and addressed. It should be suitably amended as described, with the inclusion of windup assumptions and retroactivity, and passed into law as soon as possible. We hope the committee will undertake its duty to Canadians and find the wording to make it applicable to companies already in bankruptcy process and thereby bring Canada into the 21st century. There is no impediment in law to doing so.

Thank you for listening to our concerns and our recommendations.

• (1110)

The Chair: Thank you, Madam Clark-Stewart.

We'll go to our rounds of questions now.

Although we are going until noon, we'll be able to return to seven-minute rounds, I think, starting with Mr. Rota for seven minutes.

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

Thank you, Mrs. Clark-Stewart. Thank you for being here today.

We've been going through a lot of different questions. I would tend to agree with you that pensions are deferred wages; they're just put off, through agreements that have been made between the employees and the employer, to be paid at a later date, and they are there.

One of the big things that sparked this was the fact that Nortel employees were, I guess, cheated of a retirement, for lack of a better word. I just want to clarify: you mentioned earlier that this bill will not affect Nortel workers, but you mentioned that there was a ruling in B.C.—

Ms. Anne Clark-Stewart: Yes.

Mr. Anthony Rota: —that could make this retroactive.

Could you elaborate on that a bit? That's something that would affect Nortel workers.

This bill has been a bit of a struggle right from the beginning. There has been some misinterpretation, some changes. Maybe you can comment on the security of pensions and the security of companies, if we were to go retroactive with this bill.

Ms. Anne Clark-Stewart: If you did go retroactive with this bill, what would happen is that the company would be held liable for its commitments to its employees; that the funds for their pensions would come out of the asset sales of the company. And it's a commitment of long standing that they made when those employees started working for them.

I worked forty-two and a half years for Nortel. I know I don't look it—everybody tells me I'm too young to have worked that long—but I did. I never expected, after forty-two and a half years, to be in this situation. I built my whole retirement based on the fact that I would have a retirement pension from Nortel.

The other thing that hits us is that we had a reduction in the amount of money we could put into an RRSP because of the pension adjustment that was put in place by the government in 1974. So we have a double whammy, because now we don't have a pension and we don't have RRSP money.

In this particular case, the onus should be on the company to pay for the commitments they made to their employees. Their employees committed to work hard for them, to work for long years for them. You'll find lots of people who have worked 40 and 45 years for the company, and we all worked hard.

Mr. Anthony Rota: There's no question that everybody worked hard, and I think what we're looking for is fairness. That's why working with this bill in particular makes it that much more difficult, because it could have other influences or unintended effects.

Ms. Anne Clark-Stewart: With regard to this Supreme Court ruling—

Mr. Anthony Rota: Yes, please, if you could, elaborate on that.

Ms. Anne Clark-Stewart: —British Columbia put in a statute called the Tobacco Damages and Health Care Cost Recovery Act. Imperial Tobacco took them to court, and it went all the way to the Supreme Court of Canada. The Supreme Court of Canada ruled that provinces and the federal government can put in retroactive legislation. In this case, they put in legislation to cover the costs of past, current, and future damages. And they didn't have to do it on an individual by individual basis; they did it on a gross basis, looking at the amount of health care funds that were going to be required to cover the costs of people who were affected with illnesses due to smoking.

Mr. Anthony Rota: Was this based on the fact that maybe tobacco manufacturers or cigarette manufacturers had hidden facts or had misrepresented the facts?

Ms. Anne Clark-Stewart: They had misrepresented and hidden facts, yes.

Mr. Anthony Rota: Is there something in the Nortel situation that would apply similarly?

•(1115)

Ms. Anne Clark-Stewart: I really don't know whether I can answer that particular question. I don't know the details of the running of the company. Although I was formerly an assistant vice-president, we never got into the nitty-gritty financials of the company.

Mr. Anthony Rota: Okay.

One of the issues that comes up often and that we've heard often is that other countries have pension protection. We see that and we hear it. You mentioned the U.K., where all pensions are covered. Maybe you can elaborate a little bit on that. What is the difference between, say, the U.K. system and the Canadian system? And what would you see coming to the Canadian system that could be used that is now in the U.K.?

Ms. Anne Clark-Stewart: In the U.K. system, they have the pension benefit guarantee, and that unit of the government guarantees the pensions of the employees of any company that goes into bankruptcy. They're guaranteed up to £28,000 per year.

They also guarantee the pension deficits, and they're going after the Canadian estate for that pension deficit.

The only plan that is similar in Canada, in certain regards, is the pension benefit guarantee fund in Ontario. That guarantees \$1,000 a month of pension for companies in Ontario, and you have to have had your work service in Ontario. But when we get into it now with the FSCO, which is the Financial Services Corporation of Ontario, and with Morneau Sobeco, which is now administering the Nortel pension fund, we're finding that there are all kinds of little hidden things that aren't really outlined until you get to that point.

