

Understanding Bankruptcies

This document is intended to provide you information on the bankruptcy, financial information and provide you with pertinent excerpts from the Bankruptcy of Insolvency Act (“BIA”) including duties of a Bankrupt.

What is a Bankruptcy?

A bankruptcy is a formal legal process that you can avail yourself on should you not be able to meet your financial obligations. It is typically a last resort after you have considered all other possible options for dealing with your debts. Only Licensed Insolvency Trustee (“LIT”) can file a bankruptcy on your behalf.

An LIT will assist in completing the required forms to file the Bankruptcy. He or she then files the forms with the Office of the Superintendent of Bankruptcy (“OSB”) and, once accepted you will be declared bankrupt. As a “Bankrupt” you receive legal protection know as a Stay of Proceedings and all calls or collection attempts should cease in relation to debts from prior to your filing. Should creditors continue to call direct them to your LIT as he or she will notify them of your Stay of Proceedings.

After filing the Bankruptcy, you are require to co-operate with the LIT during the process and to provide information use for the purpose of administering the Bankruptcy.

When you file a Bankruptcy the LIT takes possession of all of your assets less any assets that are exempt under provincial or federal legislation. The assets are then sold and proceed will be distributed pay your creditors. During the administration of the Bankruptcy whose you will be required to among other things attend mandatory session deigned to help you with your financial awareness. During the Administration you also be required to provide information necessary for the LIT to administer the Bankruptcy.

There are costs to file a Bankruptcy and the total value of your Bankruptcy estate to be disbursed amongst your creditor will depend on a variety of factors. These factors may include your income throughout the process and asset realized on by the LIT.

How long is the Bankruptcy?

The length of time before you are eligible for an automatic discharge, without the need for a court application, depends on whether you have filed a Bankruptcy before and what your current earnings are.

On a first bankruptcy scenario you are entitled to an automatic discharge after 9 months if your income on average is less than a Standard that the OSB sets. If your income on average is greater than the Standard you are eligible for the automatic discharge after 21 months.

On a second bankruptcy scenario you are entitled to an automatic discharge after 24 months if your income on average is less than a Standard that the OSB sets. If your income on average is greater than the Standard you are eligible for the automatic discharge after 36 months.

If this is your third or greater Bankruptcy there is no automatic discharge and an application must be brought to the courts, which you are required to attend, to be granted a discharge. The court may impose additional requirements on you to obtain a discharge.

The automatic discharge process will occur unless a creditor, the LIT or the OSB opposes your discharge.

What if there is a disagreement over my requirement to pay surplus income?

If the LIT and bankrupt are not in agreement with the amount that the bankrupt is required to pay in relation to their surplus income requirement, the bankrupt can request mediation. Mediation can also be requested if there is a dispute over whether the bankrupt could have made a viable proposal and has chosen bankruptcy rather than a proposal as a solution to debt.

In cases like these a mediator will be appointed through the OSB to try to help resolve the issue. If both parties agree, the parties sign a "mediation settlement agreement." The bankrupt will be required to comply with all conditions of the agreement.

If the parties can not agree then the LIT will apply to the court to either have the court to fix, by order, the amount the bankrupt is required to pay the bankruptcy estate or, asks the court for a hearing to decide the matter.

How does a Bankruptcy End?

The bankruptcy discharge is the final step and will rid you of your obligations to repay most all of your debts. Certain debt however can survive the Bankruptcy these would include but not be limited to alimony, support payments or court-imposed fines, penalties or restitution orders. Your trustee will discuss with you any debts that may not be discharge during the assessment portion of the bankruptcy.

What happens to my Credit Score after a bankruptcy?

The Credit Bureau Agencies will be notified of your bankruptcy and it will reflect on your report that you have filed a bankruptcy for the duration of your proceeding and a 6-year period after you have received your discharge.

On second Bankruptcy scenarios the bureaus will report you have filed a bankruptcy for the duration of you proceeding and a 14-year period after you have received your discharge.

Will there be a record of my Bankruptcy?

When you declare bankruptcy, your name becomes part of public bankruptcy and insolvency records administered by the OSB. These records are accessible to anyone who makes a request for the information.

