



KPMG Can Help Relieve Your Financial Stress

Frequently Asked Questions and Answers About Personal
Bankruptcy and Consumer Proposals

PERSONAL BANKRUPTCY SERVICES





Frequently Asked Questions
and Answers About
Personal Bankruptcy and
Consumer Proposals

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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Introduction

Facing up to one's financial problems and trying to solve them can be a difficult and emotional experience. People in this situation often experience feelings of shame or failure, and confusion about what the various alternatives mean and how they work.

When dealing with their financial problems, people want simple, direct answers to their questions. People need to know the basics about alternatives such as bankruptcy and consumer proposals. They need to know exactly what they can expect and what is expected of them in each of the alternatives.

This booklet offers a simplified view of the consumer bankruptcy and proposal process. It does not cover every detail, but provides basic answers to frequently asked questions. Each bankruptcy and proposal is different, so it is important for each debtor to discuss individual cases with a Trustee in Bankruptcy before taking action.

If you have other questions, visit KPMG's Personal Bankruptcy Web site at **www.personalbankruptcy.com** or contact your nearest KPMG office from the list provided on the back of this booklet.

KPMG Inc.

Ottawa, Canada, September 2009

Visit KPMG's Personal Bankruptcy Web site at

www.personalbankruptcy.com

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The Options Available

1. What is personal bankruptcy?

Bankruptcy may involve voluntarily assigning your assets to a Trustee in Bankruptcy for distribution to your creditors. This is referred to as filing an assignment. The person filing an assignment is known as the bankrupt and/or the debtor. An assignment provides the bankrupt with immediate relief from legal actions by creditors and eliminates or discharges the majority, if not all, of his or her debts.

You should be aware that any unsecured creditor owed more than \$1,000 could try to force you into bankruptcy. This is called an application for bankruptcy. In this case, the creditor must prove that you committed an act of bankruptcy, such as not paying your bills as they came due. The Court reviews the facts and, if the application is allowed, issues a bankruptcy order. You are then required to meet with the Trustee named in the Court Order, usually on the recommendation of the applicant creditor.

A bankrupt is required to perform certain duties that are described later in this booklet.

2. How do I make an assignment in bankruptcy?

To make an assignment in bankruptcy, you must:

- Owe at least \$1,000, and
- Be unable to meet regular payments as they fall due, or
- Own insufficient property to pay all of your debts.

An Estate Administrator is a qualified staff member of KPMG who works with our Trustee's to provide the correct approach for each individual.

A Trustee or Estate Administrator can review your personal situation, answer your specific questions, and provide financial counselling as required. KPMG is associated with a number of social agencies that provide support to service the needs of all consumers. Our Web site (www.personalbankruptcy.com) provides the location and telephone numbers of our offices located across Canada.

3. How do a summary and an ordinary bankruptcy differ?

A summary administration was developed for debtors who have limited assets and less complex financial affairs. If you have less than \$15,000 of free and unencumbered assets, you may be eligible to file your personal bankruptcy as a summary administration.

The Trustee's fees in a summary administration are based on a tariff set out in the *Bankruptcy and Insolvency Act*. The fee is determined by the amount of funds available in a bankrupt's estate. The assets available to creditors do not include assets that are exempt from seizure. Typically, exempt assets are furniture and personal effects, RRSP contributions in excess of the amounts contributed over the last 12 months, life insurance policies, and other exemptions relating to vehicles and personal residence. Exempt assets are specific to the province within which a debtor resides and, accordingly, you should contact a KPMG representative to confirm the specific exemptions applicable to you.

4. Is bankruptcy an easy way out of owing money?

No. The purpose of personal bankruptcy is to rehabilitate an honest debtor and to fairly distribute the bankrupt's assets, including surplus earnings, to creditors. The *Bankruptcy and Insolvency Act* penalizes both bankrupts and creditors who abuse the system. **Section 198 of the *Bankruptcy and Insolvency Act*, which is reproduced on page 25 of this booklet, lists bankruptcy offences.**

5. When is bankruptcy not a solution?

Bankruptcy is not always the best solution. For example, you may have enough income to manage your debts at a reasonable cost over a period of time. Instead of bankruptcy, you might consider:

- Consumer proposal under the *Bankruptcy and Insolvency Act*
- Proposal under Division I of the *Bankruptcy and Insolvency Act*
- An informal proposal
- Credit counselling
- Orderly payment of debts (not available in all provinces—ask your local Trustee).

A KPMG professional will explain these options at the commencement of the bankruptcy process and discuss those that may apply to you. Prior to you filing a bankruptcy assignment, you are required to meet with a licensed Trustee to confirm that the process selected is the most appropriate based upon your individual circumstances.

6. What is a consumer proposal?

The *Bankruptcy and Insolvency Act* offers alternatives to bankruptcy. One of the options available is to file a consumer proposal with your creditors, based on your circumstances. For example, you may ask the creditors to reduce amounts owing to them or request more time to pay the amounts due. Specific terms can be discussed with your Trustee or Estate Administrator.

