

BRIEFING BOOK

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
46	BIA s.66.11	Definition of Consumer Debtor

Proposed Wording

66.11 “consumer debtor” means an individual who is bankrupt or insolvent and whose aggregate debts, excluding any debts secured by the individual’s principal residence, are not more than \$250,000 or any other prescribed amount;

Rationale

This change to the definition of “consumer debtor” increases the amount of debts that an individual may have to be eligible to make a consumer proposal from \$75,000 to \$250,000. This new debt ceiling appears in the Act rather than in the Rules in an effort to maintain transparency about this sizeable increase. It is believed that the current indebtedness ceiling of \$75,000 is too low and forces many self-employed individuals and higher-income debtors to make a more costly and more complicated commercial proposal. The higher costs associated with a commercial proposal translate to a reduced recovery for creditors. In addition, failure of a commercial proposal results in an automatic bankruptcy, whereas failure of a consumer proposal does not. The increase in the indebtedness ceiling will channel more debtors into the simpler and more cost-effective consumer proposal scheme.

Present Law

66.11 “consumer debtor” means a natural person who is bankrupt or insolvent and whose aggregate debts, excluding any debts secured by the person’s principal residence, do not exceed seventy-five thousand dollars or such other maximum as is prescribed;

Senate Recommendation

The proposed reform follows the Senate Committee’s recommendation in part. The Senate recommendation called for an increase in the indebtedness threshold to \$100,000, with annual

increases thereafter to reflect increases in the cost of living as measured by the Consumer Price Index.

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Bill Clause No.	Section No.	Topic
47	BIA s.66.12(2)	Restriction for proposals

Proposed Wording

66.12. (2) A consumer debtor who has filed a notice of intention or a proposal under Division I may not make a consumer proposal until the trustee appointed in respect of the notice of intention or proposal under Division I has been discharged.

Rationale

The English version of subsection 66.12(2) has been modernized.

Present Law

66.12. (2) A consumer debtor who has filed a notice of intention or lodged a proposal under Division I may not make a consumer proposal until the trustee appointed in respect of the notice of intention or proposal under Division I has been discharged.

Senate Recommendation

None.

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Bill Clause No.	Section No.	Topic
48	BIA s.66.13(2)(d)	Documents to be filed

Proposed Wording

66.13. (2)(d) subject to subsection (3), file with the official receiver a copy of the consumer proposal, signed by the consumer debtor, and the prescribed statement of affairs.

Rationale

The amendment to subsection (2)(d) is intended to make it clear that a consumer proposal must be accompanied by a prescribed statement of affairs.

Present Law

66.13. (2)(d) subject to subsection (3), file a copy of the consumer proposal, signed by the consumer debtor, with the official receiver.

Senate Recommendation

None.

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Bill Clause No.	Section No.	Topic
49	BIA s.66.14(a)(iii) and (b)(i)	Documents to be filed

Proposed Wording

- 66.14.** (a) prepare and file with the official receiver a report in the prescribed form setting out
- (i) the results of the investigation made under paragraph 66.13(2)(a),
 - (ii) the administrator's opinion as to whether the consumer proposal is reasonable and fair to the consumer debtor and the creditors, and whether the consumer debtor will be able to perform it, and
 - (iii) [*repealed,*] and
 - (iv) a list of the creditors whose claims exceed two hundred and fifty dollars; and
- (b) send to every known creditor, in the prescribed form and manner,
- (i) a copy of the consumer proposal and a copy of the statement of affairs referred to in paragraph 66.13(2)(d),
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Rationale

Subsection (a)(iii) was repealed and the information that was required to be provided is reworked in subparagraph (b)(i).

Subsection (b)(i) is intended to make it clear that a consumer proposal must be accompanied by a prescribed statement of affairs. This change will ensure consistency in the way in which the information is presented.

Present Law

- 66.14** The administrator shall, within ten days after filing a consumer proposal with the official receiver,
- (a) prepare and file with the official receiver a report in the prescribed form setting out
 - (i) the results of the investigation made under paragraph 66.13(2)(a),
 - (ii) the administrator's opinion as to whether the consumer proposal is reasonable and fair to the consumer debtor and the creditors, and whether the consumer debtor will be able to perform it,

- (iii) a condensed statement of the consumer debtor's assets, liabilities, income and expenses, and
 - (iv) a list of the creditors whose claims exceed two hundred and fifty dollars; and
- (b) send to every known creditor, in the prescribed form and manner,
- (i) a copy of the consumer proposal,
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Senate Recommendation

None.

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Bill Clause No.	Section No.	Topic
50	BIA s.66.17(2)	Effect of assent or dissent

Proposed Wording

66.17. (2) Unless it is rescinded, any assent or dissent received by the administrator at or before a meeting of creditors has effect as if the creditor had been present and had voted at the meeting.

Rationale

The amendment of subsection (2) streamlines the process by removing the obligation that a meeting of creditors be held when there is a dissent received by the administrator to the consumer proposal.

Present Law

66.17. (2) Any dissent received by the administrator prior to the expiration of the forty-five day period mentioned in subsection (1) is deemed to be a request for a meeting of creditors for the purpose of paragraph 66.15(2)(b), and any assent or dissent received by the administrator at or prior to a meeting of creditors has effect as if the creditor had been present and had voted at the meeting.

Senate Recommendation

The *Bankruptcy and Insolvency Act* be reviewed in order to identify opportunities that will contribute to greater efficiency within the insolvency system, including efforts regarding the adoption of new technologies.

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Bill Clause No.	Section No.	Topic
51	BIA s.66.28(2)	Inadvertent Discharge of Section 178 (1) Claims

Proposed Wording

66.28. (2) Subject to subsection (2.1), a consumer proposal accepted, or deemed accepted, by the creditors and approved, or deemed approved, by the court is binding on creditors in respect of
(a) all unsecured claims; and
(b) secured claims for which proofs of claim have been filed in the manner provided for in sections 124 to 134.