Section 67

- (1)The property of a bankrupt divisible among his creditors shall not comprise
 - (a)property held by the bankrupt in trust for any other person;
 - (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;
 - (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); or

(b.3) without restricting the generality of paragraph (b), 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, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy,

but it shall comprise

- (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 their 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 that
 - (i) is not subject to the operation of this Act, or
 - (ii) in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on Her Majesty under the *Family Orders and Agreements Enforcement Assistance Act*, is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and
- (d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.
- (2) Subject to subsection (3), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a bankrupt shall not be regarded as

held in trust for Her Majesty for the purpose of paragraph (1)(a) unless it would be so regarded in the absence of that statutory provision.

- (3) SubSection (2) does not apply in respect of amounts deemed to be held in trust under subSection 227(4) or (4.1) of the *Income Tax Act*, subSection 23(3) or (4) of the *Canada Pension Plan* or subSection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subSection referred to as a "federal provision") nor in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where
 - (a) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subSection 227(4) or (4.1) of the *Income Tax Act*, or
 - (b) the province is a "province providing a comprehensive pension plan" as defined in subSection 3(1) of the *Canada Pension Plan*, that law of the province establishes a "provincial pension plan" as defined in that subSection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subSection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subSection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

Section 68

- **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.

Definitions

(2) The following definitions apply in this section.

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

total income

- **(a)** includes, despite paragraphs 67(1)(b) and (b.3), a bankrupt's revenues of whatever nature or from whatever source that are earned or received by the bankrupt between the date of the bankruptcy and the date of the bankrupt's discharge, including those received as damages for wrongful dismissal, received as a pay equity settlement or received under an Act of Parliament, or of the legislature of a province, that relates to workers' 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. (*revenu total*)

Determination of trustee re surplus income

(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).

Duties of trustee relating to determination

(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.

Official receiver recommendation

(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.

Trustee may fix another amount

(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.

Trustee may request mediation

(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.

Creditor may request mediation

(7) On a creditor's request made within 30 days after the day on which the trustee informed the creditor of the amount fixed under subsection (4) or (5.1), the trustee shall, within five days after the day on which the 30-day period ends, 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.

Mediation procedure

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

File

(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).

Application to court to fix amount

(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.

Fixing fair and reasonable remuneration in the case of related persons

(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.

Modification of order

(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.

Default by other person

(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.

Application is a proceeding

(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.

Property included for enforcement purposes

(15) For the purpose of this section, a requirement that a bankrupt pay an amount to the estate is enforceable against the bankrupt's total income.

When obligation to pay ceases

(16) If an opposition to the automatic discharge of a bankrupt individual who is required to pay an amount to the estate 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 to the estate an amount that the court considers appropriate.

Assignment of wages

- **68.1 (1)** An assignment of existing or future wages made by a debtor before the debtor became bankrupt is of no effect in respect of wages earned after the bankruptcy.

Assignment of book debts

(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.

Section 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.
- **End of stay**

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

(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 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:

- **(a)** in the case of a security for a debt that is due at the date the bankrupt became bankrupt or that becomes due not later than six months thereafter, that right shall not be postponed for more than six months from that date; and
- **(b)** in the case of a security for a debt that does not become due until more than six months after the date the bankrupt became bankrupt, that right shall not be postponed for more than six months from that date, unless all instalments of interest that are more than six months in arrears are paid and all other defaults of more than six months standing are cured, and then only so long as no instalment of interest remains in arrears or defaults remain uncured for more than six months, but, in any event, not beyond the date at which the debt secured by the security becomes payable under the instrument or law creating the security.

