Public Service Alliance of Canada Submission to the Senate Standing Committee on Banking, Commerce and the Economy regarding *Bill C-228*, *An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Pension Benefits Standards Act, 1985*

February 15, 2023

Public Service Alliance of Canada
Submission to Senate Standing Committee on Banking, Commerce and the Economy regarding *Bill C-228*, *An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Pension Benefits Standards Act, 1985*

The Public Service Alliance of Canada represents approximately 230,000 workers across Canada and is the largest bargaining agent in the federal public sector. Our members include thousands of workers in federal departments and agencies, crown corporations, museums and art galleries. In addition, PSAC represents members employed with the Governments of the Northwest Territories, the Yukon and Nunavut.

PSAC represents employees in the federal transportation sector at airports and port authorities as well as approximately 30,000 workers in the post-secondary education sector who work as research assistants, teaching assistants and invigilators. PSAC also represents bargaining units across Canada which include employees of municipalities, hospitals, utilities and Indigenous organizations.

Pension plan coverage for this approximately 20 per cent of the PSAC membership (46,000 members) varies from bargaining unit to bargaining unit and can involve a defined benefit pension plan, a defined contribution pension, group RRSP, group TFSA or, in a few of our smallest units, potentially no pension plan at all.

On two occasions in the recent past, employers of PSAC members have been involved in *Company Creditors Arrangements Act (CCAA)* proceedings. In both instances, the defined benefit pensions of these members were in underfunded positions and the employers required creditor protection as a consequence of severe financial difficulties.

The first instance involved the **Northern Transportation Company Ltd. (NTCL)** which applied for and received creditor protection under *CCAA* in April of 2016. PSAC provided the members and pensioners concerned with legal representation throughout the *CCAA* proceedings.

In a pension valuation prepared subsequent to the application for *CCAA* protection, the plan actuary reported that, as of December 30th, 2015, the NTCL Pension Plan had a wind-up solvency deficiency of $21,775,000 (i.e. 82% funded). At the time (December 30th, 2015) participants in the NTCL Pension Plan consisted of the following:

Active Members –	83
Retired members including Surviving Spouses –	255
Terminated members not having Elected an Option –	265
Terminated members electing deferred pension –	19
Total	**662**

The court eventually declared NTCL insolvent in December of 2016 and PSAC legal counsel was only successful in obtaining a partial diversion of funds to the unfunded pension plan obligations. Incredulously, over six years later, the final wind-up of the pension plan and the application of the pension benefit reductions have still not been finalized by the court-appointed replacement administrator Life Works.

The second instance involving PSAC members concerned an application for creditor protection under the *CCAA* by **Dominion Diamond Mines** in April, 2020. At the time, the defined benefit pension plan was underfunded on a solvency basis. PSAC again provided legal representation to the members involved and following several months of hearings by the Court a successful restructuring of the company was reached which permitted the defined benefit pension plan to continue intact.

It is fortunate that the majority of our members have not been adversely affected to date by the lack of protection proposed in Bill C-228. Nevertheless, the heart wrenching media coverage of employees/pensioners impacted by the colossal financial failures of Sears, Nortel, Giant Yellowknife Mines, among others, vividly reminds them of the potential insecurity of their own retirement futures.

Consequently, PSAC has long supported previous private member's bills that have been introduced in the House of Commons to protect pensions in the event of a corporate insolvency/bankruptcy. These included Bill C-372 tabled in the House of

Commons by MP Marilène Gill of the Bloc Québécois on October 17th, 2017 and Bill C-384 introduced by MP Scott Duvall of the New Democratic Party on November 17th, 2017.

PSAC is encouraged by the all-party support in the House of Commons for Member of Parliament Marilyn Gladu's Private Member's Bill C-228 which is now before the Senate and this committee. The proposed legislation would amend the *Companies' Creditors Arrangement Act* and the *Bankruptcy and Insolvency Act* (*BIA)* to provide preferred creditor status to unfunded pension liabilities in the eventuality of corporate bankruptcy/insolvency. If Bill C-228 had been in place prior to 2016, the pensions of vulnerable former NTCL employees would have been secured as opposed to being reduced by 18 per cent or more.