A consumer proposal must be made to all preferred and unsecured creditors, but it does not affect the rights of secured creditors. The terms of the consumer proposal must be completed in a maximum of 5 years, and must offer the creditors at least what they would be paid in a bankruptcy.

Designed for individuals, the consumer proposal is aimed at those persons who owe less than \$250,000, excluding a mortgage on their principal residence, and who do not have complicated financial affairs.

For more information on consumer proposals, see Questions 32 to 36.

7. What type of counselling will I receive?

The *Bankruptcy and Insolvency Act* stresses the rehabilitation of individuals who are overburdened with debt. Therefore, a Trustee (or, in some areas, a designated individual,) with the assistance of an Estate Administrator, will provide a review of your current financial situation. This assessment will review various topics, including your assets and liabilities, your monthly income and expenses, and the alternatives available to you.

The first counselling session must be held between 10 and 60 days from the filing of your bankruptcy or consumer proposal. Some of the topics covered in this counselling session include money management, spending habits, warning signs of financial difficulties, and obtaining and using consumer credit.

The second counselling session must be held in the period between 30 days after your first session and 7 months from the start of your bankruptcy or consumer proposal. The second counselling session will review the possible causes of your financial difficulties and your specific money management and budgeting plans. In addition, names of agencies that may assist you, now and in the future, with any non-financial causes of insolvency problems may be provided.

Further counselling sessions are available at your request or as ordered by the Trustee or the Court.

Counselling may be provided by the Trustee or Estate Administrator for both individuals related to the debtor or bankrupt, and for those persons financially associated with the bankrupt.

For the assessment session and each of the counselling sessions, you will be required to sign a certificate stating that you have completed the session. If you do not attend the counselling sessions, you will not be eligible for an automatic discharge from bankruptcy, or, in the case of a consumer proposal, you will not have completed the terms of your consumer proposal.

The Personal Bankruptcy Process

8. What are the major steps in personal bankruptcy?

The major steps in making an assignment in bankruptcy are:

- Meet with an Estate Administrator (or, in some areas, a designated individual) for an initial financial assessment
- Meet with a Trustee (or, in some areas, a designated individual) to confirm bankruptcy or proposal filing
- File an assignment in bankruptcy with the Official Receiver
- Attend an examination by an Official Receiver, if required
- Attend a first meeting of creditors, if a meeting is called
- Attend two mandatory counselling sessions
- Where automatic provisions do not apply, apply to the Court for a discharge from bankruptcy.

Many of these steps are discussed in more detail in the following questions.

9. Who is a Trustee in Bankruptcy and how are they paid?

A Trustee is an individual or a corporation licensed by the federal government to administer the bankruptcy process. A Trustee is not a lawyer. The Trustee is required to remain neutral and provide advice based upon the federally and provincially legislated laws in force.

A Trustee is paid from the assets realized in the estate. If there are no available assets, the Trustee will look to you for payment of fees and costs. In some instances, individuals have sought assistance from family and friends to provide a third party guarantee for the fees of the Trustee. An estimate of fees and costs can be given only after reviewing your current financial situation with a qualified KPMG staff member.

The fees a Trustee can charge for summary administrations and consumer proposals are specified within the *Bankruptcy and Insolvency Act*.

The Trustee's Final Statement of Receipts and Disbursements and the Creditors' Dividend Sheet are prepared by the Trustee as your bankruptcy estate or consumer proposal is concluded. They summarize all of the amounts collected and paid by the estate. A Trustee cannot be discharged without approval from the Superintendent of Bankruptcy, who reviews the Final Statement of Receipts and Disbursements, including the Trustee's claim for fees and costs.

10. Whom does the Trustee work for?

When a bankrupt voluntarily files an assignment in bankruptcy, the Trustee is chosen by the bankrupt. However, the Trustee remains an Officer of the Court, with an obligation to balance both the bankrupt's and the creditors' rights, and to investigate the affairs of the bankrupt as required. The Trustee ensures that the rights of the bankrupt, as defined by the *Bankruptcy and Insolvency Act*, are not abused. The Trustee's primary duties are to:

- Review your situation and counsel you on the alternatives available
- Administer the consumer proposal based on the agreed terms settled between the debtor and their creditors
- In bankruptcy, liquidate your assets and turn them into cash for distribution to creditors
- Administer the bankrupt estate or consumer proposal from beginning to end according to the provisions of the *Bankruptcy and Insolvency Act*.

11. Do I have certain duties as a bankrupt?

A bankrupt's duties are set out in **Section 158 of the *Bankruptcy and Insolvency Act*, which is reproduced in this booklet on page 21**. You must read this section carefully and comply with its requirements. You will be required to confirm in writing that you clearly understand your duties as a bankrupt.

