

## 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
2	BIA s.2	Definitions

#### **Proposed Wording**

2. (1) The definition “settlement” in section 2 of the *Bankruptcy and Insolvency Act* is repealed.

(2) The definition “localité d’un débiteur” in section 2 of the French version of the *Bankruptcy and Insolvency Act* is repealed.

(3) The definitions “court”, “creditor”, and “person” in section 2 of the Act are replaced by the following:

“court”, except in paragraphs 178(1)(a) and (a.1) and sections 204.1 to 204.3, means a court referred to in subsections 183(1) and (1.1) or a judge of that court, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act;

“creditor” means a person having a claim provable as a claim under this Act;

“person” includes a partnership, an unincorporated association, a corporation, a cooperative society, an organization or an income trust, the successors of a partnership, of an association, of a corporation, of a society, of an organization or of an income trust, and the heirs, executors, liquidators of the succession, administrators or other legal representative of a person;

(4) The definition “locality of a debtor” in section 2 of the English version of the Act is replaced by the following:

“locality of a debtor” means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

(5) Section 2 of the Act is amended by adding the following in alphabetical order:

“bargaining agent” means any trade union that has entered into a collective agreement on behalf of the employees of a person;

“collective agreement”, in relation to an insolvent person, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the insolvent person and a bargaining agent;

“current assets” means unrestricted cash, or any other asset that, in the normal course of operations, is expected to be converted into cash or consumed in the production of income within one year or within the normal operating cycle when it is longer than a year;

“date of the bankruptcy”, in respect of a person, means the date of  
(a) the granting of a bankruptcy order against the person,  
(b) the filing or making of an assignment by or in respect of the person, or  
(c) the event that causes an assignment by the person to be deemed;

“director” includes any individual, however designated, acting in any capacity that is similar to that of a director of a corporation;

“income trust” means a trust  
(a) that has assets in Canada, and  
(b) the units of which are traded on a prescribed stock exchange;

“time of the bankruptcy”, in respect of a person, means the time of  
(a) the granting of a bankruptcy order against the person,  
(b) the filing of an assignment by or in respect of the person, or  
(c) the event that causes an assignment by the person to be deemed;

“transfer at undervalue” means a transaction in which the consideration received by a person is conspicuously less than the fair market value of the property or services sold or disposed of by the person in the transaction;

(6) Section 2 of the French version of the Act is amended by adding the following in alphabetical order:

« localité » En parlant d’un débiteur, le lieu principal où, selon le cas :

a) il a exercé ses activités au cours de l’année précédant l’ouverture de sa faillite;  
b) il a résidé au cours de l’année précédent l’ouverture de sa faillite;  
c) se trouve la plus grande partie de ses biens, dans les cas non visés aux alinéas a) ou b).

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## **Rationale**

The word “settlement” will no longer be used in the BIA. The existing causes of action for settlements are replaced with a new cause of action for transfers at undervalue.

A new definition of “localité” is added in the French version of the BIA at clause 2(6) of the Bill.

The definition “court” has been amended to remove reference to subsection 243(1) because of concurrent amendments to that subsection which renders the current definition meaningless.

The definition “creditor” has been amended to remove reference to “unsecured, preferred by virtue of priority under section 136 or secured”. The new definition expands the meaning of creditor. Concurrent amendments have created new claimants who should be considered “creditors” for the purpose of the Act but who are not strictly unsecured, preferred by virtue of section 136 or secured.

The definition “locality of a debtor” has been amended to clarify that the appropriate time for determining the residency of a debtor is at the time of the initial bankruptcy event, the practical time a bankruptcy occurs, rather than the date a bankruptcy petition is filed, the technical time that a debtor becomes a bankrupt.

The French definition « localité » has been amended for similar reasons as the English definition “locality of a debtor”.

The remaining definitions have been included to support other amendments to the Act.

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### **Present Law**

"court", except in paragraphs 178(1)(a) and (a.1) and sections 204.1 to 204.3 and subject to subsection 243(1), means the court having jurisdiction in bankruptcy or a judge thereof, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act;

"creditor" means a person having a claim, unsecured, preferred by virtue of priority under section 136 or secured, provable as a claim under this Act;

"person" includes a partnership, an unincorporated association, a corporation, a cooperative society or an organization, the successors of a partnership, association, corporation, society or organization, and the heirs, executors, liquidators of the succession, administrators or other legal representative of a person, according to the law of that part of Canada to which the context extends;

"settlement" includes a contract, covenant, transfer, gift and designation of beneficiary in an insurance contract, to the extent that the contract, covenant, transfer, gift or designation is gratuitous or made for merely nominal consideration;

"locality of a debtor" means the principal place

(a) where the debtor has carried on business during the year immediately preceding his bankruptcy,

(b) where the debtor has resided during the year immediately preceding his bankruptcy,  
or  
(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

«localité d'un débiteur» Le lieu principal où, selon le cas :

- a) le débiteur a exercé ses activités au cours de l'année précédant sa faillite;
- b) le débiteur a résidé au cours de l'année précédant sa faillite;
- c) se trouve la plus grande partie des biens de ce débiteur, dans les cas non visés aux alinéas a) ou b).

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**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
3	BIA s.2.1	Insurance Contracts

#### **Proposed Wording**

2.1. A change in the designation of a beneficiary in an insurance contract is deemed to be a disposition of property for the purpose of this Act.

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#### **Rationale**

The reform is intended to prevent strategic behaviour by bankrupts whereby the bankrupt disposes of property, in this case an interest in an insurance contract, prior to the bankruptcy with an intention to defeat their creditors. The amendment deems a change in the designation of a beneficiary in an insurance contract to be a disposition of property, which will bring the action within the transfers at undervalue provisions and allow creditors to challenge the transaction.

