

## 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
91	BIA s.147(1)	Superintendent's levy

#### **Proposed Wording**

English Version

**147.** (1) For the purpose of defraying the expenses of the supervision by the Superintendent, there shall be payable to the Superintendent for deposit with the Receiver General a levy on all payments, except the costs referred to in subsection 70(2), made by the trustee by way of dividend or otherwise on account of the creditor's claims, including Her Majesty in right of Canada or of a province claiming in respect of taxes or otherwise.

French Version

**147.** (1) Afin de défrayer le surintendant des dépenses qu'il engage dans le cadre de sa mission de surveillance, il lui est versé pour depot auprès du receveur général un prélèvement sur tous paiements, à l'exception des frais mentionnés au paragraphe 70(2), opérés par le syndic par voie de dividende ou autrement pour le compte des réclamations de créanciers, y compris les réclamations fiscales et autres de Sa Majesté du chef du Canada ou d'une province.

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#### **Rationale**

The reform to the English version of the Act is a technical amendment intended to modernize the language use.

The reform to the French version of the Act is a technical amendment intended to clarify the meaning of the provision.

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#### **Present Law**

English Version

**147.** (1) For the purpose of defraying the expenses of the supervision by the Superintendent, there shall be payable to the Superintendent for deposit with the Receiver General a levy on all payments, except the costs referred to in subsection 70(2), made by the trustee by way of

dividend or otherwise on account of the claims of creditors, whether unsecured, preferred or secured creditors, and including Her Majesty in right of Canada or a province claiming in respect of taxes or otherwise.

French Version

**147.** (1) Afin de défrayer la surveillance du surintendant, il est versé au surintendant pour dépôt entre les mains du receveur général un prélèvement sur tous paiements, à l'exception des frais mentionnés au paragraphe 70(2), opérés par le syndic par voie de dividende ou autrement pour le compte des réclamations de créanciers, que ces créanciers soient privilégiés, garantis ou non garantis, et y compris Sa Majesté du chef du Canada ou d'une province réclamant à l'égard d'impôts ou autrement.

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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
92	BIA s.149(1), (4) and (5)	Final dividend

#### **Proposed Wording**

**149.** (1) The trustee may, after the first meeting of the creditors, send a notice, in the prescribed manner, to every person with a claim of which the trustee has notice or knowledge but whose claim has not been proved. The notice must inform the person that, if that person does not prove the claim within a period of 30 days after the sending of the notice, the trustee will proceed to declare a dividend or final dividend without regard to that person's claim.

.....

(4) Despite subsection (2), a claim may be filed for an amount payable under the following provisions within the time limit referred to in subsection (2), or within three months after the time the return of income or other evidence of the facts on which the claim is based is filed or comes to the attention of the Minister of National Revenue or, in the case of an amount payable under a provision referred to in paragraph (c), the minister in that province responsible for the provision:

(a) subsection 224(1.2) of the *Income Tax Act*;

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts;

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, if the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;

(d) subsection 82(1.1) of the *Excise Tax Act*;

(e) subsection 284(1.1) of the *Excise Act, 2001*;

(f) subsections 97.22(1) and (5) of the *Customs Act*; and

(g) subsection 72(1.1) of the *Air Travellers Security Charge Act*.

(5) Unless the trustee retains sufficient funds to provide for payment of any claims that may be filed under a provision referred to in any of paragraphs (4)(a) to (g), no dividend shall be declared until the expiry of three months after the trustee has filed all returns that the trustee is required to file.

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### **Rationale**

The reform to subsection (1) will increase efficiency by providing alternative and less costly methods for delivering the requisite notice.

The reform to subsection (4) provides a greater number of taxes, charges and levies to which the provision will apply.

Subsection (5) is a restatement of the existing subsection (4).

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### **Present Law**

**149.** (1) The trustee may, after the first meeting of the creditors, give notice by registered or certified mail to every person with a claim of which the trustee has notice or knowledge but whose claim has not been proved that if that person does not prove his claim within a period of thirty days after the mailing of the notice the trustee will proceed to declare a dividend or final dividend without regard to that person's claim.

.....

(4) Unless the trustee retains sufficient funds to provide for payment of any claims that may be filed under the *Income Tax Act*, no dividend shall be declared until the expiration of three months after the trustee has filed all returns that the trustee is required to file.

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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
93	BIA s.152(1) and (5)	Statement of receipts and disbursements

#### **Proposed Wording**

**152.** (1) The trustee's final statement of receipts and disbursements shall contain

(a) a complete account of

(i) all moneys received by the trustee out of the bankrupt's property or otherwise,

(ii) the amount of interest received by the trustee,

(iii) all moneys disbursed and expenses incurred by the trustee,

(iv) all moneys disbursed by the trustee for services provided by persons related to the trustee, and

(v) the remuneration claimed by the trustee; and

(b) full particulars of, and a description and value of, all the bankrupt's property that has not been sold or realized together with the reason why it has not been sold or realized and the disposition made of that property.