Your primary duties are to:

- Disclose all of your assets and liabilities to the Trustee
- Prepare or assist the Trustee in the preparation of your statement of affairs
- Advise the Trustee of the details of any property disposed of in the past 5 years, where such disposition was by gift or without valuable consideration
- Surrender all credit cards to the Trustee
- Attend an examination before the Official Receiver, if required
- Attend any meeting of creditors, if required
- Attend the two mandatory counselling sessions
- Advise the Trustee, in writing, of any address changes
- Advise the Trustee of any significant changes in your monthly financial affairs
- Pay to your bankruptcy estate a portion of your income that exceeds the income guidelines established by the Superintendent of Bankruptcy
- Generally assist the Trustee in administering your bankruptcy estate.

12. What happens to my wages during bankruptcy?

Wage assignments and garnishments are stopped once a bankruptcy is filed and accepted by the Superintendent of Bankruptcy.

The Trustee reviews the household income of your family unit (net of applicable deductions and non-discretionary expenses) to arrive at a household income. This income, along with the number of individuals residing in the household supported by the income, is then compared to the Income Standards set by the Superintendent of Bankruptcy. Your share of the household income in excess of the standards provided is called "surplus income."

Non-Discretionary expenses include:

- Child support payments
- Spousal support payments

- Child care expenses
- Expenses associated with a medical condition (excluding over-the-counter items)
- Court-imposed fines or penalties that are in the process of being paid
- Expenses permitted by the *Income Tax Act* (or similar provincial legislation) that are a condition of employment
- Any other debt where a stay of proceedings has been lifted by the Court, and a recourse authorized
- Interest paid on student loan debts that are not dischargeable in bankruptcy.

The Trustee will provide a supply of income and expense statements for you to fill out and submit monthly to your KPMG representative.

If you have surplus income, you will be required to remit this amount to the Trustee for a period of 21 months. Individuals who have filed bankruptcy before and who have surplus income will be required to remit monthly payments for 36 months. This amount will be distributed to your creditors. **Section 68 of the *Bankruptcy and Insolvency Act*, which is reproduced on page 18 of this booklet, explains this in more detail.**

13. Will all of my assets be assigned to the Trustee?

The only assets not assigned to the Trustee for distribution to your creditors are those exempted by federal or provincial law. Discuss this matter with the Estate Administrator or Trustee. You should ensure that all of your assets declared under oath to the Trustee are fully disclosed and properly valued.

Your assets include all existing assets as well as those that may be acquired by you prior to your discharge. This is considered “after-acquired property,” and your Estate Administrator or Trustee can provide examples of such items. Once you have filed an assignment, you cannot dispose of any assets assigned to the estate without the Trustee’s knowledge or consideration.

Property exempt from seizure under federal laws may include certain federal benefits, pensions, allowances, or reserve property.

A list of applicable provincial exemptions can be referred to at our Web site **www.personalbankruptcy.com**.

14. What about my secured creditors?

In most cases, bankruptcies and consumer proposals do not affect the rights of secured creditors. In a bankruptcy, the Trustee will confirm the validity of the secured creditor's claim against your property (i.e., car or house). If you can afford the monthly payments, in most cases financial arrangements may be made with the secured creditor. Provided there is no equity available for the benefit of your creditors, you should discuss the options of retaining or surrendering encumbered assets with the Estate Administrator or Trustee. In situations where there is equity in an encumbered asset, the Trustee has a duty to realize on this value for the benefit of your creditors. To have a full understanding of your options, consult with an Estate Administrator or Trustee.

15. What happens at an examination by the Official Receiver?

Once you file for bankruptcy, you may be required to attend an examination under oath by an Official Receiver, who is a Deputy of the Superintendent of Bankruptcy. The purpose of this examination is to determine the causes of your bankruptcy, the disposition of any past assets, and the status of present assets. Your conduct is also reviewed.

16. What happens at the first meeting of creditors, if one is called?

In a bankruptcy, under the summary administration provisions, a meeting of creditors shall be called by the Trustee if he or she is requested to do so by the Official Receiver or by creditors who have at least 25 percent of the total proven claims. The meeting must be held within 21 days after being called.

The purpose of this meeting is to:

- Confirm the appointment of the Trustee
- Appoint up to five inspectors who supervise the administration of the bankrupt estate, including approval of the Trustee's statement of receipts and disbursements
- Allow creditors to obtain information about the bankruptcy
- Allow creditors to provide direction to the Trustee.

Persons related to you are not allowed to vote in favour of most resolutions, and, accordingly, the votes of non-related creditors are sought.

The quorum for a creditors' meeting is one creditor with a proven claim who is entitled to vote. If there is no quorum, the Trustee is automatically confirmed.

You must attend the first meeting of creditors and any subsequent meetings. If you are unable to attend, written notice must be given to the Trustee. Failure to attend the creditors' meeting without a reasonable cause could be considered an offence under the *Bankruptcy and Insolvency Act*.