Section 158

The bankrupt shall

- (a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;
 - (a.1) in such circumstances as are specified in directives of the Superintendent, deliver to the trustee, for cancellation, all credit cards issued to and in the possession or control of the bankrupt;

- (b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;
- (c) at such time and place as may be fixed by the official receiver, attend before the official receiver or before any other official receiver delegated by the official receiver for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;
- (d) within five days following the bankruptcy, unless the time is extended by the official receiver, prepare and submit to the trustee in quadruplicate a statement of the bankrupt's affairs in the prescribed form verified by affidavit and showing the particulars of the bankrupt's assets and liabilities, the names and addresses of the bankrupt's creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a proper statement of affairs, the official receiver may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement;
- (e) make or give all the assistance within his power to the trustee in making an inventory of his assets;
- (f) make disclosure to the trustee of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event or beginning on such

- other antecedent date as the court may direct, and ending on the date of the bankruptcy, both dates included, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;
- (g) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within the period beginning on the day that is five years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;
- (h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereto to examination;
- (i) when required, attend other meetings of his creditors or of the inspectors, or attend on the trustee;
- (j) submit to such other examinations under oath with respect to his property or affairs as required;
- (k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;
- (l) execute any powers of attorney, transfers, deeds and instruments or acts that may be required;
- (m) examine the correctness of all proofs of claims filed, if required by the trustee;
- (n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;

(n.1) inform the trustee of any material change in the bankrupt's financial situation;

- (o) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee, or may be prescribed by the General Rules, or may be directed by the court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested; and
- (p) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all time of his place of residence or address.

Section 178

- (1) An order of discharge does not release the bankrupt from
 - (a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence, or any debt arising out of a recognizance or bail;

(a.1) any award of damages by a court in civil proceedings in respect of

- (i) bodily harm intentionally inflicted, or sexual assault, or
- (ii) wrongful death resulting therefrom;

- (b) any debt or liability for alimony or alimentary pension;
 - (c) any debt or liability arising under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse, former common-law partner or child living apart from the bankrupt;
 - (d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;
 - (e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;
 - (f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;
 - (g) any debt or obligation in respect of a loan made under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred
 - (i) before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or
 - (ii) within seven years after the date on which the bankrupt ceased to be a full- or part-time student; or
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- (h) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g).
- (1.1) At any time after five years after a bankrupt who has a debt referred to in paragraph (1)(g) ceases to be a full- or part-time student, as the case may be, under the applicable Act or enactment, the court may, on application, order that subSection (1) does not apply to the debt if the court is satisfied that
 - (a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt; and
 - (b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt.
- (2) Subject to subSection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

Section 198

- (1) Any bankrupt who
 - (a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event,
 - (b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act,
 - (c) makes a false entry or knowingly makes a material omission in a statement or accounting,

- (d) after or within one year immediately preceding the date of the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,
- (e) after or within one year immediately preceding the date of the initial bankruptcy event obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge,
- (f) after or within one year immediately preceding the date of the initial bankruptcy event, fraudulently conceals or removes any property of a value of fifty or more or any debt due to or from the bankrupt, or
- (g) after or within one year immediately preceding the date of the initial bankruptcy event, hypothecates, pawns, pledges or disposes of any property that the bankrupt has obtained on credit and has not paid for, unless in the case of a trader the hypothecation, pawning, pledging or disposing is in the ordinary way of trade and unless the bankrupt had no intent to defraud,

is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both, or on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

- (2) A bankrupt who, without reasonable cause, fails to comply with an order of the court made under Section 68 or to do any of the things

required of the bankrupt under Section 158 is guilty of an offence and is liable

- (a) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or
- (b) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

Section 199

An undischarged bankrupt who

- (a) engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt, or
- (b) obtains credit to a total of \$1,000 or more from any person or persons without informing them that the undischarged bankrupt is an undischarged bankrupt,

is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

Section 200

- (1) Any person becoming bankrupt or making a proposal who has on any previous occasion been bankrupt or made a proposal to the person's

creditors is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both, if

- (a) being engaged in any trade or business, at any time within the period beginning on the day that is two years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, that person has not kept and preserved proper books of account; or
 - (b) within the period mentioned in paragraph (a), that person conceals, destroys, mutilates, falsifies or disposes of, or is privy to the concealment, destruction, mutilation, falsification or disposition of, any book or document affecting or relating to the person's property or affairs, unless the person had no intent to conceal the state of the person's affairs.
- (2) For the purposes of this Section, a debtor shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual or other stock takings.