.....

(5) After the Superintendent has commented on the taxation of the trustee's accounts or advised the trustee that the Superintendent has no comments to make and the trustee's accounts have been taxed, the trustee shall send, in the prescribed manner, to every creditor whose claim has been proved, to the registrar, to the Superintendent and to the bankrupt

(a) a copy of the final statement of receipts and disbursements;

(b) a copy of the dividend sheet; and

(c) a notice, in the prescribed form, of the trustee's intention to pay a final dividend after the expiry of 15 days from the sending of the notice, statement and dividend sheet and to apply to the court for his or her discharge on a subsequent date that is not less than 30 days after the payment of the dividend.

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#### **Rationale**

The amendment to subsection (1) creates an obligation for the trustee to explicitly describe moneys disbursed to related parties. The intention of the reform is to attempt to restrict any conflicts of interest caused by related party transactions by requiring such transactions to be brought to the attention of all interested parties.

The reform to subsection (5) will increase efficiency by providing alternative and less costly

methods for delivering the requisite notice.

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### **Present Law**

**152.** (1) The trustee's final statement of receipts and disbursements shall contain 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 property of the bankrupt that has not been sold or realized, setting out the reason why the property has not been sold or realized and the disposition made thereof.

.....

(5) After the Superintendent has commented on the taxation of the trustee's accounts or advised the trustee that the Superintendent has no comments to make and the trustee's accounts have been taxed, the trustee shall, in the prescribed manner, forward to every creditor whose claim has been proved, to the registrar, to the Superintendent and to the bankrupt

- (a) a copy of the final statement of receipts and disbursements;
- (b) a copy of the dividend sheet; and
- (c) a notice in the prescribed form of his intention to pay a final dividend after the expiration of fifteen days from the mailing of the notice, statement and dividend sheet and to apply to the court for his discharge on a subsequent date not less than thirty days after the payment of the dividend.

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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
94	BIA s.155(d), (d.1) and (k)	Summary administration

#### **Proposed Wording**

155. The following provisions apply to the summary administration of estates under this Act:

.....

(d) all notices, statements and other documents shall be sent in the prescribed manner;

(d.1) if a first meeting of the creditors is requested by the official receiver or by creditors who have in the aggregate at least 25% in value of the proven claims, the trustee shall call the meeting, in the prescribed form and manner, and it must be held within 21 days after being called;

.....

(j) notwithstanding subsections 41(1), (5) and (6), the procedure for the trustee's discharge shall be as prescribed; and

(k) the court's authorization referred to in subsection 30(4) for a sale or disposal of any of the bankrupt's property to a person who is related to the bankrupt is required only if the creditors decide that the authorization is required.

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#### **Rationale**

The reform to paragraph (d) will increase efficiency by providing alternative and less costly methods for delivering the notices, statements and other documents.

The reform to paragraph (d.1) is a technical amendment intended to recognize that the current practice is more efficient than the process contemplated by the Act. The present provision requires that a creditor or the Official Receiver request a meeting within 30 days, however, this has proven to be impracticable. By removing this limitation, more parties will be able to participate in summary administration bankruptcies, creating a greater fairness in the process.

Subsection (k) is intended to streamline the process by only requiring the courts authorization if the creditors request it. In summary administration bankruptcies, the assets are very minor and court action would be expensive. Provided the creditors do not object to the transaction, court approval should not be mandated in these cases.

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## **Present Law**

**155.** The following provisions apply to the summary administration of estates under this Act:

.....

(d) all notices, statements and other documents shall be sent by ordinary mail or by any prescribed manner;

(d.1) a first meeting of the creditors

(i) is required to be called by the trustee only if it is requested within thirty days after the date of the bankruptcy by the official receiver or by creditors who have in the aggregate at least twenty-five per cent in value of the proven claims,

(ii) must be called in the prescribed form and manner, and

(iii) must be held within twenty-one days after being called;

(j) notwithstanding subsections 41(1), (5) and (6), the procedure for the trustee's discharge shall be as prescribed.

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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
95	BIA s.156.1	Agreement to pay fees

#### **Proposed Wording**

156.1 An individual bankrupt who has never before been bankrupt under the laws of Canada or of any prescribed jurisdiction and who is not required to make payments under section 68 to the estate of the bankrupt may enter into an agreement with the trustee to pay the trustee's fees and disbursements if the total amount required to be paid under the agreement is not more than the prescribed amount and that total amount is to be paid before the expiry of the 12-month period after the bankrupt's discharge. The agreement may be enforced after the bankrupt's discharge.

