Sent via email to FINA@parl.gc.ca

September 21, 2022

Peter Fonseca, M.P.
Chair, Standing Committee on Finance
House of Commons

Re: 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

Dear Mr. Fonseca:

Our associations are writing to you, and the members of the House of Commons Standing Committee on Finance (FINA), in advance of your study on Bill C-228. As Canadians continue to have concerns about their financial security in retirement, it is critical for Parliamentarians to address these challenges in a manner avoiding unintended consequences that will negatively impact Canadian businesses, especially those who sponsor defined benefit plans. Against that backdrop, we encourage FINA members to carefully study this legislation to understand the effects.

This proposed legislation seeks to address the situation where a company has reached a point of financial insolvency. At the core of our concerns is that the proposed legislation will decrease credit availability and make it more difficult for struggling companies to secure loans, thereby increasing the chances of struggling businesses falling into bankruptcy. This is against the policy objective of desiring successful restructures that allow for companies to emerge as a going concern, saving jobs and benefits, and continuing to make contributions that will lead to greater security for the pension plan that this legislation is seeking to protect.

Canada rightly has much to be proud about when it comes to the soundness of our financial system, which is grounded in each financial institution playing a role that ensures systemic stability. This is predicated on the basis of creditors accurately assessing risk profiles, thereby maintaining their own prudential regulatory requirements to prevent lending losses.

This legislation would fundamentally alter the risk profile that is assessed by creditors, who in turn will need to adjust their own approaches. Should this legislation pass, creditors would likely respond to adjust for the increased risk profile that would stem from the potential of not having a loan repaid in one or more of the following ways:

- requiring more or different sources of collateral and other credit enhancements from companies that receive loans;
- applying higher interest rates on loans, which increases the debt servicing costs for companies; and
- restricting a company's ability to further draw down credit facilities should that business' pension solvency come into question, thereby potentially precipitating more bankruptcies.

In addition to negatively impacting companies facing insolvency, this will have the broader impact of creating a disincentive for employers to establish – or maintain – defined benefit pension plans knowing that their access to credit would be constrained compared to maintaining a defined contribution pension plan. In an environment where less than 40% of the workforce outside of the public sector has some sort of workplace retirement savings program, our social system and our workforce cannot afford a decline in coverage.

There are also likely to be more onerous reporting requirements imposed on companies maintaining defined benefit pension plans to ensure their solvency is monitored. These more onerous reporting obligations stem from the difficulties that creditors face in trying to determine exposure to pension deficiencies since it is based on the availability of actuarial valuations. Actuarial valuations represent a snapshot in time, are based on actuarial assumptions, which change based on economic conditions, and establish theoretical liabilities. Given these transparency limitations, more rigorous reporting requirements will be imposed.

Given the adjustments to the ordering of disbursement of assets, other unsecured creditors such as suppliers, including small businesses, would also be faced with a reduced likelihood of recovering any amounts they are due, which may put pressure on their own finances. Additionally, reordering the disbursement of assets also places pressure on employees with unpaid wages and vacation pay.

Our members understand the need for pension security and the certainty it provides for workers. The preferred mechanism to achieve this for financially distressed companies would be a focus on working with lenders to enable restructuring of financial arrangements that will allow the debtor to maintain its operations and protect jobs and pensions.

Finally, there is limited published work by policy makers or researchers to analyze the actual historical Canadian experience with regard to pension plan terminations from insolvencies and the ultimate impact on beneficiaries. The creation of a super-priority in bankruptcy would have broad systemic implications for companies offering defined benefit plans, and in the absence of data it is difficult to assess potential benefits in terms of additional pension security. We believe the debate around this complex issue would benefit from such analysis and encourage the Committee to act as a catalyst for this work.

Given the aforementioned concerns with the legislation in its current form, our associations propose that the Committee study alternative mechanisms to achieve the goal of pension security for Canadians. We would be pleased to provide further perspectives on these three potential alternative methods.

1. **Amend the Bankruptcy and Insolvency Act (BIA) and Companies' Creditors Arrangement Act (CCAA) to allow for the appointment of pension insolvency trustee – Stelco example.**

The CCAA and BIA could be amended to allow for an insolvency trustee to be appointed to wind-down the pension plans of insolvent employers. Such a trustee would be empowered to make decisions with respect to the pension fund that maximize the dollars available. This model led to the success of paying full pensions to Stelco pension plan members. In June 2022, seven years after the Ontario *Pensions Benefit Act* was modified to accommodate the longer wind-up period for the Stelco plans, pension liabilities were annuitized, thus securing pensions at 100%.

Alternatively, by establishing an independent agency to administer the benefits of a distressed plan on a longer term basis until the funded status improves without crystallizing the deficit and reduction of benefits.

2. Utilize large multiemployer pension plans as a means of managing pensions from insolvent companies.

For smaller pension funds, it may be beneficial to merge with another plan to achieve the scale necessary to maintain the plan on a going concern basis. The pension insolvency trustee could also be empowered to merge the insolvent company plan where the trustee determines it to be appropriate.

3. Leverage the federal government's recent innovations by using VPLAs and ALDAs.

Recent strides have been made innovating in the area of pension "decumulation" to enable defined contribution savings to be converted into a Variable Payment Life Annuity (VPLA). Advanced Life Deferred Annuities (ALDAs) are also available so that retirees have retirement income security later in life when most needed, but at a lower cost than a traditional annuity. 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. Additionally, outcomes using a bulk transfer negotiated by the trustee to a VLPA have the potential to substantially, if not fully, replicate the member's DB pension.

Thank you for your consideration of our views. We would be pleased to provide further perspectives once the committee starts its study on the proposed legislation.

Association of Canadian Pension Management

Canadian Bankers Association

Canadian Chamber of Commerce

Canadian Manufacturers & Exporters

Pension Investment Association of Canada

CC:

Members of the House of Commons Standing Committee on Finance

Honourable François-Philippe Champagne, P.C., M.P. Minister of Industry, Science and Innovation