Some of the Conservative ministers are saying, oh, your pension fund is up to 82%. Mr. Clement is one of the ones who's saying that. Our pension fund is not at 82%.

Mr. Anthony Rota: What is the exact number you're seeing it at?

Ms. Anne Clark-Stewart: We're seeing it at 65%.

And when the pension benefit guarantee fund gets applied to us—we have an indexed pension—they've informed us that they can't provide indexed pensions, because the Canadian market can't supply them.

We're looking at \$2.5 billion in annuities. Trying to put that amount of money into annuities at this time will cripple the market, especially when the market for annuities is so low. They'll have to do it in batches over five to ten years, to put all of our pension money into annuities. We're trying to get that to stop.

The \$1,000 isn't really \$1,000; they're looking at the difference between the \$1,000 and what the pension fund is at. So they're trying to make that number as high as possible so that they have as little as possible to put in.

The Chair: Thank you, Mr. Rota. You are over time now.

[*Translation*]

You have the floor for seven minutes, Mr. Bouchard.

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

Good day, Madam. Thank you for coming here to testify this morning.

You stated that there was a retirement fund in Ontario that provides \$1,000 a month in benefits to recipients. In other words, if recipients are drawing \$600 in pension benefits, this fund provides additional compensation up to a maximum of \$1,000. Do you think this kind of provision could be beneficial or more attractive than Bill C-501?

[*English*]

Ms. Anne Clark-Stewart: I wouldn't say it was more attractive than Bill C-501, because it only affects the people who work in Ontario.

In the Nortel case, where we had people working all across Canada—we have huge populations in Calgary and Edmonton, and 30% of our employees work in Quebec—they will not get any of that pension benefit guarantee.

So if they only have a \$600-per-month pension, that's all they get.

[*Translation*]

Mr. Robert Bouchard: Suppose the federal government were to bring in this measure which now applies only in Ontario and made it part of Canadian legislation? Do you think that it would provide broader protection than Bill C-501?

•(1120)

[*English*]

Ms. Anne Clark-Stewart: I don't think it would be better protection than that under Bill C-501 even if it were all across Canada for \$1,000 a month. That legislation in Ontario was put in place in 1980 based on 1980 salaries and norms.

There was a report put together by Professor Harry Arthurs, which was submitted to the Ontario government in 2008. In it he recommended that the pension benefit guarantee fund be immediately upped to \$2,500 a month. The Ontario government is not pursuing that recommendation.

He made 144 recommendations with regard to pensions and bankruptcy in Ontario. I read those recommendations, and if four or five of them had been in place before Nortel declared bankruptcy protection, we wouldn't be in this room.

[*Translation*]

Mr. Robert Bouchard: You talked about the pension fund. When a company goes bankrupt and is placed under the protection of the Companies' Creditors Arrangement Act, that company's debt becomes an unsecured debt, as opposed to a secured debt. You talked about maintaining some protection for pension funds, but what happens to severance pay? You said you worked for 42 years. Surely you were entitled to severance pay. I don't think your employer took steps to protect your severance pay.

I can tell you about AbitibiBowater, a company located in my region. It was placed under the protection of the Companies' Creditors Arrangement Act. Under their collective agreement, employees were entitled to severance pay. However, the amount owed to them by the employer was deemed an unsecured debt.

Don't you think that employee severance should be considered a secured debt as well?

[*English*]

Ms. Anne Clark-Stewart: Yes, I do. I know that WEPPA was introduced in September 2009. It was made retroactive to the end of January 2009, just missing the Nortel employees by about two weeks, and that would have guaranteed them \$2,000 of severance pay.

There's no way the legislation in WEPPA is going to repay or pay up the severance pay that is owed to the employees. Nortel did not pay severance when they went into CCAA.

I was on long-term disability when that happened. Because I had heard they were talking to bankruptcy lawyers and I knew the situation of the company and I knew my long-term disability benefits were self-funded, I decided to apply for my pension. Now, when I applied for my pension, I was eligible for what they called a transition retirement allowance, which, again, was deferred wages that we would receive when we retired. That amount was \$150,000. Because my pension did not start until two weeks after Nortel went into bankruptcy protection, I lost that \$150,000. Nortel stopped paying all transition retirement allowances—all that were in process. You could take it either as a lump sum or monthly over a five-year period. I had chosen a lump sum.

So everybody who had that has lost out. Those claims now are a claim on the estate. We'll be lucky to get 15¢ on the dollar for that claim.

There are a whole bunch of issues related to employee claims for which we're going to be in desperate straits. That \$150,000 was to pay off my mortgage. Three years ago I downsized to come to Ottawa to help look after my aged parents as much as I could. I'm now in a situation where I'm faced with selling this house I downsized to and moving into an apartment. Having been at an executive level with Nortel, and one of the few females, I must add, when I was an executive—there were only five other females in the 1,500 who were executives—I never expected to be in this situation in my life now.

