October 12, 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

Six of Canada's leading Seniors/Pensioners Advocacy organizations are writing to you in support of Bill C-228 and the proposed extension of super-priority to the unfunded pension liability in insolvency.

As organizations representing seniors and retirees across Canada, we speak on behalf of the 4.6 million Canadians who rely on defined benefit pensions.

Federal insolvency and pension laws currently favour the protection of big banks and executive bonuses over financial protection for pensioners. This is wrong and needs to be fixed.

Since 2005, there have been three Private Members Bills, two government bills, and several consultations on the issue. In each case, with one exception, Parliament chose not to act meaningfully to protect the pensions of vulnerable Canadian seniors. C-253 was passed by the INDU committee but died on the order paper when the 2020 election was called.

Parliament has consistently chosen to protect banks and big business at the expense of vulnerable seniors.

Audrey, a Sears retiree whose pension was dramatically cut, understands this first-hand. At 78 years old, Audrey and her husband often must decide between paying for a prescription, groceries, heating, or doctor's bills. Visits to their daughters have become something they can't afford.

Audrey is just one example of the estimated 250,000 Canadian seniors, since 1982, who have faced financial insecurity when their former employer filed for insolvency with an underfunded pension. These are real people facing real hardships because Parliament has consistently sided with those who advocate for insolvency status quo - banks, lenders, and the insolvency sector.

Canadians need legislative change that compels corporate behavioural change before insolvency occurs. By legislating super-priority for defined benefit pensions in the event of insolvency, corporations and lending markets will be forced to adjust to reflect the legal reality. In other words, companies will be compelled by lenders to fully fund their pensions and hold back executive bonuses and dividends if their pensions are underfunded.

Bankers and corporate leaders will argue that this kind of behavioural change is impossible. A decade ago, people thought it was economically irresponsible to put a price on carbon. Today, as we work together to fight the climate crisis, carbon pricing has become a critical tool.

There is no evidence behind the myths perpetuated by the insolvency sector in favour of the status quo. Here are the facts:

Fact: Super-priority CAN be implemented without impacting the capital markets.
While critics have argued that extending super-priority will limit access to capital and increase borrowing costs, these predictions have not materialized in other instances. The Insolvency Institute of Canada testified in 2005 at Committee hearings on C-55 (the Wage Earner Protection Program) that extending super-priority would result in: "a significant negative impact on Canadian productivity and employment since businesses, will have a tougher time getting financing, and their costs could rise dramatically." Parliament discounted this argument and prioritized individual workers, passing WEPP on November 25, 2005. Parliament should act consistently with respect to pensioners. WEPP impacted every company that could file for insolvency, C-228 impacts the small percentage that have single employer defined benefit pension plans.

Fact: Super-priority will not reduce the number of new defined benefit pensions. Private, single-employer defined benefit pension plans have been declining for years. With a work environment that sees people moving from job to job over their careers, a pension that requires employment at the same company for thirty years or more is unrealistic. There have been no new defined benefit pension plans established in Canada in over 20 years.

FACT: Action, not consultation, is long overdue: Consultation is a stall tactic used by the insolvency sector, bankers and lawyers to maintain the status quo. Stalling doesn’t serve the interests of Canadians. It simply elevates the risks to the 4.3 M Canadians who rely on DB pensions for their retirement security.

FACT: Canada lags behind OECD countries in pension protection. Other OECD countries, including the US, the UK, and Australia, all provide significantly superior pension protection for their seniors. In Canada, with a complex federal-provincial pension and insolvency regime involving 11 jurisdictions, super-priority is our best tool to protect pensioners.

FACT: Corporate behaviour can change. At the time of its insolvency in 2003, Air Canada had a $1.3 billion pension deficit. By 2013 Air Canada’s pension deficit ballooned to $4.2 billion. Then Finance Minister Jim Flaherty agreed to relief, subject to restrictions until Air Canada’s pension was fully funded. Executive compensation increases were capped, special bonuses were prohibited, and other incentive plans were severely curtailed. The airline was also prevented from paying dividends and buying back stock. With these restrictions in place, Air Canada managed to fully fund the pension by May 2015.

Previous successful restructurings, such as Stelco, are given as examples that would have failed if the new owner had to deal with a pension deficit. The fundamental assumption here is that corporate behaviour is immutable, that the company would make the same decisions regardless of changes in the regulatory environment. This is false logic. If true, no progress would ever be made.

Pension protection is long overdue. We urge this committee to support C-228 and protect the 4.3 million Canadians who rely on defined benefit pensions for their financial security in retirement.

We look forward to an opportunity to appear before this committee to discuss the merits and potential amendments to this important bill.

CanAge CARP Canadian Federation of Pensioners Réseau FADOQ

Canadian Network for the Prevention of Elder Abuse National Pensioners Federation

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