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#### **Present Law**

2.1. For the purposes of this Act, the bankruptcy or putting into bankruptcy of a person occurs at the time or date of

- (a) the granting of a bankruptcy order against the person;
- (b) the filing of an assignment by or in respect of the person; or
- (c) the event that causes an assignment by the person to be deemed.

#### **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
4	BIA s.3	Meaning of "Reviewable Transaction"

#### **Proposed Wording**

4. Section 3 of the Act is repealed.

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#### **Rationale**

The concept of "reviewable transaction" will no longer be used in the BIA. The existing causes of action for reviewable transactions are replaced with a new cause of action for transfers at undervalue.

Subsections (2) and (3) will be retained and moved to new subsections 4(4) and (5).

#### **Present Law**

3. (1) For the purposes of this Act, a person who has entered into a transaction with another person otherwise than at arm's length shall be deemed to have entered into a reviewable transaction.

(2) It is a question of fact whether persons not related to one another within the meaning of section 4 were at a particular time dealing with each other at arm's length.

(3) Persons related to each other within the meaning of section 4 shall be deemed not to deal with each other at arm's length while so related.

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#### **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
5	BIA ss.4(1), 4(2)(b) and (c), 4(3)(a) to (d) and 4(4)	Meaning of "related persons"

#### **Proposed Wording**

4. (1) "entity" means a person other than an individual;

[Paragraph 4(2)(a) does not change.]

(2)(b) an entity and

- (i) a person who controls the entity, if it is controlled by one person,
- (ii) a person who is a member of a related group that controls the entity, or
- (iii) any person connected in the manner set out in paragraph (a) to a person described in subparagraph (i) or (ii); or

(c) two entities

- (i) both controlled by the same person or group of persons,
- (ii) each of which is controlled by one person and the person who controls one of the entities is related to the person who controls the other entity,
- (iii) one of which is controlled by one person and that person is related to any member of a related group that controls the other entity,
- (iv) one of which is controlled by one person and that person is related to each member of an unrelated group that controls the other entity,
- (v) one of which is controlled by a related group a member of which is related to each member of an unrelated group that controls the other entity, or
- (vi) one of which is controlled by an unrelated group each member of which is related to at least one member of an unrelated group that controls the other entity.

(3) For the purposes of this section,

(a) if two entities are related to the same entity within the meaning of subsection (2), they are deemed to be related to each other;

(b) if a related group is in a position to control an entity, it is deemed to be a related group that controls the entity whether or not it is part of a larger group by whom the entity is in fact controlled;

(c) a person who has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, ownership interests, however designated, in an entity, or to control the voting rights in an entity, is, except when the contract provides that the right is not exercisable until the death of an individual designated in the contract, deemed to have the same position in relation to the

control of the entity as if the person owned the ownership interests;

(d) if a person has ownership interests in two or more entities, the person is, as holder of any ownership interest in one of the entities, deemed to be related to himself or herself as holder of any ownership interest in each of the other entities;

*[Paragraphs 4(3)(e), (f), (f.1) and (g) do not change.]*

(4) It is a question of fact whether persons not related to one another were at a particular time dealing with each other at arm's length.

(5) Persons related to each other are deemed not to deal with each other at arm's length while so related.

## **Rationale**

The provision provides an explanation for what is meant, within the Act, by the term “related person”. The reforms are technical amendments to expand the scope of the provision and to re-order sections within the Act.

The amendment to subsection 4(1) creates a definition of “entity”, which means a person other than an individual. The definition of “person” for the purpose of the Act includes partnerships, unincorporated associations, corporations, cooperative societies, organizations and income trusts. The current provision, which only accounted for individuals and corporations, lacked the scope needed to capture persons that were related but that were not individuals or corporations. The concurrent reform that includes “income trusts” in the definition of person made this amendment necessary because of the structure of income trusts, which may include within its “corporate group” both corporations and partnerships along with the income trust.

The amendments to subsections 4(2) and (3) replace “corporation” with “entity” and replace “shares” with “ownership interests” to denote the many kinds of interests that may be captured – for example, a partnership interest or a unit in an income trust.

Subsections (4) and (5) are current subsections 2(2) and (3). The provisions have been moved to this section as a more rational ordering of sections.

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## **Present Law**

4. (2)(b) a corporation and

- (i) a person who controls the corporation, if it is controlled by one person,
- (ii) a person who is a member of a related group that controls the corporation, or
- (iii) any person connected in the manner set out in paragraph (a) to a person described in subparagraph (i) or (ii); or

(2)(c) two corporations

- (i) controlled by the same person or group of persons,
- (ii) each of which is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,
- (iii) one of which is controlled by one person and that person is related to any member of a related group that controls the other corporation,
- (iv) one of which is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,
- (v) one of which is controlled by a related group a member of which is related to each member of an unrelated group that controls the other corporation, or
- (vi) one of which is controlled by an unrelated group each member of which is related to at least one member of an unrelated group that controls the other corporation.

(3) (a) where two corporations are related to the same corporation within the meaning of subsection (2), they shall be deemed to be related to each other;

(b) where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by whom the corporation is in fact controlled;

(c) a person who has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares in a corporation, or to control the voting rights of shares in a corporation, shall, except where the contract provides that the right is not exercisable until the death of an individual designated therein, be deemed to have the same position in relation to the control of the corporation as if he owned the shares;

(d) where a person owns shares in two or more corporations, he shall, as shareholder of one of the corporations, be deemed to be related to himself as shareholder of each of the other corporations;

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### **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
6	BIA ss.5 (1), (3)(b), (3)(e) and (4)(d.1)	Appointment and Powers of the Superintendent

#### Proposed Wording

5. (1) The Governor in Council shall appoint a Superintendent of Bankruptcy to hold office during good behaviour for a term of not more than five years, but the Superintendent may be removed from office by the Governor in Council for cause. The Superintendent's term may be renewed for one or more further terms.

