



THE CANADIAN
BAR ASSOCIATION
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June 10, 2021

Via email: ic.osbregulatoryaffairs-affairesreglementairesbsf.ic@canada.ca

Ms. Cheryl Ringor
Acting Deputy Superintendent, Program Policy and Regulatory Affairs
Office of the Superintendent of Bankruptcy
410 Laurier Ave W,
Ottawa, ON K1A 0R1

Dear Ms. Ringor:

Re: Review of directives and regulations under the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*

The Insolvency Law Section of the Canadian Bar Association (CBA Section) is pleased to comment on the Office of the Superintendent of Bankruptcy's review of directives and regulations under the *Bankruptcy and Insolvency Act* (BIA) and the *Companies' Creditors Arrangement Act* (CCAA).

The CBA is a national association of over 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section consists of members from across the country who work on bankruptcy, insolvency and restructuring law issues.

General Comments

The CBA Section believes that the regulations and directives should be gender neutral. To this end, the regulations and directives should be reviewed in their entirety to use gender-neutral words. For example, the opening paragraph in Part III of the Schedule to the *Bankruptcy and Insolvency General Rules* states "[t]he trustee shall, in other than summary administrations, be entitled to be paid *his* disbursements". The word "his" should be replaced by the gender-neutral term "their".

In addition, we recommend that the regulations and directives be modernized to encourage the use of technology to facilitate the insolvency process. This includes service by electronic transmission, virtual meetings, and virtual filing of proceedings. Modernization will increase accessibility and reduce delays.

Comments on Specific Sections

Sections 1 and 5 of the BIA General Rules

Under the current rules, if a notice or document is received by the Division Office outside of its "business hours" it is deemed filed the *next business day*.

Most filings with the Division Office are done by Trustees electronically (with a record of the date and time of receipt). The presence of a person in the office at the time of filing during “business hours” is irrelevant. However, having a document deemed filed the next business day could be very relevant. For example, the filing of a proposal outside of business hours on the last available day to file the proposal could result in a deemed bankruptcy. If the notice or document is time stamped on the correct day, regardless of time, that should be sufficient.

As such, we suggest that the definition of “business hours” and the deemed receipt time outside of “business hours” be amended to not regulate the time of filing with the Division Office of the Superintendent.

Section 6 of the BIA General Rules

The CBA Section recommends updating this section to specify that, where a notice or other document is required to be “served” under the BIA or the BIA General Rules, the following apply: (i) in the event of service on a party represented by counsel, service via email should be allowed; and (ii) otherwise, service should be effected in accordance with the applicable service rules of the Canadian jurisdiction of the party being served.

Section 13 of the BIA General Rules

We suggest the filing of documentation with the Court and the times for filing be in accordance with the applicable service rules of the Canadian jurisdiction of the Court where the materials are filed.

The changes to sections 1, 5, 6 and 13 of the BIA General Rules would harmonize the service practices with general litigation in various provinces and would recognize the practice of service by email on represented parties and electronic filing with the Superintendent.

Section 14 of the BIA General Rules

The requirement for leave of the Court to proceed with an examination on affidavit should be removed. This would harmonize the BIA practice with general litigation.

Section 15 of the BIA General Rules

We suggest replacing the term “executing officer” with “Justice or Registrar” to clarify an undefined term.

Section 18 of the BIA General Rules

The threshold for bills requiring taxation should be increased to \$7,500 to modernize the BIA regulation and reduce delays.

Sections 18-26 of the BIA General Rules

To reduce delays related to fee taxation and to increase efficiency, taxation should proceed without requiring the professional’s appearance – the appearance only required if the bill of costs is contested or on request of the taxing officer.

Section 68 of the BIA General Rules

The rules should be updated to allow electronic storage of records to modernize record-keeping requirements.

Section 69 of the BIA General Rules

To increase accessibility to the insolvency system, we suggest removing the requirement of a seal of the Court for bankruptcy applications. This seal is administratively difficult to obtain in certain jurisdictions and underscores the archaic nature of the process.

Sections 94.1 and 95 of the BIA General Rules and section 13 of the Companies' Creditors Arrangement Regulations

Electronic transmission should be included with other transmission modes that do not require consent for use.

Section 108 of the BIA General Rules

The CBA Section suggests specifically allowing for the possibility of virtual meetings of creditors.

Section 113 of the BIA General Rules

We suggest adding electronic transmission, in addition to the currently permitted registered mail and courier, as a method by which a trustee can serve a notice of disallowance or notice of valuation on a creditor.

Section 115 of the BIA General Rules

To increase accessibility to the insolvency system and to harmonize the regulations with current practice, we suggest removing the requirement for examinations to be held before the registrar.

Form 31 – Proof of claim

To simplify the proofs of claims filings, we suggest (i) specifically providing for the communication of the proofs of claim via electronic transmission, and (ii) removing the requirement for witness signatures.

Conclusion

The CBA Section appreciates the opportunity to participate in the consultation and we trust our comments will assist the modernization of the regulations and directives. We welcome the opportunity to be of further assistance in whatever manner is constructive.

Yours truly,

(original letter signed by Marc-Andre O'Rourke for Jean-Yves Simard)

Jean-Yves Simard
Chair, CBA Insolvency Law Section