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#### **Rationale**

The addition of section 156.1 is intended to provide a mechanism which will enhance accessibility to the insolvency system for individuals who do not have surplus income and who may otherwise have difficulty paying the costs associated with the administration of a bankruptcy. In some circumstances, especially bankruptcies with small estates, it is difficult for a person to find a trustee willing to act for them because the trustees require payment for their services. If the estate is too small, no trustee will act. This has the effect of leaving the vulnerable person without professional assistance during a difficult experience. By providing that the bankrupt may pay for the trustee's services after the bankruptcy period, the reform should ensure that more people get the assistance they need. Balancing this reform is the limit on fees that can be charged by a trustee pursuant to the rules.

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#### **Present Law**

None.

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#### **Senate Recommendation**

The *Bankruptcy and Insolvency Act* be amended to allow trustees to enter into voluntary payment agreements with bankrupts who do not have surplus income. Fees payable to the trustee in accordance with such an agreement should not exceed the minimum legal amount established for summary administration bankruptcies.

## BRIEFING BOOK

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

Bill Clause No.	Section No.	Topic
96	BIA s.157.1(3)	Effect on Automatic Discharge

#### **Proposed Wording**

**157.1 (3)** Subsection 168.1(1) does not apply to an individual bankrupt who has refused or neglected to receive counselling under subsection (1).

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#### **Rationale**

The proposed wording is a technical amendment and a modernization of the language.

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#### **Present Law**

**157.1 (3)** Paragraph 168.1(1)(f) does not apply to an individual bankrupt who has refused or neglected to receive counselling provided pursuant to subsection (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
97	BIA s.161(2) and (2.1)	Examinations

#### **Proposed Wording**

**161.** (2) The official receiver shall make a record of the examination and shall forward a copy of the record to the Superintendent and the trustee.

(2.1) If the examination is held

(a) before the first meeting of creditors, the record of the examination shall be communicated to the creditors at the meeting; or

(b) after the first meeting of creditors, the record of examination shall be made available to any creditor who requests it.

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#### **Rationale**

Subsections (2) and (2.1) were modernized and modified to reflect current practice.

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#### **Present Law**

**161.** (2) The official receiver shall make notes of an examination made under subsection (1) and shall forward a copy of the notes to the Superintendent, the trustee and the court for deposit therein.

(2.1) Where the examination under subsection (1) is held

(a) before the first meeting of creditors, the notes shall be communicated to the creditors at the meeting; or

(b) after the first meeting of creditors, the notes shall be made available to any creditor who requests them.

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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
98	BIA s.162(2)	Inquiry by Official Receiver

#### **Proposed Wording**

98. Subsection 162(2) of the Act is repealed.

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#### **Rationale**

This provision is out of date and is no longer relevant.

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#### **Present Law**

**162.** (2) Where, pursuant to subsection (1), an inquiry or investigation is made by the official receiver on the direction of the Superintendent, the Superintendent shall, out of the moneys appropriated by Parliament to defray the expenses of the office of the Superintendent, reimburse the official receiver for such reasonable costs and expenses incurred by him in connection with the inquiry or investigation, not being ordinary costs or expenses of his office, as are approved by 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
99	BIA s.166	Examinations

#### **Proposed Wording**

**166.** If the bankrupt fails to present himself or herself for examination before the official receiver as required by paragraph 158(c) or if the bankrupt or any other person is served with an appointment or a summons to attend for examination and is paid or tendered the proper conduct money and witness fees as fixed by the General Rules but refuses or neglects to attend as required by the appointment or summons, the court may, on the application of the trustee or the official receiver, by warrant cause the bankrupt or other person so in default to be apprehended and brought up for examination.

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#### **Rationale**

Section 166 provides a mechanism for the official receiver to apply to the court directly without having to ask the trustee to do it.

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#### **Present Law**

**166.** Where the bankrupt fails to present himself for examination before the official receiver as required by paragraph 158(c) or where he or any other person is served with an appointment or summons to attend for examination and is paid or tendered the proper conduct money and witness fees as fixed by the General Rules but refuses or neglects to attend as required by the appointment or summons, the court may, on the application of the trustee, by warrant cause the bankrupt or other person so in default to be apprehended and brought up for examination.

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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
100	BIA s.168.1 and s.168.2	Discharge of Bankrupts

#### **Proposed Wording**

**168.1** (1) Subject to subsections (2) and 157.1(3), the following provisions apply in respect of an individual bankrupt other than a bankrupt referred to in subsection 172.1(1):

(a) in the case of a bankrupt who has never before been bankrupt under the laws of Canada or of any prescribed jurisdiction, the bankrupt is automatically discharged

(i) on the expiry of 9 months after the date of bankruptcy unless, in that 9-month period, an opposition to the discharge has been filed or the bankrupt has been required to make payments under section 68 to the estate of the bankrupt, or

(ii) on the expiry of 21 months after the date of bankruptcy unless an opposition to the discharge has been filed before the automatic discharge takes effect; and

(b) in the case of a bankrupt who has been a bankrupt one time before under the laws of Canada or of any prescribed jurisdiction, the bankrupt is automatically discharged

(i) on the expiry of 24 months after the date of bankruptcy unless, in that 24-month period, an opposition to the discharge has been filed or the bankrupt has

been required to make payments under section 68 to the estate of the bankrupt, or

(ii) on the expiry of 36 months after the date of bankruptcy unless an opposition to the discharge has been filed before the automatic discharge takes effect.