(1.1) The Superintendent shall be paid the salary that the Governor in Council may fix.

(3) (b) monitor the conditions that led to a trustee being issued a licence to determine whether those conditions continue to exist after the licence has been issued and take the appropriate action if he or she determines that the conditions no longer exist;

*[Paragraphs (3)(c) and (d) do not change]*

(e) from time to time, make or cause to be made any inquiry or investigation of estates or other matters to which this Act applies, including the conduct of a trustee or a trustee acting as a receiver, within the meaning of subsection 243(2), or as an interim receiver, that the Superintendent considers appropriate, and for the purpose of the inquiry or investigation the Superintendent or any person appointed by the Superintendent for the purpose shall have access to and the right to examine and make copies of all books, records, data, including data in electronic form, documents and papers, that are relevant to an inquiry or investigation pertaining or relating to any estate or other matter to which this Act applies;

*[Paragraphs 4(a) to (d) do not change]*

(4) (d.1) issue directives respecting the rules governing hearings for the purposes of section 14.02; and

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#### Rationale

Subsections (1) and (1.1) provide for the mandate of the Superintendent. The current provision

provides that the Superintendent sits at the pleasure of the Governor in Council. Due to the decision-making authority of the Superintendent, an “at pleasure” appointment is of questionable constitutional validity and it has, in fact, been challenged. A fixed term appointment should defeat any challenges based on the Superintendent’s impartiality and the term of five years is a common period for such appointments.

A trustee’s licence may be issued on specific terms and conditions determined by the Superintendent to be appropriate in the circumstances, which terms and conditions the trustee is required to abide by. The reform in paragraph (3)(b) is intended to grant the Superintendent the authority to revoke the licence where the trustee fails to meet the conditions that led to the granting of the licence and not, as would otherwise be required, in the event of serious misconduct by the trustee. The amendment is a proper expansion of the Superintendent’s powers because it ensures that the trustee complies with the terms and conditions put in place to protect the public.

The reform to paragraph (3)(e) to add “inquiry” is a technical amendment intended to make the English version correspond with the French version.

The French version at paragraph (3)(e) has been amended to clarify that the Superintendent has the power to discipline trustees with respect to actions taken when they were not acting in the capacity of a trustee, as is provided for in the English version. The reform is intended to create parallelism between the English and French versions.

The reform to paragraph (4)(d.1) is intended to allow the Superintendent to issue directives to ensure consistency in the procedures governing hearings under section 14.02.

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### **Present Law**

5. (1) The Governor in Council shall appoint a Superintendent of Bankruptcy to hold office during pleasure who shall be paid such salary as the Governor in Council may fix.

(3) (e) from time to time make or cause to be made such inspection or investigation of estates or other matters to which this Act applies, including the conduct of a trustee or a trustee acting as a receiver or interim receiver, as the Superintendent may deem expedient and for the purpose of the inspection or investigation the Superintendent or any person appointed by the Superintendent for the purpose shall have access to and the right to examine and make copies of all books, records, data, including data in electronic form, documents and papers pertaining or relating to any estate or other matter to which this Act applies;

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### **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
7	BIA s.6(1)	Outside investigations

#### **Proposed Wording**

6. (1) The Superintendent may engage any persons that the Superintendent considers advisable to conduct any inquiry or investigation or to take any other necessary action outside of the office of the Superintendent, and the cost and expenses of those persons shall, when certified by the Superintendent, be payable out of the appropriation for the office of the Superintendent.

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#### **Rationale**

The amendment of subsection (1) is intended to make the English version correspond with the French version, which is broader by including “inquiries” and not limiting the provision’s application only to the more formal “investigation”.

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#### **Present Law**

6. (1) The Superintendent may engage such persons as the Superintendent may deem advisable to conduct any inspection or investigation or to take any other necessary action outside of the office of the Superintendent, and the cost and expenses thereof shall, when certified by the Superintendent, be payable out of the appropriation for the office of the Superintendent.

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#### **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
8	BIA s.10 (1) and (3)	Investigations and Examinations

#### **Proposed Wording**

10. (1) If, on information supplied by an official receiver, trustee or other person, the Superintendent suspects, on reasonable grounds, that a person has, in connection with any estate or matter to which this Act applies, committed an offence under this or any other Act of Parliament, the Superintendent may, if it appears to the Superintendent that the alleged offence might not otherwise be investigated, make or cause to be made any inquiries or investigations that the Superintendent considers appropriate.

(3) If, on the application of the Superintendent or the Superintendent's authorized representative, a subpoena has been issued by the court, the Superintendent may, for the purpose of an inquiry or investigation under subsection (1), examine or cause to be examined under oath before the registrar of the court or other authorized person, the trustee, the debtor, any person who the Superintendent suspects, on reasonable grounds, has knowledge of the affairs of the debtor, or any person who is or has been an agent or a mandatary, or a clerk, a servant, an officer, a director or an employee of the debtor or the trustee, with respect to the conduct, dealings and transactions of the debtor, the causes of the bankruptcy or insolvency of the debtor, the disposition of the debtor's property or the administration of the estate, and may order any person liable to be so examined to produce any books, records, data, including data in electronic form, documents or papers in the person's possession or under the person's control.

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#### **Rationale**

The intention of the reform is to expand the Superintendent's authority to investigate suspected or alleged misconduct, whether or not the action is a response to a formal complaint. The current provision limits the Superintendent's authority to investigate the conduct of the debtor only. The reform will ensure that an investigation may be made into any matter. The reform will ensure that the Superintendent will be able to investigate suspicious actions of trustees, receivers, interim receivers and other parties to the bankruptcy. The expansion of power is necessary to adequately protect the interests of all creditors.

