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DELIVERED BY E-MAIL ATTACHMENT

July 14, 2014

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

Re: Comments for the Statutory Review of the *Bankruptcy and Insolvency Act* (BIA)

Dear Mr. Halucha:

Thank you for providing us with an opportunity to submit comments for consideration as part of the Statutory Review of the BIA scheduled to commence in September 2014. We have reviewed the Discussion Paper as posted on the Industry Canada website and will provide our comments in the same sequence as topics are set out in the paper.

As a preamble, Hoyes, Michalos & Associates Inc. is exclusively an insolvency firm operating from two dozen offices in Ontario. We have 17 licensed trustees employed or affiliated with the firm and have handled in excess of 35,000 personal insolvency filings since our inception in 1999. We believe the number of cases that we have processed, as well as the large geographic area that we service, provides us with a depth of practical experience that very few other firms can match.

We were pleased to present evidence before the Senate Standing Committee on Banking, Trade and Commerce during the last Statutory Review of the BIA which occurred in 2008 and hope that we may appear as witnesses during this round of legislative review. If you require additional information or analysis we will be pleased to provide it.

Yours truly,

Hoyes, Michalos & Associates Inc.

Ted Michalos signed electronically

Per: Ted Michalos CPA, CA, Trustee
President and Co-founder

Comments on the Discussion Paper

The following are our comments in regards to the topics raised in the Discussion Paper that appear on the Industry Canada website. Our comments appear in the same sequence as topics appear in the Discussion paper. If we have no comment on a particular topic you will not find the heading listed here.

Consumer Issues

Responsible Lending: Collectively, our trustees liked the "sound" of this topic, but after much discussion and debate, we could not determine a practical approach to suggest. Establishing a hierarchy of debt which somehow discounts or penalizes "newer" debt sounds appealing, but the reality is that lenders must be responsible for the credit they extend. If the lenders thought this was a concern they have the ability to perform financial reviews on their customers at any time to re-assess their credit worthiness. The fact that these reviews do not regularly occur suggests this is not an issue for lenders.

Licence Denial Regimes: This issue is currently before the Courts. To date, the Courts, have agreed that a licence denial is inappropriate for debts that have been stayed and/or dealt with pursuant to the BIA. We recommend that the BIA be revised to contain explicit language prohibiting licence denials in the event of an insolvency.

Registered Savings Products: We are of the opinion that the same protections that were extended to registered retirement savings plans should be applied to any registered savings product.

Specifically, moneys that have been on deposit in registered products (such as RESPs and RDSPs as well as other registered savings products) for more than 12 months before the date of insolvency should be exempt from seizure under the law. Registered savings products were created to address a specific social policy concern.

In the case of RESPs for example, they were created to encourage families to save for their children's post-secondary education. The advent of an insolvency event makes these types of savings even more critical for the individuals using registered savings products, not less so. In addition, in our experience, funds realized by liquidating these products, while significant to the debtors, do not represent a significant return to creditors. The law as it stands is inconsistent, treating RRSPs better than other forms of registered savings.

Equalization Claims: Equalization claims should only be dischargeable under insolvency law to the extent that the assets that gave rise to the equalization obligation may be seized and realized in an insolvency proceeding. If an asset is protected from realization in a bankruptcy under federal or provincial law, then the corresponding equalization obligation should not be dischargeable.

For example, pensions or other forms of retirement savings often form the basis for an equalization payment in Ontario where we practice. If the spouse with the obligation to pay files an assignment

in bankruptcy the equalization obligation is a dischargeable debt, but the pension or other form of retirement savings is protected from seizure. This is an inequitable treatment under the law.

Vesting of Family Property Claims: This becomes a non-issue if the changes discussed above under Equalization Claims are addressed.

Student Loans: In 2008 in our testimony before Parliament we argued that the seven year waiting period (reduced from the 10 year period previously in place) was still excessive and that it should be reduced to five years. Our current position is that the waiting period should be variable based on the duration of the program of study the person was enrolled in, with a maximum period of 5 years.

For example, a person that borrows for a 4 year university degree should have a 4 year waiting period. Someone attending a short term vocational school under a program of study that lasts less than 1 year should only have a 1 year waiting period. Our position is based on the expected return from the program of study. A student attending a vocational program is expecting to find employment upon graduation. If they are unable to secure gainful employment it seems unreasonable to require them to wait 7 years to be relieved from the associated student debt.

Commercial Issues

Our practice focuses on personal/consumer filings so our comments on commercial issues are limited.