(2.1) A consumer proposal accepted, or deemed accepted, by the creditors and approved, or deemed approved, by the court does not release the consumer debtor from any particular debt or liability referred to in subsection 178(1) unless the consumer proposal explicitly provides for the compromise of that debt or liability and the creditor in relation to that debt or liability has assented to the consumer proposal.

Rationale

The current wording in subsection (2) is ambiguous with respect to the meaning of the phrase “assents thereto”, the amendment will clarify this phrase. The courts have historically interpreted “assents thereto” to refer to the proposal. Thus, when a creditor with a claim under subsection 178 (1) agrees to the proposal, the creditor also agrees, perhaps inadvertently, to a release of the claim under subsection 178 (1).

The new wording under subsection 68.28 (2.1) clarifies the ambiguity and will protect creditors from unknowingly or inadvertently relinquishing their otherwise undischageable claims.

This correction will enhance fairness in the process by allowing these claimants to be informed participants without risking an unintentional compromise of their claims. Especially vulnerable in this area are child and spousal support recipients with claims for arrears, victims of fraud and holders of an award for damages as a result of intentional bodily harm. With the revised wording, the creditor’s claim under subsection 178 (1) will be discharged only if the creditor votes in favour of a proposal that specifically provides for the compromise of the section 178 claim, thus eliminating any ambiguity.

Present Law

66.28. (2) A consumer proposal accepted, or deemed accepted, by the creditors and approved, or deemed approved, by the court is binding on creditors in respect of

(a) all unsecured claims, and

(b) secured claims for which proofs of claim have been filed in the manner provided for in sections 124 to 134,

but does not release the consumer debtor from the debts and liabilities referred to in section 178, unless the creditor assents thereto.

Senate Recommendation

None.

BRIEFING BOOK

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
52	BIA s.66.31	Consumer Proposal Default

Proposed Wording

66.31. (1) Unless the court has previously ordered otherwise or unless an amendment to the consumer proposal has previously been filed, a consumer proposal is deemed to be annulled on

(a) in the case when payments under the consumer proposal are to be made monthly or more frequently, the day on which the consumer debtor is in default for an amount that is equal to or more than the amount of three payments; or

(b) in the case when payments under the consumer proposal are to be made less frequently than monthly, the day that is three months after the day on which the consumer debtor is in default in respect of any payment.

(2) If an amendment to a consumer proposal filed before the deemed annulment of the consumer proposal under subsection (1) is withdrawn or refused by the creditors or the court, the consumer proposal is deemed to be annulled on the day on which the amendment is withdrawn or refused.

(3) Without delay after a consumer proposal is deemed to be annulled, the administrator shall
(a) file with the official receiver, in the prescribed form, a report in relation to the deemed annulment; and

(b) send a notice to the creditors informing them of the deemed annulment.

(4) When a consumer proposal made by a bankrupt is deemed to be annulled,

(a) the consumer debtor is deemed to have made an assignment on the date of the deemed annulment;

(b) the trustee who is the administrator of the consumer proposal shall, within five days after the deemed annulment, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, despite section 14, affirm the appointment of the trustee or appoint another trustee in lieu of that trustee; and

(c) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed annulment and the official receiver shall, without delay, issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49.

(5) A deemed annulment of a consumer proposal does not prejudice the validity of any sale, disposition of property or payment duly made, or anything duly done under or in pursuance of the consumer proposal, and despite the deemed annulment, a guarantee given under the consumer proposal remains in full force and effect in accordance with its terms.

(6) If the administrator, in the case of a deemed annulment of a consumer proposal made by a person other than a bankrupt, considers it appropriate to do so in the circumstances, he or she may, with notice to the official receiver, send to the creditors, within 10 days after the day on which the consumer proposal was deemed to be annulled, a notice in the prescribed form informing them that the consumer proposal will be automatically revived 45 days after the day on which it was deemed to be annulled unless one of them files with the administrator a notice of objection, in the prescribed manner, to the revival.

(7) If the notice is sent by the administrator and no notice of objection is filed during the 45-day period, the consumer proposal is automatically revived on the expiry of those 45 days.

(8) If a notice of objection is filed with the administrator during the 45-day period, the administrator must, without delay, send to the official receiver and to each creditor a notice in the prescribed form informing them that the consumer proposal is not going to be automatically revived on the expiry of the 45-day period.

(9) The administrator may at any time apply to the court, with notice to the official receiver and the creditors, for an order reviving any consumer proposal of a consumer debtor who is not a bankrupt that has been deemed to be annulled, and the court, if it considers it appropriate to do so in the circumstances, may make an order reviving the consumer proposal, on any terms that the court considers appropriate.

(10) Without delay after a consumer proposal is revived, the administrator shall

- (a) file with the official receiver, in the prescribed form, a report in relation to the revival; and
- (b) send a notice to the creditors informing them of the revival.

(11) The revival of a consumer proposal does not prejudice the validity of anything duly done--between the day on which the consumer proposal is deemed to be annulled and the day on which it is revived--by a creditor in the exercise of any rights revived by subsection 66.32(2).

Rationale

This proposed change sets out the rules by which a consumer proposal is deemed to be annulled and the process by which it can be revived. The proposal provides the administrator with the discretion to revive a consumer proposal that has been deemed annulled under subsection 66.31(1).

Currently, there is no way to revive a consumer proposal that is in default. Once the consumer proposal is in default, the administrator and the courts have no flexibility, and the consumer proposal is deemed annulled. Defaults in the agreement can only be remedied by a court order made prior to the deemed annulment by way of an amendment to the proposal previously agreed to by the creditors. The new section will allow an administrator to rectify the default by providing notice to the creditors. It is especially beneficial in situations where the debtor faces a temporary problem meeting payments, for example, due to illness or temporary unemployment, but otherwise is making good faith efforts to comply with the terms of the proposal.

The ability to revive a consumer proposal that is deemed to be annulled benefits all stakeholders if the proposal is still viable and can be completed despite the default in payments. This process continues to

retain the principle of accountability to the creditors through notice provisions, and creditors have the opportunity to object to the revival. The creditors' rights to the amount of their claims less any dividends received are revived between the day on which the proposal is deemed to be annulled and the day on which it is revived—a period of 45 days.

