

By email: insolvency-insolvabilite@ic.gc.ca

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Industry Canada  
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Ottawa, Ontario  
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Attention: Paul Halucha, Director-General  
Marketplace Framework Policy Branch

Dear Sirs:

**RE: Statutory Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act**

I am responding to the call for submissions regarding the review of the BIA.

## **Commercial Issues / Encouraging Restructuring**

### Court Acceptance of Division 1 Proposals

If a Division I proposal includes all necessary terms (e.g. payment of CRA's deemed trust claims) and no creditor opposition has been filed with the Trustee within a stated time period, Division I proposal proceedings should be streamlined, and should not require court approval. Any test for commercial morality can be performed by the trustee and the OSB through its intervention policy.

## **Consumer Issues**

### Treatment of Student Loans in Bankruptcy

The study-end date should be better defined, as this date becomes uncertain if the student returns to school. Life-long learning should be encouraged, and there should be a relationship between the loan and the schooling for which the loan was provided, not between the student loan and all subsequent schooling. Amending pp. 178(1)(g)(i) and (ii) to state "... ceased to be a full or part-time student in respect of the schooling for which the student loan was granted..." might achieve this.

## Responsible Lending

The credit bureau should report that an undischarged bankrupt is an undischarged bankrupt - until they're not. These debtors will find it difficult to obtain new credit as prospective new creditors can be forewarned, improving responsible lending.

## Consumer Proposals

### *Stay of Proceedings / Limitation of Certain Rights*

A consumer proposal deemed to be annulled can be automatically revived under ss. 66.31(6), yet there is no clear re-establishment of the stay. Pursuant to the stay of proceedings provisions in pp. 69.2(1)(a), the stay is lifted upon a deemed annulment. Upon the issuance by the administrator of Form 93 (Notice to Creditors and to Official Receiver of Impending Automatic Revival of Consumer Proposal), the stay of proceedings should again take effect. The stay should be lifted if an objection to the revival is made by any creditor.

Where the revival of a consumer proposal is sought, the rights of parties to terminate agreements or for public utility companies to discontinue services simply because a consumer proposal has been filed (ss. 66.34(1) and 66.34(2)) should similarly be stayed.

### *Eligibility and Secured Debts*

A fully secured creditor should not have the right to affect the outcome of a consumer proposal, especially if they will not be sharing in any distribution under the proposal.

And, the eligibility for making a consumer proposal should be changed to reflect that unsecured debts must be under \$250,000, that only unsecured claims are counted in pp. 66.15(2)(b), and that only the votes of unsecured creditors should be counted under ss. 66.17(1) and ss. 66.19(1).

Eligibility to make a consumer proposal is established by ss. 66.12(1) and the definition of "consumer debtor" in s. 66.11. Debts must be less than \$250,000 plus any debts secured by the debtor's principal residence. The amount of consumer debt is increasing. The high cost of real estate has resulted in small fractional interests such as, for example, a parent owning a 1% interest in property to accommodate their child's access to mortgage financing, and the parent signing to be jointly liable on the mortgage. These secured debts may be fully secured and can easily push (non-principal residence mortgage) debts over the \$250,000 limit.

In Division 1 proposal, pursuant to pp. 54(2)(a)(ii) secured creditors can only vote if the proposal was made to them. In consumer proposals, secured parties are influencing whether a meeting of creditors should be called under pp. 66.15(2)(b) and the consumer proposal may not even be made to them. If a secured party is unaffected by a consumer proposal, logically they should not be entitled to influence its outcome.

### *Amended Consumer Proposals*

The prescribed Form 49 is not designed to accommodate the notification to creditors of an amended consumer proposal and should be corrected.

### *Cram Down*

The BIA should provide a mechanism to enable the acceptance of certain consumer proposals to be forced upon a dissenting majority creditor. Oftentimes, a creditor may simply refuse to accept a consumer proposal and perhaps not even provide any indication of the terms of any proposal they would find acceptable. This response may not matter due to the percentages of proven claims, but it occurs too frequently and even with consumer debtors whose income is derived solely from employment. Such responses damage the process of making available to debtors this BIA statutory facility to settle their debts.

To this end, the BIA could be amended to permit a worthy consumer debtor whose consumer proposal has been rejected by a majority creditor to apply to Court and place the onus on the opposing creditor to show just cause why the consumer proposal should not be approved, failing which the Court should be required to approve the proposal.

### **Administrative Issues:**

#### Insolvency and Debt-Poolers

Debt poolers should be regulated by the OSB, and the offence provisions of ss. 202(1) should be broadened to capture persons who are not licensed by the OSB from undertaking programs to assist insolvent persons. The federal government has constitutional jurisdiction over insolvency, and the BIA should govern more than bankruptcies and proposals, it should govern insolvency.

Yours truly,

Ken Rowan, CA, CIRP