The reform to subsection (3) is a concurrent technical amendment that provides the Superintendent with the authority to examine the trustee as well as the debtor and their respective agents or employees.

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**Present Law**

**10.** (1) Where, on information supplied by an official receiver, trustee or other person, the Superintendent suspects, on reasonable grounds, that a person has, in connection with any estate or matter to which this Act applies, committed an offence under this Act or any other Act of Parliament, the Superintendent may, if it appears to the Superintendent that the alleged offence might not otherwise be investigated, make or cause to be made such inquiries or investigations as the Superintendent deems expedient with respect to the conduct, dealings and transactions of the debtor concerned, the causes of the bankruptcy or insolvency of the debtor and the disposition of the property of the debtor.

(3) If, on the application of the Superintendent or the Superintendent's authorized representative, a subpoena has been issued by the court, the Superintendent may, for the purpose of an investigation under subsection (1), examine or cause to be examined under oath before the registrar of the court or other authorized person, the debtor, any person who the Superintendent suspects, on reasonable grounds, has knowledge of the affairs of the debtor, or any person who is or has been an agent or a mandatary, or a clerk, a servant, an officer, a director or an employee of the debtor, with respect to the conduct, dealings and transactions of the debtor, the causes of the bankruptcy or insolvency of the debtor, and the disposition of the property of the debtor, and may order any person liable to be so examined to produce any books, records, papers or documents in the person's possession or under the control of the person relating to the debtor and the conduct, dealings and transactions of the debtor, the causes of the bankruptcy or insolvency of the debtor or the disposition of the debtor's property.

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**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
9	BIA s.13 (3)	Licensing of Trustees

#### **Proposed Wording**

**13.** (3) The Superintendent may refuse to issue a licence to an applicant who is insolvent or has been found guilty of an indictable offence that, in the Superintendent's opinion, is of a character that would impair the trustee's capacity to perform his or her fiduciary duties.

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#### **Rationale**

The amendment is intended to clarify the circumstances in which the Superintendent will exercise the discretion to refuse to grant a licence to a person found guilty of an indictable offence. The intention is that the discretion should be exercised where the indictable offence is related to fiduciary relationships, fraud, theft or similar actions that would lead to questions as to the fitness of the person to act as a trustee.

The term "convicted" has been replaced with the term "found guilty" due to concerns that the French term for "convicted" is more restrictive than what is intended. The reform should create better parallelism between the French and English versions of the Act.

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#### **Present Law**

**13.** (3) The Superintendent may refuse to issue a licence to an applicant who is insolvent or has been convicted of an indictable offence.

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#### **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
10	BIA s.13.2(5)(a)	Suspension of Trustee's License

#### **Proposed Wording**

**13.2 (5)(a)** if the trustee has been found guilty of an indictable offence that, in the Superintendent's opinion, is of a character that would impair the trustee's capacity to perform his or her fiduciary duties;

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#### **Rationale**

The amendment is intended to clarify the circumstances in which the Superintendent will exercise the discretion to suspend a trustee's licence where the trustee has been found guilty of an indictable offence. The intention is that the discretion should be exercised where the indictable offence is related to fiduciary relationships, fraud, theft or similar actions that would lead to questions as to the fitness of the person to act as a trustee.

The term "convicted" has been replaced with the term "found guilty" due to concerns that the French term for "convicted" is more restrictive than what is intended. The reform should create better parallelism between the French and English versions of the Act.

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#### **Present Law**

**13.2 (5)(a)** if the trustee is convicted of an indictable offence;

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#### **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
11	BIA s.13.3(1.1) and (2)(b)	Notice of Court Hearing

#### **Proposed Wording**

**13.3.** (1.1) A trustee who applies for the permission of the court for the purposes of subsection (1) shall without delay send a copy of the application to the Superintendent.

(2)(b) the receiver, within the meaning of subsection 243(2), or the liquidator of the property of any person related to the debtor,

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#### **Rationale**

Subsection (1.1) is intended to ensure that the Superintendent has notice of any court proceedings related to allowing a trustee to act with respect to an estate where the trustee is in a conflict of interest. The purpose is to provide the Superintendent with an opportunity to intervene in cases that the Superintendent does not believe it is appropriate to have an order granted.

The amendment to paragraph 13.3(2)(b) is a technical amendment that corresponds with the concurrent amendments to the provisions dealing with receivers in section 243.

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#### **Present Law**

**13.3(2)(b)** the receiver or the liquidator of the property of any person related to the debtor,

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#### **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
12	BIA s.13.4(1)	Trustee acting for secured creditors

#### **Proposed Wording**

**13.4.** (1) No trustee shall, while acting as the trustee of an estate, act for or assist a secured creditor of the estate to assert any claim against the estate or to realize or otherwise deal with the security that the secured creditor holds, unless the trustee has obtained a written opinion of legal counsel who has not acted for the secured creditor in the previous two years and is not related to the trustee that the security is valid and enforceable as against the estate.

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#### **Rationale**

The reform is part of the amendments designed to address conflict of interest issues. The current provision provides that a trustee may act on behalf of a secured creditor to realize assets from the estate for which the trustee is acting provided the trustee receives independent legal advice that the security is effective. The ability for the trustee to act creates greater efficiency, however, the perceived conflict of interest requires strong limitations to remove the apprehension of bias.

The amendment requires that “independent” legal counsel has not recently acted for the secured creditor and is not related to the trustee. The reforms should ensure any perceived bias due to a relationship with the secured creditor or the trustee is prohibited.

