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Re: Enhancing Retirement Security for Canadians

Canadian seniors have worked hard all their lives and deserve to have their savings, investments and pensions protected. The federal government needs to remove barriers and create supports to ensure Canadians can live out their lives with financial security and financial certainty.

Improving retirement security for Canadians will not only make seniors more secure, it will save the government money.

CARP is pleased to provide recommendations to improve each of the three pillars of Canada's retirement income system. In addition, we have provided our responses to each specific pension proposal in Appendix A for ease of reference.

Next Steps

CARP welcomes the opportunity to make this submission and would be pleased to comment further or meet with MPs or staff on these issues.

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cc. The Honourable Philomena Tassi, Minister of Seniors

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A. Old Age Security (OAS) and the Guaranteed Income Supplement (GIS)

CARP recommends the federal government implement the following changes to materially enhance the provision of OAS and GIS and increase enrolment in current income support programs. These changes are critical to lifting seniors out of poverty and ensuring they can age with dignity.

1. Institute a system (as in the UK) where individuals are not required to file their own tax returns. At a minimum, this should apply to low-income wage earners and pensioners. Use this system to automatically calculate and distribute GIS to low-income seniors.

2. Increase GIS for single seniors. This will bridge the gap between existing payments and the poverty line for Canada's poorest seniors - who are overwhelmingly women.

3. Reduce GIS clawbacks. Individuals receiving GIS face high clawbacks from the federal government on earnings. When this is combined with provincial supports such as means-tested housing, they face a very high effective tax rate. This must be reduced.

4. Extend the current exemption of $3,500 of employment income for GIS purposes to all forms of income. Currently GIS recipients face clawbacks on *every* dollar of CPP income or RRSP/RRIF withdrawal.

5. Provide funding to local agencies who work with vulnerable seniors to assist with their applications for income support.

B. Canada Pension Plan (CPP)

The Canada Pension Plan is the foundation of financial security for Canadians when they retire. CARP recommends the federal government consider the following actions to enhance the benefits of CPP and improve overall financial security for seniors.

1. Provide education and information about the benefits of deferring CPP (and OAS).

2. Provide incentives for individuals to defer CPP (and OAS) past age 70. This may include enhancing the pension benefit for those who have maximized their CPP contributions by age 65 and continue to work.

3. Expand the CPP to allow individuals to purchase additional coverage where there have been gaps in their employment contributions, as provided in the U.K.[i]

4. Create an optional, expanded CPP to allow individuals to purchase additional coverage either by paying additional premiums through their working lives or by enabling pensioners to top-up their CPP with lump-sum purchases.

   The high returns and low administrative costs on CPPIB investments combined with the significant benefits of pooled retirement funds make this an extremely attractive alternative to individuals' reliance on their own investment decisions to fund their retirements. This will also help address the needs of people with low financial literacy.

5. Expand CPP benefits to cover a higher percentage of pre-retirement income recognizing that employers are increasingly offering defined contribution pension plans which offload the risks of inadequate returns entirely to employees.

C. Employment-based Pension Plans

CARP is calling on the federal government to make changes to insolvency legislation, corporate governance, corporate taxation and pension legislation to better secure defined benefit pension plans. CARP members are concerned about their pensions: 64% worry about having their pensions reduced.

1. Grant the 1.2 million Canadians with corporate defined benefit pension plans super-priority status for all forms of funding deficit in the event of bankruptcy or insolvency. It's not just pensioners that want pension protection: 95% of CARP members support super-priority for pensioners under bankruptcy legislation.

2. Require that all nationally regulated pensions be at least 100% funded on both a solvency and a going-concern basis, and encourage all Provinces to pass similar legislation. Historically some corporations were considered "too big to fail" and treated accordingly. Given the reality of disruption in today's marketplace that view is both unrealistic and harmful.

3. Create a national pension benefit guarantee fund to fully insure all defined benefit pensions. Encourage the Provinces to require pensions registered in their jurisdictions to participate in the national plan, or create their own pension insurance funds.

Encourage Ontario to extend their Pension Benefit Guarantee Fund to all pensions registered in that province and to guarantee all pension payments rather than the existing bottom-up coverage of $18,000 per year.

These changes, once implemented, would secure Canadian pensioners similar rights to those of pensioners in the U.K. and the U.S. which guarantee annual pensions up to $67,295 U.S. ($89,883 CDN)ii and £39,006 ($65,744 CDN)[iii] respectively.

