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Chair: Mrs. Sherry Romanado





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• (1105)

[*English*]

**The Chair (Mrs. Sherry Romanado (Longueuil—Charles-LeMoine, Lib.)):** Good morning, everyone. I call this meeting to order.

Welcome to meeting number 44 of the House of Commons Standing Committee on Industry, Science and Technology.

Today's meeting is taking place in a hybrid format, pursuant to the House order of January 25, 2021. The proceedings will be made available via the House of Commons website. So you are aware, the webcast will always show the person speaking, rather than the entirety of the committee. The first hour will be spent on Bill C-253, and then we will move in camera for the second hour, to review a report.

To ensure an orderly meeting, I'd like to outline a few rules to follow. Members and witnesses may speak in the official language of their choice. Interpretation services are available for this meeting. You have the choice at the bottom of your screen of either floor, English or French audio. Please select your preference now.

I'll remind you that all comments by members and witnesses should be addressed through the chair. When you are not speaking, your microphone should be on mute. If you have a tendency to move your microphone after you've spoken, please make sure you put it back in place prior to responding.

As is my normal practice, I will hold up a yellow card for when you have 30 seconds left in your intervention, and I will hold up a red card for when your time for questions has expired. Please keep your screen in gallery view, so that you can see the cards when I hold them up.

Pursuant to the order of reference of Wednesday, May 12, 2021, the committee is meeting to continue its study of Bill C-253, an act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act.

I'd like to now welcome our witnesses.

From CanAge, we have Laura Tamblyn Watts, president and CEO, and Brett Book, policy officer. From the GENMO Salaried Pension Organization, we have Michael Powell, president, and Tom Laurie, director.

[*Translation*]

From l'Observatoire de la retraite, we have with us Mr. François L'Italien, coordinator.

[*English*]

From the Store and Catalogue Retiree Group, we have Kenneth Eady, Sears retiree and court-appointed representative of Sears retirees.

Each group will have five minutes to present, followed by rounds of questions.

We will start with CanAge.

**Ms. Laura Tamblyn Watts (President and Chief Executive Officer, CanAge):** Good morning and thank you for the opportunity to address you today about the pressing issue of pension reform.

My name is Laura Tamblyn Watts and I'm the CEO of CanAge, Canada's national seniors advocacy organization. We're a pan-Canadian, non-partisan, not-for-profit organization. We work to advance the rights and well-being of Canadians as they age.

With me today is Brett Book, policy officer, with whom I will be co-presenting.

Canadian pensioners need protection from corporate default, particularly during and post COVID-19. Compared to other jurisdictions, Canada lags significantly in its protection of pensioners. With this bill, government can protect pensioners at exactly zero tax impact to other Canadians. This bill puts the risk back where it belongs, in the hands of corporations.

Members of the committee, seniors vote. Overwhelmingly, 72% of all seniors vote in every election, and 89% voted in the last two federal elections. This is an election issue for them. The issue of pension protection recently scandalized the nation with the catastrophe of Sears pensioners, but it has happened many times before, and will continue to happen again until real change is made by government.

CanAge has three key arguments in support of this bill and pension reform.

First, pension protection is long overdue and COVID has changed the landscape; second, old arguments against pension reform are incorrect and outdated; and third, the financial security of seniors matters.

First, pension protection is long overdue and COVID has changed the landscape. I'd like to tell you a story about a member who reached out to us this year. I'll call him Bob. He works at Laurentian University, where his DB plan is located. Laurentian is now in dire straits. Bob's wife worked at Sears and lost her financial security when she lost her Sears pension. He cried to me, heartbroken, on the phone, and asked how it could possibly be that they both worked their whole lives and contributed to their plans, and now face poverty because they are last in line for their own money?

We know that during COVID-19 many seniors faced hard financial times, with increased costs and low interest rates. With austerity assuredly in sight soon, we also know that more employers are likely to fail. Unless government acts now to protect the deferred wages of pensioners, more seniors will be robbed of their hard-earned money and left to a future of financial insecurity. With an aging population, this is an issue of escalating importance.

I will now turn to Mr. Book to continue.

**Mr. Brett Book (Policy Officer, CanAge):** Old arguments against pension reform are incorrect and outdated. CanAge is grateful that a small change was made during budget 2019, which made a difference for a small slice of pensioners. However, the underlying problem remains.

Most of the rationale for not fixing the problem is based on three outdated and unsupported arguments.