17. Who prepares my income tax returns?

You must supply the Trustee with documents necessary to complete two income tax returns during the year in which a bankruptcy occurs. A pre-bankruptcy income tax return must be filed for the period from January 1 to the date of bankruptcy. A post-bankruptcy income tax return must be filed for the period from the date of bankruptcy to December 31 of that year.

Income tax refunds from any pre- or post-bankruptcy income tax returns are an asset of the bankrupt estate and must be forwarded or sent to the Trustee. Income taxes owing prior to the bankruptcy are discharged and any refunds are property of your estate. Any amount owing on the post-bankruptcy tax return must be paid by you.

18. When will I get my discharge from bankruptcy?

The following is a guide for the discharge of an individual debtor from bankruptcy:

- A first-time bankrupt without surplus income is automatically granted a discharge 9 months after filing bankruptcy, unless a creditor, the Trustee, or the Official Receiver objects. If you are granted an automatic discharge, the Trustee will send you a copy of the Certificate of Discharge.
- A first-time bankrupt with surplus income, who remits required surplus income payments for 21 months will be discharged automatically in 21 months. This assumes there is no opposition to the debtor's discharge.
- If you have been bankrupt one time before, without surplus income, you will be automatically discharged in 24 months, unless a creditor, the Trustee, or the Official Receiver objects.

- A second-time bankrupt with surplus income who remits required surplus income payments for 36 months will be automatically discharged in 36 months. This assumes there is no opposition to the debtor's discharge.
- Debtors with personal income tax debt in an amount exceeding \$200,000, representing 75 percent or more of total unsecured proven claims, will not be eligible for an automatic discharge. The amount due will include interest, penalties, and fines as imposed by both federal and provincial legislation.
- Individuals who have filed bankruptcy on more than two separate occasions will be required to appear before the courts to determine whether they will be able to receive a discharge from Bankruptcy.

Debtors who have surplus income may be subject to changes in circumstances that may reduce or negate surplus income obligations and result in an application to the Court for a discharge.

As and when required, the Trustee will prepare a report on your bankruptcy that covers the causes of your bankruptcy, your conduct during bankruptcy, and whether you have committed any bankruptcy offences. In the report, the Trustee will recommend to the Court whether you should receive an absolute discharge or whether your discharge should be subject to certain conditions, such as future payments from your income. A copy of your discharge order will be sent to you, the Superintendent of Bankruptcy, and to any creditor who has requested a copy.

In considering whether your discharge should be subject to any conditions, the Trustee will consider your conduct as a bankrupt and your ability to make further payments.

The Trustee must take into account the following specific factors:

- Whether you paid the Trustee the required surplus income
- The total amount paid to the estate in comparison to your total debts and ability to make further payments in the future
- Whether you chose bankruptcy instead of a proposal, when you had the ability to make a proposal
- If the amounts due for personal income taxes precluded you from an automatic discharge.

If the Trustee opposes your discharge and you agree with the Trustee's recommendations, the Trustee will confirm your agreement in writing. If you satisfy the conditions, the Trustee will send you a court-endorsed discharge certificate.

If you disagree with the recommendations of the Trustee, or a creditor or the Superintendent of Bankruptcy disagrees with them, the matter will be set down for the courts to settle.

19. What type of discharge will I get?

The type of discharge you get depends on the factors described in Question 18. However, the following describes the different types of discharge alternatives, other than when there is an automatic certificate of discharge:

Absolute Discharge: You are no longer responsible for debts incurred prior to bankruptcy, except for those in Section 178 of the *Bankruptcy and Insolvency Act*. **The debts not discharged by bankruptcy are listed on page 24 of this booklet.**

Conditional Discharge: You may be required to pay a certain amount of money to your creditors through the Trustee for a specified period (i.e., \$100 per month for 24 months). Your discharge is subject to completing the terms and conditions of the Court Order. An Absolute Discharge will be granted when the specified conditions are fulfilled.

Suspended Discharge: This could be an Absolute Discharge but there is a delay before it comes into effect or is reviewed again by the Court.

Discharge Refused: The Court has the right to refuse a discharge in unusual circumstances. A discharge application may be refused if any of the following are reported to the Court:

- You have been bankrupt on more than two separate occasions
- **Any facts referenced in Section 173 contained on page 23 of this booklet.**

20. Which of my debts are not discharged by bankruptcy?

Debts that are not discharged by bankruptcy are outlined in **Section 178 of the *Bankruptcy and Insolvency Act*, which is reproduced in this booklet on page 24**, and include, but are not limited to:

- A fine or penalty imposed by the Court
- An award for damages arising from bodily harm, sexual assault, or wrongful death
- Alimony
- Liability for dividend to an undisclosed creditor
- Debt obtained by fraud
- Liability for support or maintenance of spouse or child under an agreement or Court Order
- Student loans when the bankruptcy occurs while you are still a student or within 7 years following the termination of full- or part-time studies.