(2) Nothing in subsection (1) precludes a bankrupt from applying to the court for a discharge before the bankrupt would otherwise be automatically discharged, and that subsection ceases to apply to a bankrupt who makes such an application.

(3) The provisions of this Act concerning the discharge of bankrupts apply in respect of an individual bankrupt who has never before been bankrupt under the laws of Canada or of any prescribed jurisdiction, to the extent that those provisions are not inconsistent with this section, whether or not the bankrupt applies to the court for a discharge referred to in subsection (2).

(4) The trustee shall, not less than 15 days before the date of a bankrupt's automatic discharge, give notice of the impending discharge, in the prescribed form, to the Superintendent, the bankrupt and every creditor who has proved a claim, at the creditor's latest known address.

(5) An automatic discharge is deemed, for all purposes, to be an absolute and immediate order of discharge.

(6) Without delay after a bankrupt has been automatically discharged, the trustee shall issue a

certificate to the discharged bankrupt, in the prescribed form, declaring that the bankrupt is discharged and is released from all debts except those matters referred to in subsection 178(1). The trustee shall send a copy of the certificate to the Superintendent.

**168.2** (1) The following provisions apply in respect of oppositions to the automatic discharge of an individual bankrupt:

(a) if the Superintendent opposes the discharge, the Superintendent must give notice of the opposition, together with the grounds for it, to the trustee and to the bankrupt before the automatic discharge would otherwise take effect;

(b) if a creditor opposes the discharge, the creditor must give notice of the opposition, together with the grounds for it, to the Superintendent, to the trustee and to the bankrupt before the automatic discharge would otherwise take effect; and

(c) if the trustee opposes the discharge, the trustee must give notice of the opposition in the prescribed form and manner, together with the grounds for the opposition, to the bankrupt and the Superintendent before the automatic discharge would otherwise take effect.

(2) If the Superintendent, a creditor or the trustee opposes the automatic discharge of an individual bankrupt, the trustee shall, unless the matter is to be dealt with by mediation under section 170.1, apply without delay to the court for an appointment for the hearing of the opposition in the manner referred to in sections 169 to 176, and the hearing must be held

(a) within 30 days after the day on which the appointment is made; or

(b) at any later time that may be fixed by the court at the bankrupt's or trustee's request.

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## **Rationale**

The trustee currently has the discretion to recommend whether or not the bankrupt should make surplus income payments to the bankruptcy estate for up to an additional 12 months. This discretion is not always applied consistently, leading to a perceived lack of fairness in the system. Furthermore, debtors may be selecting a trustee based on whether the trustee is likely to require the additional payments.

The proposed reform under section 168.1 specifies the circumstances in which a first-time bankrupt is eligible for an automatic discharge, taking into consideration whether the bankrupt is required to make surplus income payments or whether an opposition to the automatic discharge is filed. If surplus income payments are required, the proposed reform specifies the length of time for which the bankrupt must make these payments, thereby increasing the money available to the creditors. In addition, eligibility for an automatic discharge would be available to second time bankrupts under certain circumstances. Second-time bankrupts with surplus income will have to make payments for a longer time period as set out in the proposed reform. The expansion of the accessibility to an automatic discharge streamlines the bankruptcy process by eliminating the necessity of a court appearance in certain cases. It is important to note, however, that this streamlining does not remove any of the creditors' rights to oppose a discharge. Bankrupts who have been bankrupt one time before must wait longer before becoming eligible for an automatic discharge and must make surplus income payments for a longer period, which

are discernible consequences for individuals using the system a second time.

Paragraph 168.1 (1) (a) sets out the conditions under which a first-time bankrupt is eligible for an automatic discharge. Specifically, the first-time bankrupt is eligible for an automatic discharge 9 months after the date of bankruptcy unless an opposition to the discharge has been filed or the bankrupt has been required to make surplus income payments. If surplus income payments are required, the first-time bankrupt is eligible for an automatic discharge 21 months after the date of bankruptcy unless an opposition has been filed before the automatic discharge takes effect.

Paragraph 168.1 (1) (b) sets out the conditions under which a second-time bankrupt is eligible for an automatic discharge. Specifically, the second-time bankrupt is eligible for an automatic discharge 24 months after the date of bankruptcy unless an opposition to the discharge has been filed or the bankrupt has been required to make surplus income payments. If surplus income payments are required, the second-time bankrupt is eligible for an automatic discharge 36 months after the date of bankruptcy unless an opposition has been filed before the automatic discharge takes effect.

