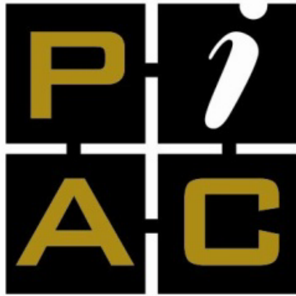

Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

October 18, 2022

Alexandre Roger
Clerk of the Committee
Standing Committee on Finance
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6
Via FINA@parl.gc.ca

Re: 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. Roger,

The purpose of this letter is to provide comments from the Pension Investment Association of Canada (PIAC) on Bill C-228 (the Bill) titled, An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, and the Pension Benefits Standard Act, 1985, also known as the Pension Protection Act. Bill C-228 aims to ensure that claims concerning unfunded liabilities or solvency deficiencies of pension plans and claims related to the termination of participation in group insurance plans are prioritized during bankruptcy proceedings.

PIAC has been the voice for Canadian pension funds since 1977 in matters related to pension investment and governance. PIAC's members manage over $2.8 trillion of assets on behalf of millions of Canadians. Our mission is to promote sound investment practices and good governance for the benefit of plan sponsors and beneficiaries.

Preferred Creditor Status

PIAC shares the same concern as the Standing Committee on Finance (FINA) that pension security is paramount for our members. However, we strongly disagree that the method to achieve pension security is through adopting a super-priority for unfunded pension liabilities and employee retirement benefits in insolvency situations. The overall impact on the pension and business environment would be harmful and result in unintended adverse consequences for those this Bill aims to assist.

In particular, the Bill would negatively impact defined benefit (DB) pension plan sponsors' ability to secure capital. As a result, the risk of sponsoring such a plan would be too high, forcing employers to close their DB pension plan. In an environment where the number of DB plans is dwindling and just over one-third of employees in the private sector have access to any workplace savings program, we cannot afford a decline in pension coverage across our workforce.

While the legislation's intentions are honourable, the Bill fails to consider that in bankruptcy, a limited amount of funds can be used to resolve outstanding debt. To view a super-priority status as a tool to secure pensioners' benefits fails to acknowledge the realities of how bankruptcy works. Furthermore, the Bill fails to consider best practices that have helped secure member pensions and how the Committee could further develop these practices to enable and ensure pension security. The recommendations below provide suggestions that the Committee should review as it considers this legislation.

Increasingly Difficult Business Environment

Should Bill C-228 become law, companies that sponsor DB plans would experience higher loan interest rates resulting from increased liability and less security for lenders. The super-priority for pension plan deficits would alter the risk profile assessed by creditors. These changes would affect credit availability, particularly for companies with DB pension plans. Creditors could require additional credit or collateral sources, resulting in an increased chance of struggling businesses becoming bankrupt. Other reporting requirements would also be enacted to monitor solvency, adding further complexity to subsequent loans.

Moreover, solvency funding rules have resulted in actuarial valuations calculating solvency liabilities far exceeding going concern liabilities. As a result, the impact of the Bill would be pro-cyclical, whereas during more critical periods of market downturns, plan funding obligations would rise when lenders are most concerned about pension deficits. This would add to a challenging operating environment where pension plan costs would increase, and the ability to receive much-needed financing to remain afloat would become difficult to achieve. Thus, the consequences would be a vicious cycle: when organizations need liquidity to stay afloat and sustain jobs, credit would be hard to acquire, and pension plan costs would increase. The consequences will harm those the Bill aims to protect, inhibiting companies' ability to restructure, save jobs and benefits, and preserve pension security.

From this, an environment emerges where if this Bill were to pass, companies that sponsor DB pension plans for their employees would be significantly disadvantaged in acquiring capital compared to their counterparts that do not support DB plans. As a result, companies will reassess whether it is in their best interest to offer DB pensions to their employees, thereby significantly harming retirement security.

It should be also noted that no other OECD country currently offers a super priority status to pensioners in bankruptcy proceedings. As a result, limited data exists to determine the success of this policy pathway. Given the broader systemic implications and viable alternative options, the absence of data makes it difficult to determine whether the benefits to retirees would outweigh the possible adverse outcomes.

Alternative Solutions

Past Successes

Protocol for insolvent companies currently involves working with stakeholders to restructure operations to sustain business activity. Under this current system, there are examples of successful restructurings that have accommodated specific businesses' needs to ensure that companies could protect employee pensions.

One recent example includes the Stelco restructuring case. In the case of Stelco, pension solvency funding requirements were so onerous that they would have made the company insolvent. Recognizing this, most pension jurisdictions in Canada changed their funding rules to emphasize going concern funding of plans over solvency funding. The value of this change is that it allows plan administrators to plan as if a pension plan will operate over a longer-term basis rather than fund the plan as if it could wind up overnight (as is the case with solvency funding).