Other Common Questions about Bankruptcy

21. What about my credit rating?

Once your level of debt becomes so great that bankruptcy is required, your credit rating is seriously affected. Your ability to obtain and use credit after discharge depends on convincing lenders of your personal financial maturity. Your credit rating can improve after bankruptcy only when you re-establish financial creditability.

Very often, it is possible that you will be granted credit after your discharge from bankruptcy or the completion of a consumer proposal, but your credit rating will likely be reflected as poor for a minimum of 6 years after your discharge from bankruptcy.

Your credit will be affected for more than 6 years if you have filed bankruptcy on more than one occasion.

You should send a copy of the discharge order or certificate of discharge to the Credit Bureau so that your credit record can be updated. All documents relating to your bankruptcy should be saved for reference by future lenders.

22. Are my spouse's assets or debts included in my bankruptcy?

No. Only assets owned by you are included in your bankruptcy. If assets are jointly owned with a spouse, then your portion may have to be sold and distributed to your creditors. It is important to make the Trustee aware of joint assets so that each case can be reviewed individually. Sale of a portion of your assets to a party not dealing at arm's length (related party such as a spouse) will require Court approval in an ordinary administration, or only if requested by creditors in a summary administration.

If the substantial majority of both your assets and debts are joint with your spouse, then it may be appropriate for a joint bankruptcy or consumer proposal to be made. You should review your situation with an Estate Administrator or Trustee.

23. Do I require a lawyer?

Generally, you do not require a lawyer to file for bankruptcy. If you feel the need for legal advice and cannot afford a lawyer, legal aid may be available. The Trustee is required to remain neutral in dealings where your discharge from bankruptcy is considered. In those instances, consideration should be given to engaging a legal representative to put forward your interests. You are free to consult with a representative from KPMG on the requirement for personal representation; however, the decision will be entirely at your discretion.

24. Will legal actions continue after declaring bankruptcy?

Most legal actions (except those referenced in Section 178 of the *Bankruptcy and Insolvency Act*) are prevented from going forward when the assignment is filed or a consumer proposal is made. If you receive any writs, garnishments, or other legal documents after the date of bankruptcy, contact the Trustee immediately.

The actions of a Secured Creditor or for support claims may not be stopped by a bankruptcy, and you should discuss this situation with an Estate Administrator or Trustee.

25. What about new assets obtained during my bankruptcy?

All assets acquired prior to your discharge should be accounted for in your bankruptcy; these assets may be used to pay your creditors. Provided you have not been discharged, lottery winnings and inheritances are considered assets, even if they are acquired after filing the assignment in bankruptcy. Your duty is to report such events to your Estate Administrator or Trustee.

26. Can I maintain my bank account?

Yes. However, if you are indebted to the same financial institution, it may be prudent to open an account elsewhere so that any balance in the account and future deposits will not be offset to pre-bankruptcy debts, or the account frozen so that ongoing living expenses cannot be paid.

27. May I use credit prior to discharge?

Under Section 199 of the *Bankruptcy and Insolvency Act*, an undischarged bankrupt may not obtain credit in excess of \$1,000.00, without disclosure to the creditor that the bankrupt is undischarged from bankruptcy. **Section 199 is reproduced in this booklet on page 26.**

You must deliver all of your credit cards to the Trustee upon filing an assignment in bankruptcy.

28. How are joint debt or loan co-signers affected?

Bankruptcy does not stop the liability of anyone who guaranteed or co-signed a loan on your behalf. Even your spouse may be accountable for liabilities incurred jointly with you. It is important to make the Estate Administrator or Trustee aware of joint liabilities so that each case can be reviewed separately.

29. Who will know about my bankruptcy?

Your bankruptcy and discharge are matters of public record. Bankruptcy documentation is stored with the Superintendent of Bankruptcy and, in some cases, at the Court. Statutory documents and discharge records are available to all Credit Bureaus. Employers are not normally notified of personal bankruptcies, except to obtain income information, and notices of summary administration bankruptcies, consumer proposals, and Division I proposals are not published in newspapers.

30. How should I handle telephone calls or other “harassment”?

The bankruptcy process offers a chance to rehabilitate yourself and to relieve the pressure from creditors. Any telephone calls received from creditors after bankruptcy should be referred to the Estate Administrator or Trustee. If the calls are distressing, threatening, or verbally abusive, make careful notes of each incident and consider contacting the police. Harassment is against the law, and a report to the provincial regulating body may be appropriate.

31. How much will my bankruptcy cost?

The fees and costs of a summary administrator bankruptcy are set by the *Bankruptcy and Insolvency Act*. In addition, there are counselling fees, government filing fees, possibly Court fees, and applicable federal and provincial taxes to be paid. All fees/costs are paid from the funds in your bankruptcy estate. You should discuss this subject in detail with the Estate Administrator or Trustee.