First, the adoption of superpriority of pensions and pension protections will mean fewer employees will start up defined benefit plans. With respect, that ship has already sailed. Defined benefit plans are not being created. In Ontario, DB plans fell by more than 10% between 2017 and 2019, even after the Ontario government lowered funding requirements for solvency from 100% to 85%. The only changes that happened were that there are fewer DB plans, not more, and corporations saved billions.

Second, corporations with DB pension plans will have loan rate premiums that will make them uncompetitive and lead to more insolvencies. If profound pension deficits were such a key concern, corporations, pursuant to good risk management and corporate governance, would never permit these enormous pension deficits to occur on their books.

The third argument is that superpriority can have the side effect of making it harder for companies to pull up out of insolvency. This is simply not the case. Companies have the financial ability to fund pension requirements, but instead choose to use their cash for bonuses to corporate executives, dividends and share buybacks. Corporations do not have the legal requirement to protect pensions, so they don't.

The financial security of seniors matters. Seniors who are stripped of their pensions must rely on government benefits, which are not enough to make ends meet. They draw down hard on our already stretched systems, and any additional private savings they might have are in a slump due to flat interest rates—all of this in a rapidly aging population where one in five Canadians will be at the age of retirement by 2030.

CanAge has five recommendations in support of this bill and pension reform, which are to create a superpriority for defined benefit pensioners in the case of corporate insolvency; create pension benefit guaranteed funds across Canada; require pension funds to be fully funded, 100%; establish a retroactive and recurring refundable tax credit equal to what those who have lost have experienced; and finally, create a flexible and modern pension reform system.

We respectfully ask the committee to carefully consider our recommendations and review "Voices of Canada's Seniors: A Roadmap to an Age-Inclusive Canada", which can be found on our website, [canage.ca/voices](http://canage.ca/voices). For detailed recommendations, specifically look under section E, regarding economic security.

We thank the committee for the opportunity to present today. It is respectfully submitted. Thank you.

• (1110)

**The Chair:** Thank you very much.

As a gentle reminder, when you see the cards you can wrap it up.

Our next presentation will be by the GENMO Salaried Pension Organization. You have five minutes.

**Mr. Tom Laurie (Director, GENMO Salaried Pension Organization):** Thank you.

GENMO is an organization that advocates on behalf of over 7,000 of GM Canada's salaried retirees, and we thank you for the opportunity to speak to you this morning.

Like most people, we thought government regulations protected pensioners. After all, defined benefit pensions are supposed to be guaranteed for life. Then, in 2008 and 2009, GM Canada came perilously close to bankruptcy. In fact, GM in the U.S. and Nortel both did file for insolvency. A vague potential pension problem became too close to being real for us.

Out of this situation, GENMO was born in May of 2010. We discovered that pension advocates are the only stakeholders making proposals to solve this problem. While other stakeholders all profess to understand that pensioners are unfairly treated and should be better protected, they haven't brought forward a single credible solution. We have to thank Madam Gill and Mr. Duvall for joining with pension advocates to try to correct this inequity.

The only credible solution on the table today is Bill C-253. It is opposed by some stakeholders. They claim it would put companies with defined benefit pension plans at risk by facing lending premiums that would lead to insolvencies. However, the Ontario Indalex ruling, which made pension deficits a deemed trust, stood for two years without any resulting wave of insolvencies.

Companies will operate within the legislative environment that governments set. Change this environment and companies will change their behaviour. Implementing Bill C-253 will likely have two major impacts on corporate behaviour towards pensions.

First, the pension obligation will be real, not something that disappears during an insolvency. Companies will better fund their pensions to maintain a good standing with all of their creditors. For example, when boards consider dividends, share buybacks and executive bonuses, they will consider their pension obligation more seriously.

Studies have shown that companies with defined benefit pension plans pay out far more out of the company than would be required to address their pension obligations. Sears, as an example, literally took hundreds of millions of dollars out of the company, while leaving behind a pension obligation in the millions.

Secondly, companies would improve their pension fund risk management. Company pension contributions come from two sources: cash from their continuing operations and money earned on the assets within their plan. There is an incentive for companies to take risks with pension assets to try to generate higher returns, thereby reducing the contributions from their operations. If they lose or miscalculate on this bet, what is the downside? They may get five, 10 or 15 years to make it up, and if worse comes to worst and the company goes out of business or fails, the debt literally vanishes.

In my case, in 2009, when GM Canada told salaried employees their pension was 95% funded, the reality was that after the market crashed, the pension fund was probably in about the 50% funded range. Was GM taken by surprise? Certainly. Was GM too heavily invested in higher-returning equities? Absolutely.

