



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

September 14, 2012

Via email: FINA@parl.gc.ca

James Rajotte, M.P.
Chair, Standing Committee on Finance
Sixth Floor, 131 Queen Street
House of Commons
Ottawa, ON K1A 0A6

Dear Mr. Rajotte,

Re: Bill C-28 – *Financial Literacy Leader Act*

Introduction

The Canadian Bar Association's National Pensions and Benefits Law Section (the CBA Section) is pleased to comment on Bill C-28, the *Financial Literacy Leader Act*. The CBA Section comprises lawyers from across Canada who practice in the pensions and benefits area of law, including counsel to pension and benefit administrators, employers, unions, employees and employee groups, trust and insurance companies, pension and benefit consultants, and investment managers and advisors.

The CBA Section supports the government's financial literacy initiatives. While the primary focus of the CBA Section is on financial literacy as it relates to retirement and retirement products, we recognize the need for financial literacy throughout the lives of individuals in a range of areas, and that financial literacy has both individual and societal benefits. We refer you to our letter of May 7, 2012 to the Commissioner of the Financial Consumer Agency of Canada, and to CBA resolution 12-02-M, copies of which are enclosed.

We are cognizant of the Report of the Task Force on Financial Literacy of December 2010, entitled *Canadians and Their Money* (the Financial Literacy Task Force Report).

It is not clear whether the Financial Literacy Leader is intended to fulfill the role of the national leader recommended in the Financial Literacy Task Force Report. There are jurisdictional constraints with federal legislation and the role of the Financial Literacy Leader. However, there are sound policy reasons for federal involvement, such as the impact on government-provided retirement income programs. There are also benefits in a nationally designed program and strategy for consumer protection even if the provinces and territories have jurisdiction in areas such as

education, pensions and property and civil rights. If the role of the Financial Literacy Leader is to be broadly interpreted, it might be preferable to have a separate act, given the focus of the *Financial Consumer Agency of Canada Act* on financial institutions.

Commentary

Given the lack of detail in the Bill, our comments will be policy oriented rather than technical. Our principal comments go to the intended scope of the Bill and how it will add to the scope of the Act.

The objectives described in the Bill – the addition of paragraph (g) to subsection 3(2) of the Act (section 3 of the Bill), as well as the powers and functions of the Financial Literacy Leader in section 7 of the Bill – are very broad and very general.

It is not clear whether the objectives are intended to go further than those related to the activities of financial institutions. The Act currently addresses the issues of financial literacy as they relate to the activities and communications of financial institutions, and provides for the assessment of financial institutions by the Commissioner. Section 12 of the Bill also provides for assessments against financial institutions for “some or all of the expenses related to initiatives to strengthen the financial literacy of Canadians”. Presumably, the activities of the Financial Literacy Leader are intended to be broader or different in scope than those of the Commissioner under the Act. If they are not related to the activities and communications of financial institutions, we do not believe that financial institutions should be subject to an assessment. Further, funding by financial institutions with respect to regulation of their activities is not conducive to an independent objective approach.

The term of office of the Financial Literacy Leader is “at pleasure”, while the term of the Commissioner under the Act is “during good behavior”. Without more specificity on objectives and powers it is difficult to see how the activities of the Financial Literacy Leader could be evaluated. Too much generality can lead to unfocused activity.

In summary, we believe there should be more specificity in the Bill, preferably in an act separate from the *Financial Consumer Agency of Canada Act*, perhaps more closely following the recommendations of the Financial Literacy Task Force to the extent that is the intent.

Yours truly,

(original signed by Noah Arshinoff for Michael M. Mazzuca)

Michael M. Mazzuca
Chair, National Pensions and Benefits Law Section

Encl.



May 7, 2012

Via email: Ursula.Menke@fcac-acfc.gc.ca

Ursula Menke
Commissioner of the Financial Consumer Agency of Canada
427 Laurier Avenue West, 6th Floor
Ottawa, ON K1R 1B9

Dear Ms. Menke:

Re: Financial Literacy

I am writing on behalf of the National Pensions and Benefits Law Section of the Canadian Bar Association (CBA Section) on financial literacy.

The CBA is a national association representing approximately 37,000 jurists, including lawyers, notaries, law teachers and students, across Canada. Our primary objectives are to uphold the Rule of Law, improve the administration of justice and promote equality in the law.

We applaud the Financial Consumer Agency of Canada's financial literacy initiatives and, once Bill C-28 becomes law, look forward to working collaboratively with FCAC's "Financial Literacy Leader" on initiatives to improve Canadians' financial literacy. On Wednesday, April 11th, I was pleased to meet with FCAC officials to discuss how the CBA and FCAC can collaborate to increase financial literacy.