PSAC is also well aware of the claims being made by organizations such as Association of Canadian Pension Management (ACPM), the Canadian Chamber of Commerce, the CD Howe Institute, the Canadian Bankers' Association, and others regarding the potential catastrophic consequences should Bill C-228 be passed by the Senate and become law. The doomsday scenario promulgated by these lobby groups would include denied access of capital to employers who sponsor defined benefit pension plans, a surge in the consequential wind-up or conversion of defined benefit pension plans and a general reduction in retirement security of Canadians.

These positions either fail to understand or ignore the safeguard provisions of Bill C-228 as well as the emerging state of defined benefit pension plans in Canada.

Bill C-228 specifically incorporates a four-year transition period subsequent to the Coming into Force (CIF) date which should provide employers and defined benefit pension plan sponsors sufficient time to adjust corporate financing arrangements and pension funding challenges.

In addition, recent developments in the economy and the financial markets have significantly reduced the probabilities of actually having to need the protections of *Bill C-228* in the coincidental eventualities involving both a bankrupt/insolvent employer and an under-funded defined benefit pension plan.

For example, according to Statistics Canada, over the 10-year period from 2011 to 2021 the number of defined benefit pension plans actually declined from 11,975 to 9,022, a decrease of 24.7%. Over the same time period the number of Canadians covered by a defined benefit pension plan stayed relatively stable from 4,484,011 to 4,425,506, 1.3% fewer.

Furthermore, according to an Estimated Solvency Ratio (ESR) exercise conducted by the Office of the Superintendent of Financial Institutions (OSFI) the median ESR for federally regulated defined benefit pension plans improved to 1.09 as at December 31st, 2021 an increase from .97 as at December 31st, 2020. (An Estimated Solvency Ratio is a calculation to determine whether or not a company has sufficient funds to meet its long-term liabilities.) The primary cited factors contributing to this improvement were strong investment returns and higher solvency discount rates. (The *discount rate* is the rate used to value the current cost of future pension obligations. It is based on long-term bond yields.) Although the financial markets were not nearly as robust in 2022, the significant increase in solvency discount rates over the year would suggest that the solvency funding position of federally regulated pension plans has improved even further as of December 31, 2022.

In a similar exercise by Financial Services Regulatory Authority of Ontario (FSRA), where the largest number of defined benefit pension plans are registered in Canada, the median solvency ratio of provincially regulated defined benefit pension plans was determined to be 109% as at September 30th, 2022. This compared with 106% as at September 30th, 2021.

As at September 30th, 2022, the percentage of provincially regulated defined benefit pension plans in Ontario with a solvency ratio of greater than 100% was 78% in comparison with 67% as at September 30th, 2021. PSAC anticipates that increases in solvency discount rates to traditional historical levels will contribute to further improvement in in the solvency funding ratios of defined benefit pension plans in Ontario notwithstanding continued volatility in the financial markets. It follows that the requirement to consider pension fund deficiencies in the eventuality of corporate bankruptcy/insolvency process is likely to decline in the future.

Despite this positive news, PSAC advocates that the protections afforded under Bill C-228 remain necessary to safeguard pensioners/workers in the eventuality of underfunded pension plans whose employers may become insolvent/bankrupt.

Pensioners and workers are no doubt the most vulnerable parties in Canadian bankruptcy and insolvency proceedings. Bill C-228 serves to address this inequity and is long overdue.

Note: Pension benefit entitlements for approximately 80 per cent of PSAC's members are provided under the *Public Service Superannuation Act (PSSA).* The pension protection features of Bill C-228 do not significantly affect these members.

For information: Michele Girash, National Political Action Officer, Public Service Alliance of Canada, girashm@psac-afpc.com, 705-561-0848