Subsection (1) clarifies that the consumer proposal is deemed to be annulled the day on which the debtor is in default for an amount that is equal to or more than the amount of three payments, in cases where payments are to be made monthly, or the day that is three months after the day on which the debtor is in default in respect of any payment in cases where payments are to be made less frequently than monthly.

Subsection (2) also clarifies that the consumer proposal is deemed to be annulled the day on which any amendment filed prior to the dates mentioned in subsection (1) is withdrawn or refused by the creditors or the court.

Subsection (3) sets out the duties of the administrator in the event of a deemed annulment, i.e., to file a report with the official receiver and to send a notice to the creditors.

Subsection (4) sets out what happens in the specific case when a consumer proposal that is made by a bankrupt is deemed to be annulled. In this case, (a) the debtor is deemed to have made an assignment on the date of the deemed annulment; (b) the trustee who is the administrator of the consumer proposal shall within 5 days send notice of a meeting of creditors. At the meeting, the creditors may affirm the appointment of the trustee or appoint another trustee; and (c) the trustee shall file a report with the official receiver who shall issue a certificate of assignment in bankruptcy.

Subsection (5) confirms the validity of actions taken under the consumer proposal before the date of the deemed annulment. The changes made to this subsection are minor technical matters, such as, the numbering and modernizing the language.

Subsection (6) allows for the possibility of reviving a consumer proposal that has been deemed annulled if the proposal was made by a person other than a bankrupt. The discretion on whether to revive a proposal lies with the administrator. Within 10 days after the day on which the consumer proposal is deemed to be annulled and if the administrator considers it appropriate, he or she may notify the creditors and the official receiver that the consumer proposal will be automatically revived 45 days after the day on which it was deemed to be annulled unless they file a notice of objection.

Subsection (7) confirms that if the administrator sends the notice under subsection (6) and no objection is filed within the 45-day period, the consumer proposal is automatically revived on the expiry of the 45 days.

Subsection (8) sets out the notice requirements if an objection to the revival is filed with the administrator during this 45-day period. In these cases, the administrator must notify the official receiver and each creditor that the consumer proposal is not going to be automatically revived at the expiry of the 45-day period.

Subsection (9) enables the administrator at any time in this process to apply to court, with notice to the official receiver and the creditors, for an order reviving the deemed annulment of a consumer proposal made by a person other than a bankrupt. This subsection also enables the court, if it considers it

appropriate, to make an order reviving the consumer proposal on any terms that it considers appropriate.

Subsection (10) sets out the duties of the administrator after a consumer proposal is revived. The administrator shall file a report in relation to the revival with the official receiver and send a notice to the creditors informing them of the revival.

Subsection (11) confirms the validity of things done by a creditor in the exercise of the creditor's rights between the day on which the consumer proposal is deemed to be annulled and the day on which it is revived.

Present Law

66.31. (1) Independently of section 66.3,

(a) where payments under a consumer proposal are to be made monthly or more frequently and the consumer debtor is in default to the extent of three months payments, or

(b) where payments under a consumer proposal are to be made less frequently than monthly and the consumer debtor is in default for more than three months on any payment,

the consumer proposal shall thereupon be deemed to be annulled unless the court has previously ordered otherwise or unless an amendment to the consumer proposal has previously been filed, and the administrator shall forthwith so inform the creditors and file a report thereof in the prescribed form with the official receiver.

(2) Where an amendment to a consumer proposal filed before the deemed annulment of the consumer proposal by virtue of subsection (1) is withdrawn or refused by the creditors or the court, the consumer proposal shall thereupon be deemed to be annulled.

(3) A deemed annulment of a consumer proposal by virtue of subsection (1) or (2) does not prejudice the validity of any sale, disposition of property or payment duly made, or anything duly done under or in pursuance of the consumer proposal, and notwithstanding the deemed annulment of the consumer proposal, a guarantee given pursuant to the consumer proposal remains in full force and effect in accordance with its terms.

Senate Recommendation

None.

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An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
53	BIA s.66.32(2)	Annulment of the proposal

Proposed Wording

66.32. (2) En cas d'annulation — effective ou présumée — de la proposition, les droits des créanciers sont rétablis jusqu'à concurrence du montant de leurs réclamations, déduction faite toutefois des dividendes reçus.

Rationale

The French version of subsection (2) was modernized.

Present Law

66.32. (2) En cas d'annulation -- effective ou présumée -- de la proposition, les droits des créanciers renaissent jusqu'à concurrence du montant de leurs réclamations, déduction faite toutefois des dividendes reçus.

Senate Recommendation

None.

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An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
54	BIA 66.33	Consumer Proposals

Proposed Wording

54. Section 66.33 of the Act is repealed.

Rationale

This section is illogical since the 1997 amendments to the BIA given the elimination of retroactivity in the date of bankruptcy.

Present Law

66.33 Where a consumer debtor in respect of whom a consumer proposal has been filed makes an assignment at any time before the court has approved or deemed to have approved the consumer proposal, the date of the assignment shall be deemed to be the earlier of

(a) the day on which the consumer proposal was filed, and

(b) the day on which the first petition, if any, for a receiving order in respect of that consumer debtor was filed.

Senate Recommendation

No Senate Recommendation

BRIEFING BOOK
An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
55	BIA s.66.34(1)	Ipso facto clauses

Proposed Wording

66.34. (1) If a consumer proposal has been filed in respect of a consumer debtor, no person may terminate or amend any agreement, including a security agreement, with the consumer debtor, or claim an accelerated payment, or the forfeiture of the term, under any agreement, including a security agreement, with the consumer debtor, by reason only that

Rationale

Subsection (1) was clarified to make it clear that the reference to “agreements” includes security agreements.