All Trustees' fees and costs are subject to comment by the Superintendent of Bankruptcy and may also be approved by estate inspectors, where any are appointed, or by the Court, when required.

Consumer Proposals

32. Who is an Administrator?

An Administrator is a Trustee or other individual licensed by the Superintendent of Bankruptcy to administer consumer proposals and provide counselling. We will use the Trustee term to represent the Administrator.

33. What are the major steps in a consumer proposal?

The major steps in a consumer proposal are:

- Meet with a Trustee (or, in some areas, a designated individual) or Estate Administrator to review your current financial position and the alternatives available to you (the financial assessment ensures that a consumer proposal is a reasonable course of action for you to choose)

- The Trustee or Estate Administrator helps prepare the consumer proposal and statement of affairs, which are then filed with the Official Receiver
- At the end of 45 days, a meeting of creditors will only be called if 25 percent in dollar value of proven creditor claims requests a meeting, or if requested by the Official Receiver
- Attend two counselling sessions
- The consumer proposal will receive automatic Court approval, unless the Official Receiver, any creditor, or other interested party objects, within 60 days of filing a consumer proposal (unless a meeting of creditors is required)
- Make payments to the Trustee, who distributes funds to the creditors at least every 3 months or in accordance with the terms of the consumer proposal
- If the consumer proposal is not accepted, or if you default on the consumer proposal, there is no automatic bankruptcy, but all creditors are then allowed to take action against you
- If three payments are missed during the term of the consumer proposal, the consumer proposal is deemed annulled
- There are specific provisions for a Trustee to apply discretion to revive a consumer proposal that would otherwise be deemed annulled, and should be discussed with the Estate Administrator or Trustee if you fall behind in your payments.

34. How does filing a consumer proposal affect my creditors?

Filing a consumer proposal has the following effect on your creditors:

- All unsecured creditors are prevented from collecting debts until the consumer proposal is withdrawn, refused, or annulled
- No creditor or landlord can terminate an agreement just because a consumer proposal was filed
- An accepted consumer proposal is binding on all unsecured creditors and any secured creditors who filed a proof of claim
- A consumer proposal accepted, or deemed accepted, by the creditors and approved, or deemed approved, by the court does not release the consumer debtor from any particular debt or liability referred to in subsection 178(1), unless the consumer proposal explicitly provides for the compromise of that debt or liability, and the creditor in relation to that debt or liability voted for the acceptance of the consumer proposal.

35. How does a consumer proposal affect my job and wages?

An employer cannot fire, discipline, or suspend you solely because you filed a consumer proposal. Once a consumer proposal is filed, all wage assignments and garnishments are stopped.

36. How much will a consumer proposal cost?

The Trustee fees in a consumer proposal are set by the *Bankruptcy and Insolvency Act*. In addition, there are counselling fees, government filing fees, possibly Court fees, and applicable federal and provincial taxes to be paid. All fees and costs are paid from the funds you contribute under the terms of your consumer proposal. All Trustee's fees and costs are subject to comment by the Superintendent of Bankruptcy and may also require approval by any inspectors, if appointed, or by the Court, when required.

Excerpts from the *Bankruptcy and Insolvency Act*

Salary and Wages Paid to the Bankrupt

Section 68

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

(2) Definitions – The following definitions apply in this section:

"surplus income"

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

"total income"

- (a) includes, despite paragraphs 67(1)(b) and (b.3), a bankrupt's revenues of whatever nature or from whatever source that are earned or received by the bankrupt between the date of the bankruptcy and the date of the bankrupt's discharge, including those received as damages for wrongful dismissal, received as a pay equity settlement or received under an Act of Parliament, or of the legislature of a province, that relates to workers' compensation; but
- (b) does not include any amounts received by the bankrupt between the date of the bankruptcy and the date of the bankrupt's discharge, as a gift, a legacy or an inheritance or as any other windfall.

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

- (a) whenever the Trustee becomes aware of a material change in the bankrupt's financial situation; and
- (b) whenever the Trustee is required to prepare a report referred to in subsection 170(1).

(4) Duties of Trustee relating to determination – Whenever the Trustee is required to determine whether the bankrupt has surplus income, the Trustee shall:

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

- (i) fix, having regard to the applicable standards, the amount that the bankrupt is required to pay to the estate of the bankrupt,
 - (ii) inform, in the prescribed manner, the Official Receiver, and every creditor who has requested such information, of the amount fixed under subparagraph (i), and
 - (iii) take reasonable measures to ensure that the bankrupt complies with the requirement to pay; and
- (b) if the Trustee determines that there is no surplus income, inform, in the prescribed manner, the Official Receiver, and every creditor who has requested such information, of that determination.