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#### **Present Law**

**13.4.** (1) No trustee shall, while acting as the trustee of an estate, act for or assist a secured creditor of the estate to assert any claim against the estate or to realize or otherwise deal with the security that the secured creditor holds, unless the trustee has obtained a written opinion of a legal counsel who does not act for the secured creditor that the security is valid and enforceable as against the estate.

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#### **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
13	BIA s.13.5 and 13.6	Trustee's Code of Ethics

#### **Proposed Wording**

**13.5** A trustee shall comply with the prescribed Code of Ethics.

**13.6** A trustee shall not engage the services of a person

(a) whose trustee licence has been cancelled under paragraph 13.2(5)(a) or subsection 14.01(1); or

(b) who is the subject of a direction made by the Superintendent under paragraph 14.03(1)(d).

French Version

**13.6** Le syndic ne peut retenir les services d'une personne:

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#### **Rationale**

Section 13.5 is a technical amendment to clarify that a Code of Ethics has been prescribed.

Paragraph 13.6(a) expands the application of the provision to include trustees whose licences have not been cancelled but who have otherwise been made subject to conservatory measures and, more specifically, to circumstances in which the Superintendent has directed the Official Receiver not to appoint the trustee to any new estate until a disciplinary matter is dealt with by the Superintendent.

In addition, section 13.6 in the French version is amended as the current provision only refers to employees, whereas it should also apply to persons acting as contractors.

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#### **Present Law**

**13.5** A trustee shall comply with such code of ethics respecting the conduct of trustees as may be prescribed.

**13.6** A trustee shall not engage the services of a person whose trustee licence has been cancelled under paragraph 13.2(5)(a) or subsection 14.01(1).

French Version

**13.6** Le syndic ne peut employer une personne dont le surintendant a annulé la licence aux termes de l'alinéa 13.2(5)a) ou du paragraphe 14.01(1).

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**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
14	BIA s.14.01(g)	Superintendent's Powers

#### **Proposed Wording**

**14.01(1)(g)** require the trustee to do anything that the Superintendent considers appropriate and that the trustee has agreed to.

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#### **Rationale**

Subsection 14.01(1) sets out the actions that the Superintendent may take when, after an investigation, it has been determined that action must be taken to correct the conduct of a trustee. The reform at paragraph (g) is intended to allow more flexibility. The trustee and the Superintendent will be able to negotiate measures that are appropriate in the circumstances and allow the Superintendent to enforce those measures against the trustee.

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#### **Present Law**

None.

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#### **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
15	BIA ss.14.02(1), (1.1)(1.2) and (1.3)	Disciplinary hearings

#### **Proposed Wording**

**14.02** (1) Before deciding whether to exercise any of the powers referred to in subsection 14.01(1), the Superintendent shall send the trustee written notice of the powers that the Superintendent may exercise and the reasons why they may be exercised and afford the trustee a reasonable opportunity for a hearing.

(1.1) The Superintendent may, for the purpose of the hearing, issue a subpoena or other request or summons, requiring and commanding any person named in it

(a) to appear at the time and place mentioned in it;

(b) to testify to all matters within his or her knowledge relative to the subject-matter of the investigation into the conduct of the trustee; and

(c) to bring and produce any books, records, data, including data in electronic form, documents or papers in the person's possession or under the person's control relative to the subject-matter of the investigation.

(1.2) A person may be summoned from any part of Canada by virtue of a subpoena, request or summons issued under subsection (1.1).

(1.3) Any person summoned under subsection (1.1) is entitled to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

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#### **Rationale**

The current provision states that, where the Superintendent intends to discipline a trustee for misconduct, the Superintendent must give the trustee the opportunity to be heard. There is concern that the current wording is open to challenge because of an apprehension of bias. Strictly read, the provision requires the Superintendent to give a trustee an opportunity to be heard only after the Superintendent has already decided to punish the trustee. It may be argued that the Superintendent is not an impartial adjudicator in that circumstance because the

Superintendent has already determined the guilt of the trustee. That is not the purpose of the provision nor is it how the Superintendent proceeds in these cases so a correction is called for to accurately set forth the proceedings.

Therefore, the reform to section (1) is a technical amendment to clarify that the Superintendent must give the trustee an opportunity to be heard prior to making a decision in the matter. In the notice sent to the trustee, the Superintendent is required to provide the trustee with information regarding the purpose of the hearing and the possible consequences to the trustee. This should provide greater fairness as the trustee will better understand the issue against them and the possible repercussions.

Subsections (1.1) to (1.3) provide the Superintendent with the authority to subpoena persons to appear at the hearing. The provisions are similar to the Superintendent's powers in respect of hearings regarding the debtor's conduct

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### **Present Law**

**14.02** (1) Where the Superintendent intends to exercise any of the powers referred to in subsection 14.01(1), the Superintendent shall send the trustee written notice of the powers that the Superintendent intends to exercise and the reasons therefore and afford the trustee a reasonable opportunity for a hearing.

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### **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
16	BIA ss.14.03(1), (2)(b) and (2)(f)	Disciplinary Hearings

#### **Proposed Wording**

**14.03(1)** Subject to subsection (2), the Superintendent may, for the protection of an estate, the rights of the creditors or the debtor.

(2)(b) the Superintendent makes or causes to be made any inquiry or investigation under paragraph 5(3)(e);

(2)(f) a trustee has been found guilty of an indictable offence that, in the Superintendent's opinion, is of a character that would impair the trustee's capacity to perform the trustee's fiduciary duties, or has failed to comply with any of the conditions or limitations to which the trustee's licence is subject; or

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#### **Rationale**

The amendment to subsection (1) is intended to ensure that the protection of an estate extends to protection of the rights of creditors and debtors.

The reform to paragraph (2)(b) to add "inquiry" is a technical amendment intended to make the English version correspond with the French version.