Present Law

66.34. (1) If a consumer proposal has been filed in respect of a consumer debtor, no person may terminate or amend any agreement with the consumer debtor, no person may terminate or amend any agreement with the consumer debtor, or claim an accelerated payment, or a forfeiture of the term, under any agreement with the consumer debtor, by reason only that

Senate Recommendation

The *Bankruptcy and Insolvency Act* be amended to provide that *ipso facto* clauses in agreements for basic services are not enforceable with respect to consumer proposals and consumer bankruptcies.

BRIEFING BOOK

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
56	BIA s.66.37 and s.66.38	Mandatory Counselling in a Consumer Proposal

Proposed Wording

66.37 If an administrator files an amendment to a consumer proposal before the withdrawal, refusal, approval or deemed approval by the court of the consumer proposal, or after the approval or deemed approval by the court of the consumer proposal and before it has been fully performed or annulled or deemed annulled, the provisions of this Division apply to the consumer proposal and the amended consumer proposal, with any modifications that the circumstances require, and, for that purpose, the definition “consumer debtor” in section 66.11 is to be read as follows:

“consumer debtor” means an individual who is insolvent;

66.38 (1) If a consumer proposal is fully performed, the administrator shall issue a certificate to that effect, in the prescribed form, to the consumer debtor and to the official receiver.

(2) Subsection (1) does not apply in respect of a consumer debtor who has refused or neglected to receive counselling provided under paragraph 66.13(2)(b).

Rationale

Financial counselling has been effective in helping debtors to manage better their financial affairs, change behaviour, and develop good financial management skills. This mandatory counselling may play an important role in helping debtors to avoid future financial difficulties.

Both section 66.37 and subsection 66.38 (1) have been amended to modernize the language.

While paragraph 66.13(2)(b) requires trustees to provide counselling to debtors, subsection 66.38 (2) provides that debtors making a consumer proposal are required to undergo counselling and that the administrator shall not issue a certificate of full performance of the consumer proposal if the debtor does not undergo this counselling.

Present Law

66.37 (1) Where an administrator files an amendment to a consumer proposal
(a) before the withdrawal, refusal, approval or deemed approval by the court of the consumer proposal, or

(b) after the approval or deemed approval by the court of the consumer proposal and before it has been fully performed or annulled or deemed annulled, the administrator shall call a meeting of creditors to be held within twenty-one days after the amendment is filed, to consider the consumer proposal as amended.

- (2) With respect to an amendment to a consumer proposal and the amended consumer proposal,
- (a) the provisions of this Division, except subsections 66.15(1) and (2), apply, with such modifications as the circumstances require; and
 - (b) the definition "consumer debtor" in section 66.11 shall be read as follows:
“"consumer debtor" means an insolvent natural person;”.

66.38 Where a consumer proposal is fully performed, the administrator shall give a certificate to that effect, in the prescribed form, to the consumer debtor and to the official receiver.

Senate Recommendation

The proposed reform follows the Senate Committee’s recommendation.

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An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
57	BIA s.67(1)	RRSP Exemption

Proposed Wording

67. (1) The property of a bankrupt divisible among his creditors shall not comprise

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(b) any property, other than property in a registered retirement savings plan or a registered retirement income fund, as those expressions are defined in the *Income Tax Act*, or in any prescribed plan, that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides,

(b.1) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b),

(b.2) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b),

(b.3) subject to any prescribed conditions and limitations, property in a registered retirement savings plan or a registered retirement income fund, as those expressions are defined in the *Income Tax Act*, other than property contributed to any such plan or fund in the 12 months, or in any longer period that the court may specify, before the date of bankruptcy.

(c) all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before his or her discharge, including any refund owing to the bankrupt under the *Income Tax Act* in respect of the calendar year — or the fiscal year of the bankrupt if it is different from the calendar year — in which the bankrupt became a bankrupt, except the portion of any such refund that is not subject to the operation of this Act, and

Rationale

Registered retirement savings plans play an important role in the financial planning of many Canadians. For self-employed Canadians and those whose employers do not offer retirement savings benefits, an RRSP may be the best post-retirement source of funds available, other than the social safety net provided by the Government. Therefore, the protection of RRSP's is vital to ensure that Canadians are able to enjoy a reasonable living standard in their post-employment years.

Where an individual is forced into bankruptcy it is generally accepted that creditors should be entitled to recoup their losses against that individual's property, however, it is also generally accepted that certain essential property should be exempt from seizure. For example, in most jurisdictions, the bankrupt is entitled to keep household furnishings, clothing, tools of his or her trade, a vehicle (up to a set dollar

value), and in some jurisdictions, their principal residence (also up to a set dollar value). RRSP's can be considered in the same domain as tools of the trade or a principal residence because it is essential to the well-being of the bankrupt in the long term. An RRSP is intended to provide for the individual with a reasonable living standard after their work years are done.

Further, the treatment of RRSP's and similar products differs depending on the province in which the bankrupt resides. Some provinces currently exempt RRSP's from seizure under a bankruptcy while others do not. In addition, RRSP-like products sold by the insurance industry are generally granted an exemption from seizure during a bankruptcy due to the nature of those products. Therefore, one bankrupt may be treated differently than another based on financial advice received years prior to a bankruptcy.

Therefore, the intention of the reform is to protect RRSP's and similar products from seizure during a bankruptcy so that the individual will have the financial means to care for him or herself without ending up as a burden on society and to ensure that bankrupts receive equal treatment regardless of the province of residence.

The reform will include anti-abuse mechanisms. First, the amount that may be exempted under the RRSP will be capped. The cap limit will allow for a reasonable rate of return on investment while ensuring that creditors are not denied repayment when the bankrupt holds an unduly large RRSP. Second, the exempted property will be required to be locked in until the bankrupt rolls the product into a retirement income fund, annuity or similar product. This will prevent a bankrupt from using the exemption to frustrate creditors and then breaking the RRSP for the bankrupt's personal use as soon as a discharge is granted. Third, the exempted property will be subject to a claw-back on any contributions made in the twelve months prior to the bankruptcy filing. The intention is to ensure that a bankrupt does not engage in strategic behaviour to deny creditors.

