CANADIAN FEDERATION OF PENSIONERS
ADVOCATING FOR PENSIONERS
FÉDÉRATION CANADIENNE DES RETRAITÉS
POUR LES RETRAITÉS

The Canadian Federation of Pensioners (CFP) is pleased to provide its comments regarding the Senate Standing Committee on Banking, Commerce, and the Economy review of Bill C-228.

The Canadian Federation of Pensioners advocates on behalf of defined benefit pension plans and their members. Founded in 2005, the CFP is the united voice of 23 retiree groups, representing 300,000 defined benefit pensioners and their families, who work together to improve pension security across Canada. CFP is affiliated with CARP, CanAge, FADOQ, Retired Teachers of Ontario, and the National Pensioners Federation. Learn more at pensioners.ca

On November 23, 2022, Parliament voted unanimously in support of Bill C-228. This legislation will provide protection to millions of Canadian seniors and their families who rely on defined benefit pensions for their financial security in retirement.

C-228 has been heralded by seniors and pensioner organizations across the country and has received widespread media coverage. *The Globe and Mail*'s November 28 editorial lauded Parliamentarians for their unanimity in further pension protection, noting: “Individual workers promised a set pension benefit shouldn't suddenly be left with less in a bankruptcy when major institutions like banks come out better.”

The unanimous passage of C-228 by Members of Parliament recognizes fundamental facts around pension protection:

1. Pensions are deferred wages, earned while working and paid after retirement.
2. Pensioners should receive the pensions their former employer committed to, even in the event of insolvency.
3. Pensioners are treated unfairly under current insolvency legislation – a situation that must be remedied in the interest of all Canadians.

On December 14, 2022, at the second reading of C-228 in the Senate, Senate group leaders stood up and recognized the need to protect pensioners in insolvency.

Since 2004, numerous bills to address pension unfairness have been introduced in Parliament. At every turn, government ministries, the pension and banking industries, and their lobbyists have fought these attempts to protect pensioners without ever offering viable alternatives. During that same period, many bankruptcies occurred, including those of Nortel, Sears, and Groupe Capitales Médias, leaving defined benefit pensioners in dire financial straits.

Parliament has had 19 years to consult on and study this issue. The time for action is now. We strongly object to any further delays in protecting vulnerable Canadian seniors. How many more vulnerable Canadian seniors will see their retirement plans crushed in the next 19 years if this bill doesn't pass?

Sears pensioner Audrey and her husband understand this first-hand. At 79 years old, they must decide between paying for a prescription, groceries, heating, or doctors' bills. Visits to their daughters have become something they cannot afford. Audrey is only one of an estimated 250,000 Canadian seniors whose pensions were cut dramatically when their former employer filed for insolvency.

In November, Parliamentarians took a firm stand to protect vulnerable seniors like Audrey and unanimously passed C-228.

The Association of Canadian Pension Management (ACPM) has been particularly vocal in its opposition to C-228. Its so-called 'solutions' – which were rejected by the Parliamentary Committee on Finance last year – unilaterally transfer the pension risk from companies who willingly accepted the obligation to individual pensioners. Pensioners are the only stakeholders in insolvency who have had their rights to manage their financial risk removed by legislation.

These so-called solutions require the government to put the future financial well-being of Canadian seniors at greater risk without their informed consent. This is the embodiment of the government's own definition of elder financial abuse and should be rejected.

There is a dearth of data about pension plans and plan members in Canada. The reality is that no one tracks data on private single employer defined benefit pension plans. What we do know, according to a 2022 survey of Canadian Federation of Pensioners member organizations, is that all our member plans are closed. This means new members are not allowed to be enrolled. In fact, most of these plans have been closed for up to twenty years. Our survey also showed that there are far more retired members than active members of these plans. For every 6 retirees, there is only one active (i.e. working) member.