So there's the severance pay. There's the people who were terminated and who are still not employed because of the narrow skill set they had working in the company. There are people who have gone to the other companies that bought out part of Nortel businesses who have been laid off from those businesses, because they are restructuring and downsizing.

• (1125)

The Chair: Thank you, Madam Clark-Stewart. Thank you, Mr. Bouchard.

Now we'll go on to Mr. Lake, for seven minutes.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

Thank you, Ms. Clark-Stewart, for coming before us today.

I want to ask first about the amendments themselves, because that is why we extended into these extra meetings. It was to hear how

these amendments changed or didn't change witnesses' views on the legislation.

Can you tell me whether the NDP amendments change your organization's position on this legislation?

Ms. Anne Clark-Stewart: No, they don't change our position. We feel that the fact that you've included the solvency ratio versus the unfunded liability is most important, because the unfunded liability just means that it's an ongoing concern.

Mr. Mike Lake: Based on the testimony you heard from other witnesses, do you think this is likely? Are these changes major in terms of people changing their positions on the legislation because of these amendments? Do you anticipate that any of the other organizations will?

Ms. Anne Clark-Stewart: I think the other organizations that were in favour of Bill C-501 will be more in favour of Bill C-501 as a result of this.

Mr. Mike Lake: And the organizations opposed to Bill C-501 would probably still be opposed, I would say, right?

Ms. Anne Clark-Stewart: I think those organizations would be opposed to anything that would benefit employees.

Mr. Mike Lake: That's pretty strong language.

Ms. Anne Clark-Stewart: Well, I've been listening to all of the presentations. I've been here at all of those committee meetings, except one, and I've read all of the transcripts.

I am absolutely appalled—and that's the word I'm going to use, "appalled"—that businesses say that they cannot keep their commitments to their employees for business reasons, for increased credit.

The other point I want to make is that most of those people who were against the bill were saying, well, this could happen, this may happen, this is probably going to happen.

Where's the definitive indication that it will happen?

When the other bill on WEPPA was introduced, with retroactive legislation, there was no going to the Supreme Court with that. When the asset-backed paper case went in in 2007, and that was retroactive legislation to favour the banks, there was no appeal to the Supreme Court on it.

So I think there's a lot of fearmongering, from my perspective—i. e., if we do that, then this is going to happen and people are going to object.

Let's look at the needs of Canadians and the needs of the seniors, the frail, the elderly. These are people who are in nursing homes right now who are going to have to leave their environments. They are going to have to go to other nursing homes that are cheaper. They're going to have to uproot from all of their contacts. The average age of our pensioners is 74, and with these seniors, this is very disruptive for them.

Mr. Mike Lake: There's no question that bankruptcy, in general, is disruptive.

Ms. Anne Clark-Stewart: No question.

Mr. Mike Lake: It's disruptive to suppliers, though, as well. It's obviously disruptive to the thousands and thousands of Canadians who held Nortel in their RRSPs. It was very disruptive to them as well. It's disruptive to pension funds, union pension funds, that held bonds. You know, it's disruptive to them and those pensioners as well.

Bankruptcy is disruptive. It's terrible. It is very hard to hear what Nortel pensioners are going through. I find it very difficult to see what the long-term disability folks are going through.

Ms. Anne Clark-Stewart: Absolutely.

Mr. Mike Lake: Bankruptcy is devastating. There's no question.

Ms. Anne Clark-Stewart: I just have a comment on bonds in pension funds. They do not have Nortel junk bonds in pension funds. They're below investment grade.

Mr. Mike Lake: I just want to talk a little bit, if I could, about the unintended consequences we heard about. You've said that it's fearmongering, but the....

You said that you were an executive at Nortel, right?

• (1130)

Ms. Anne Clark-Stewart: Yes.

Mr. Mike Lake: So you understand, probably, a little bit about access to capital and the positive and negative impacts on a company depending on whether they're able to access capital.

Do you not believe that for companies going through or acting in this very difficult global economic environment, access to capital has been a pretty critical issue over the last little while?

Ms. Anne Clark-Stewart: Yes, I do. But I also know that if a company wants to get into a market, they will do whatever they have to do in terms of the capital expenditures.

I was involved in mergers and acquisitions in the 1980s and 1990s with the wireless division. I was AVP of business planning. We went into France, and we bought a company in France called Matrikon. Going into France, we not only had to pay for all of the employees who were foreign service, as you call it. We had to pay equivalent taxes that they would have paid in France as employees of France. We had to pay twice that amount. That was a cost of doing business to get into that market.

So I think you will find that most businesses that want to get into a market will do whatever is necessary to get into that market.