Present Law

67. (1) The property of a bankrupt divisible among his creditors shall not comprise

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(b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides, or

(b.1) such goods and services tax credit payments and prescribed payments relating to the essential needs of an individual as are made in prescribed circumstances and are not property referred to in paragraph (a) or (b), but it shall comprise

(c) all property wherever situated of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on him before his discharge, and

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Senate Recommendation

The reform follows Senate recommendation #2.

BRIEFING BOOK

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
58	BIA s.68	Surplus Income

Proposed Wording

68. (1) The Superintendent shall, by directive, establish in respect of the provinces or one or more bankruptcy districts or parts of bankruptcy districts, the standards for determining the surplus income of an individual bankrupt and the amount that a bankrupt who has surplus income is required to pay to the estate of the bankrupt.

(2) The following definitions apply in this section.

“surplus income” means the portion of the total income of an individual bankrupt that exceeds that which is necessary to enable the bankrupt to maintain a reasonable standard of living, having regard to the applicable standards established under subsection (1).

“total income”, for the purposes of the definition “surplus income”.

(a) includes, despite paragraphs 67(1)(b) and (b.1), all of a bankrupt’s revenues from whatever nature or source that are received by the bankrupt between the date of the bankruptcy and the date of the bankrupt’s discharge, including any amounts received as damages for wrongful dismissal, as a pay equity settlement or under any Act of Parliament or Act of the legislature of a province that relates to workers’ or workmen’s compensation; but

(b) does not include any amounts received by the bankrupt between the date of the bankruptcy and the date of the bankrupt’s discharge, as a gift, a legacy or an inheritance or as any other windfall.

(3) The trustee shall, having regard to the applicable standards and to the personal and family situation of the bankrupt, determine whether the bankrupt has surplus income. The determination must also be made

(a) whenever the trustee becomes aware of a material change in the bankrupt’s financial situation; and

(b) whenever the trustee is required to prepare a report referred to in subsection 170(1).

(4) Whenever the trustee is required to determine whether the bankrupt has surplus income, the trustee shall

(a) if the trustee determines that there is surplus income,

(i) fix, having regard to the applicable standards, the amount that the bankrupt is required to pay to the estate of the bankrupt,

(ii) inform, in the prescribed manner, the official receiver, and every creditor who has requested such information, of the amount fixed under subparagraph (i), and

(iii) take reasonable measures to ensure that the bankrupt complies with the requirement to pay; and
(b) if the trustee determines that there is no surplus income, inform, in the prescribed manner, the official receiver, and every creditor who has requested such information, of that determination.

(5) If the official receiver determines that the amount required to be paid by the bankrupt is substantially not in accordance with the applicable standards, the official receiver shall recommend to the trustee and to the bankrupt an amount required to be paid that the official receiver determines is in accordance with the applicable standards.

(5.1) On receipt of the official receiver's recommendation, the trustee may fix, having regard to the applicable standards, another amount as the amount that the bankrupt is required to pay to the estate of the bankrupt, and if the trustee does so, the trustee shall

(a) inform the official receiver and every creditor, in the prescribed manner, of the amount fixed under this subsection; and

(b) take reasonable measures to ensure that the bankrupt complies with the requirement to pay.

(6) If the trustee and the bankrupt are not in agreement with the amount that the bankrupt is required to pay under subsection (4) or (5.1), the trustee shall, without delay, in the prescribed form, send to the official receiver a request that the matter be determined by mediation and send a copy of the request to the bankrupt.

(7) On a creditor's request made within 30 days after the trustee has informed the creditor of the amount fixed under subsection (4) or (5.1), the trustee shall, within five days after the 30-day period, send to the official receiver a request, in the prescribed form, that the matter of the amount that the bankrupt is required to pay be determined by mediation and send a copy of the request to the bankrupt and the creditor.

.....

(10) The trustee may, in any of the following circumstances — and shall apply if requested to do so by the official receiver in the circumstances referred to in paragraph (a) — apply to the court to fix, by order, in accordance with the applicable standards, and having regard to the personal and family situation of the bankrupt, the amount that the bankrupt is required to pay to the estate of the bankrupt:

(a) if the trustee has not implemented a recommendation made by the official receiver under subsection (5);

(b) if the matter submitted to mediation has not been resolved by the mediation; or

(c) if the bankrupt has failed to comply with the requirement to pay as determined under this section.

.....

(12) On the application of any interested person, the court may, at any time, amend an order made under this section to take into account material changes that have occurred in the financial situation of the bankrupt.

.....

(14) For the purpose of this section, a requirement that a bankrupt pay an amount to the estate of the bankrupt is enforceable against all the bankrupt's property, including property referred to in paragraphs 67(1)(b) and (b.1).

(15) If an opposition to the automatic discharge of an individual bankrupt who is required to pay an amount to the estate of the bankrupt is filed, the bankrupt's obligation under this section ceases on the day on which the bankrupt would have been automatically discharged had the opposition not been filed, but nothing in this subsection precludes the court from determining that the bankrupt is required to pay an amount that the court considers appropriate to the estate of the bankrupt.

Rationale

Approximately 20-25% of bankrupts have sufficient income to pay a portion of it to their creditors. The proposed reform is aimed at ensuring that those bankrupts with the financial means to contribute to their estates pay as much as possible in order to maximize the return to their creditors. This section is updated to clarify ambiguities surrounding the concept of what constitutes income and surplus income. Specifically, it provides definitions as to what types of lump sum payments are and are not to be included in the calculation of income. In addition, this section sets out trustees' duties with regard to determining surplus income.

Subsection (1) introduces the commonly used term of "surplus income."

Subsection (2) provides the definition of "surplus income" and clarifies the definition of "total income." "Total income" explicitly includes revenue received as damages for wrongful dismissal, pay equity settlement, and any payment relating to workers' compensation. It explicitly excludes amounts received by the bankrupt, between the date of the bankruptcy and the date of the bankrupt's discharge, as a gift, legacy or inheritance or as any other windfall.

Subsection (3) puts the onus on the trustee to determine whether the bankrupt has surplus income. It also stipulates that the trustee must re-examine whether the bankrupt has surplus income whenever the trustee becomes aware of a material change in the bankrupt's circumstances and whenever the trustee is required to prepare a report under subsection 170 (1).