Under the tighter controls that followed, GM Canada reduced significantly the risks in its pension fund and actually brought it to over 100% funded. This is possible with the right motivation.

We hear lots of speculative claims about the consequences of superpriority. How would small businesses get financing? Who would be impacted? In fact, very few, if any, small businesses have defined benefit pensions.

What about other stakeholders during insolvency? If businesses make the adjustments I have discussed previously, there should be little impact. In any case, every other stakeholder has negotiated their risk. They have at risk only the unpaid portion of their contract. Pensioners actually have 20, 30 or 40 years on the table.

• (1115)

We also hear about deflection. You will likely hear witnesses say the solution is elsewhere, in tighter solvency regulations, limits on dividends, etc. However, these things are very difficult to deal with. The point is that while some of these ideas sound reasonable, they

are a jurisdictional nightmare. They involve three areas of legislation—pension, business and tax—and they cross provincial and federal jurisdictions. It would take a lot of effort to do this.

The single point at which to address protection in Canada is insolvency legislation. Bill C-253 provides a reasonable solution.

Thank you.

**The Chair:** Thank you very much.

[*Translation*]

I now invite Mr. L'Italien to take the floor.

You have five minutes, Mr. L'Italien.

**Mr. François L'Italien (Coordinator, Observatoire de la retraite):** Good morning, ladies and gentlemen.

My name is François L'Italien and I am the coordinator of l'Observatoire de la retraite.

Here are a few words about our organization, which has been in existence since 2014. Our organization has two main missions: first, to produce and encourage economic research on retirement to deepen knowledge on this issue of general interest; second, to contribute to the public debate on retirement by disseminating knowledge that is likely to raise the civic competence of Quebecers on this issue.

We bring together 14 major institutional and organizational partners in Quebec, including fund managers, the major retiree associations and the main labour unions.

L'Observatoire de la retraite has been interested in the issue of the impact of corporate restructuring on retirees for several years now, since pension protection is a fundamental concern for us and for Quebec society.

We agreed to contribute to the work of the committee with respect to Bill C-253 to highlight the existence of a structural problem with the Companies' Creditors Arrangement Act, namely, in our view, the overrepresentation of the interests of a particular group in the restructurings that are carried out under this act.

Since 2010, as you know, there have been many cases of company restructurings or bankruptcies that have led to pension cuts for pensioners, and these have often been in the media. We need only think of White Birch Paper, Sears Canada and Groupe Capiales Médias, to mention just a few. These cases not only showed the powerlessness of the retirees affected by the restructuring, but they also highlighted a legal process where those directly affected by the restructuring could not speak out or negotiate. It is a legal process that justifies an increasingly unfair distribution of the benefits and risks of financial restructuring.

With the hindsight provided by these repeated restructurings, the process, actors and effects of restructurings are becoming better documented and known, and make us see aspects of the legislative and legal framework of the Companies' Creditors Arrangement Act that the legislator probably did not see at the very beginning. The further we go, the more we see that a law that is intended to revive companies in difficulty opens the way to business strategies that have nothing to do with difficulties suffered. In fact, we are seeing the emergence, more and more, of a pattern in which defined benefit plans are being undermined.

The structural problem that we have to deal with in the Companies' Creditors Arrangement Act, which is I think the subject of Bill C-253, is the fact that the best organized financial players, the privileged creditors, preferred creditors and business owners, who are by the same token the least vulnerable to financial shocks, emerge with a significant advantage in the restructuring process when compared to other stakeholders, including pension plans.

These financial actors may of course suffer losses in the process, that is not the point, but these are nothing like those of other stakeholders, starting with pension plan members who are at a very vulnerable point in their lives. Since the pension plan's claim against the company is not considered a priority claim or entitled to the same protection as employees' wages, resorting to the Companies' Creditors Arrangement Act has virtually become a way to wind up the plans and this directly affects people's lives.

Unlike the large financial firms and business owners who file under the CCAA, who manage wealth and have large incomes, these are real people with limited financial resources at a time in their lives when they cannot financially recover.

The case of White Birch Paper was very clear in this regard. On the one hand, we saw that the CEOs of Black Diamond Capital and White Birch funds, who proceeded to buy the company, benefited from the Companies' Creditors Arrangement Act by fetching more than \$4.2 million in interest charges and \$12 million in professional fees. On the other, we saw retirees whose pensions were cut by 20% to 30%.

This inequality between large financial organizations and pension plan members not only creates immeasurable economic consequences, but generates an increasingly widespread sense of economic injustice.

