



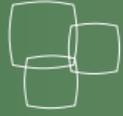
Office of the Superintendent  
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# Dealing with Debt

A Consumer's Guide



Canada 



Protecting the  
Integrity of the  
Insolvency System

Protéger l'intégrité  
du système  
d'insolvabilité

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# MANDATE AND MISSION

## OF THE OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY

The Superintendent of Bankruptcy is mandated to “supervise the administration of all estates and matters under insolvency legislation.”

To fulfill its legislative mandate, the Office of the Superintendent of Bankruptcy (OSB) has undertaken the mission “to contribute to a fair and efficient marketplace by protecting the integrity of the Bankruptcy and Insolvency system for the benefit of investors, lenders, consumers and public interest.”

The OSB intends to achieve this mission by concentrating its efforts on the following four strategic objectives:

1. maintain an efficient and effective regulatory framework;
2. promote awareness of the rights and responsibilities of the stakeholders in the insolvency system;
3. ensure trustee and debtor compliance with the legislative and regulatory framework; and
4. be an integral source of information on Canadian insolvency matters.

# INTRODUCTION

Many Canadians face a financial crisis at some time. Most debt problems are easy to solve. Others need professional assistance. The best way to deal with your financial problems is to admit to them and take control before they get out of hand.

This booklet can help you decide whether you have a serious debt problem. It also gives some suggestions for solving your difficulties and avoiding them in the future. The information in this booklet is meant for individuals only and does not apply to corporations.

Readers are reminded that this booklet is not meant to be used for legal purposes. Its only aim is to give information to individuals who are having financial difficulties.

# RECOGNIZE THE DANGER SIGNALS

You have a debt problem, or are going to have one, if:

- you continually go over your spending limit or you use your credit cards as a necessity rather than a convenience;
- you are always borrowing money to make it from one payday to the next;
- your wages have been garnished to pay for outstanding debts;
- you pay only interest or service charges monthly and do not reduce your total debt over many months;
- creditors pressure you for payment, threaten to sue or repossess your car, furniture or television, or hire a collection agency to recover the money for them; or
- utility companies cut off service because your bills have gone unpaid.

# POSSIBLE **SOLUTIONS**

## **Contact your creditors**

Explain why you can't make your payments and suggest making lower payments over a longer period of time. You may be surprised by how many creditors are willing to accept such arrangements.

## **Credit counselling**

Credit counselling services are available, but may be different from province to province. Contact a local family or community counselling office or a credit counselling association to find out how to get in touch with such a service. If you have difficulty making a budget and sticking to it, counselling may help you.

## **Debt consolidation loan**

You can ask a bank or financial institution about combining or "consolidating" your debts into one loan. In such a case, the bank or financial institution will pay off all your debts and, in return, you make single monthly payments to the bank or financial institution. Make sure to shop around because interest rates are different. It is important to stop buying on credit. Continuing to use credit could make your debt load too great for you to handle.

## **Consolidation order**

If you live in Alberta or Saskatchewan, you may apply for a consolidation order. A consolidation order sets out the amount and the times when payments

are due to the court. The court will distribute your payments to your creditors. This part of the *Bankruptcy and Insolvency Act* (Part X: Orderly Payment of Debts) lets you pay off your debts over three years and frees you from creditor harassment and wage garnishment. Unlike bankruptcy, you do not lose your assets.

## **Voluntary Deposit scheme**

For residents of Quebec, the Voluntary Deposit scheme (better known as the “Lacombe Law”) is similar to a consolidation order. You must make a monthly payment based on your income and number of dependants, to the court. This service is usually available at the local courthouse.

## **Consumer proposal**

Under the *Bankruptcy and Insolvency Act* you may make a consumer proposal to your creditors to reduce the amount of your debts, extend the time you have to pay off the debt, or provide some combination of both. Consumer proposals are explained in more detail on page 19.

## **Bankruptcy**

If none of the above methods solves your debt problem, you may choose to declare bankruptcy. Bankruptcy should be a last resort if you cannot meet your financial obligations through affordable payments over a specific period of time.