Mr. Mike Lake: As members of the industry committee, I would imagine that we all, over the last couple of years, though, heard from companies that their challenges with access to capital were putting them in danger of not being able to operate any more, not being able to continue, because of some of the challenges they had.

In those circumstances, companies that may not have had access to that capital may have gone bankrupt. They may have had to lay off employees. They may have faced fairly devastating circumstances. Their suppliers may have had significant struggles as well.

What do you say to those suppliers out there who might have had challenges running their own businesses, who may have had to face the possibility of laying off employees?

Ms. Anne Clark-Stewart: I suggest they go to the Royal Bank of Canada and get involved with them, since they have a \$3 billion profit every quarter. They have lots of capital.

Mr. Mike Lake: Our banking system is one of the strongest banking systems in the world. We hear that time and time again. That's a strength of the Canadian economy. It's one of the reasons we're not facing some of the challenges that countries like Ireland and Greece have faced over the last little while.

When we talk about unintended consequences as we go through this, I hope you understand that when we're making decisions on legislation like this we're trying to weigh everything we hear. We're trying to avoid creating a situation that's worse than the situation we have now.

I understand it's difficult when you're here looking at the specific situation as it relates to Nortel. There's no question that situation is very difficult. But as we process this, as we hear what various witnesses have to say, we have to make a decision on the basis of the overall economy in Canada and—

The Chair: Mr. Lake, I'm sorry, I have to make a decision too.

Mr. Mike Lake: —ensuring we're not going to create very similar situations for other Canadians.

The Chair: I apologize, Mr. Lake.

Mr. Mike Lake: No, that's fair.

The Chair: Again, as Mr. Wallace constantly quotes me, time is our enemy.

Mr. Rafferty, for seven minutes, please.

Mr. John Rafferty (Thunder Bay—Rainy River, NDP): Thank you very much, Chair.

I'd like to make a couple of comments first before I ask you some questions, Ms. Clark-Stewart.

First of all, with regard to Mr. Lake's most recent comments about the banks being the strongest in the world, I'll remind everybody that the Canadian taxpayers did pay—it's off the books, of course, not official—\$75 billion to our banks.

Some of our banks made very poor investments in the last number of years, the same as American banks did, CIBC being the most notable, in terms of being in trouble.

Ms. Anne Clark-Stewart: Right.

Mr. John Rafferty: So I hesitate to say that the.... While our banks may be the strongest in the world, they have had their problems too, particularly over the last couple of years.

On Mr. Rota's comments about pensions being deferred wages and him agreeing that they are, in fact that is very true. I agree with Mr. Rota on that. In fact I would go one step further and suggest that all the other agreements that companies make with employees should be legally binding agreements. They are commitments that companies have made, and they should be treated fairly and in the proper order, instead of being somewhere down...and unsecured and being able to get out of those commitments.

For many years Canadian companies have had an opportunity to use the system the way it is, to use money that is not rightfully theirs, in some cases, to increase their bottom line or pay out shareholders or to do all sorts of different things. I guess this bill is an attempt to put an end to that.

We've heard from a number of organizations here over the last few weeks, and there are ones I've met privately with, for example the Canadian Bankers Association and others, and they're very clear that they will work within whatever legislation there is. For them it's a question of risk. That's really the bottom line. How much risk do they have? And will this bill increase their risk? Will it decrease their risk? That's really what they're concerned about.

I would suggest that one of the things this bill will do over the next number of years is make sure that investors invest in companies for the right reasons. In other words, they'll be investing in companies because they have great owners, because they have a wonderful product, great marketing plans, a great future, and 10 years down the road they're going to be making lots of money.

That's why people will start investing in companies—instead of investing in companies by looking at how much money they can borrow and use within that company within the law, which is very wrong.

Now there are people, here in this committee and other MPs, who think, I guess, one of three things about this bill. There's one group that just opposes the bill as it stands.

There's another group that opposes strengthening the bill. When I say strengthening the bill, I'm talking about the amendments that I put forward that clear up some language and close a loophole about unfunded liabilities and so on, of which you're well aware.

Then there are people who oppose weakening the bill. Weakening the bill would be, I guess, instead of talking about secured pensions and other liabilities, talking about preferred, which they would see as a weakening, and they're not happy about it.

So we have these three groups of people. The political reality, and I want to be very clear about this, is that a lot of people will be thinking, particularly in the opposition—I mean opposed to the NDP, not the opposition in the House—that it's an NDP bill, and that's a problem for them.

I mean, there are lots of reasons why people are opposing this bill.

I do have a question.

● (1135)

Mr. Mike Wallace (Burlington, CPC): We're waiting, we're waiting.

Mr. John Rafferty: I meant to have a question, but I got carried away, and I apologize for that.

