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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:

Subject: Written Submissions on Insolvency Legislation

Further to my letter to you of July 11, 2014, this is a submission from Service Alberta.

Protection of Consumer Interests

Consumer Deposits

It is the position of Consumer Programs, Service Alberta, that deposits and pre-payments from an individual consumer should be recognized and protected ahead of secured creditor claims. These deposits are not yet the property of the business as no goods or services were provided to the consumer. As noted, provincial consumer protection regimes may offer some protection for consumers through a security or compensation fund, but these monies are also available to consumers who have suffered losses arising from unfinished work, fraud or other breaches of contract, all of which can occur in bankruptcy situations. Appropriate protection of consumer deposits would ensure that the funds available through consumer protection regimes are available to address other consumer losses related to the activities of the bankruptcy supplier.

This would also ensure that consumer deposits or pre-payments that should be, but are not, placed in trust by the business that is going bankrupt would be protected appropriately. As an example, the Time Share and Points-Based Contracts and Business Regulation under Alberta's *Fair Trading Act* requires that deposits and payments for time share contracts be placed in trust for the 10 day cancellation period or until the time share property is available (if it is under construction). It is possible that a time share developer close to bankruptcy could decide to use the funds from sales to further development or operations rather than place the funds in trust as required. We also believe that deposits for renting residential premises and deposits for condominium purchases should come ahead of secured creditors. Loss of a condominium deposit can be substantial.

This proposal ties, in our view, directly to that of "responsible lending" below. Creditors have the tools and ability to gauge and monitor businesses should they choose to do so and there are very

often warning signs that will be apparent to lenders and suppliers that are not available or obvious to consumers. From a consumer protection standpoint, it is nonsensical to disadvantage consumers by assigning consumer deposits and pre-payments made to a now bankrupt supplier to secured creditors who should be responsible for assessing and accepting the risks associated with their lending.

Responsible Lending

Any effort to develop a substantive “responsible lending” regime should be achieved in conjunction with consultation and possible amendments to the maximum interest rate under the Criminal Code, to provincial collections legislation, and to the national harmonized Cost of Credit Disclosure template, which has been implemented at the national level for federally regulated financial institutions and at the provincial level for other lenders. Establishing a standard for “improvident” or “unconscionable” loans in the BIA that was not reflected more generally in lending legislation would offer little real protection to consumers and would disadvantage lenders who may be of “last resort” but whose products are otherwise perfectly legal. And if no standard is established in the BIA for “improvident” or “unconscionable”, then there would be no consistency in what might be determined to be improvident or unconscionable for the purposes of lending.

Reaffirmation Agreements and Discharge of Student Loan Provisions

For both these proposals, it should be noted that any change in these standards could have an impact on collection activity and consumer reporting, both of which are regulated provincially. Consumer Programs, Service Alberta, does not have a formal position on either proposal, but allowing bankruptcy debts to be reaffirmed or student loans pursued over an extended period can have a long term “ripple effect” on the credit history of the individual. With consumer reporting, the “reaffirmation” of a debt has been discharged through bankruptcy or the extension of a student loan debt can have a significant negative impact on a consumer’s ability to secure credit. At present, provincial regulations require that negative information about these debts be removed from the report after a certain period of years (six years in Alberta) after the last payment. Where a consumer makes a payment on an old or otherwise unreportable debt, they can effectively re-introduce the negative credit information related to that debt into their consumer report. Similarly, third party collection activity more than six years after the last payment or written acknowledgement, are prohibited. But, if a consumer makes a payment on a debt, the six year collection limitation clock starts running again.

Thank you for this opportunity to submit comments. As stated in my earlier letter to you, I would be pleased to connect you to those who prepared submissions, should you wish to discuss.

Yours truly,

Kim Graf
Barrister and Solicitor