Subsection (4) sets out the duties of the trustee regarding the determination of surplus income. If the trustee determines that the bankrupt has surplus income, the trustee is to fix the amount payable to the bankrupt's estate, inform the official receiver and every creditor who has requested this information, and take reasonable measures to ensure that the bankrupt complies with the requirement to pay. However, if the trustee determines that the bankrupt has no surplus income, the trustee still must provide this information to the official receiver and every creditor who has requested it.

Subsections (5), (6), (7), and (10) are changed to modernize the language.

Subsection (5.1) provides that if the official receiver determines the bankrupt is able to pay a different amount than that fixed by the trustee, the official receiver may recommend this new amount to the trustee. At this point, the trustee may fix another amount and inform the official receiver and every

creditor and take reasonable measures to ensure that the bankrupt complies with the requirement to pay.

Subsection (12) is changed to specify that the court may amend an order under this section to take into account material changes in the bankrupt's "financial" situation as opposed to the bankrupt's "personal or family" situation.

Subsection (14) provides that where a bankrupt is obligated to make surplus income payments, these payments may be enforced against otherwise exempt property, such as income from a pension.

Subsection (15) specifies when the bankrupt's obligation to pay surplus income ceases even if an opposition to the automatic discharge is filed, i.e., the obligation ceases the day on which the bankrupt would have been automatically discharged. However, this does not preclude the court from determining that the bankrupt is required to pay an amount that the court considers appropriate to the bankrupt's estate.

Present Law

68. (1) The Superintendent shall, by directive, establish in respect of the provinces or one or more bankruptcy districts or parts of bankruptcy districts, the standards for determining the portion of the total income of an individual bankrupt that exceeds that which is necessary to enable the bankrupt to maintain a reasonable standard of living.

(2) For the purposes of this section,

(a) "total income" referred to in subsection (1) includes, notwithstanding paragraphs 67(1)(b) and (b.1), all revenues of a bankrupt of whatever nature or source; and

(b) a requirement that a bankrupt pay an amount to the estate of the bankrupt is enforceable against all property of the bankrupt, other than property referred to in paragraphs 67(1)(b) and (b.1).

(3) The trustee shall

(a) having regard to the applicable standards established under subsection (1), and to the personal and family situation of the bankrupt, fix the amount that the bankrupt is required to pay to the estate of the bankrupt;

(b) inform the official receiver in writing of the amount fixed under paragraph (a); and

(c) take reasonable measures to ensure that the bankrupt complies with the requirement to pay.

(4) The trustee may, at any time, amend an amount fixed under subsection (3) to take into account

(a) material changes that have occurred in the personal or family situation of the bankrupt; or

(b) a recommendation made by the official receiver under subsection (5).

(5) Where the official receiver determines that the amount required to be paid by the bankrupt under subsection (3) or (4) is substantially not in accordance with the applicable standards established under subsection (1), the official receiver shall recommend to the trustee and to the bankrupt an amount required to be paid that the official receiver determines is in accordance with the applicable standards.

(6) Where the trustee and the bankrupt are not in agreement with the amount that the bankrupt is

required to pay under subsection (3) or (4), the trustee shall, forthwith, in the prescribed form, send to the official receiver a request that the matter be determined by mediation and send a copy of the request to the bankrupt.

(7) On the request in writing of a creditor made within thirty days after the date of bankruptcy or an amendment referred to in subsection (4), the trustee shall, within the five days following the thirty day period, send to the official receiver a request in the prescribed form that the matter of the amount the bankrupt is required to pay under subsection (3) or (4) be determined by mediation and send a copy of the request to the bankrupt and the creditor.

(8) A mediation shall be in accordance with prescribed procedures.

(9) Documents contained in a file on the mediation of a matter under this section form part of the records referred to in subsection 11.1(2).

(10) Where

(a) the trustee has not implemented a recommendation made by the official receiver under subsection (5),

(b) the issue submitted to mediation requested under subsection (6) or (7) is not thereby resolved, or

(c) the bankrupt fails to comply with the requirement to pay as determined under this section, the trustee may, or on the request of the inspectors, any of the creditors or the official receiver shall, apply to the court for the hearing of the matter, and the court may, on the hearing, in accordance with the standards established under subsection (1) and having regard to the personal and family situation of the bankrupt, by order, fix the amount that the bankrupt is required to pay to the estate of the bankrupt.

(11) The court may fix an amount that is fair and reasonable

(a) as salary, wages or other remuneration for the services being performed by a bankrupt for a person employing the bankrupt, or

(b) as payment for or commission in respect of any services being performed by a bankrupt for a person,

where the person is related to the bankrupt, and the court may, by order, determine the part of the salary, wages or other remuneration, or the part of the payment or commission, that shall be paid to the trustee on the basis of the amount so fixed by the court, unless it appears to the court that the services have been performed for the benefit of the bankrupt and are not of any substantial benefit to the person for whom they were performed.

(12) On the application of any interested person, the court may, at any time, amend an order made under this section to take into account material changes that have occurred in the personal or family situation of the bankrupt.

(13) An order of the court made under this section may be served on a person from whom the bankrupt is entitled to receive money and, in such case,

(a) the order binds the person to pay to the estate of the bankrupt the amount fixed by the order; and

(b) if the person fails to comply with the terms of the order, the court may, on the application of the trustee, order the person to pay the trustee the amount of money that the estate of the bankrupt would have received had the person complied with the terms of the order.

(14) For the purposes of section 38, an application referred to in subsection (10) is deemed to be a proceeding for the benefit of the estate.

Senate Recommendation

The proposed reform follows the Senate Committee's recommendation.

BRIEFING BOOK
An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
59	BIA s.68.1(2)	Assignment of book debts

Proposed Wording

68.1 (2) An assignment of existing or future amounts receivable as payment for or commission or professional fees in respect of services rendered by a debtor who is an individual before the debtor became bankrupt is of no effect in respect of such amounts earned or generated after the bankruptcy.