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

(5.1) Trustee may fix another amount – On receipt of the Official Receiver’s recommendation, the Trustee may fix, having regard to the applicable standards, another amount as the amount that the bankrupt is required to pay to the estate of the bankrupt, and if the Trustee does so, the Trustee shall:

- (a) inform the Official Receiver and every creditor, in the prescribed manner, of the amount fixed under this subsection; and
- (b) take reasonable measures to ensure that the bankrupt complies with the requirement to pay.

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

(7) Creditor may request mediation – On a creditor’s request made within 30 days after the day on which the Trustee informed the creditor of the amount fixed under subsection (4) or (5.1), the Trustee shall, within five days after the day on which the 30-day period ends, send to the Official Receiver a request, in the prescribed form, that the matter of the amount that the bankrupt is required to pay be determined by mediation and send a copy of the request to the bankrupt and the creditor.

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

- (9) File** – Documents contained in a file on the mediation of a matter under this section form part of the records referred to in subsection 11.1(2).
- (10) Application to court to fix amount** – The Trustee may, in any of the following circumstances — and shall apply if requested to do so by the Official Receiver in the circumstances referred to in paragraph (a) — apply to the Court to fix, by Order, in accordance with the applicable standards, and having regard to the personal and family situation of the bankrupt, the amount that the bankrupt is required to pay to the estate of the bankrupt:
- (a) if the Trustee has not implemented a recommendation made by the Official Receiver under subsection (5);
 - (b) if the matter submitted to mediation has not been resolved by the mediation; or
 - (c) if the bankrupt has failed to comply with the requirement to pay as determined under this section.
- (11) Fixing fair and reasonable remuneration in the case of related persons** – The court may fix an amount that is fair and reasonable:
- (a) as salary, wages or other remuneration for the services being performed by a bankrupt for a person employing the bankrupt, or
 - (b) as payment for or commission in respect of any services being performed by a bankrupt for a person, where the person is related to the bankrupt, and the court may, by order, determine the part of the salary, wages or other remuneration, or the part of the payment or commission, that shall be paid to the trustee on the basis of the amount so fixed by the court, unless it appears to the court that the services have been performed for the benefit of the bankrupt and are not of any substantial benefit to the person for whom they were performed.
- (12) Modification of Order** – On the application of any interested person, the Court may, at any time, amend an Order made under this section to take into account material changes that have occurred in the financial situation of the bankrupt.
- (13) Default by other Person** – An Order of the Court made under this section may be served on a person from whom the bankrupt is entitled to receive money and, in such case:
- a) the Order binds the person to pay the estate of the bankrupt the amount fixed by the Order: and
 - b) if the person fails to comply with the terms of the Order, the Court may, on the application of the Trustee, order the person to pay the Trustee the amount of money that the estate of the bankrupt would have received had the person complied with the terms of the Order.
- (14) Application is a proceeding** – For the purposes of section 38, an application referred to in subsection (10) is deemed to be a proceeding for the benefit of the estate.

- (15) Property included for enforcement purposes** – For the purpose of this section, a requirement that a bankrupt pay an amount to the estate is enforceable against the bankrupt's total income.
- (16) When obligation to pay ceases** – If an opposition to the automatic discharge of a bankrupt individual who is required to pay an amount to the estate is filed, the bankrupt's obligation under this section ceases on the day on which the bankrupt would have been automatically discharged had the opposition not been filed, but nothing in this subsection precludes the Court from determining that the bankrupt is required to pay to the estate an amount that the Court considers appropriate.

Duties of Bankrupt

Section 158

A bankrupt shall

- (a) make discovery of and deliver all his property that is under his possession or control to the Trustee or to any person authorized by the Trustee to take possession of it or any part thereof;
- (a.1) in such circumstances as are specified in directives of the Superintendent, deliver to the Trustee, for cancellation, all credit cards issued to and in the possession or control of the bankrupt;
- (b) deliver to the Trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;
- (c) at such time and place as may be fixed by the Official Receiver, attend before the Official Receiver or before any other Official Receiver delegated by the Official Receiver for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;
- (d) within five days following the bankruptcy, unless the time is extended by the Official Receiver, prepare and submit to the Trustee in quadruplicate a statement of the bankrupt's affairs in the prescribed form verified by affidavit and showing the particulars of the bankrupt's assets and liabilities, the names and addresses of the bankrupt's creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a proper statement of affairs, the Official Receiver may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement;
- (e) make or give all the assistance within his power to the Trustee in making an inventory of his assets;

- (f) make disclosure to the Trustee of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event or beginning on such other antecedent date as the court may direct, and ending on the date of the bankruptcy, both dates included, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;
- (g) make disclosure to the Trustee of all property disposed of by gift or settlement without adequate valuable consideration within the period beginning on the day that is five years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;
- (h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereat to examination;
- (i) when required, attend other meetings of his creditors or of the inspectors, or attend on the Trustee;
- (j) submit to such other examinations under oath with respect to his property or affairs as required;
- (k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;
- (l) execute any powers of attorney, transfers, deeds and instruments or acts that may be required;
- (m) examine the correctness of all proofs of claims filed, if required by the Trustee;
- (n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the Trustee;
- (n.1) inform the Trustee of any material change in the bankrupt's financial situation;
- (o) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the Trustee, or may be prescribed by the General Rules, or may be directed by the Court by any special Order made with reference to any particular case or made on the occasion of any special application by the Trustee, or any creditor or person interested; and
- (p) until his application for discharge has been disposed of and the administration of the estate completed, keep the Trustee advised at all times of his place of residence or address.