• (1120)

In addition, as the number of restructuring cases rises, trust in public institutions is beginning to fray.

**The Chair:** Thank you very much.

[English]

I now invite Mr. Eady to present for five minutes.

**Mr. Kenneth Eady (Sears Retiree and Court-Appointed Representative of Sears Retirees, Store and Catalogue Retiree Group):** Thank you very much.

Good morning, everybody. My name is Ken Eady. I am a Sears retiree and a court-appointed representative for the 17,000 Sears retirees who were affected by the bankruptcy of Sears.

Most of you know the story of Sears, which was a long-time Canadian company, 65 years, and for decades a trusted company in Canada, with employees who worked at Sears for a full career—40 years, sometimes 50 years.

Sears made promises to its employees that, quite frankly, we all believed and accepted as true, that we would have a guaranteed retirement income when we retired, and that we would have health and dental benefits and group life when we retired. That pension was a condition of employment at Sears, and it was a contributory plan. The employees contributed every month to that plan—our money, our wages.

Then, in 2005, the takeover of Sears U.S. threw the control of Sears Canada into the hands of a hedge fund. You've all read the stories of how that unfolded, and it was mentioned here this morning as well. We'll let you draw your own conclusions about the practices that were held there. It's enough to say that in 2017, the company sought creditor protection.

That's when things changed. It changed for everybody who worked at Sears who was a retiree. The pension plan lost 20% of its value right away.

Now, with 20%, people can say, well, maybe that's not so bad, but if you have a small pension and you lose 20%, that can make an enormous difference in how you live. Think about losing 20% of your current income and trying to maintain your lifestyle. Health and dental, group life, all disappeared, and it's hard to replace when you are 85 years old. You can't possibly buy group life, and health and dental are very difficult to replace.

Of all the creditors, the retirees are the ones who have the least likelihood of mitigating their losses. Others can continue to stay in business and can change their business. In fact, the employees can go out and get another job if they are lucky, but the majority of retirees can't mitigate that loss. That money is gone, and gone for good.

The real story here is that Sears broke that promise, a promise that, as a management person, I participated in making to employees, because I believed it was true as well. Sears broke that promise after making it over and over again. As well, after repeatedly being informed—repeatedly told—the federal and provincial institutions that would or should protect vulnerable seniors failed to protect them. They didn't protect them. There was absolutely no protection.

The real story is about the thousands of retirees who lost their pension and lost that income. A guy like Don, retired at 77 years old, has had to go back to work at Home Depot as a greeter so he can afford the medication for his wife's illness and so they can stay in their home. Doris, a 50-year employee of Sears, worked to the last day but lost 20% of her pension. The plans that she and her husband had for retirement changed substantially. Jack is 82, but Jack has to use his line of credit to subsidize his income so that he and his wife can stay in their home.

My colleagues have made a lot of really great points today, with real meaning, but I want to leave you with one important thought: Is it just and is it fair that in Canada, banks receive more protection under bankruptcy laws than seniors? Is it just and is it fair that in Canada, banks receive more protection than vulnerable seniors do? I believe it is not.

• (1125)

You're the ones who can make a difference here, folks. The MPs on this committee can vote in favour of this bill and help protect seniors. I suggest you do.

Thank you very much.

**The Chair:** Thank you very much, Mr. Eady.

We'll now start our rounds of questions.

The first round of questions, for six minutes, goes to MP Poilievre.

**Hon. Pierre Poilievre (Carleton, CPC):** We've now heard all the arguments for and against the bill. What I need is some technical information. My first question is this: In the event that this bill were to pass, how would it be possible for a business to collateralize assets in order to get loans for expansion and new hiring?

Perhaps Mr. Powell would be the right person to address that technical question.

**Mr. Michael Powell (President, GENMO Salaried Pension Organization):** Yes. I think the answer to that is that if you assume that businesses make no change to their behaviour, then that's going to be a problem, absolutely. However, I see that as a false assumption. Businesses will adapt and adjust, just as they did when Ontario ruled in the Indalex case that the unfunded pension liability was a deemed trust. There was not a wave of insolvency. We did not read in the papers that companies were failing left, right and centre.

As Tom pointed out—

• (1130)

**Hon. Pierre Poilievre:** I'm not so much suggesting that they would fail. I'm just wondering about the legal question: How would you write a collateral agreement that says that the lender will lend

money to the business, that the business will expand, and that, in the event of default, then the lender has recourse to the collateral? How would you write that, with this bill in place, which removes collateral primacy and replaces it with pension primacy?

