

# BigBlue Pensioners Association

December 13, 2022

Standing Senate Committee on Banking, Commerce and the Economy  
The Senate of Canada  
Ottawa, Ontario  
Canada, K1A 0A4

[banc@sen.parl.gc.ca](mailto:banc@sen.parl.gc.ca)

Dear Hon. Senators:

**Re: Bill C-228 (MP Marilyn Gladu). An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Pension Benefits Standards Act, 1985**

The BigBlue Pensioners Association (BPA) represents the 7,000 members and surviving spouses, in every province of Canada, of the IBM Canada Defined Benefit Pension Plan.

We respectfully request Senators to support the passage of Bill C-228 – which was passed UNANIMOUSLY by the House of Commons – to protect the pensions of over 2 million Canadians in the event of a bankruptcy or restructuring of a distressed company with an underfunded Defined Benefit Pension Plan.

**Recommendation: Adopt Bill C-228 without amendment.**

## **RATIONALE for Recommendation**

1. **The Promise:** Every member of a Defined Benefit (DB) Pension Plan was induced to become an employee of a company having such a plan with the promise of wages paid both during and **after** their period of employment. In receipt of that promise, many accepted a lower wage and/or the requirement to make employee contributions to the plan - and delivered extraordinary loyalty to the company.
2. **Original Risk Protection in Law (100% Solvency Funding):** Recognizing the risks of deferred payments, governments legislated that actuarially sufficient funds be held in a pension plan to fulfill the promise of deferred lifetime wages.
3. **Subsequent Reductions of Protections in Law (Government-sanctioned underfunding):** Organizations representing sponsoring companies, using arguments of hardship, successfully asked governments (i.e. Canada and most of the provinces) for partial or full relief of various obligations to maintain sufficient funds to pay deferred wages (pensions). Significant examples are:
  - a. Company contributions into pension plans - *in arrears*.
  - b. Company contributions to correct deficits – in arrears and *spread equally as if to be paid over 5 to 10 years (for example, a \$10 million funding deficit might require*

*company contributions of just \$1 million/year– but payable only until the next Actuarial Report).*

c. Actuarial Reporting at *three-year intervals* - if solvency funding ratios decline in the interim, increased company contributions must await the next Actuarial Report.

d. Replacement of the requirement for 100% Solvency Funding with 100% Going-Concern Funding. Going-Concern is calculated using a higher discount rate and presumes a never-to-be-distressed, never-to-be-bankrupt company. A plan funded at 100% on a Going-Concern basis appears to be well-funded. However, on a Solvency basis, it might be greatly underfunded at about 85%. (A recent example of a similar pension plan funding discrepancy: Laurentian University).

e. Replacement of the requirement for 100% Solvency Funding with a requirement for 85% Solvency Funding – **the worst single measure to increase risk to pensions** – adopted first in Ontario and followed by most other provinces.

f. Discretionary Funding Relief – applied arbitrarily and perhaps on inappropriate occasions.

4. **Result #1 (Widespread Pension Plan Underfunding):** The funding relaxations above have resulted, at different times, in large numbers of pension plans with persistent solvency-funding deficiencies. One reason: funds not contributed to a pension plan earn investment returns for the company instead of the pension plan.

5. **Result #2 (Bankruptcies aggravate and lock in underfunding):** Some companies faced difficulties in their marketplaces and became distressed. On the verge of bankruptcy or restructuring, such companies seldom prioritize required contributions to pension plans. In such cases, an increased level of underfunding occurs and is locked in upon bankruptcy.

6. **Result #3 (Bankruptcy law causes the Promise Not to be Kept):** Existing bankruptcy law treats pensioners as unsecured creditors – at the end of the line in the division of remaining assets of a bankrupt company. For the very few underfunded pension plans which have received remaining assets of a bankrupt company, it can take years – sometimes beyond the remaining lifetimes of elderly pensioners. An 80% solvency-funded plan of a bankrupt company typically results in a 20% pension reduction for every pensioner. The hardest hit: elderly pensioners, spousal survivors and pensioners living close to or below the poverty line.

**Real Examples:** Bankruptcies of Nortel, Sears and Cliffs Natural Resources are recent well-publicized cases **victimizing** thousands of pensioners with significantly reduced pensions.

**The Devastating Toll:** As reported recently by the Globe and Mail, over 250,000 Canadians have been deprived of deferred wages they were promised as pensions – a toll of the lax pension regimes created by governments.

**Alternatives advanced by others are ineffective – and could actually result in greater pension reductions.** Organizations claiming to represent the interests of pensioners made submissions to the Finance Committee of the House of Commons. In doing so, they did not consult pensioner organizations and their proposals include additional risks to pensions. In short, they are not acceptable to pensioners. **The Commons explicitly rejected them.** Further, they included

unsubstantiated claims that Bill C-228 would have undue negative effects on banks and other experienced credit-granting companies. MPs challenged those claims - requesting studies, examples and evidence. **None were produced.**

**Bill C-228 - a very good solution**

If adopted, Bill C-228's provisions will come into effect after a generous four-year waiting period and largely remedy the Unkept Promise above – by amending applicable bankruptcy and restructuring legislation to treat pension plans with the same priority as unpaid employee wages in the division of remaining assets of a company in bankruptcy or restructuring. Pension losses in bankruptcy will be reduced or eliminated.

**Pensioners deserve the pensions that they were promised, that they contributed to and that they earned.**

**Recommendation: Adopt Bill C-228 without amendment.**

Respectfully submitted,

Directors of the BigBlue Pensioners Association  
Darlene Adams, Bob Birk, Cliff Jenkins, Mario Lavoie, Johanne L'Heureux, Jim McKenzie, Gerry Pelletier, Rod Stableforth, Cheryl Steadman

**BigBluepensionersassociation@gmail.com**

Copy: Marilyn Gladu, MP [Marilyn.gladu@parl.gc.ca](mailto:Marilyn.gladu@parl.gc.ca)