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*Empty Promises: Why Workplace Pension Law Doesn't Deliver Pensions*, By Elizabeth J. Shilton (2016) Montreal/Kingston: McGill-Queen's University Press, 304 pages. ISBN: 978-0-7735-4787-2

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These criticisms aside, this is a substantial volume, destined to be the basis for any general discussion of inequality in Canada or examination of some of the specific policies the authors discuss. The editors have fulfilled their goals of addressing three major questions on inequality in Canada. This book deserves to be studied. It is relatively accessible to readers who are not professional economists. The performance of governments in recent years could be improved by such study. In the past decade, Canadian provinces have frozen minimum wages, increased university tuitions, smiled while foreign investors drove up the price of housing in major cities and dismantled apprenticeship programs, among other policies. Clearly, an examination of this book might reduce inequality and improve economic performance.

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### **Empty Promises: Why Workplace Pension Law Doesn't Deliver Pensions**

By Elizabeth J. Shilton (2016) Montreal/  
Kingston: McGill-Queen's University Press,  
304 pages. ISBN: 978-0-7735-4787-2.

The title of this book is both attractive and puzzling. It attracts attention because it is rare to state such a sharp opinion about private pension funds, which are in a delicate situation in Canada. Most of the population does not have access to a defined benefits pension plan but would like to, because it is recognized for its offering of secured rents for retirees. Saying that defined benefits pension plans are empty promises is quite depressing and unfair in the context of the Canadian retirement system. The title of the book is puzzling because workplace pensions are usually set in the context of collective bargaining and supervised by regulatory authorities—federal and provincial—which are protected by several laws. Saying that

workplace pension plans are not delivering pensions suggest that this industry is, in the majority, in an illegal situation or that workplace pension law is inefficient. The title stays in mind during the entire reading of this book, reconstructing the demonstration of empty promises across the chapters. The elements of the demonstration are not new in pension literature. Quebec readers will not find much in common with the author's perspective because of Quebec's pension system specifics (unions' savings plans and workplace pension model, sovereign fund and pension management authority in the public sector, multi-employer workplace pensions, and sectoral pension funds). Nevertheless, it is interesting to have a synthesis of reflexions about pensions from a highly experienced practitioner. Chapter 5 to 8, for example, are very well documented and each judicial decision placed in its own particular context.

The book is probably not accessible for non-specialists of Canadian pension's system without a solid judicial background. Unfortunately, there is no presentation of the present situation of pension funds system in Canada to introduce main debates about pension. Industrial relations academics and professionals may be interested by the analysis of jurisprudence and Supreme Court decisions. It is nonetheless necessary to recognize that the judicial aspect is usually decisive in case of conflict about workplace pensions. The problem lies in many statements, usually discussed more thoroughly in the literature, which are presented as definitions at the beginning of the book: the system is a "voluntary system", established by employers because a "business system demanded a stable workforce of loyal, well-trained employees"; "a trend away from plans that pay guaranteed benefits, towards capital accumulation (CAP) plans"; "Canada is unusually dependent, by international standards, on the workplace pension system as a mechanism for delivering retirement income"; "this book focuses primarily on a

model in which the plan is 'sponsored' by a single employer" (p. 3-14). All these elements should have been documented with secondary literature and statistics because, for all of them, the devil is in the detail, and a more social sciences multi-disciplinary perspective would have been necessary to reinforce the premises of the demonstration.

The theoretical developments in the book about "pension's relation" are interesting and well written. Workplace pension law's historical evolution is influenced by different approaches, from proprietary right to employment contract and gift. The important idea is that the workplace pension is a hybrid concept between social security, trust law, and administrative (labour) law. The term hybrid means that you cannot separate these elements without changing the purpose of the concept and the evaluation of its efficiency. Hybrid also means that conflicts about the signification of workplace pensions are the main driving force behind its development. The analysis of the conflicts, from a judicial point of view, is a clear realisation of this book. While reading it, we may be tempted to go a step further from conflicts to collective action and social groups. For example, the status of retirees is unclear in the Canadian retirement system. Sometimes, they are associated with employees through unions, sometimes they are dependent of employers' decisions, and sometimes they are considered as a third social actor separated from employees and employer, but without legal status. Justice Louis LeBel makes important observations about relationships between collective bargaining, fiduciary responsibility and workplace pension (p. 95 and 142). A collective action's perspective would also allow the reader to know who unions are and who employers are to understand their strategies in these conflicts about workplace pensions. Hybrid also means that effective regulation by governmental authorities exclusively through the legal

