

Recent Amendments to Canadian Insolvency Legislation



Recent Amendments to the Companies' Creditors Arrangement Act ("CCAA") and the Bankruptcy and Insolvency Act ("BIA") have introduced new provisions designed to encourage restructuring of viable businesses as an alternative to bankruptcy and to improve the protection for workers in bankruptcy.

Key amendments to the BIA include:

Creation of a super-priority for wages and unrelated pension contributions which would come before the claims of certain other creditors including secured creditors;

A reduction in the student loan debt discharge period; and

Protection of Registered Retirement Savings Plans ("RRSPs").

Wage Earner Protection Program Act ("WEPPA")

In addition to changes to the BIA, new legislation called the Wage Earner Protective Program Act ("WEPPA") was put in place which creates the Wage Earner Protection Program (WEPP). The WEPP provides for payment of outstanding wages, up to the greater of \$3000 or four times the maximum weekly insurable earnings under the *Employment Insurance Act*, to individuals whose employment is terminated as a result of bankruptcy or receivership. The term "wages" is defined to include salary, vacation pay, severance and termination pay. Trustees in bankruptcy and receivers are obligated by WEPPA to assist in administering the WEPP. The administration involves identifying individuals who are owed wages, determining the amount owed, notifying employees of their entitlement and providing WEPP administrators with information pertaining to the wage arrears owing to employees.

Wage Claims

In bankruptcies and receiverships, employee claims under WEPP are secured against current assets (i.e., cash, accounts receivable and inventory) up to \$2000 per employee. This limited super-priority over current assets ranks above claims of secured creditors but below the rights of unpaid suppliers to repossess goods. However, the super-priority ranks behind unremitted income tax, employment insurance and Canadian Pension Plan deductions which are deemed to be held in trust for various government agencies. Similar (though not identical) rights are afforded to employees in a receivership.

WEPPA and the amendment to the BIA provide that officers and directors are not entitled to the same kind of secured claim for wages. Officers and directors will continue to have a preferred claim in bankruptcy or receivership.

The trustee in bankruptcy or receiver may be personally liable to employees for claims to the extent of the amount realized from the current assets.

Pension Protection

The amendments to the BIA also provide a special priority claim over all assets of a debtor employer for the payment of normal pre-bankruptcy/receivership pension contributions, not including any unfunded pension liabilities, in a bankruptcy or receivership. Normal pre-filing contributions are amounts deducted from employee's remuneration for contribution to the pension plan and all unpaid employer's contributions. This limited super priority ranks below the rights of unpaid suppliers to repossess goods but ahead of the claims of secured creditors.

Student Loans

The waiting period before which a student loan may be discharged is reduced from 10 years to 7 years. The period before which an application may be made to the court to request a discharge on the basis of hardship is reduced from 10 years to 5 years.

RRSP Contributions

Amounts held in RRSPs are exempt from seizure in bankruptcy, subject to a possible claw back for contributions made in the 12 months preceding bankruptcy.

Conclusion

The new amendments and new legislation provide a more comprehensive system of claims and priorities in a bankruptcy or receivership representing an attempt to make a compromise between the rights of creditors and employees and to balance the interest of all parties in bankruptcy or receivership.

Please consult a lawyer before taking any action based on information contained in this article.

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