Here are six reasons why this esteemed Committee should reject the pension industry's position and so-called solutions and recommend C-228 proceed to Third Reading without any amendments:

First, the pension sector consistently focuses on reducing companies' pension costs at the expense of seniors' financial security. The ACPM and its allies argue that employers should not be responsible for their pension commitment in insolvency. In pension regulation consultations, the ACPM is on record as supporting the elimination of, or at least a significant reduction in, solvency requirements.

This leaves pensioners short-changed for life. Lower costs to sponsors would mean less money in the pension. Less money in the pension would result in greater losses for pensioners in insolvency.

This is a position that explicitly treats vulnerable Canadian seniors as acceptable collateral damage in insolvency. Putting the financial security of vulnerable Canadian seniors at risk without their informed consent is the very definition of elder financial abuse.

Canada has a bad track record in this regard. Since 1982, an estimated 250,000 Canadian seniors, including pensioners from Sears, Nortel, and White Birch, have faced financial insecurity and poverty when their former employer filed for insolvency with an underfunded pension. Some have incurred pension income cuts of 30%. These are real people facing real hardships because until now, Parliament had consistently sided with big banks, lenders, and insolvency sector lobbyists.

Second, the pension industry is focused on a single overriding objective: absolving companies of their pension commitments. This position is well-documented in the submissions made to past government consultations on insolvency and pension benefit legislation.

In its C-228 submissions, the pension industry argues that pension deficits should not be made whole in insolvency, and the insolvent company and its financial backers should be absolved of their pension commitment.

When the pension industry provides submissions to consultations on pension benefit legislation, its focus is on eliminating or significantly reducing pension solvency targets. Before 2016, pension solvency targets were 100%. The target was that a pension would have assets to meet 100% of the plan liabilities at the point in time when pension contributions are calculated.

This lobbying effort by the pension industry has been largely successful. Today, most private defined benefit plans in Canada are either not required to meet any solvency requirement or target only 85% solvency. This means pensioners are short-changed when a company becomes insolvent.

Third, there is no data or evidence to support predictions of dire consequences. The pension sector predicts dire nationwide financial consequences if C-228 is put into law, including higher borrowing costs and potentially making financing unavailable for a bankruptcy restructuring, thereby ensuring the demise of a distressed company.

This opinion is offered without data. It is surprisingly similar to the objections raised by the pension industry in opposition to the Wage Earner Protection Program, which Parliament passed to protect the wages of workers whose employers became insolvent. WEPP was passed in 2005, yet the pension industry cannot provide examples of Canadian companies forced into liquidation because of increased borrowing costs or the inability to raise capital. There is no data showing that Canadian productivity and employment lag that of competitor nations due to WEPP.

Fourth, if we change the rules, companies will change their behaviour. Bill C-228 offers Canadians much-needed legislative change that would compel corporate behaviour change before insolvency occurs. By legislating superpriority 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.

The Air Canada story illustrates this point. Filing for insolvency in 2003, Air Canada had a $1.3 billion pension deficit. Over the next 10 years, the deficit ballooned to $4.2 billion. When asked for further relief in 2013, then Finance Minister Jim Flaherty demanded conditions to be attached to the relief. This included severe restrictions on share buybacks, dividends, and executive compensation. In response Air Canada fully funded its pension by May 2015.

Fifth, C-228 will not impact the expansion of single-employer, defined benefit pensions in Canada. The number of single-employer, defined benefit pensions in Canada has been declining for years. Contrary to the claims of the ACPM, reducing the pension cost to companies by reducing solvency requirements has not reversed or halted the decline of single-employer defined benefit pension plans. In fact, the rate of decline is increasing. Lowering the cost has not preserved pensions, but it has freed up funds for share buy backs, executive bonuses, dividends, etc. This goes to the heart of this argument: can companies afford to fully fund their pensions? The evidence is that they can, but they choose not to because current legislation allows them to underfund their pensions.

Bill C-228 protects Canadian pensioners who are beneficiaries of private sector, single-employer, defined benefit pensions. This kind of pension is a legacy of the previous century's industrial economy and is predicated on a worker being employed for 30 years or more with the same company. In today's innovation economy, workers expect to change jobs and want pensions that are mobile and flexible.