4. Allow companies to take advantage of business cycles by claiming a deduction for pension funding up to 135% of the actuarial liability, an increase from the current 120% limit.

5. Support more robust regulator reviews of federally regulated pension plans, including sensitivity analysis and scenario forecasting. Encourage provincial regulators to do likewise.

6. Where the sale of a company with an unfunded pension liability is contemplated, require the pension to be fully funded prior to sale, or the consent of the regulator and pension plan members to the sale.

   When the B.C. government required full funding of Catalyst Paper Corporation's pension prior to sale, the pension was immediately fully funded. This directly, positively impacted the retirement security of Catalyst's pensioners.

7. Expand look-back provisions to protect pensioners from investors intent on stripping assets while creating or increasing an unfunded pension liability, by increasing the look-back provision to ten years, or stipulating that look-back limits do not apply where a company's fiduciary duty to pensioners has been breached.

   In practice, some companies have sold off profitable divisions or real estate and distributed the proceeds to shareholders as dividends or through share buy backs, effectively circumventing the priority of pensioners and other creditors.

   For example, the sale of Sears' profitable assets, such as the Craftsman Tools division, and the dividending out of these sales proceeds contributed significantly to the harm done to Sears' pensioners.

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8. Abolish universal pension funding relief. Where corporations are seeking legislative change to allow longer periods to make up deficits or other means of funding relief, allow relief only in those cases where funding would truly be a hardship. In such cases, prohibit share buy backs, dividends and executive bonuses and other special compensation until pensions are once again fully funded on both a going concern and insolvency basis.

9. Increase disclosure requirements for federally-regulated companies with defined benefit pensions. At a minimum, plan members should know whether their pension plans are fully funded and should be informed of corporate earnings and any plans to increase dividends or buy back shares.

10. Create an optional, incremental, Canada Pension Plan, *Canada Pension Plan Plus,* where CPPIB invests the assets and Canada Revenue Agency (CRA) and Employment and Social Development Canada (ESDC) jointly administer the plan. The combination of risk pooling, solid returns and low administration fees enjoyed by the Canada Pension Plan would significantly contribute to the financial security of defined contribution pensioners, and be particularly beneficial to those with low financial literacy.

11. Provide an option for orphaned pension plans of insolvent companies to continue to operate, so that pensioners are not left with decreased assets due to a forced wind-up at fire sale prices and the (comparatively) high cost of annuitization.

    This could be done through Canada Pension Plan Plus (see 9 above) or by allowing existing pension plans to offer this service as is done on an ad hoc basis in Ontario and Quebec.

12. CARP cautions the federal government against transferring pensioners' funds to self-managed accounts. Canadians pay some of the highest investment fees in the world while our investor protections lag those of other developed countries.

    The risks of self-managed accounts are further compounded where retirees and their surviving spouses have low financial literacy.

CARP has also provided responses to the specific proposals put forward by your department on defined benefit pension protection. Please see Appendix A for that information.

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D. Private Savings Plans

Polls commissioned by Sun Life, RBC and Investors Group and our own member polls have consistently shown more than 50% of Canadians are worried about outliving their retirement savings. CARP recommends the federal government adopt the following changes to ensure Canadians don't outlive their savings.

1. Eliminate mandatory RRIF withdrawals to recognize increased longevity and lower returns as well as the reality that seniors are increasingly working past age 71.

   CARP encourages the government to consider phasing out RRIFs altogether, which would also significantly reduce the administrative burden on individuals with RRIFS and their financial advisors and firms.

   According to analysis prepared by the C.D. Howe Institute, deferring the collection of taxes on RRIFs is revenue neutral.[iv]

2. Consider further RRIF and RRSP changes to safeguard the most vulnerable. Due to low financial literacy, low wage earners are often encouraged to invest in RRSPs even though they realize little in the way of tax savings for doing so.

   When they later withdraw those funds, they are subject to high clawbacks on their GIS.

   CARP suggests an amnesty to allow low-income, low-asset individuals to transfer RRSP and RRIF balances to TFSAs. This amnesty would protect low-income, low-asset individuals from punitive GIS clawbacks when they withdraw their savings.

3. CARP calls on the government to protect those who have taken steps to save for their own retirements by improving investor protections. As a first step, the federal government should lead a national conversation with the provinces and territories to:

   - Introduce a best interest standard;
   - Ban embedded fees on all investment products;
   - Harmonize regulation between providers of virtually identical products such as mutual funds and segregated funds to prevent financial advisors from engaging in regulatory arbitrage, where they recommend products to customers based on commissions and regulations, rather than on customer needs;

- Regulate credentials and titles in the investment industry so that investors are not misled by titles such as Vice President or Senior Specialist, which appear to indicate knowledge or expertise but which carry no such qualifications;
- Empower the Ombudsman for Banking Services and Investments with the ability to make binding recommendations and improve outcomes for investors who have been wronged.

