



July 15, 2014

Paul Halucha
Director-General
Marketplace Framework Policy Branch
Industry Canada
235 Queen Street, 10th Floor, East Tower
Ottawa, Ontario K1A 0H5

Dear Mr. Halucha,

Please find accompanying this letter the submission of comments by the Consumers Council of Canada with respect to Statutory Review of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*.

Please feel free to be in touch should there be any questions about the Council's submission.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Don Mercer', written over a light blue horizontal line.

Don Mercer
Vice President, Consumer Representation & Stakeholder Outreach
Chair, Financial Services Issues Committee

cc: Aubrey LeBlanc, President, Consumers Council of Canada
Ken Whitehurst, Executive Director, Consumers Council of Canada
Joan Huzar, Member, Consumers Council of Canada



July 2014

Response to the Industry Canada Discussion Paper: “Statutory Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act”

The Consumers Council of Canada is an independent, not-for-profit organization, federally incorporated in 1994 to bring a sensitive consumer voice to work with business and government to create a better marketplace. Working together as the Consumers Council of Canada our members form the most active, Canada-wide, multi-issue consumer group. The Council helps business and government manage today's consumer issues. It aims to create an efficient, equitable, effective and safe marketplace.

The Council's response to the review of the BIA is based on the following central and fundamental principles:

1. The rights of consumers (debtors) as articulated in the Charter of Consumer Rights must be respected.

The following are the rights of consumers that apply particularly to bankruptcy:

1. Basic Needs – the right to enter into the bankruptcy process when due to financial difficulties basic needs can no longer be met.
2. Information – the right to information about the bankruptcy process and the options available. Such information must be available in a format accessible to the consumer. Accessibility not only means available, but also includes the concept of plain language at certified grade seven level to recognize that consumers are very busy and may not all have high levels of literacy. To be accessible, plain language is essential.
3. Choice – the right to choose between the different bankruptcy processes based on a informed choice.
4. Representation – the right to be represented in the bankruptcy process by a trustee.
5. Redress – the right to appeal to the Office of the Superintendent of Bankruptcy should the consumer(debtor) believe they have had unsatisfactory service from a trustee or any part of the bankruptcy/proposal process.
6. Consumer Education – the right to understand the various bankruptcy/proposal options and the reasons they may find themselves in financial difficulties. Usually provided through credit counseling.

7. Privacy – the right to have their personal financial information protected by the trustee and other parties in the bankruptcy process.
2. The Council supports the concept of harmony of treatment nationally of persons in bankruptcy. Consumers should not find their rights diminished by virtue of moving to or living in a different province or territory than previously. In areas where the federal and provincial governments share jurisdiction (as in bankruptcy, where the federal law is augmented by provincial provisions and enforced by provincial courts) it is appropriate for the federal law and regulation to set out best practices intended to avoid provincial exceptions likely to diminish those practices that protect consumers. In a Canadian environment that often features the necessity of mobility for employment purposes, Canadians should expect that rules of bankruptcy to be fair and predictable.

In addition, the protections should also be technology neutral if the process used is one that is on line. This may not be the case now, but the law should anticipate this possibility. The protections also should be service neutral in the event that different levels of service become an option in the future (if not now). The idea is that as the law is not changed frequently there should be anticipation of future possibilities.

Consumer Issues

Consumer Deposits:

Stakeholders are invited to make submissions regarding whether, and how, Canada could enhance protection for consumer deposits either through consumer liens or, alternatively, through other mechanisms within the insolvency regime.

The Council believes that where a consumer has made a deposit pursuant to the future delivery of goods or services, that deposit should be protected in the event the retailer becomes insolvent. This is an instance where the consumer should receive consistent protection in all provinces. Consumers should have similar protection to that offered in the United States where deposits are treated as preferred claims. When the consumer has given their money to the retailer in good faith, they should rank ahead of unsecured creditors in the event of bankruptcy.

Responsible Lending:

Stakeholders are invited to make submissions regarding whether, and how, the BIA could take into account creditors' conduct that has contributed to the financial difficulties or insolvency of a debtor.

The Council understands that certain credit granting practices may contribute to a consumer's financial troubles. It sees no reason why when it can be demonstrated that credit was granted or extended imprudently or on unconscionable terms that the borrower owe payments on such loans for the period leading up to the bankruptcy or proposal. It is entirely appropriate that the BIA take into account creditor's conduct that may have contributed to the debtor's problems. The consumer has the right to information and education about financial matters and understand the implications of taking on debt or accessing increased credit.

The "Fresh Start" Principle:

Submissions are invited as to whether amendments are required to the BIA to address the apparent conflict between the "fresh start" principle and the objectives of licence denial regimes.

The Council supports the concept of the “fresh start” principle. The denial of a driver’s licence or vehicle registration due to a record of bankruptcy is at odds with both the “fresh start” principle and the concept of debtor rehabilitation and as such should not be permitted. While the Council acknowledges that while driving is not a “right”, in much of Canada it is an employment necessity. Taking away the ability to drive may deprive the consumer of their ability to be employed and as such should not be allowed. This is an area where “leaving it up to the courts” is not the appropriate response. Consistent national treatment should prevail.

Registered Savings Products:

Stakeholders are invited to make submissions regarding the treatment of registered savings products in bankruptcy.

The Council supports the inclusion of RDSPs as exempt from seizure in bankruptcy.

Federal Exemptions list:

Submissions are invited as to whether the introduction of a federal list of exemptions should be considered.

The Council agrees that a federal exemptions list should be created. This would be consistent both with the consumers right to information (much easier to inform consumers if exemptions are largely the same across the country) and with the principle of consistent national treatment. However, it may be necessary to respond to regional needs, some assets being more critical to meeting basic needs in some places than others. So, in the case of personal bankruptcy, the development of a federal exemptions list should be sensitive to regional diversity, enable provinces to recognize special needs and include mechanisms for harmonizing the federal list where reasonable based on the principle that no consumer’s rights should be disadvantaged by virtue of where they live.

Equalization Claims:

Submissions are invited as to whether, and how, bankruptcy legislation could be amended so as to improve the status of equalization payments in bankruptcy.

The Council recognizes that better protection may be needed in the area of marital breakdown and bankruptcy. As marital breakdown is a significant cause of bankruptcy, and as noted may lead to apparent injustices, the Council recommends that the BIA be amended to address the injustices that may occur when an equalization payment is released in a bankruptcy.

Student Loans:

Stakeholders are invited to make submissions regarding whether the current provisions regarding the release of student loan debts should be amended.

The Council believes that consideration should be given to reducing the 10- and five-year duration provisions related to the release of student debt loans.

Stakeholders are invited to make submissions regarding the current hardship discharge provisions.

The “solution” of going to court to access the hardship provision of the BIA combined with the five-year wait seems an overly harsh remedy for students. The Council wonders how many people avail themselves of this provision? It recommends that the revisions to the BIA consider a better mechanism to address this issue.

Partial Release of Debts:

Stakeholders are invited to make submissions regarding possible flexibility for court-ordered partial discharges on hardship grounds, including any factors the court should consider in exercising its discretion.

As above, the solution of going to court may not be a realistic option for student loan holders suffering hardship. Far better that the BIA incorporate mechanisms that, when hardship is proven, the student debt may be released in part or in whole. Reliance on the courts does not seem to be a realistic solution.