Six, superpriority is the best way to achieve equitable pension protection for all Canadians. Canada lags behind both the United States and the United Kingdom in pension protection. Both the US and the UK have single, national pension regulation schemes that provide consistent, equitable pension protection. Canada has 11 different pension jurisdictions, each with different requirements, rules, and enforcement standards. Superpriority under Bill C-228 is the best way to achieve fair and equitable protection for all defined benefit pensioners within Canada's complex pension regulatory environment.

It's time for this David and Goliath battle to end. The pension industry claims to act in the best interests of pensioners. This is patently false. The industry has a long track record of lobbying to protect the interests of plan holders and administrators at the expense of seniors.

As the Chamber of sober second thought, the Senate of Canada should act decisively to support passage of C-228 and protect the millions of Canadians who have worked hard all their lives and paid into their pensions. We urge the Senate Standing Committee on Banking, Commerce, and the Economy to put the needs of vulnerable seniors ahead of corporate self-interest. We cannot afford another Nortel or Sears. The time for action is long overdue.

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PENSION PROTECTION FAQs

Can't pensions be saved through restructuring like Air Canada?

It is surprising that Air Canada is offered as an example of a CCAA restructuring that preserved pensions.

Air Canada's pension is federally regulated and, like other federally regulated pensions, is "required" to be 100% solvency funded. The fact that Air Canada had a $1.3 billion pension deficit in 2003, show a failure of the federal regulatory regime. Air Canada should not have had a pension deficit to deal with; it should not have been a factor in the insolvency.

However, the reality is that federal pension regulations do not require pensions to be 100% solvency funded and Air Canada had a significant pension deficit. There is no penalty if a plan is less than 100% solvency funded.

While Air Canada used the CCAA to successfully restructure, that restructuring did not fix the pension problem. Even with the pensioners agreeing to concessions providing Air Canada solvency relief the pension deficit continued to increase and Air Canada sought additional solvency relief several times. By 2013, Air Canada's pension deficit ballooned to $4.2 billion while executive bonuses continued to be paid and the company, once again, sought further relief.

The finance minister (Jim Flaherty) agreed to further relief, but it came with restrictions. Executive compensation increases were capped at the rate of inflation. 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. Air Canada's pension was addressed when the rules were changed and corporate behaviour changed. CFP has long held that changing the rules by extending super priority to the pension deficit will not result in massive business failure, it will lead to a change in business behaviour.

Will Bill C-228 impede restructurings like that of Stelco?

On September 16, 2014, U.S. Steel Canada Inc. was granted protection from its creditors under the Companies' Creditors Arrangement Act.

Stelco is used by the pension sector to provide an example of how pensions can successfully reach full solvency funding by allowing the pension plans to continue to operate despite the insolvency of the sponsoring employer. This is very misleading.

Stelco's restructuring was unusual and predicated on the creation of new revenue streams under its new owner. The Stelco pension plans had a committed revenue stream from the new owner and other revenue streams contingent on the success of the new company which came to fruition. These revenue streams allowed plan management to implement a growth investment risk profile, leading to improved solvency funding. Without these revenue streams it would be the fiduciary responsibility of plan management to preserve the plan assets by derisking the plans, making growth virtually impossible.

Furthermore, claims that all Stelco pensions have been wound up and successfully annuitized are not true. As of January 2023, one of Stelco's pensions has still not been wound up.

Why can't pension protection be addressed in pension benefits legislation?

Canada lags the United States and United Kingdom in pension protection. Both the US and the UK have single, national pension regulation schemes that provide consistent, equitable pension protection. Canada has 11 different pension jurisdictions, each with different requirements, rules, and enforcement standards. Superpriority under Bill C-228 is the best way to achieve fair and equitable protection for all defined benefit pensioners within Canada's complex pension regulatory environment.