4. Amend income tax legislation so deferred annuities are taxed when paid, rather than on accumulated value.

   An annuity is a payment stream that is purchased with a lump sum investment. Because annuities appeal to people who expect to live for many years, insurance companies price annuities to factor in above-average longevity of recipients, and consequently annuities are relatively expensive.

   A deferred annuity is a payment stream that is due to start in some future period, perhaps 20 years after purchase. Because of the extended gap between the purchase date of the deferred annuity and the commencement of annuity payments, there is less risk to insurers that recipients will collect payments for extended periods, or at all, and consequently deferred annuities can be priced at a rate that is more attractive to purchasers.

   While deferred annuities would be an attractive option for some retirees, the way they are taxed has precluded insurance firms from offering them and investors from purchasing them. Deferred annuities are currently taxed on their annual increase in value. Under this approach, individuals would pay taxes before they receive any benefit, and would be taxed on benefits they may never receive, as many will die before any deferred annuity payment is made. Matching tax payments to annuities received would be a fairer tax treatment.

   Creating a favourable environment for deferred annuities would provide individuals with the opportunity to self-insure against outliving their assets and would reduce dependency on social welfare programs.

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Appendix A: Responses to Specific Proposals

1. Pension Options

A. Solvency reserve accounts (SRAs)

A SRA is an account of the pension plan into which companies could remit solvency special payments to eliminate pension deficits. Once the deficit is eliminated and the plan is in surplus, employers would be permitted to recover portions of their special payments from the SRA, in the form of plan surplus, that are no longer required to secure pension benefits. Allowing for SRAs would provide greater flexibility for employers when meeting their pension funding obligations and could provide greater incentive for companies to keep their pension plans well-funded by allowing employers to access certain surplus. To protect benefit security, employer withdrawals from the SRA would not be permitted to create a funding deficit.

CARP's response:

CARP's position is that pension plans should be fully funded so they are always in a position to pay full benefits regardless of other cash outflows.

While the SRA concept is interesting, CARP would need more information about how SRAs would work, and assurances that funds in an SRA would be available to pensioners when needed, before supporting such an initiative.

B. Pension funding relief criteria

The Minister of Finance has the authority to provide employers with special pension funding relief to improve the long-term sustainability of their pension plans. This can help avoid the scenario of employer insolvency and the termination of an underfunded plan. To enhance the Minister's authority in this regard and improve corporate responsibility, employers seeking funding relief could be required to agree to certain specified criteria or conditions, such as a prohibition of dividend payments while pension funding relief measures remain in place. However, in complex cases, employer insolvency and benefit reductions may be unavoidable.

CARP's response:

CARP strongly supports limiting pension funding relief to those cases where it is clearly justified. We believe that such relief must be tied to specific conditions, including the cessation of dividends, a prohibition on share buy backs, and limits on executive compensation.

C. Transfers to self-managed accounts

When a federally regulated DB plan is terminated, it must purchase annuities for retirees that replicate plan benefits. Where plans are underfunded due to employer bankruptcy, purchasing annuities leads to permanently reduced benefits. Retirees could be provided with an 6 additional option to transfer their reduced pension amount, as a lump sum, to a personally managed locked-in savings plan in order to allow for recoupment of losses through future investment returns. However, this would expose retirees to further risks, such as investment losses and the possibility of outliving their retirement savings.

CARP's response:

CARP believes there are better alternatives for pensioners than the forced annuitization of pension plans that are being wound up. Companies are more likely to become insolvent in market down-turns, thus forced annuitization results in the crystallization of investment losses which would likely have lessened or reversed over time.

CARP does not support the transfer of funds to employees for self-management due to lost risk pooling, high fees, poor investor protections and low financial literacy.

Without the pooling of longevity risk, individuals managing their own investments face a significantly higher cost of self-funding their retirements compared to the amount required to be held by a pension. According to a study completed by Commonwealth for HOOPP, in terms of "bang for the buck" a pension will deliver \$5.32 in retirement security compared to \$1 of independently managed retirement savings[v].

Canadians pay some of the highest investment fees of any developed country[vi] while suffering from a comparative lack of investor protections[vii] [viii].

