



June 7, 2021

Standing Committee on Industry, Science and Technology
House of Commons
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Re: ACPM Response to Super Priority of Pensions Provision in draft Bill C-253

To Whom It May Concern:

ACPM is the leading advocate for plan sponsors and administrators in the pursuit of a balanced, effective, and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers and our membership represents over 400 companies and retirement income plans that cover millions of plan members - some of our members are sponsors of the largest defined benefit ("DB") pension plans in Canada.

ISSUES OF CONCERN TO THE PENSION INDUSTRY

Bill C-253 (a private member's bill) proposes to amend the Bankruptcy and Insolvency Act (the "BIA") and the Companies' Creditors Arrangement Act (the "CCAA") to ensure that DB pension claims are paid in priority to secured and unsecured creditors in the event of the bankruptcy or restructuring of the sponsoring employer. While the goal of protecting pensions is a laudable one, Bill C-253 will have the opposite effect by impeding the ability of DB sponsors to borrow money to operate.

CURRENT TREATMENT OF PENSION OBLIGATIONS UNDER THE BIA AND THE CCAA

Currently, the BIA provides that the following amounts are paid in priority to secured creditors:

- Unremitted contributions deducted from employees' pay;
- So-called "normal cost" contributions, which is the cost of benefits accruing day-over-day as determined on the basis of a going concern valuation; and
- Employer contributions due but unremitted to any defined contribution pension plan.

The above noted amounts are all ascertainable, fixed dollar amounts and are generally paid by an insolvent company sponsor in any event.

ISSUES AND CONCERNS WITH THE PROPOSED LEGISLATION

If Bill C-253 comes into effect, DB pension plan sponsors will have difficulty accessing capital. For some it will be impossible, for others expensive, and, for many, Bill C-253 will constitute a default under existing credit facilities. The reason for this is that lenders, such as banks and bondholders, would see their interests suddenly become subordinate to potentially substantial, fluctuating, pension deficits.

The increased lending risk resulting from Bill C-253, if passed, will put Canadian companies at a competitive disadvantage to companies in other countries that do not have to give preferred creditor status to pension deficits. In addition, if passed, Bill C-253 would likely have the effect of instantly depressing the value of corporate bonds issued by such employers. Such corporate bonds are widely held by Canadians in their retirement savings portfolios and by institutional investors such as registered pension plans.

Moreover, this legislation would make it that much more difficult for a distressed employer to secure any financing if they sponsor a DB plan. While this legislation might be helpful in securing pensions for retired members in the short-term (possibly at the earlier demise of the company), it would hurt those still employed as well as all suppliers to that company.

In a broader sense, Bill C-253, if it comes into effect, would hasten the result that good pension and public policy ought to be designed to protect against: it will cause DB plan sponsors to terminate their DB pension plans in response to an inability or difficulty in obtaining credit. This would accelerate the existing shift away from defined benefit plans towards defined contribution plans, particularly in the absence of meaningful alternatives in all jurisdictions, such as target benefit plans, which remain unavailable in Ontario outside a limited context.

FULL CONSIDERATION OF ALL OPTIONS

We urge the Committee to consider deeply the problem and its solution.

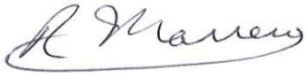
If the Committee does see a need to strengthen the current legislative provisions designed to provide better benefit outcomes to members of DB pension plans, there are a number of other options that would protect pensioners without harming the financial strength of plan sponsors that should instead be carefully considered. For example, in Budget 2021, the Government took steps to create variable payment life annuities (“VPLAs”). VPLAs are cost-efficient retirement decumulation vehicles that could be purposed to vastly improve outcomes for members of insolvent company pension plans.

Another option includes the establishment of a scheme that would protect pension fund assets by permitting a government agency or some other entity to administer distressed pension plans until their funded status improves, e.g., as enacted in Quebec, rather than forcing the crystallization of deficits and reduction of benefits as is the case under the existing rules.

Last but not least, the immediate implementation of legislation is needed to facilitate the implementation and use of target benefit plans.

We respectfully urge you to carefully consider the damaging effect this legislation will undoubtedly have on Canadian DB pension plans, their plan sponsors and the entire Canadian retirement system. We would be pleased to discuss our comments further as you may require.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ric Marrero", with a stylized flourish at the end.

Ric Marrero
Chief Executive Officer
ACPM

cc: Honourable Chrystia Freeland
Deputy Prime Minister of Canada, Finance Minister
Honourable François-Philippe Champagne,
Minister of Innovation, Science and Industry of Canada