Bankruptcy is a legal process performed under the *Bankruptcy and Insolvency Act*. Because of your inability to pay your debts, you assign all of your assets, except those exempt by law, to a licensed trustee in bankruptcy. This process relieves you of most debts, and legal proceedings against you by creditors should stop. Bankruptcy is explained in more detail on page 23.

# WHAT YOU SHOULD KNOW

## **Administrator of consumer proposals**

An administrator of consumer proposals is a trustee in bankruptcy or a person appointed by the Superintendent of Bankruptcy. British Columbia (1-800-663-7867), Saskatchewan (1-306-933-6520) and Nova Scotia (1-902-424-7020) provide administration of consumer proposals. You may wish to contact the appropriate provincial department. With regard to trustees in bankruptcy, their names may usually be found in the Yellow Pages under the headings of “Bankruptcy” or “Trustees in Bankruptcy.”

## **Assets acquired during bankruptcy**

You must assign to your trustee all assets acquired during your bankruptcy, including lottery winnings and inheritances, so they can be divided among your creditors.

## **Assets and property**

In a bankruptcy, you must assign all your assets to the trustee, except for exempt property, such as basic furniture and tools-of-trade needed to make your living. Exempt property can vary from province to province. Your trustee can tell you what these are.

## **Bankrupt**

This is the legal status of a person who declares bankruptcy.

## ***Bankruptcy and Insolvency Act (the Act)***

This is the federal law that regulates bankruptcy and insolvency in Canada.

## **Bankruptcy Court**

This is a court in which a judge or registrar will decide on a bankrupt's application for discharge and other insolvency matters. Discharges are explained in more detail on page 26.

## **Co-signers**

Your bankruptcy does not cancel the responsibility of anyone who has guaranteed or co-signed a loan on your behalf. For example, if your parent co-signed a loan for you, that parent would be liable to pay the loan in full even if you decide to file for bankruptcy.

## **Creditor**

A creditor is a person, institution or business to whom you owe money. Secured creditors are creditors that have taken certain measures to protect themselves and hold a mortgage, pledge, lien or similar instrument on, or against, your assets. If secured creditors are not repaid, they can enforce their claims by recovering the assets on which they hold security.

Unsecured creditors are creditors that do not have any security for the debt owing to them.

## **Credit rating and re-establishment of credit**

Credit bureaus collect information about consumers' financial affairs and sell the information to their clients, such as credit lenders, employers and insurance companies. These agencies obtain information from various sources, for example:

- from the consumer who provides information when filling out an application for credit or a loan;
- from public records that provide information related to such matters as bankruptcy, court judgments and conditional sales contracts that are registered with provincial authorities;
- from credit lenders and collection agencies that provide credit files on a monthly basis. These files contain information such as the account number, the outstanding balance and a nine-point rating scale, indicating, for example: R1 — that payment was made on time; R2 — that payment was made 30–60 days late; and R9 — a bad debt or one that has been placed for collection (also applies to bankruptcy).

It should be noted that your credit rating is set by your creditors. Credit bureaus only pass that information on to their clients.

Generally, information concerning your bankruptcy could show up on your file for a period of 6 to 7 years after your discharge. If you have been bankrupt before, this period could be extended to as much as 14 years. This period could vary from one province to another.

The decision as to whether or not to grant credit to an applicant is made by the credit lender, not the credit bureau. It is the lender's individual credit scoring system that determines access to credit.

Should you wish to improve your credit rating after obtaining your discharge from bankruptcy, you could, for instance, contact your banker and request a meeting. For this meeting, you could bring your paycheque stubs, your budget and your discharge papers. You could explain that you have obtained your discharge and ask the banker how you can earn your way back to a good credit rating.

## **Debtor**

A debtor is a person who receives a loan or an advance of goods and services in exchange for a promise to pay at a later date.

## **Income tax returns**

You must complete two income tax returns for the calendar year in which you become bankrupt. The pre-bankruptcy return covers the period from the beginning of the year to the date of your bankruptcy. You will be required to provide your trustee with details and documentation to support this return. The post-bankruptcy return covers the period from the date of bankruptcy to the end of the calendar year.

Income tax refunds for both the pre- and post-bankruptcy periods become part of your bankruptcy.