The amendment to paragraph (2)(f) is intended to clarify the circumstances in which the Superintendent will exercise the discretion to refuse to grant a licence to a person found guilty of an indictable offence. The intention is that the discretion should be exercised where the indictable offence is related to fiduciary relationships, fraud, theft or similar actions that would lead to questions as to the fitness of the person to act as a trustee.

The term "convicted" has been replaced with the term "found guilty" due to concerns that the French term for "convicted" is more restrictive than what is intended. The reform should create better parallelism between the French and English versions of the Act.

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#### **Present Law**

**14.03(1)** The Superintendent may, for the protection of an estate in the circumstances referred to in subsection (2),

(2)(b) the Superintendent makes or causes to be made any investigation pursuant to paragraph 5(3)(e);

(2)(f) a trustee is convicted of an indictable offence or has failed to comply with any of the conditions or limitations to which the trustee's licence is subject; or

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**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
17	BIA ss.14.06(1.1) and (1.2)	Trustee Liability

#### **Proposed Wording**

**14.06**(1.1) In subsections (1.2) to (6), a reference to a trustee means a trustee in a bankruptcy or proposal and includes

(a) an interim receiver;

(b) a receiver within the meaning of subsection 243(2); and

(c) any other person who has been lawfully appointed to take, or has lawfully taken, possession or control of any property of an insolvent person or a bankrupt that was acquired for, or is used in relation to, a business carried on by the insolvent person or bankrupt.

(1.2) Despite anything in any federal or provincial law, if a trustee carries on in that position the business of the debtor or continues the employment of the debtor's employees, the trustee is not by reason of that fact personally liable in respect of any claim against the debtor or related to a requirement imposed on the debtor to pay an amount if the claim is in relation to a debt or liability, present or future, to which the debtor is subject on the day on which the trustee is appointed.

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#### **Rationale**

Subsection (1.1) is an explanatory provision. For the purposes of this section, references to a trustee are deemed to include interim receivers, receivers and persons acting like receivers without that designation. The reform is intended to ensure that a person who, under a security agreement, acts as a receiver but who does not fall within the four corners of section 243 still obtains the protection that receivers are granted.

Subsection (1.2) is intended to clarify that trustees (as defined to include interim receivers, receivers and those acting like receivers) are not personally liable for obligations or liabilities to which the debtor company was subject on the day on which the trustee was appointed.

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#### **Present Law**

(1.1) In subsections (1.2) to (6), a reference to a trustee means a trustee in a bankruptcy or proposal and includes an interim receiver or a receiver within the meaning of subsection 243(2).

(1.2) Notwithstanding anything in any federal or provincial law, where a trustee carries on in that position the business of the debtor or continues the employment of the debtor's employees, the trustee is not by reason of that fact personally liable in respect of any claim against the debtor or related to a requirement imposed on the debtor to pay an amount where the claim arose before or upon the trustee's appointment.

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### **Senate Recommendation**

The *Bankruptcy and Insolvency Act* be amended to separate clearly the personal liability of an insolvency practitioner from the liability of the debtor's estate.

## 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
18	BIA s.19(3)	Trustees' Duties

#### **Proposed Wording**

18. Subsection 19(3) of the Act is repealed.

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#### **Rationale**

Subsection 19(3) was moved to section 21, clause 19.

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#### **Present Law**

19(3) The trustee shall verify the bankrupt's statement of affairs.

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#### **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
19	BIA s.21	Verifying the Statement of Affairs

#### **Proposed Wording**

**21.** The trustee shall verify the bankrupt's statement of affairs referred to in paragraph 158(d).

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#### **Rationale**

The reform to section 21 is a technical amendment to renumber existing subsection 19(3) to provide a more logical sequence. The existing section 21 is repealed to reflect current practice – trustees do not initiate criminal proceedings under the Act.

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#### **Present Law**

**21.** The trustee may initiate such criminal proceedings as may be authorized by the creditors, the inspectors or the court against any person believed to have committed an offence under this Act.

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#### **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
20	BIA s.25 (1), (1.1), (1.2), (1.3), (1.4) and (3)	Trust Funds

#### **Proposed Wording**

**25(1)** When acting under the authority of this Act, a trustee shall, without delay, deposit in a bank all funds received for an estate in a separate trust account for each estate.

(1.1) The trustee may deposit the funds in a deposit-taking institution, other than a bank as defined in section 2, only if deposits held by that institution are insured or guaranteed under a provincial or federal enactment that provides depositors with protection against the loss of funds on deposit with that institution.

(1.2) If the funds are situated in a country other than Canada, the trustee may, if authorized by the Superintendent, deposit them in a financial institution in that country that is similar to a bank.

(1.3) The trustee shall not withdraw any funds from the trust account of an estate without the permission in writing of the inspectors or, on application, the court, except for the payment of dividends and charges incidental to the administration of the estate.

(1.4) A trustee may, with the permission of the court, invest the funds in short-term securities of the Government of Canada or the government of a province held in trust for the estate.

(3) The trustee shall not deposit any funds received by the trustee when acting under the authority of this Act in any banking account kept by the trustee for the trustee's personal use.

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#### **Rationale**

The amendment to subsection (1) is intended to ensure that the rules regarding handling of estate funds apply regardless the capacity in which the trustee is acting. As well, technical amendments were made to update language usage.

Reforms to subsections (1.1), (1.2) and (1.3) are technical amendments to the English version of the Act only, to update language usage.

Subsection (1.4) was included to provide trustees with greater flexibility to invest estate funds,

which are expected to be held for an extended period. Government backed short term securities are generally regarded as safe investments and may provide a better return for the estate than a bank account.

Reforms to subsections (3) are technical amendments to update language usage.