The CBA Section has a particular interest in financial literacy, especially in light of the growing importance of retirement savings. As more responsibility for retirement savings is placed on individuals through defined contribution pension plans, Registered Retirement Savings Plans, and Pooled Registered Pension Plans, there is a greater need for individuals to develop an early understanding of financial matters. The importance of financial literacy, including the role of the public education system, is of increasing concern among the entire pension industry and, by way of example, was recognized through recommendations contained in the 2008 report of the Joint Expert Panel on Pension Standards for Alberta and British Columbia.¹

¹ Report of the Joint Expert Panel on Pension Standards, Recommendations 10.5-A, 10.5-B, and 10.5-C, pp. 178-179. Link to the Report:
http://www.finance.alberta.ca/publications/pensions/pdf/2008_1125_jepps_final_report.pdf

As practitioners in the area of pensions and benefits law, CBA Section members must anticipate legal issues that could arise for retirement benefit plan administrators and sponsors. The distinctions, for example, between financial “advice”, “education” and “information”, all of which play a role in retirement planning, are not always readily apparent. To minimize liability, retirement plan administrators may be inclined to provide only enough financial information on matters such as selecting investment options, to discharge their obligations to plan members. Plan administrators will consequently tend to err on the side of providing less rather than more financial information.

However, a certain level of financial literacy is required for individuals to prepare properly for retirement and to select appropriate investment options. Unfortunately, if retirement plan sponsors and administrators provide financial education or advice to plan members, they could incur liability, especially if plan members rely solely, and to their detriment, on that education or advice. It is important that Canadians receive financial education, including literacy, from impartial sources so they can make informed and wise decisions regarding their retirement savings plans

In addition, to the extent that retirement savings vehicles and the accompanying investment options are heavily marketed to individuals by, for example financial institutions, there is very much a consumer element to financial literacy in a pensions and benefits law context. As such, we see a connection between the interests of the CBA Section and FCAC.

The CBA Section looks forward to working with the FCAC on these important matters. I am attaching for your information a resolution on financial literacy recently adopted by the CBA’s governing Council. We will be writing to provincial and territorial governments to urge the implementation of programs to improve financial literacy among Canadians.

Yours truly,

(original signed by Judy Hunter for Mitch Frazer)

Mitch Frazer
Chair, National Pensions and Benefits Law Section

Cc. The Honourable James Flaherty P.C. M.P.
flaherty.j@parl.gc.ca

Incl.

Financial Literacy

WHEREAS Canadians need basic knowledge to make informed decisions about financial saving, investing and spending;

WHEREAS Canadians need a fundamental level of financial literacy to save and plan for retirement;

WHEREAS financial literacy is a key element of the retirement savings system, especially in light of the increasing prevalence of, and reliance on, capital accumulation plans with member-driven investments;

WHEREAS federal, provincial and territorial governments are best suited to develop, encourage and support financial literacy programs on a broad scale;

WHEREAS financial literacy results in individual and societal benefits and should be widely incorporated as a topic of study into Canada's education system;

Améliorer les connaissances de base en matière financière

ATTENDU QUE les Canadiens et les Canadiennes ont besoin de connaissances de base pour prendre des décisions informées sur l'épargne, l'investissement et les dépenses;

ATTENDU QUE les Canadiens et les Canadiennes doivent posséder des notions financières de base pour épargner et planifier leur retraite;

ATTENDU QUE le fait de posséder des notions financières est un élément clé du système d'épargne retraite, notamment à la lumière de la prévalence et au recours de plus en plus croissant aux plans d'accumulation du capital où les membres sont le moteur des placements;

ATTENDU QUE les gouvernements fédéral, provinciaux et territoriaux sont les mieux placés pour développer, encourager et soutenir à grande échelle des programmes d'amélioration des connaissances en matière financière;

ATTENDU QUE des avantages individuels et sociétaux résultent de l'amélioration des connaissances en matière financière chez les gens et que ces connaissances devraient être incluses comme sujet d'étude dans le système d'éducation du Canada;

Resolution 12-02-M**Résolution 12-02-M**

BE IT RESOLVED THAT The Canadian Bar Association:

1. support existing initiatives by federal, provincial and territorial governments to increase the financial literacy of Canadians;
2. urge federal, provincial and territorial governments to increase efforts to encourage, develop, support and maintain programs aimed at increasing financial literacy of Canadians; and
3. urge provincial and territorial governments to incorporate financial literacy into all levels of the Canadian education system, and to make appropriate professional development opportunities and resources available to teachers.

Certified true copy of a resolution carried by the Council of the Canadian Bar Association at the Mid-Winter Meeting held in Mayan Riviera, Mexico, February 11-12, 2012.

QU'IL SOIT RÉSOLU QUE l'Association du Barreau canadien :

1. appuie les projets existants des gouvernements fédéral, provinciaux et territoriaux visant à améliorer les connaissances financières de base des Canadiens et Canadiennes;
2. exhorte les gouvernements fédéral, provinciaux et territoriaux à augmenter leurs efforts en vue d'encourager, de développer, de soutenir et de maintenir des programmes d'amélioration des connaissances en matière financière destinés aux Canadiens et aux Canadiennes;
3. exhorte les gouvernements provinciaux et territoriaux à inclure des programmes visant l'amélioration des connaissances en matière financière à tous les niveaux du système d'éducation du Canada, et à rendre disponibles pour les enseignants des ressources et des occasions appropriées de développement professionnel.

Copie certifiée d'une résolution adoptée par le Conseil de l'Association du Barreau canadien, lors de l'Assemblée de la mi-hiver, à Mayan Riviera, Mexique, du 11 au 12 février 2012.

**John D.V. Hoyles
Chief Executive Officer/Chef de la direction**