So there are two types of things that I just talked about. One is leaving the bill where it is and secure it, the pensions and those other liabilities, determination and so on, being secured; or two, preferred. You've already indicated today that preferred is acceptable to you.

What is your feeling about these two divisions, these two ways of looking at this bill? If an amendment could be put forward to move this to preferred, what would be your thoughts on that?

Ms. Anne Clark-Stewart: I would be supportive of that, and I would hope that all parties would work together on this bill. I know it's what we have been working on as the Nortel pensioners group. We've been working with every party, trying to get them to work together to get a good bill for the common good of all Canadians who are going to be affected.

Back when Eaton's went bankrupt, this bankruptcy law should have been addressed. Back when Massey Ferguson went bankrupt, this law should have been addressed. Now that Nortel has... Well, we don't know if it's going bankrupt or if it's going to come out as an IP company. That's still up in the air.

That's another reason why I want to make sure that this reading says that it's not just when it comes out of bankruptcy but when it comes out of CCAA as well, because once a company comes out of CCAA it has no responsibility to its former employees or its former pension plan or former employee obligations.

Mr. John Rafferty: Ms. Clark-Stewart, two years ago, when I made my first speech in the House, I was very clear that I wanted to work with everyone in this House. Canadians expect us all to work together to bring forward legislation that helps everyone and is good for everyone.

With regard to this bill, I've said from the very beginning that I hope we can all work together to make it a good bill. If we need to make changes, we'll make some changes, but we'll do what needs to be done because Canadians expect us to. Quite frankly, that's our job.

I want to assure you that I believe everybody on this committee is of the same mind. I would suggest to you that most members of Parliament in the House are also with us. I hope we come up with something that will be acceptable to everyone.

● (1140)

Ms. Anne Clark-Stewart: I hope so too.

The Chair: Thank you very much, Mr. Rafferty and Madam Clark-Stewart.

Mr. Benson, before we go into our next round of questions, perhaps you could go ahead with your five-minute presentation.

Mr. Phil Benson (Lobbyist, Teamsters Canada): Thank you, Mr. Chair.

I do apologize for being late. For some reason I had the wrong time in my agenda. As we know, we're slaves to our BlackBerrys.

It's somewhat novel to come back in a week or so before a committee to talk about a bill. As I understand it, there were some drafting errors that had to be fixed.

Clearly, we spoke to the bill to put workers in preference in bankruptcy. It's something we've supported for many years. That's in the documentation I gave you.

I want to deal with two issues based upon prior testimony with regard to the bill. To continue a little bit about the discourse or dialogue on what we see as rigours in the marketplace, when the market doesn't have to look at a particular debt of a company, in this case a pension, we think it sends the wrong signals to shareholders, the people buying shares. Would they treat two companies the same in the marketplace if they had to look at a pension deficit?

With reference to bondholders, a big deal was made about a difference in cost of, what, 12 to 50 basis points? You can take the view from one way that this hurts companies, but if you view it from the other way, bondholders are losing returns. They're not looking at the full risk of a company. They'll be asking for more money. In fact, bondholders are being hurt.

You can look at it from the point of view of unsecured creditors. Most unsecured creditors wouldn't know that this great big pension elephant was going to land in their lap. Would they be willing to continue with discounts and all sorts of preferential treatment to companies? Probably not. Should they? Probably not.

As taxpayers, why should we be on the hook for a company that goes bankrupt? As I understand it—and we have people at Flextronics—from the Nortel elephant we're going to get 26¢ on the dollar, rather than 70¢. That's what I understand. Should the taxpayer be on the hook to pay for GIS and equivalent tax credits? Probably not.

Finally, we have our members and other members and people who lose their pensions.

I want to address one thing I heard, and I hear this all the time: "The only way to guarantee a pension is the viability of a company". It's a truism, said over and over and over again.

What tripe. What absolute tripe. What that says is that if I work for a company for 30 years and I'm retired for 20 years, I can still get a little letter in the mail that says I have to take a haircut.

But what company lasts 50 or 60 years in the modern world? Not too many.

The only way to protect a pension is to first make sure, to use the earlier analogy, that the horses are in the barn. That means the money is put in. It is not treated like company money. They've said, before other committees that I've been in front of, that they have to use that money to build their company. But no one's trusted money has to go away.

We also need rules that make sure it's invested conservatively—small-c, of course—prudently, and wisely. It is all workers' wages. All we're asking is that every nickel gets paid. Workers 20 years down the road shouldn't find out that they have to take a haircut because the rules weren't in place and their pensions weren't protected.

This bill, if I'm reading and understanding it correctly, is to close that barn door. It's to simply say to workers that in bankruptcy, your wages will be protected. Your pension will be protected. I think it's part of the discipline that's sent to the marketplace, which I think and we think is important.

It also sends a message to companies—namely, you have to invest prudently, it's not your money, you have to put it away for a rainy day, you have to be careful with it, you have to fund it.