Subsection 168.1 (2) removes the nine-month time frame for an automatic discharge and replaces it with wording that will include all the new time frames for an automatic discharge set out in Subsection 168.1 (1).

Subsection 168.1 (3) remains the same.

Subsection 168.1 (4) maintains the trustee's duty to notify the Superintendent, the bankrupt, and every creditor who has proved a claim of the bankrupt's automatic discharge. This notice must still be provided not less than 15 days before the date that the bankrupt's automatic discharge will take effect.

Subsection 168.1 (5) is re-numbered.

Subsection 168.1 (6) provides the trustee with the duty to issue a certificate of automatic discharge to the discharged bankrupt with a copy to the Superintendent, confirming that the bankrupt is released from all debts except those referred to in subsection 178(1) of the Act.

Section 168.2 sets out the protocol to follow when an automatic discharge is opposed. Specifically, if any party opposes an automatic discharge, that party must give notice to the other parties including the grounds for the opposition before the automatic discharge would otherwise take effect. This section clarifies that notice must be given only if an opposition is actually filed and not if there is an intention to file an opposition. Unless the matter is to be dealt with by mediation under section 170.1, the trustee shall apply to the court for an appointment for the hearing, which is to be held within 30 days after the day on which the appointment is made or at a later date fixed by the court at the bankrupt or trustee's request.

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## **Present Law**

**168.1** (1) Except as provided in subsection (2), the following provisions apply in respect of an individual bankrupt who has never before been bankrupt under the laws of Canada or of any prescribed jurisdiction:

- (a) the trustee shall, before the end of the eight month period immediately following the date on which a receiving order is made against, or an assignment is made by, the individual bankrupt, file a report prepared under subsection 170(1) with the Superintendent and send a copy of the report to the bankrupt and to each creditor who requested a copy;
- (a.1) the trustee shall, not less than fifteen days before the date of automatic discharge provided for in paragraph (f), give notice of the impending discharge, in the prescribed form, to the Superintendent, the bankrupt and every creditor who has proved a claim, at the creditor's latest known address;
- (b) where the Superintendent intends to oppose the discharge of the bankrupt, the Superintendent shall give notice of the intended opposition, stating the grounds therefor, to the trustee and to the bankrupt at any time prior to the expiration of the nine month period immediately following the bankruptcy;
- (c) where a creditor intends to oppose the discharge of the bankrupt, the creditor shall give notice of the intended opposition, stating the grounds therefor, to the Superintendent, to the trustee and to the bankrupt at any time prior to the expiration of the nine month period immediately following the bankruptcy;
- (d) where the trustee intends to oppose the discharge of the bankrupt, the trustee shall give notice of the intended opposition in prescribed form and manner, stating the grounds therefor, to the bankrupt and the Superintendent at any time prior to the expiration of the nine month period immediately following the bankruptcy;
- (e) where the Superintendent, the trustee or a creditor opposes the discharge of the bankrupt, the trustee shall, unless the matter is to be dealt with by mediation under section 170.1, forthwith apply to the court for an appointment for the hearing of the opposition in the manner referred to in sections 169 to 176, which hearing shall be held
  - (i) within thirty days after the day the appointment is made, or
  - (ii) at such later time as may be fixed by the court at the request of the bankrupt or the trustee; and
- (f) where the Superintendent, the trustee or a creditor has not opposed the discharge of the bankrupt in the nine month period immediately following the bankruptcy, then, subject to subsection 157.1(3),
  - (i) on the expiration of that nine month period, the bankrupt is automatically discharged, and
  - (ii) forthwith after the expiration of that nine month period, the trustee shall issue a certificate to the discharged bankrupt, in the prescribed form, declaring that the bankrupt is discharged and is released from all debts except those matters referred to in subsection 178(1), and shall send a copy of the certificate to the Superintendent.

(2) Nothing in subsection (1) precludes an individual bankrupt from applying to the court for discharge before the expiration of the nine month period immediately following the bankruptcy, and subsection (1) ceases to apply to an individual bankrupt who makes such an application before the expiration of that period.

(3) The provisions of this Act concerning the discharge of bankrupts apply in respect of an individual bankrupt who has never before been bankrupt under the laws of Canada or of any prescribed jurisdiction, to the extent that those provisions are not inconsistent with this section, whether or not the bankrupt applies to the court for a discharge referred to in subsection (2).

(4) An automatic discharge by virtue of paragraph (1)(f) is deemed, for all purposes, to be an absolute and immediate order of discharge.

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### **Senate Recommendation**

The proposed reform follows the Senate Committee's recommendation.

## BRIEFING BOOK

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

Bill Clause No.	Section No.	Topic
101	BIA s.169(1), (2), (5) and (6)	Application for discharge

#### **Proposed Wording**

##### English Version

**169.** (1) The making of a bankruptcy order against, or an assignment by, a person other than a corporation or an individual in respect of whom subsection 168.1(1) applies operates as an application for discharge.

