

SENT by E-mail

Parliamentary Secretary  
to the Minister of Finance



Secrétaire parlementaire  
du ministre des Finances

Ottawa, Canada K1A 0G5

2009FIN291699

JUN 23 2009

Ms. Diane A. Urquhart  
Independent Financial Analyst  
Mississauga, ON  
urquhart@rogers.com

Dear Ms. Urquhart:

Thank you for your correspondence of June 11, 2009 regarding the impact of federal bankruptcy legislation on pension plans.

Canada's two main bankruptcy statutes, which are the responsibility of the federal government and the Minister of Industry in particular, are the *Bankruptcy and Insolvency Act* (BIA) and the *Companies' Creditors Arrangement Act* (CCAA). The *Winding-up and Restructuring Act* is a third statute that is primarily used by financial institutions. As such, I have forwarded your correspondence to the Honourable Tony Clement, Minister of Industry, for his consideration. I can also provide you with some general information that may be of use.

Pension fund assets are held in trust and are separate and apart from a company's assets. As such, if a company liquidates, shareholders and creditors have absolutely no access to the pension fund's assets. These funds are used to pay pension benefits to the plan members.

In bankruptcy law, an appropriate balance is sought between the competing interests of the debtor and the creditors and between the creditors themselves. Changing the priority of unfunded pension liabilities and severance payments could have a negative impact on the cost and availability of credit. Increases in the cost and availability of credit would

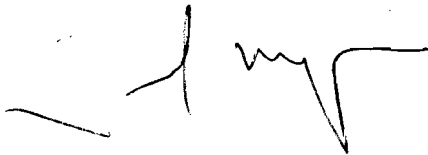
Canada

increase the cost of doing business and potentially reduce employment and economic growth.

Bankruptcy law and the federal pension law do incorporate some protections for certain unpaid pension amounts. The BIA and the CCAA were recently amended to provide a super-priority status to outstanding employer and employee pension contributions that have been collected but not yet remitted to the pension fund in both bankruptcy and corporate restructuring. Super-priority status implies that these amounts rank ahead of other creditors, including secured creditors. Super-priority status in bankruptcy became law in July 2008. The super-priority status in corporate restructuring is pending. For federally regulated pension plans, the *Pension Benefits Standards Act, 1985* extends a deemed trust protection to special payments due but not yet remitted, which implies that these amounts are not considered part of the employer's estate on bankruptcy.

Thank you for communicating your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ted Menzies', with a stylized flourish at the end.

Ted Menzies

c. The Honourable Tony Clement, Minister of Industry