With that, I'd be more than willing to answer any questions you have.

Thank you very much, Mr. Chair.

I do apologize for being late. Again, we are slaves to our BlackBerrys these days.

The Chair: Thank you, Mr. Benson.

Mr. McTeague, you have five minutes.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you.

Mr. Benson and Ms. Clark-Stewart, thank you very much for being here again, both of you.

I'm sure Mr. Braid will appreciate the significance of the BlackBerry malfunctioning in this particular time of Mr. Benson's tardiness....

Mr. Phil Benson: [*Inaudible—Editor*]

Hon. Dan McTeague: I thought I heard that.

I just wanted to create a bit of controversy here.

Voices: Oh, oh!

• (1145)

Mr. Phil Benson: It's more to do with garbage in, garbage out. It's probably my fingers.

Hon. Dan McTeague: Well, welcome again.

I've spent a number of years being taken as a bit of a thorn in the side of some of the largest corporations in this country. I've been labelled a bank basher, not a big friend of big pharma, and certainly not a friend of big oil.

I have a question that goes to both of you, and it will relate more to the realities, I think, that we're confronted with. I'm sympathetic, and I think my party has demonstrated this.

Mr. Benson, you and I will have a chance to talk again this afternoon.

I wanted to underscore what, in your view, would be the practical reactions of corporations in this country if they now have to factor in this bill in terms of existing employment. This is to both of you, and in particular Ms. Clark-Stewart.

In other words, given international realities that didn't exist 20 years ago...packing up and leaving, we didn't have the regulatory protections that we once had in this country. What would stop a corporation....?

Never mind the issue of bonds for a moment; set that aside, recognizing what this would mean in terms of the bottom line impact. What would this mean for jobs across the country today?

I mean, yes, it's great to say we would have these pensions, but is it not the practical reality that companies may just start to cut off some of their employment or suspend future employment opportunities?

Ms. Anne Clark-Stewart: What's actually happening is that companies are not doing defined benefit pension plans. There hasn't been a new one in over 11 years, and they're going to defined contribution pension plans.

Hon. Dan McTeague: Mr. Benson.

Mr. Phil Benson: Teamsters, probably unlike most unions, really live in a global marketplace. Though we do many things that are not global—dairy, beverage, brewery, film, all sorts of stuff—we are Canada's transportation union. Every boat that shows up in the Vancouver, Halifax, and Montreal docks is yet another teamster's job.

To be quite honest with you, companies will choose to move global or not, depending on many factors, and I don't believe pensions are going to be one of them. The issue is that having made a promise and a commitment and taken the wages of workers... because there's no such thing as a corporate contribution. It's workers' contributions. It's part of the pay package. The argument is more about what we do with that money when they get it. Do we continue to use it to build a company? For example, do we take holidays, do we avoid doing it? The big thing they were doing was taking riskier investments to boost the value of their plan, as we found out in 2005 and 2009.

Do I think it would be imminent? No. But to go to the root question that I think you're raising, and I raised this last time, you might be talking about an issue of cap and phase-in rather than imminent.

Hon. Dan McTeague: Well, Mr. Benson, you may not have had the opportunity to be here when Ms. Clark-Stewart suggested there is now a prima facie case, that she has legal opinions that suggest retroactivity could occur. It's in that context that I asked the question, because it seems to me that if... I haven't even plumbed the idea of bankrupt companies in existing bankrupt companies, the impacts that would have should the legislation pass.

Perhaps I could ask the researchers at this point, through you, Chair, if they might be able to determine for us for the next meeting the suitability or practicality of a provincial statute, a Supreme Court decision, I believe, B.C. versus Imperial Tobacco, and its application to federal statutes. There may be a subtle difference.

Ms. Clark-Stewart, I'm not doing this to slight you, I'm just trying to get our own bearings straight on whether we can do this.

My final question is this. Nortel has failed. What does Ericsson do? What does Motorola do? What have they done for their pensions and for their pensioners?

Ms. Anne Clark-Stewart: I can't answer that question, but I could find out for you.

Mr. Phil Benson: According to Labour Canada when I talked to them, Teamsters Canada represents about 70% of their business. We are the largest private sector federally regulated union in terms of numbers, in what we do. This kind of a bill has a great impact on a lot of our members.

As to retroactivity, I'm not going to get into a legal argument, but most bills that come out of here aren't, and I'd be surprised if it is.

In terms of impact, of course, I wish it were. Obviously, for our membership, we're getting pinged. I think that's an issue you should have your legal people certainly examine.

• (1150)

The Chair: Thank you, Mr. Benson.

Now we'll move on to Mr. Wallace, for five minutes.

Mr. Mike Wallace: Thank you, Mr. Chair.

I want to thank our guests for coming this morning.