(2) The trustee, before proceeding to his or her discharge and in any case not earlier than three months and not later than one year after the bankruptcy of a person for whom there is an application for discharge by virtue of subsection (1) shall, on five days notice to the bankrupt, apply to the court for an appointment for a hearing of the application for the bankrupt's discharge, and the hearing must be held within 30 days after the day on which the appointment is made or at any other time that may be fixed by the court at the bankrupt's or trustee's request.

.....

(6) The trustee, on obtaining or being served with an appointment for hearing an application for discharge, shall, not less than 15 days before the day appointed for the hearing of the application, send a notice of the hearing, in the prescribed form and manner, to the Superintendent, the bankrupt and every known creditor, at the creditor's latest known address.

##### French Version

**169.** (5) Le tribunal peut, avant de délivrer une convocation, si le syndic le requiert, exiger que soit déposée auprès de celui-ci telle somme, ou que lui soit fournie telle garantie que le tribunal estime appropriées, pour le paiement de ses honoraires et débours occasionnés par la demande de libération.

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#### **Rationale**

The amendment to subsection (1) clarifies that this section does not apply to anyone who is entitled for an automatic discharge under the proposed regime. It removes the possibility of the debtor waiving his discharge, which would be contrary to the spirit of the BIA.

Subsection (2) was amended to make it consistent with changes to subsection 169(1) of the BIA. As well, subsection 169(3) of the Act is repealed because of the amendments to subsections 169(1) and (2).

Subsection (5) was amended in French to specify that this subsection refers to the application for discharge.

Subsection (6) was amended to modernize the language.

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## **Present Law**

### English Version

**169.** (1) Subject to section 168.1, the making of a bankruptcy order against, or an assignment by, any person except a corporation operates as an application for discharge, unless the bankrupt, by notice in writing, files in the court and serves on the trustee a waiver of application before being served by the trustee with a notice of the trustee's intention to apply to the court for an appointment for the hearing of the application as provided in this section.

(2) The trustee, before proceeding to the discharge and in any case not earlier than three months and not later than one year following the bankruptcy of any person who has not served a notice of waiver on the trustee, shall on five days notice to the bankrupt apply to the court for an appointment for a hearing of the application on a date not more than thirty days after the date of the appointment or at such other time as may be fixed by the court at the request of the bankrupt or trustee.

(3) A bankrupt who has given a notice of waiver as provided in subsection (1) may, at any time at the bankrupt's own expense, apply for a discharge by obtaining from the court an appointment for a hearing, which shall be served on the trustee not less than twenty-one days before the date fixed for the hearing of the application, and the trustee on being served therewith shall proceed as provided in this section.

.....

(6) The trustee, on obtaining or being served with an appointment for hearing on application for discharge, shall, not less than fifteen days before the day appointed for the hearing of the application, send a notice thereof in the prescribed form to the Superintendent, the bankrupt and every creditor who has proved a claim, at the creditor's latest known address.

### French Version

(5) Le tribunal peut, avant d'émettre une convocation, si le syndic le requiert, exiger que soit déposé chez le syndic tel montant, ou que soit fournie au syndic telle garantie, que le tribunal estime appropriés, pour le paiement de ses honoraires et débours occasionnés au sujet de la demande.

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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
102	BIA s.170(1)	170 Report

#### **Proposed Wording**

**170.** (1) The trustee shall, in the prescribed circumstances and at the prescribed times, prepare a report, in the prescribed form, with respect to

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#### **Rationale**

The amendment to subsection (1) is intended to streamline the process; it will limit the circumstances under which the report must be prepared. It is anticipated that the section 170 report will only be required where: the bankrupt has surplus income; when an opposition to the bankrupt's discharge has been filed; when the bankrupt has been bankrupt on a previous occasion; when there is any reason that would require a court hearing of the discharge; or when the trustee, for other reasons, determines that the report would be required.

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#### **Present Law**

**170.** (1) The trustee shall prepare a report in the prescribed form with respect to

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#### **Senate Recommendation**

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

## 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
103	BIA s.170.1(1) to (5)	Mediation request

#### Proposed Wording

**170.1.** (1) If the discharge of an individual bankrupt is opposed by a creditor or the trustee in whole or in part on a ground referred to in paragraph 173(1)(m) or (n), the trustee shall send an application for mediation, in the prescribed form, to the official receiver within five days after the day on which the bankrupt would have been automatically discharged had the opposition not been made, or within any further time after that day that the official receiver may allow.

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#### Rationale

The amendment to subsection (1) clarifies that the subsection will apply only in cases where there is surplus income. This change reflects other amendments that were made to the Act concerning surplus income.

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#### Present Law

**170.1.** (1) The report prepared under subsection 170(1) shall include a recommendation as to whether or not the bankrupt should be discharged subject to conditions, having regard to the bankrupt's conduct and ability to make payments.

