

# Changes to Canada's Bankruptcy and Insolvency Act

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## HEADNOTE

### Consumer Proposals Just Got a Big Boost

The current law in Canada in relation to consumer (debtor) proposals is found in section 66.11 of the Bankruptcy & Insolvency Act (BIA). If a consumer's debt was under \$75,000 (excluding mortgage) a proposal

could be made to the creditors and if the majority accepted, they were bound to the term of the proposal. If the consumer's debts were more than \$75,000 then they fell under a Division 1 proposal, which cost a lot to administer, offered less to creditors and therefore had a good chance of being rejected. The other part of the law that increased the chances of rejection was the requirement that 50% plus one of the number of creditors and two-thirds of the dollar value of all creditors needed to accept the proposal. If the proposal was rejected, the consumer was automatically deemed bankrupt.

The new changes allow debtors who owe up to \$250,000 to file an informal proposal and if the majority rejects the proposal, there is no automatic bankruptcy. Only 50% plus one have to accept the consumer's proposal and that means the chances of getting the proposal accepted are better than a Division 1 proposal under the BIA. If the proposal is accepted, all wage garnishments are canceled. The changes to the BIA allow up to a five-year payback period and if the debtor misses one or two payments, the agreement is not annulled. Interest stops running on a debtor's debt as of the date the proposal is filed.

There are also safeguards to the assets of a debtor under the new changes with respect to retirement savings, called an RRSP or Registered Retirement Savings Plan in Canada. The new changes prevent creditors from seizing or sharing in the liquidation of an RRSP when a debtor files for bankruptcy. AU the debtor has to do is buy the RRSP or contribute toward a

RRSP at least one year and one day before filing for bankruptcy and these funds could not be touched by creditors. Finally, the other change of interest to lenders and secured creditors is the new priority that back wages have over all secured creditors. Back-wages owed to employees (up to \$2,000CN) will now have priority over all claims by secured creditors whether they are preferred, secured or priority creditors.

#### IMAGE PHOTOGRAPH<sup>1</sup>

In summary, once these amendments come into effect later this year, creditors will find some larger stumbling blocks in the way of their processes of collecting from consumers who choose to exercise their new rights under the BIA. You will find your legal actions and garnishments stayed and possibly find that you will receive a smaller portion of the outstanding debt over a longer period of time.

#### SIDEBAR

The new changes prevent creditors from seizing or sharing in the liquidation of an RRSP when a debtor files for bankruptcy.

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