I have a couple of questions, but I do have to make a comment. I am on the finance committee, and we have looked at the banking system.

Mr. Rafferty talked about our banking system being in the same position as some of our friends south of the border. That is just not the case. There was one bank that was more exposed than others to the bundling of paper that wasn't worth anything, but it still wasn't enough to make a significant dent, and some of the banks didn't touch it at all. So we're in much better shape, and I do take some offence to that comment that our banking system is in the same shape as the U.S. That's just not accurate.

My first question, I guess, would be to you, Mr. Benson, since you've been around a little bit on the Hill on this. I have a fundamental....

And this is me speaking, not my side of the table here or anything.

Here we have a bill to deal with pensions that's eight clauses long. It makes significant changes.

And just so you know how a private member's bill operates, you call over and say, "My slot is up, I want to make a bill that says the sky is blue. Can you send me the legalese to make that happen?" They send you a few paragraphs, if that's all it takes to make that happen, and there's no review by the department in terms of its legality or from a policy perspective. There's no analysis. It's my bill: I can go forward and do it.

And in fact in this case, Mr. Rafferty picked it up from somebody else. It wasn't even his doing.

I'm not criticizing anybody for doing it. Private members' bills in my view do a great job of bringing the issue forward and making it part of the discussion of Parliament, committee, and so on. But in my view, if we are going to make significant changes to the pension system in Canada, the pressure should be on the government of the day, which is us, to make proper legal acts.

Normally when we do a bill at this committee or any committee, we get a binder. Some binders are bigger. In finance they're huge. Most bills come with a binder full of stuff. They're well studied, well analyzed.

Do you have any concerns that we're making such changes...?

I think there are eight clauses in here, and we have eight amendments to seven clauses or something like that.

So my view is that this bill is flawed in that it's not at the level of scrutiny it needs to have to make a significant difference to our pension system.

I would appreciate a comment on that.

Mr. Phil Benson: Thank you, Mr. Wallace.

As you know, in the last year or so I have appeared twice before the House committee of finance talking about pension reform, and in front of the Senate committee. Also Mr. Flaherty was very kind to invite us to his round table on pension reform, and Mr. Menzies was quite kind.

Going back to the documents I gave you—they in fact go back to 2004—we were trying to get this issue clearly front and centre long before Nortel was addressing this issue.

Yes, it would please me—I'd be very happy—if the minister and the government would pick up this bill and make it part of, if you like, a total reform package on pension reform. I think nothing could be better or wiser. It's always great when it's total reform. But having been around this place for coming up 25 years, sometimes you take your chunks where you can get them and you move forward.

I do agree with you somewhat. A lot of private members' bills do raise the issue and bring it forward. They do push governments, opposition, and people to work together to move forward to get something.

At this time, we have nothing except this bill.

Mr. Mike Wallace: Okay. I appreciate that.

Ms. Clark-Stewart, I have a question for you. You're in a DB plan, or were?

Ms. Anne Clark-Stewart: I still am, until next year.

Mr. Mike Wallace: If you were talking to a young person today, would you advise them that a DC plan is a better way to go? You have your money and you get your share, you put your share in and you control it. Or do you prefer still the DB approach?

• (1155)

Ms. Anne Clark-Stewart: Personally, if I had my druthers, I'd do a defined contribution plan and I'd look after my own investments.

But I'm a fairly sophisticated investor. Most people who work in large corporations do not have that ability. So I think we need to have a level of protection for people.

The Chair: Thank you, Madam Clark-Stewart.

Thank you, Mr. Wallace.

Now to the Bloc, Mr. Cardin, *cinq minutes*.

[*Translation*]

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

Good day and welcome to our witnesses.

To follow up on Mr. Wallace's comments, I'd like to relate to you my experience as a municipal councillor some years ago, in 1986 and 1987. I was appointed to serve on the committee responsible for my municipality's pension fund. The plan was a non-defined benefit plan and the municipality was responsible for any unfunded actuarial

liabilities. Someone said earlier that a pension fund was merely compensation deferred. A pension fund is comprised of employer and employee contributions, but it is also at the mercy of other unknown factors that are controlled by external and internal authorities, namely the pension fund managers. How well the fund performs is an unknown.

On looking at the actuarial liability, I was thinking that if the pension fund was simply compensation deferred, then the actuarial liability was simply additional taxation deferred. We're talking about direct services and this is an additional form of taxation.

I had a question about non-defined benefits or defined contributions. You answered my question when you said that a defined contribution plan called for a certain level of expertise on the part of the persons investing the money. In terms of management, companies must stay in business to sustain pension funds over time. Businesses need to perform well. In the case of Nortel, some weaknesses were apparent. Generally speaking, pension funds have long been manipulated by employers, who would seize any actuarial surpluses. We all know what happened to companies that were facing bankruptcy or that had an agreement with creditors. In future, important measures need to be taken with respect to pension fund management.