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### **Present Law**

**25(1)** Subject to subsections (1.1) and (1.2), a trustee shall forthwith deposit in a bank all moneys received for an estate in a separate trust account for each estate.

(1.1) The trustee may deposit moneys pursuant to subsection (1) in a deposit-taking institution, other than a bank as defined in section 2, only if deposits held by that institution are insured or guaranteed under a provincial or federal enactment that provides depositors with protection against the loss of money on deposit with that institution.

(1.2) Where moneys referred to in subsection (1) are situated in a country other than Canada, the trustee may, where authorized by the Superintendent, deposit the moneys in a financial institution in that country that is similar to a bank.

(1.3) The trustee shall not withdraw any money from the trust account of an estate without the permission in writing of the inspectors or, on application, the court, except for the payment of dividends and charges incidental to the administration of the estate.

(3) The trustee shall not deposit any sums received by the trustee in the trustee's official capacity as a trustee in any banking account kept by the trustee for the trustee's personal use.

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### **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
21	BIA s.28 (1)	Documents to be sent to the Superintendent

#### **Proposed Wording**

**28(1)** The trustee shall, without delay after their receipt or preparation, send to the Superintendent, in the prescribed manner, true copies of the documents referred to in section 155 and a true copy of

- (a) the notice referred to in section 102,
- (b) the statement referred to in paragraph 158(d),
- (c) the trustee's final statement of receipts and disbursements and the dividend sheet, and
- (d) every order made by the court on the application for discharge of a bankrupt or annulling any bankruptcy,

and file a copy of the documents referred to in paragraphs (b) and (c) in the court.

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#### **Rationale**

The reform is a technical amendment to increase efficiency by allowin for the transfer of documents in a manner other than by mail.

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#### **Present Law**

**28(1)** The trustee shall, forthwith after their receipt or preparation, mail to the Superintendent true copies of the documents referred to in section 155 and a true copy of

- (a) the notice referred to in section 102,
- (b) the statement referred to in paragraph 158(d),
- (c) the trustee's final statement of receipts and disbursements and the dividend sheet, and
- (d) every order made by the court on the application for discharge of a bankrupt or annulling any bankruptcy,

and file a copy of the documents referred to in paragraphs (b) and (c) in the court.

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#### **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
22	BIA s.29(2)	Trustees' Duties

#### **Proposed Wording**

22. Subsection 29(2) of the Act is repealed.

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#### **Rationale**

The requirement for the trustee to file the reports are dealt with in concurrent amendments at clause 102, in section 170(1).

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#### **Present Law**

29 (2) Every trustee before proceeding to his discharge shall, unless he has already done so, prepare and file the reports referred to in sections 170 and 171 and forward a copy of each to the Superintendent.

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#### **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
23	BIA s.30(3), (4), (5) and (6)	Trustee's Powers

#### **Proposed Wording**

30 (3) If no inspectors are appointed, the trustee may do all or any of the things referred to in subsection (1).

(4) The trustee may sell or otherwise dispose of any of the bankrupt's property to a person who is related to the bankrupt only with the court's authorization.

(5) For the purpose of subsection (4), in the case of a bankrupt other than an individual, a person who is related to the bankrupt includes a person who controls the bankrupt, a director or an officer of the bankrupt and a person who is related to a director or an officer of the bankrupt.

(6) In deciding whether to grant the authorization, the court must consider, among other things,

- (a) whether the process leading to the proposed sale or disposal of the property was reasonable in the circumstances;
- (b) the extent to which the creditors were consulted in respect of the proposed sale or disposal;
- (c) the effects of the proposed sale or disposal on creditors and other interested parties;
- (d) whether the consideration to be received for the property is reasonable and fair, taking into account the market value of the property;
- (e) whether good faith efforts were made to sell or dispose of the property to persons who are not related to the bankrupt; and
- (f) whether the consideration to be received is superior to the consideration that would be received under all other offers actually received in respect of the property.

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#### **Rationale**

Subsections 30(1) and (2) set out the powers that may be exercised by the trustee with the permission of the inspectors, however, it is not in every bankruptcy that inspectors are appointed. Especially when the estate is small and creditors do not believe that recovery is likely, the creditors will not expend the time or expense to have inspectors appointed. The addition of subsection (3) provides that in the absence of inspectors the trustee can act unilaterally so that an estate is not left in limbo when inspectors are not appointed.

Subsection (4) will require that the trustee obtain court approval before selling or disposing of

the bankrupt's property to a person who is related to the bankrupt. Subsection (4) is intended to prevent possible abuse by "phoenix corporations". Prevalent in small business, particularly in the restaurant industry, phoenix corporations are the result of owners who engage in serial bankruptcies. A person incorporates a business and proceeds to cause it to become bankrupt. The person then purchases the assets of the business at a discount out of the estate and incorporates a "new" business using the assets of the previous business. The owner continues their original business basically unaffected while creditors are left unpaid.

Subsection (5) expands the definition of "related person" for the purposes of the section to address corporations.

Subsection (6) sets out the factors the court must consider before granting an order to sell the property. It provides legislative guidance for the court and provides direction for the debtor. The provision should improve consistency of judicial decisions.

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**Present Law**

None.

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**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
24	BIA s.31 (1) and (2)	Borrowing Powers

#### **Proposed Wording**

**31** (1) With the permission of the court, an interim receiver, a receiver within the meaning of subsection 243(2) or a trustee may make necessary or advisable advances, incur obligations, borrow money and give security on the debtor's property in any amount, on any terms and on any property that may be authorized by the court and those advances, obligations and money borrowed must be repaid out of the debtor's property in priority to the creditors' claims.

(2) For the purpose of giving security under section 427 of the *Bank Act*, the interim receiver, receiver or trustee, when carrying on the business of the bankrupt, is deemed to be a person engaged in the class of business previously carried on by the bankrupt.