**Mr. Michael Powell:** Yes, and pensions become another.... There is superpriority already in insolvency today—

**Hon. Pierre Poilievre:** Right. It's for salaries and things like that.

**Mr. Michael Powell:** —for things like that. This becomes another one. That would be a risk that would be evaluated as they make those loans, as they do today. Again, I would suggest that businesses would be much more careful about the pension deficits they build up, just as—

**Hon. Pierre Poilievre:** Yes, that's a strong argument for the bill. Many businesses should be forced—in the present tense—to get their pensions in order so that they can raise money in the markets. You make a good point.

I don't want to be convinced anymore on anything. I just want an explanation. Is there anyone else who has technical insight on how that would work: a collateral agreement if this bill is in place? Is there anyone else who can jump in on that narrow question?

It looks like we don't have anyone on that point.

My next question is this: Do we need a transition period for the coming into force of this bill? If the bill just dropped like a brick today, it would reorder the priority of creditors in the event of an insolvency or a bankruptcy. It would do so midstream. Creditors that made loans under the existing regime would suddenly have new rules of the game halfway through it.

I see Laura Tamblyn Watts nodding.

Do you want to jump in on that question?

**Ms. Laura Tamblyn Watts:** Thank you.

It actually folds into the last question as well. In order to ensure that the books are in the proper order and that risk mitigation and management are able to be overseen by corporate governance, in my respectful view, we need a roll-in period. That can start with companies that are starting up now starting with the new rules and with having a roll-in period of approximately three years. That's enough time for foresight of corporate governance to make sure that they are able to change the contractual obligations, that the pension funds are more fully funded, and that on external loan guarantees these new particulars are put in.

**Hon. Pierre Poilievre:** You said three years. Is that for existing businesses, and then it would be immediate for new businesses?

**Ms. Laura Tamblyn Watts:** Yes.

**Hon. Pierre Poilievre:** Okay.

Does anyone else want to comment on the issue of transition? Okay.

I think that's a sensible suggestion, Ms. Tambllyn Watts. What about in cases where there are loan agreements that are 30 years long that have collateral arrangements built into them? Three years would then interrupt those contractual arrangements. How would you respond to that problem?

**Ms. Laura Tambllyn Watts:** Governance knows that rules change. Anyone who's sat on a corporate governance committee or anyone who's ever negotiated contracts knows that you need to keep up with the laws. Canada has been so far behind the U.S., the U.K. and even Australia. The street knows that this needs to happen and is coming. Already, it's being built in.

A three-year notice period, in our respectful view, is appropriate, even when there are existing contractual loan guarantees. It's enough for the underlying loan support system to work through that process.

**Hon. Pierre Poilievre:** What about not having three years and instead just saying that all new loans and liabilities that businesses with a defined benefit plan take on after this date will be prioritized behind the pension? That way, you wouldn't interrupt existing arrangements. Would that be an alternative?

**Ms. Laura Tambllyn Watts:** It is an alternative.

**Hon. Pierre Poilievre:** Mr. Powell?

**Mr. Michael Powell:** I would say it's an alternative. I think you'd have to be very careful with the implementation date, kind of like what we saw this week with Air Canada. If you let people know it's going to happen, I think you'll see a rush of loan applications to beat that deadline. We saw that with Air Canada, with the bonuses this week.

**Hon. Pierre Poilievre:** Okay. I have 30 seconds left. Does anyone want to jump in on any of these technical matters before my time lapses?

All right. Thank you. That was very helpful.

• (1135)

**The Chair:** Thank you very much.

We'll now go to MP Erskine-Smith.

You have the floor for six minutes.

**Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.):** Thanks very much.

I want to pick up where Pierre left off on the state of DB pension plans. If you have a transitional period that says this will take effect only on a going-forward basis, isn't there still great risk to pensioners, given the existing liabilities that companies have that are at the moment prioritized over and above unfunded liabilities as they relate to pensions?

**Mr. Michael Powell:** I think if you left it open-ended like that, it clearly would be a problem, but Laura and I have been talking about three years to get your house in order, which is a reasonable amount of time. If you took an alternate view, it would be some form of go-forward, as Mr. Poilievre mentioned, although, again, I would have concern about how you set that cut-off date so that you don't get a rush of companies signing in for deals and avoiding the pension liability going forward.

From our perspective, certainly the three-year period gives enough time for the companies to reorganize and the lenders to reorganize what they're doing.