Rationale

Subsection (2) was modernized.

Present Law

68.1 (2) An assignment of existing or future amounts receivable as payment for or commission or professional fees in respect of services rendered made by a debtor who is a natural person before the debtor became bankrupt is of no effect in respect of such amounts earned or generated after the bankruptcy.

Senate Recommendation

None.

BRIEFING BOOK
An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
60	BIA s. 69(2)(d) and (d)(i)	Aircraft Objects

Proposed Wording

69. (2)(d) to prevent a creditor who holds security on aircraft objects under an agreement with the insolvent person from taking possession of the aircraft objects

(i) if, after the commencement of proceedings under this Act, the insolvent person defaults in protecting or maintaining the aircraft objects in accordance with the agreement,

Rationale

Section 69(1) stays any proceedings a creditor may have against a debtor who has filed a notice of intention to file a proposal.

Due to commitments made under the *Act to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (the Act), it became necessary to create an exception so that creditors with security on aircraft objects are not subject to the stay of proceedings under the BIA if the debtor fails to protect or maintain the object in accordance with the agreement. The Act also provides that 60 days following the filing of the notice of intention, the creditor can seize the object unless the debtor has remedied all defaults under the agreement. Finally, it releases the stay if after the 60-day period the debtor goes into default.

Paragraph 69(2)(d) and subparagraph (d)(i) simply change the word “equipment” to “aircraft objects”, which will be a defined term in the BIA once the Act comes into force. These provisions also make clear that the exceptions only apply to secured creditors as defined in the BIA. Similar provisions are included in subsection 65.1(4) of the BIA to specifically deal with leases.

Present Law

Present wording will come into force when the insolvency provisions of the Act come into force.

69. (2)(d) to prevent a creditor who holds security on aircraft objects – or who is a lessor of aircraft objects or a conditional seller of aircraft objects – under an agreement with the insolvent person from taking possession of the equipment

(i) if, after the commencement of proceedings under this Act, the insolvent person defaults in protecting or maintaining the equipment in accordance with the agreement,

Senate Recommendation

None.

BRIEFING BOOK
An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
61	BIA s. 69.1(2)(d) and (d)(i)	Aircraft Objects

Proposed Wording

69.1 (2)(d) to prevent a creditor who holds security on aircraft objects under an agreement with the insolvent person from taking possession of the aircraft objects

(i) if, after the commencement of proceedings under this Act, the insolvent person defaults in protecting or maintaining the aircraft objects in accordance with the agreement,

Rationale

Section 69.1(1) stays any proceedings a creditor may have against a debtor who has filed a proposal.

Due to commitments made under the *Act to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (the Act), it became necessary to create an exception so that creditors with security on aircraft objects are not subject to the stay of proceedings under the BIA if the debtor fails to protect or maintain the object in accordance with the agreement. The Act also provides that 60 days following the filing of the proposal, the creditor can seize the object unless the debtor has remedied all defaults under the agreement. Finally, it releases the stay if after the 60-day period the debtor goes into default.

Paragraph 69.1(2)(d) and subparagraph (d)(i) simply change the word “equipment” to “aircraft objects”, which will be a defined term in the BIA once the Act comes into force. These provisions also make clear that the exceptions only apply to secured creditors as defined in the BIA. Similar provisions are included in subsection 65.1(4) of the BIA to specifically deal with leases.

Present Law

Present wording will come into force when the insolvency provisions of the Act come into force.

69.1 (2)(d) to prevent a creditor who holds security on aircraft objects or who is a lessor of aircraft objects or a conditional seller of aircraft objects under an agreement with the insolvent person from taking possession of the equipment

(i) if, after the commencement of proceedings under this Act, the insolvent person defaults in protecting or maintaining the equipment in accordance with the agreement,

Senate Recommendation

None.

BRIEFING BOOK

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
62	BIA s.69.3 (1), (2) and (3)	Stay of Proceedings

Proposed Wording

69.3 (1) Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

(1.1) Subsection (1) ceases to apply in respect of a creditor on the day on which the trustee is discharged.

(2) Subject to subsection (3), sections 79 and 127 to 135 and subsection 248(1), the bankruptcy of a debtor does not prevent a secured creditor from realizing or otherwise dealing with his or her security in the same manner as he or she would have been entitled to realize or deal with it if this section had not been passed, unless the court otherwise orders, but in so ordering the court shall not postpone the right of the secured creditor to realize or otherwise deal with his or her security, except as follows:

(3) If a secured creditor who holds security on aircraft objects under an agreement with the bankrupt is postponed from realizing or otherwise dealing with that security, the order under which the postponement is made is terminated

(a) if, after the order is made, the trustee defaults in protecting or maintaining the aircraft objects in accordance with the agreement;

(b) 60 days after the day on which the order is made unless, during that period, the trustee

(i) remedied the default of every other obligation under the agreement, other than a default constituted by the commencement of proceedings under this Act or the breach of a provision in the agreement relating to the bankrupt's financial condition, and

(ii) agreed to perform the obligations under the agreement, other than the bankrupt's obligation not to become insolvent or an obligation relating to the bankrupt's financial condition, until the day on which the secured creditor is able to realize or otherwise deal with his or her security; or

(c) if, during the period that begins 60 days after the day on which the order is made and ends on the day on which the secured creditor is able to realize or otherwise deal with his or her security, the trustee defaults in performing an obligation under the agreement, other than the bankrupt's obligation not to become insolvent or an obligation relating to the bankrupt's

financial condition.

Rationale

Subsections (1) and (2) were modernized.

The addition of subsection (1.1) clarifies that a creditor may realize against the property of the bankrupt without leave of the court once the trustee has been discharged. This change was necessary as creditors could not realize claims, without court approval, after the trustee was discharged, since a debtor who has not been discharged would still be protected from creditor claims under stay of proceedings provisions of the BIA.

With regards to the *Act to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (the Act), subsection (2) refers to an exception (in subsection (3)) to the rules regarding stays in bankruptcies for creditors who have security on aircraft objects.