Streamlined Small Business Proposal Proceeding: The restrictions limiting consumer proposals to consumer debtors should be removed such that any entity, be it an individual or business enterprise with debts below the specified threshold (currently $250,000) may avail themselves of this procedure. The restrictions should be further modified such that the debt threshold relates only to unsecured debts. Secured debts should be excluded from the threshold. This may require an adjustment of the current threshold, based on analysis of debt levels disclosed on Division I filings to produce a reasonable allocation of small business files to the stream-lined procedure.

Administrative Issues

Renaming the Bankruptcy and Insolvency Act: Our trustees are in agreement that the use of the term “bankruptcy” has a social stigma, and have suggested bankruptcy trustees be authorized to use the term “licensed insolvency practitioner” in their advertising. The current requirement of calling ourselves “bankruptcy trustees” has contributed to the growth of the “debt consulting industry” to the detriment of the general public. A significant portion of the debt consulting industry are simply opportunists; they advertise debt reduction services, charge debtors a fee and then refer them to a bankruptcy trustee to file a consumer proposal. The damage these firms have done to the public’s perception of the insolvency industry is hard to overstate.

Restricting Consumer Proposals: See our comments above regarding Streamlined Small Business Proposals.

Tax Issues: We recognize that the Crown is often an involuntary creditor in insolvency proceedings, but we are concerned with the slow erosion of protections provided by the BIA that appear to be occurring over time. Specifically, the high tax debt discharge requirements, the enhanced requirement to pay exclusions, and the suggestion that the dischargeability of tax debts should be subject to further limitations and/or exclusions.

Respectfully, the Crown has extraordinary powers to aid in collection of information and money. Rather than create additional restrictions under insolvency law, we would prefer to see the Crown exercise greater effort in pre-filing collection. It is not uncommon for an individual debtor to have three or more years of tax returns outstanding (unfiled) when they attend at a trustee's office. Commercial lenders notify their customers if they are 30 days overdue – the government should look to improve and enhance their systems so that non-compliant persons and businesses are identified much sooner.

Other Topics Not Addressed in the Discussion Paper (Consumer Issues)

Counselling Requirements: We understand that a review of the mandatory counselling requirements under the BIA will be commenced in the near future. At this time we would like to suggest the following for consideration:

a) The tariff for counselling has not been increased in a very long time
b) The number and frequency of counselling sessions may no longer be adequate given the increased number of consumer proposals being filed (with terms up to 5 years) and the extension of bankruptcy filings from 9 to 21, 24 or 36 months.

Debtors would benefit from the increased access to financial education and review over an extended period of time. In addition, not-for-profit credit counselling agencies provide a significant portion of the mandatory counselling and would certainly benefit from increased remuneration for their services.

Frequency of Dividends: A standard time limit should be introduced for the distribution of interim dividends in a consumer proposal and personal bankruptcy files that extends beyond 24 months. It is not uncommon for trustees to only distribute dividends in a consumer proposal once per year. Given the improvements in electronic banking and other forms of computerized processing, we think distributing dividends quarterly (every three months) may be more appropriate. This issue should be discussed with the major commercial lenders to determine their preference. Similarly, now that personal bankruptcy files run for up to 36 months, consideration should be given to mandatory interim dividends based on funds on deposit and time elapsed since filing.

Trustee Monitoring: The Office of the Superintendent of Bankruptcy (the "OSB") monitors all trustees, but the process is not transparent. There are no published guidelines explaining how frequently a trustee is monitored via an on-site visit by the OSB, or with other procedures. We assume that the OSB maintains detailed statistics on each trustee, including timeliness of the submission by the trustee of various estate documents, dividend realizations, mix of file types, and complaints received. We recommend that these statistics should be published to allow trustees to know how they perform compared to their peers, and to allow the public to evaluate the competence of individual trustee firms.

Trustee Licensing: Currently all trustees pay the same annual license fee. We recommend that the Office of the Superintendent of Bankruptcy (the "OSB") should have the ability to adjust the trustee's annual license fee within a range based on a risk profile of the trustee, and the trustee's firm. The adoption of Trustee Monitoring Reports as noted in the previous point would facilitate this initiative, and would allow the OSB to recover a greater portion of their monitoring expenses from the trustees that operate in a manner requiring greater OSB monitoring.

Trustee Tariff: Trustees are compensated based on the funds realized in the estate, and these tariffs have remained unchanged for many years. While we acknowledge that trustee operating costs have increased over the years, we do not believe that it is fair to bankrupts or the creditors to require them to bear a greater portion of the administrative costs of the trustee. We therefore do not recommend any change to the tariffs at this time.