system is virtually impossible. There are too many laws (social security, public pension funds, workplace, individual and collective saving plans), too many authorities (federal and provincials, financial and labour), too many sectoral situations (construction, public sector including education, health, municipal, private sector with natural resources, manufacturing and services), too many regimes of negotiation (centralized, decentralized, sectoral, coordinated, multi-levels). Canadian workplace pension law regulation may be said to be an empty promise of regulation in this sense. Decisions by arbitrators, courts and legislators are no longer sufficient to ensure regulation from a public interest perspective (pension plan coverage in the population, pension funds management, pension income, etc.). Chapter 4 is dedicated to regulation, but lacks theoretical foundations outside the simple opposition between Market regulation and State regulation.

The conclusion of the book was prophetic, as federal and Quebec governments have agreed to update public pension funds, CPP and QPP, but that does not settle the issue of workplace pension law as defined by the author. To illustrate the interest of reading this book, we could separate conservative from progressive points of view. The conservative one consists of promoting the abolition of workplace pension to rely only in public pensions and individual savings for retirement income. This seems to be the position of the author as she states: "The conclusion to be drawn from this history is that workplace pension plans have had their day." (p. 182). This would imply letting the actual trend towards the disappearance of private sector workplace single employer pension plans continue (however, the public sector situation is different). It would also mean (approximately) doubling public pension programs from 40 per cent of income replacement to 80 per cent and requiring mandatory indi-

vidual savings, as for example in Quebec or New Zealand, to complete income replacement. The progressive point of view would be to improve the retirement system with workplace pensions in order to increase the percentage of workers covered, but not the same kind of collective pensions. Many models already exist in several countries including Canada: sectoral or professional workplace pensions, mandatory insurance funds in case of employer's financial difficulties, individual accounts in collectively negotiated pension plans.

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### **Unions in Court: Organized Labour and the Charter of Rights and Freedoms**

By Larry Savage and Charles W. Smith (2017)  
Vancouver: University of British Columbia Press, 268 pages. ISBN: 978-0-7748-3538-1.

In 2016, Julius Getman published a book where he documented how the United States of America's Supreme Court had gutted the 1935 *National Labor Relations Act 1935* (USA) which promoted workers' freedom of association rights to form unions and engage in collective bargaining, including the right to strike.<sup>1</sup> In 1982, Canada finally achieved 'constitutional' separation from the United Kingdom when the latter's Parliament passed the *Canada Act 1982* (UK). Contained in that Act was *The Canadian Charter of Rights and Freedoms*, which provided Canada with a new constitutional regime. Three provisions of the *Charter* are relevant for the contested terrain known as industrial relations. They are:

Section 1: The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Section 2: Everyone has the following fundamental freedom [...], such as] (d) freedom of association.

Section 15: (1) Every individual is equal before and under the law and has the right to the equal protection of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Inevitably, cases concerning industrial relations found their way to the Supreme Court of Canada. While there have been some cases which have gone against unions, the general trajectory of the Court's decisions, over the last three and half decades, has been one of recognising that unions have a constitutional right to engage in collective bargaining, including strike action. In contrast to the situation on the other side of the International Boundary, Canadian judges, especially in the last two decades, have been more positive in their attitude to unions, collective bargaining and the right to strike.

The direction of the cases that have recognised/granted such rights were generally mounted by unions in response to 'anti-union' provincial and federal government legislation. According to the Canadian Foundation for Labour Rights, between 1982 and 2016, federal and provincial governments enacted 218 laws that impinged negatively on the collective bargaining rights of Canadian workers.<sup>2</sup> The *Charter* held out a prospect of redress. Moreover, relying on political action, in the form of the New Democratic Party to be elected and if elected to enact 'supportive' legislation was regarded by most Canadian unions as little more than a waste of time and scarce resources.

Larry Savage and Charles Smith in *Unions in Court: Organized Labour and the Charter of Rights and Freedoms* provide a lively and illuminating account