Subsection (3) clarifies the language in the Act so that the provision clearly applies to bankruptcies, where there must be an order postponing the secured creditor's right to realize on his assets.

Present Law

69.3 (1) Subject to subsection (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged.

(2) Subject to sections 79 and 127 to 135 and subsection 248(1), the bankruptcy of a debtor does not prevent a secured creditor from realizing or otherwise dealing with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed, unless the court otherwise orders, but in so ordering the court shall not postpone the right of the secured creditor to realize or otherwise deal with his security, except as follows:

The present wording of subsection (3) will come into force when the insolvency provisions of the Act come into force.

(3) The bankruptcy of a debtor does not prevent a creditor who holds security on aircraft objects or who is a lessor of aircraft objects or a conditional seller of aircraft objects under an agreement with the bankrupt from taking possession of the equipment

(a) if, after the commencement of proceedings under this Act, the trustee defaults in protecting or maintaining the equipment in accordance with the agreement;

(b) sixty days after the commencement of proceedings under this Act unless, during that period, the trustee

- (i) remedied the default of every other obligation under the agreement, other than a default constituted by the commencement of proceedings under this Act or the breach of a provision in the agreement relating to the bankrupt's financial condition,
 - (ii) agreed to perform the obligations under the agreement, other than an obligation not to become insolvent or an obligation relating to the bankrupt's financial condition, until the day on which proceedings under this Act end, and
 - (iii) agreed to perform all the obligations arising under the agreement after the proceedings under this Act end; or
- (c) if, during the period that begins on the expiry of the sixty-day period and ends on the day on which proceedings under this Act end, the trustee defaults in performing an obligation under the agreement, other than an obligation not to become insolvent or an obligation relating to the bankrupt's financial condition.

Senate Recommendation

None.

BRIEFING BOOK

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
63	BIA s.70(2)	Costs

Proposed Wording

70. (2) Despite subsection (1), one bill of costs of a barrister or solicitor or, in the Province of Quebec, an advocate, including the executing officer's fees and land registration fees, shall be payable to the creditor who has first attached by way of garnishment or filed with the executing officer an attachment, execution or other process against the property of the bankrupt.

Rationale

The English version of subsection (2) was amended to comply with the Federal government's Harmonization Program aimed at changes to federal legislation to reflect the appropriate civil and common law terminology.

Present Law

70. (2) Despite subsection (1), one bill of costs of a barrister or solicitor or, in the Province of Quebec, an advocate, including the executing officer's fees and land registration fees, shall be payable to the creditor who has first attached by way of garnishment or lodged with the executing officer an attachment, execution or other process against the property of the bankrupt.

Senate Recommendation

None.

BRIEFING BOOK
An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
64	BIA s.74(3)	Caveat

Proposed Wording

74. (3) If a bankrupt owns any real property or immovable or holds any charge registered in a land registry office or has or is believed to have any interest, estate or right in any of them, and for any reason a copy of the bankruptcy order or assignment has not been registered as provided in subsection (1), a caveat or caution may be filed with the official in charge of the land registry by the trustee, and any registration made after the filing of the caveat or caution in respect of the real property, immovable or charge is subject to the caveat or caution unless it has been removed or cancelled under the provisions of the Act under which the real property, immovable, charge, interest, estate or right is registered.

Rationale

The English version of subsection (3) was amended to comply with the Federal government's Harmonization Program aimed at changes to federal legislation to reflect the appropriate civil and common law terminology.

Present Law

74. (3) If a bankrupt owns any real property of immovable or holds any charge registered in a land registry office or is believed to have any interest, estate or right in any of them, and for any reason a copy of the bankruptcy order or assignment has not been registered as provided in subsection (1), a caveat or caution may be lodged with the official in charge of the land registry by the trustee, and any registration made after the lodging of the caveat or caution in respect of the real property, immovable or charge is subject to the caveat or caution unless it has been removed or cancelled under the provisions of the Act under which the real property, immovable, charge, interest, estate or right is registered.

Senate Recommendation

None.

BRIEFING BOOK
An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

Bill Clause No.	Section No.	Topic
65	BIA s.81(2) and (4)	Disposal of claims

Proposed Wording

81. (2) The trustee with whom a proof of claim is filed under subsection (1) shall within 15 days after the filing of the claim or within 15 days after the first meeting of creditors, whichever is the later, either admit the claim and deliver possession of the property to the claimant or send notice in the prescribed manner to the claimant that the claim is disputed, with the trustee's reasons for disputing it, and, unless the claimant appeals the trustee's decision to the court within 15 days after the sending of the notice of dispute, the claimant is deemed to have abandoned or relinquished all his or her right to or interest in the property to the trustee who may then sell or dispose of the property free of any right, title or interest of the claimant.

.....

(4) The trustee may send notice in the prescribed manner to any person to prove his or her claim to or in property under this section, and, unless that person files with the trustee a proof of claim, in the prescribed form, within 15 days after the sending of the notice, the trustee may then, with the leave of the court, sell or dispose of the property free of any right, title or interest of that person.

Rationale

The amendments to subsections (2) and (4) are technical in nature and modernize the language and the methods, which will be described in the regulations, by which notices can be sent.

Present Law

81. (2) The trustee with whom a proof of claim is filed under subsection (1) shall within fifteen days thereafter or within fifteen days after the first meeting of creditors, whichever is the later, either admit the claim and deliver possession of the property to the claimant or give notice in writing to the claimant that the claim is disputed with his reasons therefor, and, unless the claimant appeals therefrom to the court within fifteen days after the mailing of the notice of dispute, he shall be deemed to have abandoned or relinquished all his right to or interest in the property to the trustee who thereupon may sell or dispose of the property free of any lien, right, title or interest of the claimant.

.....

(4) The trustee may give notice in writing to any person to prove his claim to or in property under this

section, and, unless that person files with the trustee a proof of claim in the prescribed form within fifteen days after the mailing of the notice, the trustee may thereupon with the leave of the court sell or dispose of the property free of any lien, right, title or interest of that person.

Senate Recommendation

None.