Studies by FCAC have identified the comparatively low levels of financial literacy of Canadian seniors as a priority issue[ix]

CARP is supportive of enabling a willing pension plan (the receiving plan) to accept a transfer of assets from the pension plan of an insolvent company, or indeed any company, (the transferring plan) provided the receiving plan guarantees to pay a negotiated percentage of earned pension benefits to the members of the transferring plan.

The viability of this approach was proven by the merger of Torstar's pension plan with the Colleges of Applied Arts and Technology Plan (CAAT)[x].

D. Clarify benefit entitlement

Federal pension legislation provides that members are entitled to their accrued pension benefits, with the intent that the full pension benefits are to be provided regardless of whether

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the plan remains ongoing or is terminated. Nevertheless, it has been suggested that the legislation may be unclear in this respect, leading some plan sponsors to propose amendments that would provide for different benefits on plan termination compared to while it remains ongoing (e.g., indexation only payable on plan termination if sufficient assets remain in the plan). This could result in members experiencing reductions for those benefits if a plan is terminated underfunded, particularly in an insolvency situation. In order to ensure that all pension benefits are afforded equal protection regardless of whether the plan is ongoing or terminated, the legislation could be clarified to provide explicitly that entitlement to pension benefits cannot be made conditional on the continued operation of the plan. Alternatively, amendments would be required to provide flexibility for DB pension plans to offer different benefits in different circumstances in pursuit of plan-specific objectives, such as addressing affordability and sustainability issues that may be critical to the employer.

CARP's response:

CARP believes that members are entitled to the full pension benefits promised and earned, and that this entitlement is not diminished by the insolvency of the employer.

2. Corporate Governance Options

A. Restrictions on corporate behaviour

Dividend payments, share redemptions and executive compensation packages could be restricted under the CBCA in cases where a company has a large pension deficit. However, these proposals would apply only to CBCA corporations.

CARP's response:

CARP supports these proposals and encourages the federal government to show leadership in this regard.

B. Increased corporate reporting and disclosure requirements

Currently, the CBCA requires corporations to make annual reports and disclosures to shareholders regarding corporate financial information. Recent CBCA amendments, while not yet in effect, will also require publicly-traded corporations to disclose to shareholders prescribed information pertaining to diversity among the board and senior management, and on diversity policies. In order to strengthen corporate social responsibility towards employees and pensioners, the CBCA could be amended to require corporations to report on policies that pertain to the interests of workers and pensioners, and require directors to promote the company's success for the benefit of all its stakeholders, including pensioners and employees.

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As with other potential federal corporate governance changes, only CBCA corporations would be affected.

CARP's response:

CARP believes there is a significant opportunity to address the knowledge gap between employers and pensioners. For example, employees' and pensioners' pension statements should include not only the amount of pension that the plan member has earned, but the percentage of the pension that would be paid based on current plan funding on an insolvency basis.

CARP also supports an expanded fiduciary duty under s. 122 of the CBCA that requires the directors to take into account the interests of a broader group of stakeholders, including pensioners and employees.

3. Insolvency Options

A. Enhanced "look-back" period: The BIA allows a court to set aside dividend payments or share redemptions made by an insolvent corporation within one year of the bankruptcy. The BIA and CCAA also allow a court to set aside reviewable transactions (transfers at undervalue) by the debtor company up to five years before insolvency. In order to enhance corporate accountability and better align corporate decision making with pensioner interests, the "look-back" period in the BIA and the CCAA could be enhanced to include the power for a court to set aside executive bonuses and compensation increases where a company with unfunded pension liabilities enters insolvency within a fixed period. The proceeds recovered could be earmarked for funding pension obligations. However, the proposal could create marketplace uncertainty as executives and shareholders would face greater risks of retroactive claw backs.

CARP's response:

CARP strongly supports the extension of the look-back period beyond current limits. In addition, CARP believes any limitation on the look-back period should be waived where there is evidence that the employer has not upheld a fiduciary duty to plan members. Marketplace uncertainties could be addressed with exemptions and/or indemnification for innocent third parties.

As involuntary, non-commercial creditors, pensioners stand as some of the most vulnerable individuals in the CCAA process and need protection.

B. Enhanced transparency in the CCAA process

In CCAA proceedings, the debtor company can negotiate with its creditors under court supervision on an agreement to restructure its debts. Pensioner interests in restructuring proceedings may be affected by limitations in the current court-supervised process. To better ensure fairness and equity for pensioners and employees, as well as to enhance transparency, the following amendments to the CCAA could be considered:

- increasing participation for pensioners and employee groups at the outset of proceedings by limiting the scope of initial orders;
- enhanced transparency for all creditors by requiring creditors to disclose their real economic interests; and
- creating a more equitable process by imposing an express duty of good faith on all parties to the restructuring.