As for employers who manipulated pension funds, greater control is needed over pension fund management to minimize long-term risk. To say that the company is responsible for all actuarial liabilities isn't right. The company cannot predict these liabilities any more than pensioners can.

Summing up then, what steps can we take to protect pensioners and those who are set to retire soon so that their retirements are secure and companies do not face too many unknowns, which could hamper their growth? It always comes back to that question.

[*English*]

Mr. Phil Benson: Thank you. I think you asked two questions there.

On the first question, to make sure they're secured—that's what this bill does, I think. This type of bill would make them secured.

The second question, interestingly, is our number two position. We only have three, and that's number two. That's the need to ensure that the promises that are made are realistic and are kept, there are no vacations, money goes into the funds, and they are invested prudently. "Prudently" is bonds or bonds equivalent; they're not in the market.

I know there is a lot of talk that stocks beat bonds. Every time I pick up the paper I see that truism. However, just two weeks ago there was a lovely study that showed that, in fact, over the last 30 years bonds were 9.9 and stocks were 9.4.

Thank God the Teamsters Canada actuary—God bless him, he passed away a few years ago—had done this going back to the 1900s and insisted, for safety reasons, that our pension plan would be in bonds and not in stocks, to the point that we were less than 4% invested in the market.

The only way to guarantee it is to ensure the money is there and is invested prudently and correctly.

As to the final comment, if I may, though employers will always say we pay, this is one thing that economists will agree with, and you can bring a string of them in: at the end of the day, it all belongs to their pay package. The only people in Canada, in my view, who get paid correctly are construction workers. You will hear that artisan construction workers make \$50 an hour, \$48 an hour in a union setting. What people don't realize is that \$10 of that goes to their pension fund, \$4 goes to this fund and \$3 goes to that.

In reality, that's how we're all paid. We just don't often see it on our paycheque.

• (1200)

The Chair: Thank you, Mr. Benson.

Thank you, Mr. Cardin.

That is our time, but Mr. Rafferty has asked for one question.

If you could do that as briefly as possible, Mr. Rafferty, I think the committee would be okay with it.

Does Mr. Van Kesteren have a brief question as well?

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): No.

The Chair: Oh, he is leaving now.

Okay, briefly, Mr. Rafferty.

Mr. John Rafferty: Thank you, Chair.

You know, I had to smile last week. I was thinking of company after company, corporation after corporation, that kept on coming forward and saying, oh, this is going to be the end of defined benefit plans; this is going to be awful; this is going to be horrible. And then....

Mr. Wallace can confirm this, but my light bulb comes on occasionally here.

Mr. Mike Wallace: Can you see through all that hair?

Mr. John Rafferty: Well, I'm trying.

At any rate, I had to smile to myself, because I thought, "Why are they saying that? Why are they bemoaning the fact that defined benefit plans will disappear?"

Well, they're bemoaning the fact because they won't have access to other people's money. That's why they were bemoaning the fact that defined benefit plans would disappear.

And thank you for indicating that, you know, there haven't been any new ones.

I would put it to you that in fact defined benefit plans really are a thing of the past. What this bill does is protect them going forward, and 20 or 30 years from now this bill will have no relevance. So this is an opportunity to make sure there's protection.

I'd like your comments on that.

The Chair: As briefly as possible.

Mr. Phil Benson: I'll be really brief.

A pension plan is a pension plan, and whether or not it's a hybrid plan—Teamsters Canada is partly defined and partly defined contribution—there's still a requirement that the plan will fully fund its promises.

So although defined benefit may be going, I personally do not predict one will appear perhaps in my lifetime. It's for all pension plans. I don't view it for just one. I think this is for all of them.

The Chair: Madam Clark-Stewart.

Ms. Anne Clark-Stewart: I would like to make a last point.

There were a number of changes put in place by the government for federally regulated pension plans. Those were good initiatives, but they don't apply to private plans. I think we have to somehow make some arrangements within this country that we don't have two classes of pensioners, because now with what they've done with the federally regulated plans is that the over-funding can get up to 125% without any penalties. That's not the case with the private plans.

I think when our pension plans were creeping up to the 110% level, which is what they are at right now, the companies tended to say they were not going to put any more money into that. That valuation was based on an ongoing concern.

When you get into a situation like we're in right now, they weren't basing it on the solvency ratio or on the windup ratio. You can see that we're looking at 30% and 40% differences between those. We have to do something to make sure that this legislation gets changed as well.

The Chair: Thank you, Madam Clark-Stewart.

Thank you to both witnesses for appearing today.

Ms. Anne Clark-Stewart: Thank you very much.

The Chair: To our committee, we'll meet again on Thursday with another panel of witnesses.

The meeting is adjourned.

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