**Mr. Nathaniel Erskine-Smith:** I saw a note from CARP and the Canadian Federation of Pensioners that listed a series of different possible solutions. One of those solutions was a deemed trust, but even they acknowledged that in the case of a deemed trust for all pension liabilities, it would impact the DIP lender negatively, such that you would see maybe fewer restructurings.

Walk me through why that same concern doesn't also exist in relation to the superpriority plan.

**Mr. Michael Powell:** Again, I have to point out that with Indalex in Ontario, pensions were essentially a deemed trust for almost two years, at least in the most recent legal case. Deemed trust comes first, and that would supersede every other priority in insolvency. That simply is not reasonable. That would throw everything out of whack. Superpriority already exists, as you've probably heard, with the wage program, employment expenses and things like that. It's already out there. It's already being used. It doesn't put pensioners at the very top, where deemed trust would be. It puts them in the next level down, essentially.

As to what that would do, again, if you give the companies enough time to respond, that's a very reasonable place for that priority to sit. It wouldn't cause the same concern as deemed trust. Deemed trust is clearly the nuclear option. That puts pensions ahead of every other expense. DIP lenders would never lend if it was deemed trust.

**Mr. Nathaniel Erskine-Smith:** Let me ask about the balance between protecting those who deserve to be protected, the pensioners who have worked their entire lives—the Supreme Court has acknowledged that these pensions are deferred wages, and that much is clear—against the certainty in the restructuring process for lenders. Can we look to international examples that identify superpriority in full? I've had examples put to me that show that, as I think we heard from the Canadian Federation of Pensioners in previous testimony, other jurisdictions have a cap, a superpriority of up to, say, \$50,000.

I wonder what you think about establishing a cap in this legislation that would then strike the balance between both protecting pensioners and establishing certainty.

**Mr. Michael Powell:** Yes, that's an option. Certainly, that would go a long way to fixing the problem we have today. No other country has the same legislative environment that Canada has. The countries you've heard of—the U.S., the U.K., Australia and most of the EU—do a better job of protecting pensioners, but they do it in ways that are within their legislative environment. Frankly, the complex nature of Canada has multiple jurisdictions dealing with pensions across multiple legal realms. This involves tax law, pension regulations and business regulations.



I used to work for General Motors of Canada. My pension is regulated by Ontario. General Motors is registered in Nova Scotia. If you tried to have one of these other solutions, such as the U.K. or even the U.S. solution, you would have to get all of these jurisdictions to all agree to uniform change across things like tax and pension legislation. I don't know how you would do that. I've never heard a credible solution to—

**Mr. Nathaniel Erskine-Smith:** It's another challenge we face at the federal level with this idea of an insurance pool. It's an obvious idea to have, but then you create, obviously, material risks if the federal government is loaning out money but then provincial governments are walking away from their obligations, potentially.

Mr. Book, I saw you nodding your head at one point. I'd be interested in other panellists' views on whether we should leave the legislation as is or whether they think it would be preferable to establish a cap as it relates to the superpriority.

I'm starting with Mr. Book.

**Mr. Brett Book:** Thank you.

Once again I'd like to go back to what Mr. Powell said about working within the legislation here. If it works that a cap would be more beneficial to pensioners, we would support that idea, but we want to underscore the importance of the superpriority and the importance of making sure that pensioners do have a priority that's put ahead of the creditors.

• (1140)

**Mr. Nathaniel Erskine-Smith:** Understood.

Ms. Watts, do you have a view on the cap and whether we should leave the legislation as is for the full superpriority or whether we should cap it?

**Ms. Laura Tamblyn Watts:** I prefer the full superpriority. I would accept a cap.

**Mr. Nathaniel Erskine-Smith:** Understood.

Mr. Eady, do you have a view on this?

**Mr. Kenneth Eady:** Yes, I'm with Laura on this. I could accept it as a negotiated settlement, if you would, but it's not my preference. I'm not sure why pensions should be capped when lending institutions are not.

**Mr. Nathaniel Erskine-Smith:** Yes, I guess I would look to international examples, then, to the wage earner protection piece as well, which has a cap, but I completely take the point. If the principle is pension protection, then it should be protected in full.

Thanks, all.

**Mr. Kenneth Eady:** This is debt—real debt. It can be classified in very similar ways to debt that the banks hold, so I'm not sure why it would be capped—but I understand.

Thank you.

**The Chair:** Thank you very much.

[*Translation*]

I now invite Mr. Lemire to take the floor.

You have the floor for six minutes.

**Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ):** Thank you, Madam Chair.

Thank you for your statements. Thank you very much, Mr. Eady, for your very compelling testimony. I understand the emotional charge associated with this issue.

I also thank my colleagues for reflecting on these concerns and doing so outside the box. Refocusing the issue of fairness is important to me.

Maybe we could take a cue from White Birch Paper, for example.

Mr. L'Italien, you have studied this particular case. What can we learn from this saga?

**Mr. François L'Italien:** Thank you for your question.

In fact, we did a thorough economic analysis based on the documents that were made available by the financial comptroller Ernst & Young at the time of the restructuring, in 2010. We were able to reconstruct the owner's financial strategy by getting hold of the annual reports, as well as reports produced by independent auditors.

We should have investigated further, but due to lack of resources and time, we were unable to pursue this avenue. However, we came to the conclusion that behind the exorbitant indebtedness of the Stadacona plant in Quebec City there was a corporate scheme. Given the maturity of the defined benefit plan for the plant's employees, given also that the bulk of the management costs and all the variable capital, i.e. the expenses associated with salaries and the pension plan related to this plant, were disproportionate in the eyes of the owner, there was a strategy of excessive indebtedness; this led the owner to place himself under the Companies' Creditors Arrangement Act, the CCAA.

In our view, what emerges from this case is that, while the CCAA was originally intended to enable companies in real financial difficulty to get back on their feet, over time it has enabled some employers to develop stratagems.

There really should be thorough economic investigations. We know that the case of Sears Canada in Ontario pointed in the direction of improper payment of certain revenues to the company's shareholders at a time when it was known that the company was in financial difficulty. So we see that the argument in the CCAA that creditors must be protected from default or business risk does not hold up in a systematic way. We need to look at these cases. We have been seeing repeated restructurings for several years now, and we think the time has come to at least take stock of the restructuring cases and adjust the focus.

In our view, raising the level of protection for pension plans is a step in the right direction to take stock and improve pension protection.

**Mr. Sébastien Lemire:** In the interest of fairness, passing this bill quickly seems necessary.

I would like to hear from you on the inequities in the bankruptcy process. When you look at the stakeholders by comparing the priority shareholders, the owners and the workers, where do you think the inequalities in the process are? Can we argue that there is inequity in the risk, but also in the consequences of bankruptcy? Is there an economic injustice?

● (1145)

**Mr. François L'Italien:** In the case of White Birch Paper, this is undeniable. People here can bear witness to other cases. We heard about Sears Canada, where there is clearly a structural asymmetry between, on the one hand, workers, and, on the other hand, creditors or owners who, thanks to the CCAA, have their financial interests protected, even enhanced, because the CCAA suspends all negotiations, collective agreements, and, in Quebec, all provisions of the Labour Code to reopen collective agreements.

The CCAA gives a lot of power to the owners and creditors to revive a business, whereas when it comes time to discuss the business recovery agreement, the retirees have no voice, they are not involved, unless the stakeholders as defined by the CCAA decide so. They are not called by the judge to testify about the consequences that a restructuring might have, or to give, quite simply, their endorsement of the revival agreement.

There are two profound injustices. The first relates to the consultation of stakeholders on the recovery restructuring agreement. The second is related to the economic and financial consequences. I was talking about this in my speech, if we take the case of White Birch Paper, we see that the financial situation of the creditor and the owner has improved with the CCAA, while the pensioners have had to deal with extraordinary financial problems. So on the one hand, we have fund managers and banks, institutions where people's assets are not at stake. On the other hand, we are talking about real people who have relatively modest amounts of money to live on and who have no say in the process that directly affects them. This is an unfair process.

**Mr. Sébastien Lemire:** I have one last question for you.

I understand that the ability to absorb negative effects is much easier for a bank, for example, than for a worker. In Bill C-253, as preferred creditors, are banks affected, in your opinion?

**The Chair:** You may answer, very quickly.

**Mr. François L'Italien:** That's an excellent question.

From our point of view, no study shows that this is the case. We need studies, because we don't have enough data to determine objectively whether or not that is the case.

**Mr. Sébastien Lemire:** Thank you.

**The Chair:** Thank you very much.

[English]

Our next round of questions goes to MP Duvall.

You have the floor for six minutes.

**Mr. Scott Duvall (Hamilton Mountain, NDP):** Thank you. I want to thank all the guests for coming here today and giving us some feedback on this important issue.

My first question was going to be for Mr. Powell because he has mentioned it, but even Mr. Book mentioned it. There's been talk at committee about delaying when the measures of this bill will kick in. I've heard, and it's been thrown out there, approximately a three-year delay. Would that be for existing...for people who are already in the procedures?