(2) The trustee shall consider the following matters in making a recommendation under subsection (1):

- (a) whether the bankrupt has complied with a requirement imposed on the bankrupt under section 68;
- (b) the total amount paid to the estate by the bankrupt, having regard to the bankrupt's indebtedness and financial resources; and
- (c) whether the bankrupt, if the bankrupt could have made a viable proposal, chose to proceed to bankruptcy rather than to make a proposal as the means to resolve the indebtedness.

(3) A recommendation that the bankrupt be discharged subject to conditions is deemed to be an opposition to the discharge of the bankrupt.

(4) Where the bankrupt does not agree with the recommendation of the trustee, the bankrupt may, before the expiration of the ninth month after the date of the bankruptcy, send the trustee a request in writing to have the matter determined by mediation.

(5) Where a request for mediation has been made under subsection (4) or the discharge of the bankrupt is opposed by a creditor or the trustee in whole or in part on a ground referred to in paragraph 173(1)(m) or (n), the trustee shall send an application for mediation in prescribed form to the official receiver within five days after the expiration of the nine month period referred to

in subsection (4) or within such further time as the official receiver may allow.

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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
104	BIA s.172	Court Order of Discharge

#### **Proposed Wording**

**172.** (1) On the hearing of an application of a bankrupt for a discharge, other than a bankrupt referred to in section 172.1, the court may

(a) grant or refuse an absolute order of discharge;

(b) suspend the operation of an absolute order of discharge for a specified time; or

(c) grant an order of discharge subject to any terms or conditions with respect to any earnings or income that may afterwards become due to the bankrupt or with respect to the bankrupt's after-acquired property.

(2) The court shall, on proof of any of the facts referred to in section 173 given orally under oath or by affidavit,

.....

(2.1) If the court imposes as a condition of discharge that the bankrupt pay money, the court may direct that the bankrupt pay the money to any creditor, to any class of creditors, to the trustee or to the trustee and one or more creditors, in any amount and manner that the court considers appropriate.

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#### **Rationale**

Subsection (1) maintains the existing court discretion with regard to granting or refusing an order of discharge. However, this subsection now excludes bankrupts under section 172.1 given that they have different requirements with respect to their application for a discharge hearing.

Subsection (2) adds the provision that evidence supporting an opposition to discharge may be submitted in affidavit form or in person. Nothing in the current Act specifies that the opposing party must appear in person, and the Act is silent on whether an affidavit would suffice. This amendment clarifies this point. Current practice has been to require the opposing party to appear in person. This practice can act as a disincentive for creditors to bring information regarding the bankrupt's conduct to the attention of the court because creditors faced with the expense of a court appearance may not consider it worth their while in cases where the probability of increased dividends is unknown or small. This clarification allowing for affidavit evidence will enable more creditors to participate in the system.

Subsection (2.1) provides the court with discretion when ordering payments under a conditional discharge order. The current legislation does not provide the court with the ability to order payments to be made to any particular party. Currently, payments under a conditional discharge order are made to the bankruptcy estate to be apportioned in accordance with the existing priority scheme. The amendment would allow the court to apportion the payments under a conditional discharge order to the trustee and/or to one or more creditors.

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**Present Law**

**172.** (1) On the hearing of an application of a bankrupt for a discharge, the court may either grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time, or grant an order of discharge subject to any terms or conditions with respect to any earnings or income that may afterwards become due to the bankrupt or with respect to his after-acquired property.

(2) The court shall on proof of any of the facts mentioned in section 173

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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
105	BIA s.172.1	Bankrupts with High Income Tax Debt

#### Proposed Wording

- 172.1** (1) In the case of a bankrupt who has \$200,000 or more of personal income tax debt and whose personal income tax debt represents 75% or more of the bankrupt's total unsecured proven claims, the hearing of an application for a discharge may not be held before the expiry of
- (a) if the bankrupt has never before been bankrupt under the laws of Canada or of any prescribed jurisdiction,
    - (i) 9 months after the date of bankruptcy if the bankrupt has not been required to make payments under section 68 to the estate of the bankrupt at any time during those 9 months, or
    - (ii) 21 months after the date of bankruptcy, in any other case;
  - (b) if the bankrupt has been a bankrupt one time before under the laws of Canada or of any prescribed jurisdiction,
    - (i) 24 months after the date of bankruptcy if the bankrupt has not been required to make payments under section 68 to the estate of the bankrupt at any time during those 24 months, or
    - (ii) 36 months after the date of bankruptcy, in any other case; and
  - (c) in the case of any other bankrupt, 36 months after the date of the bankruptcy.
- (2) Before proceeding to the trustee's discharge and before the first day that the hearing could be held in respect of a bankrupt referred to in subsection (1), the trustee must, on five days notice to the bankrupt, apply to the court for an appointment for a hearing of the application for the bankrupt's discharge.
- (3) On the hearing of an application for a discharge referred to in subsection (1), the court shall, subject to subsection (4),
- (a) refuse the discharge;
  - (b) suspend the discharge for any period that the court thinks proper; or
  - (c) require the bankrupt, as a condition of his or her discharge, to perform any acts, pay any moneys, consent to any judgments or comply with any other terms that the court may direct.
- (4) In making a decision in respect of the application, the court must take into account
- (a) the circumstances of the bankrupt at the time the personal income tax debt was incurred;
  - (b) the efforts, if any, made by the bankrupt to pay the personal income tax debt;
  - (c) whether the bankrupt made payments in respect of other debts while failing to make reasonable efforts to pay the personal income tax debt; and
  - (d) the bankrupt's financial prospects for the future.
- (5) If the court makes an order suspending the discharge, the court shall, in the order, require the bankrupt to file income and expense statements with the trustee each month and to file all returns