## **Inspector**

Inspectors are appointed by creditors to represent them before the trustee during the administration of proposals and bankruptcies. They are expected to assist the trustee by virtue of their experience and are required to supervise certain aspects of the trustee's administration.

## **Insolvent person**

An insolvent person has a debt of \$1000 or more and is unable to meet financial obligations when they become due, or has ceased to do so, or whose total assets, if they were sold, would not be enough to pay for all of that person's financial obligations.

## **Legal action**

Although legal actions or most garnishments against you stop on the date you declare bankruptcy or file a consumer proposal, criminal actions and some civil matters, such as actions in matrimonial matters, are not affected by a bankruptcy or proposal. You must give the trustee or administrator copies of all legal documents that you have received before and after the date you became bankrupt or filed a proposal. In a proposal, no creditor can, without permission of the court, start or continue any legal action until the proposal is either withdrawn, refused or annulled, or until the administrator has been discharged. In the case of a bankruptcy, no creditor can, without permission of the court, start or continue any legal action until the trustee has been discharged.

## **Mediation**

Mediation is a way of resolving conflict between two or more individuals. In the context of a bankruptcy, an impartial and independent person — the “mediator” — will help the individuals involved in a dispute to settle their disagreement instead of going to court. Generally, the mediator is an employee from one of the Superintendent of Bankruptcy’s Division offices. Mediation is more flexible, speedier and less costly than formal court proceedings. It allows people affected by the bankruptcy to be directly involved in deciding how their disagreement will be settled.

In bankruptcy, mediation is available to resolve two types of disputes:

- i. when the trustee and the bankrupt are not in agreement with the amount that the bankrupt, who has surplus income, is required to pay creditors; and

- ii. when opposition to the discharge is based on the fact that the bankrupt has failed to comply with the requirement to make surplus income payments, or if the bankrupt could have made a viable proposal and has chosen bankruptcy rather than a proposal as a solution to debt.

When mediation takes place, the bankrupt and the trustee (or trustee's representative) must be present. If a creditor requests mediation, that creditor must also be present.

For more information on mediation, you may ask your trustee to provide you with a free copy of the brochure entitled "All About Bankruptcy Mediation" prepared by the Office of the Superintendent of Bankruptcy or you may consult the OSB's website at: [osb.ic.gc.ca](http://osb.ic.gc.ca).

## **Official Receiver**

The Official Receiver is a federal government employee in the Office of the Superintendent of Bankruptcy and an officer of the court with specific duties under the *Bankruptcy and Insolvency Act*. The Official Receiver, among other things, accepts the documents that are filed in proposals and bankruptcies, examines bankrupts under oath, and chairs meetings of creditors.

## **Payments and surplus income**

Immediately after becoming bankrupt, you should no longer be required to make payments to your creditors. However, you have a duty to inform your trustee of any material change in your financial situation, such as an income tax refund, a new job or the birth of a new family member.

The trustee determines whether you have any surplus income, taking into consideration the standards issued by the Superintendent of Bankruptcy, your total income, and your personal and family situation. Surplus income is the amount of total income a bankrupt receives that exceeds the amount needed to maintain a reasonable standard of living. If the trustee concludes that you have surplus income, the trustee will set the amount you must pay into the bankruptcy estate. This amount may be adjusted during the administration of your bankruptcy if there is a change in either your total income or personal or family situation.

The Superintendent of Bankruptcy's standards are set out in Directive No. 11, which is available on the OSB's website at: [osb.ic.gc.ca](http://osb.ic.gc.ca).

If you do not agree with the amount set by the trustee, the trustee must request mediation. Similarly, a creditor may request mediation if that creditor does not agree with the amount of the surplus income payment set by the trustee. If mediation does not resolve the dispute, the trustee, under certain circumstances, will have to apply to court to have the matter decided.

Failure to make the required payments may affect your discharge (that is, the date of your release from bankruptcy).

## **Pressure from creditors**

One of the objectives of the Act is to relieve you of pressure from your creditors. If you receive phone calls or letters from creditors, tell them that you are bankrupt, or have made a proposal, and refer them to your trustee or administrator of consumer proposals.

