Rumanek & Company Ltd.

Trustee in Bankruptcy & Administrators of Proposals

Submission by Rumanek & Company Ltd.

On

Industry Canada's

Public Consultation on Statutory Review of the *Bankruptcy and Insolvency Act*

and the *Companies' Creditors Arrangement Act*

Submission dated: July 14, 2014

This submission is being forwarded by Rumanek & Company Ltd. ("Rumanek") in response to the call for submissions by the Office of the Superintendent of Bankruptcy on the proposed amendments to the *Bankruptcy and Insolvency Act*.

OUR BACKGROUND

Rumanek & Company Ltd., a Toronto-area consumer insolvency practice, has been operating since 2000. We have three full-time trustees: Carl Rumanek, our founding trustee and President of Rumanek & Company Ltd., has been involved in the insolvency industry since 1981, and became a licenced trustee in 1989. Jordan Rumanek, Vice President, has been employed in the insolvency industry since 1992 and received his license in 2007. Karen Adler, Associate Trustee, received her license in 2007, having entered the insolvency industry in 2003.

Rumanek & Company Ltd. has administered more than 17,000 consumer estates and has regularly attended Bankruptcy Court in Toronto over the past 14 years.

OUR OBJECTIVES

Rumanek & Company Ltd. is committed to assisting those experiencing financial distress in obtaining a fresh start, free of the burden of their insurmountable debts.

COMMENTS ON INDUSTRY CANADA'S PUBLIC CONSULTATION

Consumer Issues

Protection of Consumer Interests

Responsible Lending

When a debtor initially applies for credit there is a maximum quantum of credit available. Creditors continually increase the maximum credit limit as long as the debtor is making minimum payments. These increases are applied without the debtor's consent, and in the absence of a request to do so. We believe that creditors should not be allowed to increase the borrowing limit on an existing credit facility unless a) requested to do so by way of application by the debtor, and b) the application for increase is supported by income verification.

The "Fresh Start" Principle

Licence Denial Regimes

There are many cases on the issue of licence denials based on non-payment of pre-bankruptcy debt, often to a third party. We feel that amendments to the BIA should be made that clarify the apparent conflict between the "fresh start" principle and the power of license-issuing creditors to circumvent this principle, for their own benefit or that of a third party, by way of license denial. Clarity and consistency would be appropriate.

Consumer Exemptions

Registered Savings Plans

Due to the extraordinary circumstances and exceptional expenses of those with disabilities and their families, RDSPs should be exempted the same way RRSPs are, subject to a claw-back of contributions made within the 12 months prior to bankruptcy. The balance should be exempt from seizure.

Protecting Families

Equalization Claims

Equalization debtors (the bankrupt owes an equalization payment):

The obligation to make equalization payments should be addressed under s. 178 of the Act as a debt not released by the bankrupt's discharge.

Equalization creditors (the bankrupt is owed an equalization payment; the situation of a bankrupt having received an equalization payment prior to bankruptcy has an additional set of complexities, and is not addressed here):

The potential inclusion of equalization payments as debts not released by bankruptcy begs the question of whether equalization funds owed to a bankrupt ought to be an exempt asset, in whole or in part. (This could become even more complicated if the equalization payment is in lieu of ongoing support.) It appears that the principle of equitable distribution to creditors may be in conflict with the principle of family protection, such that a bankrupt spouse owed equalization payments may be cleared of debt, but his or her future may be as vulnerable as a non-bankrupt spouse who is owed equalization that would be discharged in the current regime.

Administrative Issues

Renaming the Bankruptcy and Insolvency Act

"Restructuring and Insolvency Act" communicates the function of the legislation without the negative connotations that accompany the word "bankruptcy". This change could in turn facilitate the consideration of a less negative-sounding name for Trustees in the future.

In our experience consumers are afraid of the term “bankruptcy”, as the word carries negative connotations. This reflects poorly on trustees in bankruptcy, part of whose mandate is to assist those in financial crisis, and leads debtors to less scrupulous service-providers who are not bound by the “bankruptcy” name.

Restricting Consumer Proposals

The definition of consumer proposal should be changed to exclude secured credit for one motor vehicle which is being driven by the debtor. We submit that the threshold for a consumer proposal be redefined as $250,000 excluding debts by an individuals’ principal residence and one secured loan for a motor vehicle driven by the debtor.

Technical Issues

Disallowance of Claims

There are always reasonable and unusual circumstances why an appeal cannot be made within 30 days. It would be appropriate for the court to have the authority to extend the period for appealing the disallowance of a claim.

Section 173 – Facts for Which Discharge Will be Suspended

Section 173 should be expanded to include substance abuse as a fact for which discharge cannot be granted absolutely, so that in the case of a subsequent bankruptcy, the court would be made aware of any commonality. This is particularly important post-September 18, 2009, as a second time bankruptcy can be discharged automatically. A debtor struggling with addictive behaviours could potentially not see a Registrar until his or her third assignment.

Secured Creditors Calling Proposal Meetings

A consumer proposal is made to the unsecured creditors. Secured creditors have little or no economic interest in the outcome of the proposal, as they retain their rights to realize on their security, despite the proposal. As only the unsecured creditors are eligible to vote on the consumer proposal, and only the unsecured creditors are able to share in the dividends, it is appropriate that only the unsecured creditors be eligible to call meetings of creditors.