



Remarks re Bill C-253, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act

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Science and Technology

Good morning. My name is Charles Docherty and I am the Assistant General Counsel at the Canadian Bankers Association. With me today is Bill Kennedy, Vice President, Special Loans, with National Bank of Canada.

We appreciate having the opportunity to appear before this Committee today. The CBA has met with parliamentary committees in the past to discuss proposals similar to those contained in Bill C-253, and we recognize that this is a complex and difficult issue.

I would like to begin by briefly discussing the financial challenges presented by COVID-19. When the pandemic began in 2020, Canada's banks worked in lockstep with the federal government, the Bank of Canada and regulators to immediately implement a series of relief initiatives, and banks redeployed staff to create their own tailored support plans for individuals and small businesses to help them manage financial uncertainty and blunt the economic impact of COVID-19.

Canada's banks have helped close to 800,000 homeowners with mortgage flexibility and provided more than 482,000 individuals with credit card payment deferrals. Banks worked with the Government of Canada to efficiently and securely deliver the Canada Emergency Response Benefit to more than 3.4 million Canadians, and facilitated interest-free loans to more than 877,000 small businesses through the Canada Emergency Business Account. Banks will continue to stand by their customers and bring tailored solutions to help foster a strong recovery.

Part of a strong economic recovery, and a factor which is equally necessary to achieve economic growth in normal times, is access to affordable credit for businesses to allow them to invest and grow.

It is the perspective of lenders to businesses of all sizes across the economy that we bring to the committee's deliberations today. A key part of banks' role as lenders is to carefully manage risk, which includes being subject to a robust prudential regulatory regime. Canada's banks take very seriously their responsibility in this regard, making lending decisions based on a number of factors. The current legislative and regulatory framework is obviously an important factor in those decisions and that includes the provisions set out in the Bankruptcy and Insolvency Act.

A key objective of insolvency legislation is to provide certainty in the market to promote economic stability and growth. A very careful balance has been achieved over several decades in the order of priority in bankruptcy. When lenders decide to lend to a business, they have to account for the risk of the business not paying back their loan and, if the business goes bankrupt, how much can be recovered. The proposals contained in this bill would require banks and others who provide capital to businesses to factor in potential losses associated with unfunded pension obligations coming first in the event of bankruptcy when making lending decisions. This could mean less access to capital and higher borrowing costs.

It is very difficult for a lender or other secured creditor to understand its exposure to a pension deficiency with a super-priority as it would depend on the availability of actuarial valuations, which are only prepared periodically. Actuarial valuations represent a snapshot in time, are based on actuarial assumptions which change based on economic conditions, and establish theoretical liabilities. This limits transparency and affects the ability for a lender or other secured creditor to assess its risk.

Further, other unsecured creditors such as suppliers, many of them small businesses, would also be faced with a reduced likelihood of recovering any amounts they are due, which may put pressure on their own finances.

Ultimately, changes to the order of priority in bankruptcy threaten to seriously undermine the delicate balance with ripple effects across the economy, particularly when proposed changes are not undertaken within the context of a broader and more complete consideration of the entire insolvency legislative framework.

We encourage the committee to examine other potential solutions, including the possibility of companies establishing solvency reserve accounts and pension guarantee funds such as those established in the UK, the US and right here in Ontario.

Thank you once again for the opportunity to provide the perspective of Canada's banks as you consider the proposals.