## **Superintendent of Bankruptcy**

The Superintendent of Bankruptcy is a federally appointed official by the Governor in Council who oversees the administration of estates under the *Bankruptcy and Insolvency Act* in Canada.

## **Trustee in bankruptcy**

A trustee in bankruptcy is a person licensed by the Superintendent of Bankruptcy to administer proposals and bankruptcies. The trustee represents your creditors and is an officer of the court. However, the trustee can give you information and advice about both the proposal and bankruptcy processes and make sure that your rights, as well as those of the creditors, are respected.

## WHERE TO GO **FOR HELP**

If you want more information on making a consumer proposal to your creditors, contact an administrator of consumer proposals — usually a trustee in bankruptcy. If you wish more information on declaring bankruptcy, you should contact a trustee in bankruptcy. The names of trustees and administrators of consumer proposals in your area are usually listed in the Yellow Pages under “Bankruptcy” or “Trustee in Bankruptcy,” or provincial government services. If you cannot secure the services of a trustee, contact the nearest Office of the Superintendent of Bankruptcy at Industry Canada (see Appendix II, on page 35).

# ASSESSMENT AND COUNSELLING

Before you decide whether to make a consumer proposal or declare bankruptcy, the administrator of consumer proposals or the trustee, as the case may be, will perform an assessment. The purposes of this assessment are to evaluate your financial situation, to explain the options available to you, and to discuss with you the merits and the consequences of your choice.

Should you decide to make a consumer proposal or declare bankruptcy, the *Bankruptcy and Insolvency Act* requires that counselling be provided to you. Counselling must be given by a counsellor registered with the Office of the Superintendent of Bankruptcy. Counselling consists of two sessions. During the first counselling session, you will be provided with information concerning money management, spending and shopping habits, warning signs of financial difficulties, and obtaining and using credit. In the second session, the counsellor will help you to discover and understand the causes of your insolvency or bankruptcy, and will assist you in establishing a rehabilitation plan by helping you to develop recommendations and alternatives for a financial action plan. You must attend these two sessions. Counselling may also be provided to someone who is related to you or has a financial relationship with you. If you feel that you need additional help or assistance, you may ask for a third counselling session.

If you made a proposal and refuse or neglect to use this service, the administrator of consumer proposals cannot issue a certificate of full performance of consumer proposal. If you declared bankruptcy and refuse or neglect to use this service, you will not be eligible for an automatic discharge.

# CONSUMER PROPOSAL

## **What is a consumer proposal?**

A consumer proposal is an offer made by a debtor to his or her creditors to modify his or her obligations to them. For example, you may propose to your creditors that you will pay a lower amount each month, but over a longer period of time. Or you may propose that your creditors accept being paid a percentage of what you owe.

## **How does a consumer proposal benefit you?**

Your unsecured creditors will not be able to take legal steps to recover their debts from you (such as seizing assets or garnisheeing wages) unless the proposal is withdrawn, rejected or annulled, or if the administrator is discharged before the proposal was fully performed. However, creditors may continue to pursue recovery of debts that would not be released by an order of discharge in a bankruptcy (except if the proposal explicitly provides for the compromise of such claims and the creditor votes in favour of the proposal).

## **Who can make a consumer proposal?**

Any natural person who is insolvent, including a bankrupt, whose debts do not exceed \$250 000, excluding a mortgage for the person's principal residence, can make a consumer proposal. When a bankrupt wishes to make a proposal, the proposal must first be approved by the inspectors and the bankrupt must have obtained the assistance of a trustee who will be the administrator of the consumer proposal. If the person's debts exceed \$250 000, the proposal will be made under Division I of Part III of the Act.

It is also possible to make a joint consumer proposal. Two or more consumer proposals may be joined where they could reasonably be dealt with as one proposal because of the financial relationship of the consumer debtors involved. It must be emphasized that joint consumer proposals can be made only if the total debt of all the consumer debtors does not exceed \$500 000.

### **How does someone make a proposal? What is the procedure?**

The procedure begins when you seek the help of an administrator who might be a trustee in bankruptcy or a person appointed by the Superintendent of Bankruptcy. This individual will assess your financial situation and give you advice about what kind of a proposal may be best for you and your creditors. The administrator will ask you to sign the required forms, which will then be filed with the Official Receiver.

