



November 23, 2022

**OPEN LETTER TO: Members of the House of Commons and Members of the Senate**  
**RE: Bill C-228, An Act to amend the Bankruptcy and Insolvency Act, (“BIA”) the Companies’ Creditors Arrangement Act (“CCAA”) and the Pension Benefits Standards Act, 1985 (“PBSA”)**

ACPM is the leading advocacy organization for a balanced, effective and sustainable retirement income system in Canada and we are a politically neutral, non-profit national organization. Our retirement plan sponsor and administrator members manage retirement plans for millions of plan members, including active plan members and retirees in Canada. Our members represent some of the largest private and public sector defined benefit (DB) pension plan sponsors and administrators in Canada.

The intent of [Bill C-228](#) appears to improve the security of retiree pensions in the event of an employer insolvency. However, the proposed super-priority approach in this bill has numerous flaws and has serious consequences for existing private sector DB plans. **As a pro-pension organization, we are very concerned with this bill, which could lead to a loss of pension coverage for up to a million Canadians.** ACPM believes that a successful retirement income system balances coverage and security. In Canada, there is a finely calibrated and balanced retirement income system that scores better than many of our peers in international indices.<sup>1</sup>

In the event of a plan insolvency, a super-priority approach would put plan members ahead of secured and unsecured creditors in respect to unfunded obligations for member benefits; creditors include any organization that provides credit, loans, and financing for a variety of reasons (equipment, research, acquisitions etc.) and also includes smaller suppliers and vendors that are already being challenged by the economic environment.

While a super-priority approach appears to represent an improved outcome for plan members in an insolvency, it creates an immediate risk for secured and unsecured creditors in an insolvent situation. These creditors will take action to mitigate this risk with restrictions on financing availability, higher borrowing costs and potentially making financing unavailable for a bankruptcy restructuring, thereby ensuring the demise of a distressed company. These concerns were identified in a letter dated September 21, 2022, to Peter Fonseca, M.P., Chair, Standing Committee on Finance House of Commons, and was supported by ACPM, Canadian Bankers Association, Canadian Chamber of Commerce, Canadian Manufacturers & Exporters and the Pension Investment Association of Canada<sup>2</sup>.

The most imminent threat from an imposed super-priority approach will be the continued existence of active private sector DB plans themselves. These plans are already highly regulated and they cannot incur more costs and risks - they will simply wind up their existing plans or convert them to a retirement savings plan that will be less beneficial for plan members.

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<sup>1</sup> [Mercer CFA Institute Global Pension Index 2022](#)

<sup>2</sup> <https://www.acpm.com/getmedia/253071c3-90b2-4c88-b06c-33c56aec87b3/ACPM-Coalition-C-228-Letter-EN.pdf>

Because Bill C-228 contains amendments to the BIA and CCAA, the proposed legislation is not restricted to federally regulated plans, it will apply to any private sector DB plan in Canada. As of 2020, private sector DB plans covered approximately 1.2 million individuals<sup>3</sup>.

ACPM believes that there are methods that can improve outcomes for plan members in an insolvency without imposing an untested super-priority regime that runs counter to existing national and international standards and practices in respect to secured and unsecured creditors. An insolvency approach should provide employees and retirees with a high degree of certainty of receiving as much of their pension promise as possible. This can be accomplished without the collateral damage identified above and *any of them can be implemented by the federal government*.

**1) Allow pension plans to continue to operate despite the insolvency or bankruptcy of the sponsoring employer.**

Reductions to pension benefits result from “freezing” deficits at a wind-up date that is triggered by an employer’s insolvency. Allowing the plan to continue operating rather than winding it up will, in many cases, allow for funding to recover over time and reductions to be eliminated or minimized. This approach has been used very successfully on an exception basis in Ontario.

**2) Leverage the federal government’s recent innovations.**

Retirees of insolvent company pension plans could be empowered to change the form of their pension from a traditional DB life pension to a lump-sum payment in order to purchase, on a tax deferred basis, a Variable Payment Life Annuity (VPLA) or an Advanced Life Deferred Annuities (ALDA). The *Income Tax Act* could be amended to allow retirees of insolvent company pension plans to take advantage of these innovations to maximize the retirement dollars available to them.

**3) Asset Pooling and Investment Management**

A third alternative could be to leverage the professional, highly capable asset management services available within the existing federal public pension regimes to utilize their investment fund experience in managing the investment of insolvent company pension funds. For over 10 years, Québec legislation has allowed [Retraite Québec](#) (Québec regulatory agency) to administer retirees’ assets after the wind-up of their pension plan following the bankruptcy of their former employer. This solution, nationally, would help a great deal, particularly in combination with the other potential solutions we are proposing.

There are many aspects and implications in respect to Bill C-228, many of which have not been considered in great detail. Our position and proposals on this bill are available for public viewing<sup>4</sup>.

We urge federal representatives to pursue a responsible solution to the issue of pension security and to consider the recommendations that we are proposing on behalf of the people who actually work in the Canadian retirement income industry. Thank you.

**ACPM**

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<sup>3</sup> [Statistics Canada - Registered pension plan membership, by sector and plan type](#)

<sup>4</sup> [ACPM Response to FINA review of Bill C-228, An Act to amend the Bankruptcy and Insolvency Act, the Companies’ Creditors Arrangement Act and the Pension Benefits Standards Act, 1985](#)