Section 173

(1) **Facts for which discharge may be refused, suspended or granted conditionally**

- (a) the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible;
- (b) the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by the bankrupt and as sufficiently disclose the business transactions and financial position of the bankrupt within the period beginning on the day that is three years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;
- (c) the bankrupt has continued to trade after becoming aware of being insolvent;
- (d) the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities;
- (e) the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt's business affairs;
- (f) the bankrupt has put any of the bankrupt's creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against the bankrupt;
- (g) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, incurred unjustifiable expense by bringing a frivolous or vexatious action;
- (h) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, when unable to pay debts as they became due, given an undue preference to any of the bankrupt's creditors;
- (i) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, incurred liabilities in order to make the bankrupt's assets equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities;
- (j) the bankrupt has on any previous occasion been bankrupt or made a proposal to creditors;
- (k) the bankrupt has been guilty of any fraud or fraudulent breach of trust;
- (l) the bankrupt has committed any offence under this Act or any other statute in connection with the bankrupt's property, the bankruptcy or the proceedings thereunder;

- (m) the bankrupt has failed to comply with a requirement to pay imposed under section 68;
- (n) the bankrupt, if the bankrupt could have made a viable proposal, chose bankruptcy rather than a proposal to creditors as the means to resolve the indebtedness; and
- (o) the bankrupt has failed to perform the duties imposed on the bankrupt under this Act or to comply with any order of the court.

(2) Application to farmers – Paragraphs (1)(b) and (c) do not apply in the case of an application for discharge by a bankrupt whose principal occupation and means of livelihood on the date of the initial bankruptcy event was farming or the tillage of the soil.

Section 178

(1) Debts not released by order of discharge – An Order of Discharge does not release the bankrupt from:

- (a) any fine, penalty, restitution Order or other Order similar in nature to a fine, penalty or restitution Order, imposed by a Court in respect of an offence, or any debt arising out of a recognizance or bail;
- (a.1) any award of damages by a Court in civil proceedings in respect of:
 - (i) bodily harm intentionally inflicted, or sexual assault, or
 - (ii) wrongful death resulting therefrom;
- (b) any debt or liability for alimony or alimentary pension;
- (c) any debt or liability arising under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse, former common-law partner or child living apart from the bankrupt;
- (d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a Trustee or Administrator of the property of others;
- (e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;
- (f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the Trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;
- (g) any debt or obligation in respect of a loan made under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred:
 - (i) before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or

- (ii) within seven years after the date on which the bankrupt ceased to be a full- or part-time student; or
- (h) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g).

(1.1) Court may order non-application of subsection – At any time after five years after a bankrupt who has a debt referred to in paragraph (1)(g) ceases to be a full- or part-time student, as the case may be, under the applicable Act or enactment, the Court may, on application, Order that subsection (1) does not apply to the debt if the Court is satisfied that:

- (a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt; and
- (b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt.

(2) Claim released – Subject to subsection (1), an Order of Discharge releases the bankrupt from all claims provable in bankruptcy.

OFFENCES

Section 198

(1) Bankruptcy Offences – Any bankrupt who:

- (a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event,
- (b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act,
- (c) makes a false entry or knowingly makes a material omission in a statement or accounting,
- (d) after or within one year immediately preceding the date of the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,
- (e) after or within one year immediately preceding the date of the initial bankruptcy event, obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge,
- (f) after or within one year immediately preceding the date of the initial bankruptcy event, fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from the bankrupt, or
- (g) after or within one year immediately preceding the date of the initial bankruptcy event, hypothecates, pawns, pledges or disposes of any property that the

bankrupt has obtained on credit and has not paid for, unless in the case of a trader the hypothecation, pawning, pledging or disposing is in the ordinary way of trade and unless the bankrupt had no intent to defraud, is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both, or on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

- (2) Failure to comply with duties** – A bankrupt who, without reasonable cause, fails to comply with an order of the Court made under section 68 or to do any of the things required of the bankrupt under section 158 is guilty of an offence and is liable:
- (a) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or
 - (b) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

Section 199

(1) Failure to Disclose Fact of Being an Undischarged Bankrupt –

An undischarged bankrupt who:

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

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

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