CARP's response:

CARP strongly supports greater participation of pensioners in any insolvency proceedings. We agree with the specific reforms suggested above, and believe further protections are both merited and achievable. These include:

- Requiring that any court-appointed monitor that intends to take a position on inter-creditor disputes to the detriment of pensioners must have the approval of the court.
- Where multiple plans exist for an employer, requiring that members of all pension plans be represented through the insolvency process (for example, management, blue-collar union and white-collar union).
- Requiring the court appoint Representatives and a Representative Counsel to represent all pensioners at the outset of a CCAA, receivership or bankruptcy proceeding.

We note that the insolvency process appears to have been used by international companies with Canadian subsidiaries as a means to close Canadian operations while avoiding the resulting obligations to pensioners (and other claimants).

For example, Wabush mines claimed that their Canadian mine was played out and that its only option was insolvency. We now know this was factually incorrect as the mine was subsequently purchased and is being reopened[xi] [xii]. Increasing transparency may go some way to protecting pensioners, but CARP encourages the federal government to take further action to prevent such abuses.

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Endnotes

[i] https://www.gov.uk/voluntary-national-insurance-contributions/print

[ii] https://www.pbgc.gov/wr/benefits/guaranteed-benefits/maximum-guarantee In 2019, the maximum annual pension benefit payable for a 65 year old (without a survivor) is $67,295 US or $89,883 CDN.

[iii] https://www.ppf.co.uk/sites/default/files/file-2018-10/compensation_cap_1_april_2018_0.pdf As of April 1, 2018 the maximum pension benefit insured for a 65 year old is **£**39,006 or $65,744.

[iv] Robson, William B.P. and Laurin , Alexandre, Outliving Our Savings: Registered Retirement Income Funds Rules Need a Big Update https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed//e-brief_175.pdf Page 3

[v] Healthcare of Ontario Pension Plan, National Institute on Ageing and Commonwealth, The Value of a Good Pension; How to improve the efficiency of retirement savings in Canada, 2018, page 4.
https://hoopp.com/docs/default-source/about-hoopp-library/advocacy/the-value-of-a-good-pension-102018.pdf

[vi] See for example, Morningstar's 2015 Global Fund Investor Experience Study, which gives Canadian Mutual Funds a D- for fees and expenses.

[vii] Unlike the UK, Australia and the EU, Canada has no best interest standard to protect investors. See for example, the analysis by FAIR Canada, FAIR Canada Comments on Proposed Best Interest Standard and Proposed Targeted Reforms, Sept 30, 2016, Appendix A, https://faircanada.ca/submissions/fair-canada-comments-on-proposed-best-interest-standard-and-proposed-targeted-reforms/

[viii] Canada's Investors' ombuds office, the Ombudsman for Banking Services and Investments, does not have the ability to make binding recommendations. This restriction is not found in other countries such as the U.K. Australia, India and New Zealand. (per Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' (OBSI) Investment Mandate, May 2016, Deborah Battell and Nikki Pender, page 31.)
https://www.obsi.ca/en/news-and-publications/resources/PresentationsandSubmissions/2016-Independent-Evaluation-Investment-Mandate.pdf

[ix] According to FCAC's National Strategy for Financial Literacy, "In Economic Action Plan 2013, the Government identified seniors as a priority group and committed to implementing a financial literacy strategy that specifically responds to seniors' needs." Page 2, https://www.canada.ca/content/dam/canada/financial-consumer-agency/migration/eng/financialliteracy/financialliteracycanada/documents/seniorsstrategyen.pdf

[x] https://www.caatpension.on.ca/en/news/everyone/torstar-pension-plans-join-caat-pension-plan-making-us-stronger

[xi] Hatnay, Andrew, Annual Review of Insolvency Law, *Restructuring, Liquidating, Now Disengagement: The Use of the CCAA by Corporate Parents to Disengage from Canadian Operations*, the case studies reviewed include Wabush Mines, February 2017, page 132.

[xii] After Wabush Mines was put into insolvency because of lack of economic viability (and pension and health benefits were cut – see above reference), it was subsequently sold and is slated to be reopened in 2019.
https://business.financialpost.com/pmn/business-pmn/iron-ore-production-to-restart-next-year-in-labrador-mining-town-of-wabush

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