of income required by law to be filed.

(6) If, at any time after the expiry of one year after the day on which any order is made under this section, the bankrupt satisfies the court that there is no reasonable probability that he or she will be in a position to comply with the terms of the order, the court may modify the terms of the order or of any substituted order, in any manner and on any conditions that it thinks fit.

(7) The powers of suspending and of attaching conditions to the discharge of a bankrupt may be exercised concurrently.

(8) For the purpose of this section, “personal income tax debt” means the amount payable, within the meaning of subsection 223(1) of the *Income Tax Act* without reference to paragraphs (b) to (c), by an individual and the amount that is payable by an individual under any provincial legislation that imposes a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, including, for greater certainty, the amount of any interest, penalties or fines imposed under the *Income Tax Act* or the provincial legislation.

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## **Rationale**

This new section introduces a new procedure for discharging bankrupts with high personal income tax debt. It is aimed at those individuals who have an outstanding personal income tax debt (federal and/or provincial) in excess of \$200,000 (including principal, interest and penalties) where the amount owing represents 75% or more of the bankrupt’s total unsecured proven claims. This new section is designed to ensure that bankrupts with significant personal income tax debt do not abuse the insolvency system by paying their other creditors to the exclusion of the government. These bankrupts will not be eligible for an automatic discharge and an application for discharge will be required. The onus will be on the debtor to justify any relief to be granted by the court.

Paragraph (1)(a) specifies the earliest date for the hearing of an application for discharge for a bankrupt who has never been bankrupt before, i.e., the hearing may not be held before the expiry of 9 months after the date of bankruptcy if the bankrupt has not been required to make payments under section 68 to the estate of the bankruptcy or 21 months after the date of bankruptcy in any other case.

Paragraph (1)(b) specifies the earliest date for the hearing of an application for a discharge for a bankrupt who has been bankrupt one time before, i.e., the hearing may not be held before the expiry of 24 months after the date of bankruptcy if the bankrupt has not been required to make payments under section 68 to the estate of the bankruptcy or 36 months after the date of bankruptcy in any other case.

Paragraph (1)(c) specifies the earliest date for the hearing of an application for a discharge for a bankrupt who has been bankrupt two or more times before, i.e., the hearing may not be held before the expiry of 36 months after the date of bankruptcy in all cases.

Subsection (2) provides that the trustee must give five days notice to the bankrupt before applying to the court for an appointment for the hearing of the bankrupt’s application for discharge.

Subsection (3) specifies the types of orders that the court may make on the hearing of a bankrupt’s application for discharge. The options available to the court include: refusing the

discharge; suspending the discharge; requiring the bankrupt to perform any acts, pay any moneys, consent to any judgements or comply with any other terms that the court may direct.

Subsection (4) sets out the factors the court shall take into account when making a decision with respect to the bankrupt's discharge. The onus is on the bankrupt to justify the relief requested of the court. The factors for consideration are: the bankrupt's circumstances at the time the personal income tax debt was incurred; the efforts made by the bankrupt to pay the personal income tax; whether the bankrupt paid other debts while failing to make reasonable efforts to pay the personal income tax debt; and the bankrupt's financial prospects for the future.

Subsection (5) specifies that if the court suspends the discharge, the court shall also order the bankrupt to provide the trustee with monthly income and expense statements and to file all income tax returns and remittances required by law during the period the discharge is suspended.

Subsection (6) enables the court to modify the order if the bankrupt satisfies the court that there is no reasonable probability that he or she will be in a position to comply with the terms of the order. The court may modify the order after one year.

Subsection (7) grants the court with the power to suspend and attach conditions to a bankrupt's discharge concurrently.

Subsection (8) defines "personal income tax" in the context of the *Income Tax Act*. It also specifically includes any amount payable by an individual under any provincial legislation that imposes a tax similar in nature to that under the *Income Tax Act*. The amount also includes any interest, penalties or fines.

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### **Present Law**

None

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### **Senate Recommendation**

None.