### **What happens after a proposal is filed with the Official Receiver?**

Within 10 days after filing your proposal with the Official Receiver, the administrator is required to send the Official Receiver a report. The report contains the administrator's opinion about whether the proposal is fair and reasonable, and whether he or she believes you will be able to perform it. It also contains a list of your creditors.

At the same time, the administrator must send to each of your creditors a copy of your proposal, of your statement of affairs (which contains the list of your assets and liabilities; list of your creditors; information related

to your personal affairs; and budget information) and of the administrator's report on your proposal. If there is a meeting of the creditors, the administrator will ask the creditors to accept or reject the proposal.

### **How does a proposal get accepted?**

Your creditors will have up to 45 days to consider whether to accept or reject your proposal. A creditor may send a notice to the administrator accepting or rejecting the proposal. If creditors do not respond, they will be considered to have accepted the proposal. If a sufficient number of creditors accept the proposal, then it will become binding on you and your creditors, and you will have to meet its terms.

### **What happens if the proposal is rejected?**

If the proposal is rejected, you will no longer be protected by the Act. The administrator will, within 5 days, notify you, all your creditors and the Official Receiver of the rejection. Your creditors will now be able to take legal steps to recover their debts from you. If you were bankrupt when you made this proposal, the administration of your bankruptcy will continue.

### **What if my proposal is accepted, and I fully meet the terms?**

When the proposal is fully performed, the administrator must give a certificate of full performance to you and the Official Receiver, and you will be relieved of the debts that were in the proposal.

## **What if I stop making the payments and default on the performance of the proposal?**

If you fail to keep the terms of your proposal, it may be annulled or deemed annulled. If you were insolvent prior to making the proposal, you return to the same situation and your creditors would have a claim against you for the amount owed to them before the proposal, minus any amount you paid them during the proposal. If you were bankrupt when the proposal was made and then your proposal is subsequently annulled or deemed annulled, you will be considered bankrupt on the date of the annulment.

Administrators of consumer proposals are given discretion to “revive” a consumer proposal that would otherwise be *deemed annulled*. In fact, administrators can rectify the default by providing notice to the creditors. It is especially beneficial in situations where the debtor faces a temporary problem meeting payments, for example, due to illness or temporary unemployment, but otherwise is making good faith efforts to comply with the terms of the proposal. Also, courts have the power to make an order reviving a consumer proposal on any terms the court considers appropriate.

## **Does it cost anything to make a proposal?**

Yes. There is a filing fee to be paid to the Superintendent of Bankruptcy. In addition, the administrator is entitled to be paid. These fees are prescribed by the *Bankruptcy and Insolvency Rules*, which may be consulted on the OSB’s website at: [osb.ic.gc.ca](http://osb.ic.gc.ca).

# **BANKRUPTCY**

## **What is bankruptcy and what are the benefits to the debtor?**

Bankruptcy is a legal process, regulated by the Act, by which you may be discharged from most of your debts. The purpose of the Act is to permit an honest, but unfortunate, debtor to obtain a discharge from his or her debts, subject to reasonable conditions.

When you declare bankruptcy, your assets are given to a trustee in bankruptcy who then sells them and distributes the money among your creditors. Once you declare bankruptcy, your unsecured creditors will not be able to take legal steps to recover their debts from you (such as seizing assets or garnisheeing wages).

It is also possible to file a “joint assignment.” A joint assignment allows two bankrupts, involved in a close financial relationship, to file for bankruptcy together and to see their assets combined and their files dealt with as one file. This is available to debtors if their debts are substantially the same and the trustee believes it is in the best interest of the debtors and creditors.

## **What are the duties of a bankrupt?**

Once you are legally a bankrupt, you are required to perform the duties of bankrupts as outlined in Appendix I, which begins on page 29. The trustee will inform you of these duties.

## **How does one declare bankruptcy?**

First, you meet with a trustee in bankruptcy who will assess your financial situation and explain the options available to you as described earlier. If you decide to declare bankruptcy, the trustee will help you complete several forms that you will have to sign. You are considered a bankrupt only when the trustee files these forms with the Official Receiver.