I'm only asking that question because if we allow a three-year delay for when this bill will be implemented the way it's written, to me there would be a race for applicants trying to get there before time.

I was wanting to hear Mr. Powell's comments on that, please.

**Mr. Michael Powell:** Thank you, Mr. Duvall.

I think when I talk about that and when I look at a three-year delay or some amount of time—I don't know if three years is the correct amount—there does have to be a reordering of the agreements between the borrowers and the lenders. That has to occur, whatever time that takes.

I don't like the idea of saying that it only starts to happen after three years. It goes into effect now and they have three years to make the adjustments, so that you don't legally get into the situation of it being enforceable for three years. You don't give them three years to enter into long-term agreements that would avoid having to fall under the regime of the law. The regime of the law will be there. You have three years to structure yourself to be prepared for it.

I'm not a lawyer who writes legislation. I don't know how you would write that, but that's the meaning that I have.

● (1150)

**Mr. Scott Duvall:** Thank you.

Mr. Eady, I want to thank you for all the hard work you've done representing the Sears retirees. You're an amazing person, and so is the group you're working with. I know you guys have gone through a hard time.

Would putting the unfunded portion of the pension plan up to superpriority and ahead of other secured creditors, as Bill C-253 will be doing, have helped save the Sears pensioners?

**Mr. Kenneth Eady:** Yes. The simple answer is yes.

**Mr. Scott Duvall:** Okay. There's been some talk of moving up the unfunded part of the pension in the pecking order but still leaving them behind the banks. Would that have saved the Sears pensioners?

**Mr. Kenneth Eady:** I'm not certain. I don't believe so. There were really only the super creditors and the rest in this case. The employees were part of the super creditors and the banks. I don't believe it would have made any meaningful difference to Sears pensioners.

I don't agree with that process. Pensioners need to be treated at least equally to other debtors with regard to the debt that is owed them. It's easy to say that all creditors are debtors, but you have a different type of debt with a pension plan. It's a long-term outstanding debt. Pensioners have to be treated as super creditors to make it meaningful, and it would have been meaningful for Sears pensioners.

**Mr. Scott Duvall:** Thank you.

Mr. Eady, with regard to the case of Sears—and I know it was devastating for people across Canada and it really highlighted our current situation—do you believe the status quo we have now, the rules, are inadequate? It was so easy for Sears to go into CCAA and claim bankruptcy to relieve themselves of their liabilities and actually make a profit for some others.

**Mr. Kenneth Eady:** That's a complicated question, Mr. Duvall. The situation that Sears found itself in is not unique but it is substantially different from other examples, like that of Nortel. The Sears situation involved a specific business practice the hedge fund used against the company. There are no laws in Canada that interfere in that process. Should there be? Well, that's a wholly different question for another day. Maybe they should be addressed as well. However, in this case they did what was legal, and I'm not here to dispute that.

The CCAA has now morphed from a restructuring law to what appears to be an orderly bankruptcy law. There's no doubt in my mind that Sears knew they were going to close that business out when they sought court protection, but they used the CCAA laws to be able to get DIP money and to organize it, maybe to the benefit of the company and maybe not.

**Mr. Scott Duvall:** Okay.

Ms. Watts, I want to thank you for the work you do.

Do you believe it is imperative—imperative—that we deal with this issue in this term of government to make sure there are changes made that would protect the pensioners you represent?

**Ms. Laura Tamblyn Watts:** Yes.

**Mr. Scott Duvall:** You're the best. Thanks.

**The Chair:** Thank you so much. I think she saw the card waving, so she was very quick.

We have only about six minutes remaining in the first hour. Because there is a transition time for us to log off of this meeting and to log into the next portion, which is in camera, and because we have a hard stop at one o'clock for interpreters, my suggestion would be that we end at the end of the first round, if that's okay with the members of the committee, so we can move into the in camera portion. Is that okay with the committee?

That's perfect. Thank you so much.

With that, I'd like to thank you, witnesses, for being with us today. Your testimony will help us look at this bill through a lens of all of the stakeholders who are affected with respect to pension plans.

Thank you again.

● (1155)

[*Translation*]

Thank you for your statements and comments.

[*English*]

As a gentle reminder to committee members, any drafted amendments for this bill must be given to the clerk by 4 p.m. today.

With that, I would like to thank everyone for being with us.

Members, if you could please log off this Zoom and log on to the in camera portion, we will see you shortly. Thank you very much.

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