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#### **Rationale**

The reforms are technical amendments to reflect concurrent amendments to the interim receiver provisions and the receiver provisions. The role of interim receivers is to be reduced and, as such, they will not be granted powers under this section. At the same time, the role of receivers is expected to expand. By adding receivers to the parties that may use this provision will give receivers more flexibility in carrying on their duties.

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#### **Present Law**

**31(1)** With the permission of the court, an interim receiver or a trustee, prior to the appointment of inspectors, may make necessary or advisable advances, incur obligations, borrow money and give security on the property of the debtor in such amounts, on such terms and on such property as may be authorized by the court and those advances, obligations and money borrowed shall be repaid out of the property of the debtor in priority to the claims of the creditors.

(2) For the purpose of giving security under section 427 of the *Bank Act*, the trustee or interim receiver if authorized to carry on the business of the bankrupt is deemed to be a person engaged in the class of business previously carried on by the bankrupt.

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#### **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
25	BIA s.33	Expenses and Disbursements

#### **Proposed Wording**

**33.** The court may make an order providing for the sale of any or all of the assets of the estate of the bankrupt, either by tender, private sale or public auction, setting out the terms and conditions of the sale and directing that the proceeds from the sale are to be used for the purpose of reimbursing the trustee in respect of any costs that may be owing to the trustee or of any moneys the trustee may have advanced as disbursements for the benefit of the estate.

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#### **Rationale**

The reform to subsection 33(1) is technical, to clarify that the proceeds from a sale of assets ordered by the court are to be used to pay the expenses of the trustee, including disbursements.

Subsection 33(2) is repealed due to the fiduciary relationship between the trustee and the estate. A potential conflict of interest may arise in the situation where a trustee is declared to own property the trustee is administering in trust.

The BIA already provides for third party deposits and fee guarantees.

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#### **Present Law**

**33(1)** The court may make an order providing for the sale of any or all of the assets of the estate of the bankrupt, either by tender, private sale or public auction, setting out the terms and conditions of the sale and directing that the proceeds therefrom shall be used for the purpose of reimbursing the trustee in respect of any costs that may be owing to him or of any moneys he may have advanced for the benefit of the estate.

(2) If no bid is received for the assets of the estate of the bankrupt sufficient to reimburse the trustee, the court may make an order vesting in the trustee personally all assets of the estate and on the making of the order the rights and interests of the creditors and of the bankrupt to the assets shall be determined and ended.

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#### **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
26	BIA s.34 (3)	Notice

#### **Proposed Wording**

**34 (3)** The trustee must send notice to the Superintendent's division office of the day and time when any application for directions made under subsection (1) is to be heard and of the day and time when the trustee intends to report to the court as required by the Superintendent under subsection (2).

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#### **Rationale**

The reform is intended to ensure that the Superintendent has notice of any court proceedings related to a trustee seeking directions from the court. The purpose is to provide the Superintendent with an opportunity to intervene in such circumstances so that the Superintendent may bring to the court's attention relevant information prior to directions being given.

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#### **Present Law**

None.

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#### **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
27	BIA s.35 (3)	Time limitation

#### **Proposed Wording**

**35 (3)** If a bankrupt is an individual, a notice referred to in subsection (1) is operative only during the three-month period immediately after the date of the bankruptcy unless the court, on application, extends that period on any terms that it considers fit.

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#### **Rationale**

The reform is a technical amendment to modernize language.

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#### **Present Law**

**35 (3)** Where a bankrupt is an individual, a notice referred to in subsection (1) is operative only during the three month period immediately following the date of bankruptcy unless the court, on application, extends that period on such terms as the court considers fit.

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#### **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
28	BIA s.36(1)	Duty of former trustee

#### **Proposed Wording**

**36** (1) On the appointment of a substituted trustee, the former trustee shall without delay pass his or her accounts before the court and deliver to the substituted trustee all the property of the estate, together with all books, records and documents of the bankrupt and of the administration of the estate, as well as a statement of receipts and disbursements that contains a complete account of all moneys received by the trustee out of the property of the bankrupt or otherwise, the amount of interest received by the trustee, all moneys disbursed and expenses incurred and the remuneration claimed by the trustee, together with full particulars, description and value of all the bankrupt's property that has not been sold or realized, setting out the reason why the property has not been sold or realized and the disposition made of the property.

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#### **Rationale**

The reform is intended to clarify that where there has been the appointment of a substituted trustee, the former trustee must account for his or her own administration of the file. This amendment also adapts the section to the new procedures provided for in section 152 of the Bill that addresses the final administration of the trustees' accounts. It will provide a better understanding of the work accomplished by the trustee to relate it to the final account submitted by the Trustee.

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#### **Present Law**

**36** (1) On the appointment of a substituted trustee, the former trustee shall forthwith pass his accounts before the court and deliver to the substituted trustee all the property of the estate, together with all books, records and documents of the bankrupt and of the administration.

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#### **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
29	BIA s.40 (1)	Disposal of unrealizable assets

#### **Proposed Wording**

**40** (1) Any property of a bankrupt that is listed in the statement of affairs referred to in paragraph 158(d) or otherwise disclosed to the trustee before the bankrupt's discharge and that is found incapable of realization must be returned to the bankrupt before the trustee's application for discharge, but if inspectors have been appointed, the trustee may do so only with their permission.

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#### **Rationale**

The amendment of subsection (1) will provide a fair mechanism for the treatment of the bankrupt's unrealizable assets and will enhance the transparency of the administration of those assets.

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#### **Present Law**

**40** (1) With the permission of the inspectors, any property of a bankrupt found incapable of realization shall be returned to the bankrupt prior to the trustee's application for discharge.

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#### **Senate Recommendation**

None.