## **What kind of forms will I have to sign?**

You will have to sign at least two forms. One is an “Assignment” and the other is your “Statement of Affairs.” In the assignment you state that you are handing over all of your assets to the trustee for the benefit of your creditors. In the statement of affairs you list your assets, liabilities, income and expenses. As well, you will have to answer several questions about your family, your employment and the disposition of your assets.

Before you sign the forms, make sure you understand these legal documents that become part of your bankruptcy file. Although the trustee prepares them from the information you provide, they are your statements. You are responsible for the accuracy of their contents. Review them carefully before you sign. Once these documents have been filed with and accepted by the Official Receiver, you become legally bankrupt and, at this point, the process cannot be reversed without a court order. Keep copies of notices and all other documents the trustee sends you.

## **What happens after the forms are filed with and accepted by the Official Receiver and I become bankrupt?**

Generally, a meeting of creditors is not necessary but there may be instances where such a meeting will be held. Creditors or the Official Receiver may request one. If a meeting of creditors is called, you must attend this meeting. You may also be required to go to the Official Receiver's office to answer several questions under oath about your financial affairs.

## **What happens at the first meeting of creditors?**

If a meeting is called, the trustee will give a report about your assets and liabilities and the creditors may ask you questions related to your financial file. The creditors will then vote to either confirm the trustee's appointment, or substitute a trustee of their choice. The creditors will then have an opportunity to vote for the appointment of inspectors. They may also give directions to the trustee related to the administration of the estate.

## **What does the examination with the Official Receiver involve?**

The Official Receiver may send you a notice instructing you to appear before him or her for an examination under oath. The Official Receiver will then ask you a number of questions about the causes of your bankruptcy, your conduct, the disposition of your assets and the nature of your debts.

## **When is a bankrupt discharged?**

If you are a first-time bankrupt, you will be automatically discharged nine months after the date of bankruptcy if you have no surplus income. You will be automatically discharged after 21 months after the date of bankruptcy if you are required to make surplus income payments to the estate.

For a second bankruptcy, you will automatically be discharged after 24 months after the date of bankruptcy if you have no surplus income and 36 months after the date of bankruptcy if you are required to make surplus income payments to the estate.

Bankrupts with personal income tax debt in an amount of \$200 000 or more representing 75 percent or more of total unsecured claims, are not eligible for an automatic discharge.

An automatic discharge happens only if notice of opposition to the discharge is not given by the Superintendent of Bankruptcy, the trustee or a creditor.

If notice of opposition to the discharge is given and it is based on the fact that the bankrupt did not pay the required amount of surplus income, or the bankrupt, who could have made a viable proposal, has chosen bankruptcy rather than a proposal as a solution to debt, the trustee must ask the Official Receiver for mediation.

If mediation fails to resolve the issue or if an opposition is filed for other reasons, the trustee will have to obtain a date for a court hearing. The parties opposing the discharge will have to give their reasons to the court, which will make a decision. It should be noted that a first-time individual bankrupt who refuses or neglects to receive the required counselling sessions will not qualify for an automatic discharge.

## **What kind of discharge orders can a judge or registrar issue?**

At a hearing for a discharge, the court decides whether to postpone the hearing to a later date, refuse the discharge or issue any of the following orders:

### **i. Order of Absolute Discharge**

This official document relieves you of the debts incurred before you declared bankruptcy, taking into consideration the exceptions provided in the Act.

### **ii. Order of Conditional Discharge**

The court may impose certain conditions that must be met before your discharge becomes absolute. For example, the court may require you to pay an amount to your trustee for distribution to your creditors.

### **iii. Order of Suspended Discharge**

The court orders a delay so that the discharge will not be effective until a certain date.

Your discharge may be delayed by an opposition by a creditor, the trustee or the Superintendent of Bankruptcy on such grounds as an ongoing criminal investigation or a breach of your duties as specified in the *Bankruptcy and Insolvency Act*.

## **What is the effect of a bankruptcy discharge?**

The bankrupt is released of most debts. Some debts are not released, however, such as an award for damages in respect of an assault; a claim for alimony, spousal or child support; any court fine; a debt arising out of fraud or misleading representation; or debts or obligations for student loans if the bankruptcy occurs while the debtor was still a student or within seven years after the bankrupt ceased to be a student.