Most jurisdictions, including Ontario, Quebec, and British Columbia, have revised their funding rules to ensure that DB pensions can last over the longer term. The funding reforms that Ontario made contributed to the ability of Stelco to restructure. However, plans that fall under federal jurisdiction have not been so lucky, as federal pension legislation has not been reformed in lockstep with major provincial jurisdictions. **Thus, PIAC encourages the Committee to amend the legislation to ensure that funding rules under the PBSA are adapted to be consistent with jurisdictions like Ontario who now follow a going concern plus regime.**

Moreover, further looking at the Stelco insolvency case raises doubt about whether super-priority status is even necessary. In the case of Stelco, an insolvency trustee was appointed to manage plan assets on a longer-term basis, allowing the trustee to maximize pension dollars. This resulted in the ability for Stelco pension plan members to receive their full pensions. The longer-term windup period, which Ontario extended, resulted in the necessary time required to improve the funded status of the Stelco pension plan without pension deficits and benefit reductions becoming definite. The success of Stelco's plans displays how alternatives to traditional windups can, with time and good management, result in pension security. **Stelco indicates there are a range of creative solutions beyond an immediate plan wind-up/closure due to bankruptcy that will deliver greater value to retirees in an insolvency situation. PIAC encourages policymakers to look systematically at these potential options and best practices and remove impediments to their implementation.**

Easing SEPP to MEPP Merger Processes

A newer phenomenon in building pension security is facilitating plan consolidation, where employers merge their pension plan into a larger multiemployer pension plan (single employer to multiemployer pension plan mergers). In doing so, the employer no longer must manage the pension plan, and employees' pensions no longer rely on their employer's fiscal health. Pension consolidation in this form can be a solution for pension security before companies go insolvent. As a result, the Committee should commit to finding ways to make pension consolidation more efficient within and across pension jurisdictions involving different plan types.

Furthermore, in certain circumstances, a multiemployer pension plan may be able to take over the management of pension assets and liabilities of an insolvent plan, should it agree to take on such a plan. While the pension transfer may not be able to replicate the existing pension at full value, the long-term nature of MEPP pension management combined with indexation can bring

close to full restoration of the pension benefit. PIAC encourages the FINA Committee to find ways to remove impediments to permitting MEPPs from administering the insolvent pension plan.

Solvency Reserve Accounts

The 2022 Federal Budget proposed establishing a framework for solvency reserve accounts (SRAs). Allowing and promoting the use of SRAs can help DB plan sponsors better manage the volatility of plan funding requirements and help improve benefit security for members and retirees. SRAs would create a separate or notional account within a single employer DB pension plan into which an employer could remit special solvency payments that could be used when a plan is experiencing an economic downturn. An SRA could help improve plans' funded status during periods of underfunding and can be used for benefit top-ups if necessary. In a rising interest rate environment, solvency reserve accounts have become even more appealing as solvency funding ratios have improved. Before proceeding with this legislation, the Standing Committee should allow employers and other pension jurisdictions to implement Solvency Reserve Accounts and to determine their effectiveness.

Technical Amendments:

While PIAC insists that the passage of this Bill would lead to unintended consequences and thus should not be passed, some technical amendments can be made to lessen the blunt impacts of the Bill's provisions.

Establish a transition period of 7-10 years:

Noting the potential consequences of this legislation PIAC recommends extending the transition period of it coming into effect. This transition period needs to take into account typical bargaining periods (which are usually 3-5 years), pension plan valuation cycles (since the bargaining for pension plan reforms would need the valuation to do so) as well as relevant notice periods to plan members regarding plan reforms (which could require up to 2 years). Moreover, any type of plan changes, including moving from a defined benefit pension to a defined contribution pension, would likely result in substantial costs to a business to evaluate which changes are most suitable for the organization. Where accommodations are needed for defined benefit plan members who are close to retirement, these settlements can be costly and would also take a lengthy period of time to settle.

With the potential passing of this Bill and the inevitable transition away from DB pension offerings a transition period 7-10 years would allow pension plan sponsors to fully evaluate the options in front of them to ensure employee pensions are secured.

Cap the amount that plan members are able to recover through priority status:

As previously mentioned, the pool of money distributed during bankruptcy proceedings is limited, and thus the Committee must be mindful of all stakeholders that are entitled to some recovery. As a result, the Committee is encouraged to cap the amount that pension plan members are able to recover. A range of options are available for review including capping the top up to the lower of the amount required to bring the plan to full funding on a going concern basis or to prop up solvency funding by 5-10 points. PIAC encourages the Committee to review this further and to work with industry to find a suitable cap.

Commit to researching insolvency and pensions before the legislation comes into effect:

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. Thus, the Committee should amend the legislation to require the Government to research this topic before the Bill comes into effect. In doing so such research should determine if worker pension security will improve or if retirement security coverage will worsen for workers across Canada.

PIAC appreciates the opportunity to respond to the Standing Committee on Finance's review of Bill C-228. We would be more than happy to respond to any questions regarding this submission. Thank you for the opportunity to share our perspective on this important topic.

Yours truly,

Peter Waite
Executive Director

Cc:
Hon. Chrystia Freeland – Minister of Finance
Hon. François-Phillipe Champagne – Minister of Innovation, Science and Industry
Kathleen Wrye – Department of Finance, Director, Pensions Policy, Financial Sector Policy Branch
Mark Schaan - Department of Industry, Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector
Pierre Poilievre – Leader of the Official Opposition
Jagmeet Singh – Leader of the New Democratic Party
Yves-François Blanchet – Leader of the Bloc Québécois