## **How does bankruptcy affect employment?**

For the most part, bankruptcy should not affect your employment. However, there are some special cases. For example, you may have difficulty being bonded. Your trustee will be able to give you more information on other possible restrictions or prohibitions.

## **Does it cost anything to go bankrupt?**

Yes. There is a filing fee to be paid to the Superintendent of Bankruptcy. In addition, the trustee is entitled to be paid. These fees are prescribed by the *Bankruptcy and Insolvency Rules*, which may be consulted on the OSB's website at: [osb.ic.gc.ca](http://osb.ic.gc.ca).

# APPENDIX I

## Excerpts from the *Bankruptcy and Insolvency Act* concerning bankruptcies

### 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 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 such powers of attorney, conveyances, deeds and instruments as 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.

## BANKRUPTCY OFFENCES

### *Section 198*

#### 1. Any bankrupt who

- (a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event,
- (b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act,
- (c) makes a false entry or knowingly makes a material omission in a statement or accounting,
- (d) after or within one year immediately preceding the date of the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,
- (e) after or within one year immediately preceding the date of 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. 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.

## FAILURE TO DISCLOSE FACT OF BEING UNDISCHARGED

### *Section 199*

An undischarged bankrupt who

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

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

# APPENDIX II

## Division Offices of the Superintendent of Bankruptcy

### **NOVA SCOTIA**

Maritime Centre

1505 Barrington Street, 16<sup>th</sup> Floor

**Halifax**, Nova Scotia B3J 3K5

Tel.: 1-877-376-9902 | Fax: 902-426-7275

### **QUEBEC**

1141, Route de l'Église, 4<sup>th</sup> Floor

**Québec**, Quebec G1V 3W5

Tel.: 1-877-376-9902 | Fax: 418-648-4120

5 Place Ville-Marie, Suite 800

**Montréal**, Quebec H3B 2G2

Tel.: 1-877-376-9902 | Fax: 514-283-9795

### **ONTARIO**

Place Bell Building

160 Elgin Street, 11<sup>th</sup> Floor, Suite B-100

**Ottawa**, Ontario K2P 2P7

Tel.: 1-877-376-9902 | Fax: 613-996-0949

25 St. Clair Avenue E, 6<sup>th</sup> Floor

**Toronto**, Ontario M4T 1M2

Tel.: 1-877-376-9902 | Fax: 416-973-7440

Federal Building

55 Bay Street N, 9<sup>th</sup> Floor

**Hamilton**, Ontario L8R 3P7

Tel.: 1-877-376-9902 | Fax: 905-572-4066

Federal Building  
451 Talbot Street, Suite 303  
**London**, Ontario N6A 5C9  
Tel.: 1-877-376-9902 | Fax: 519-645-5139

### **MANITOBA**

400 St. Mary Avenue, 4<sup>th</sup> Floor  
**Winnipeg**, Manitoba R3C 4K5  
Tel.: 1-877-376-9902 | Fax: 204-983-8904

### **SASKATCHEWAN**

1945 Hamilton Street, Suite 600  
**Regina**, Saskatchewan S4P 2C7  
Tel.: 1-877-376-9902 | Fax: 306-780-6947

123 Second Avenue S, 7<sup>th</sup> Floor  
**Saskatoon**, Saskatchewan S7K 7E6  
Tel.: 1-877-376-9902 | Fax: 306-975-5317

### **ALBERTA**

Standard Life Tower  
639 Fifth Avenue SW, Suite 510  
**Calgary**, Alberta T2P 0M9  
Tel.: 1-877-376-9902 | Fax: 403-292-5188

Canada Place Building  
9700 Jasper Avenue, Suite 725  
**Edmonton**, Alberta T5J 4C3  
Tel.: 1-877-376-9902 | Fax: 780-495-2466

### **BRITISH COLUMBIA**

300 West Georgia Street, Suite 2000  
**Vancouver**, British Columbia V6B 6E1  
Tel.: 1-877-376-9902 | Fax: 604-666-4610



