PERSONAL INSOLVENCY GUIDE

UPDATED FOR THE NEW BANKRUPTCY LAWS!
May, 2011

Earl Sands, MBA, CGA, CIRP, Trustee in Bankruptcy

- *Determine whether bankruptcy is right for you*
- *Learn about your other options so you can avoid bankruptcy*
- *Get the straight facts in plain English on all aspects of insolvency*

Personal Insolvency Guide

by

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The ***Personal Insolvency Guide*** was first published in 2005 by Self Counsel Press and sold in book stores across Canada for $12.95.
The ***Personal Insolvency Guide*** has been updated to reflect the new bankruptcy laws and other matters as of May, 2011 and is now published exclusively in MOBI and EPUB formats.

The book is written in clear non-technical English and is the most comprehensive book available on helping individuals deal with a financial crisis. The ***Personal Insolvency Guide*** gives the straight facts, in plain English, on all aspects of the insolvency industry so that individuals can make the best decision on how to get a **fresh financial start**.

About the Author

Earl Sands, MBA, CGA, CIRP, is a trustee in bankruptcy. He founded his bankruptcy firm in 1990. When he sold his practice in late 2001, his firm had six offices and was handling the largest number of personal bankruptcies and proposals in British Columbia.

His interest in bankruptcy goes back to 1981 when he wrote his MBA thesis on bankruptcy prediction.

He served on the Canadian Association of Insolvency and Restructuring Professionals (CAIRP) committee that developed the CAIPR website and contributed to the personal bankruptcy training course material that is studied by would-be trustees in bankruptcy.

He also operates one of the best resources on the Internet in regards to bankruptcy in Canada; **www.BankruptcyCanada.com**.

Introduction

It was the spring of 1990 and I had just opened my insolvency practice. It was decided that our firm would be a full service insolvency firm; providing services as receivers and managers for secured creditors such as banks and acting as trustees for small business and individuals going into bankruptcy or filing proposals.

There was only one problem! Although I was a full-fledged trustee, trained in all theoretical aspects of insolvency, I had never actually handled a personal bankruptcy or a personal proposal, because all my work had been in commercial insolvencies.

Thankfully, we had hired Doris Bianchi, who never ceased to amaze me with her capacity to know when and how every one of the myriad forms was to be made out and filed.

That was my start on a journey of learning and great job fulfillment. I discovered that my ignorance of practical experience in personal bankruptcy and personal proposals was actually an advantage. Every situation had to be thought out logically and in the process we came up with many innovative ways of helping debtors and creditors.

The most lasting and significant thing I learned was that people filing bankruptcy or a proposal were not trying to beat or scam the system and were not crooks. They were victims of too much debt mostly because of some unexpected tragic event in their lives. Perhaps it was a lost job, an illness, a divorce or a failed business.

Some people also succumbed to human foibles such as students taking on too much debt and then not being able to get a job paying enough to pay off the debt or people gambling or not paying their taxes.

Since I opened my practice in 1990 there have been tremendous changes in the insolvency field. Bankruptcies have more than doubled. More and more credit-counselling firms have opened up for business, fuelled by the debtors' desires to do almost anything to avoid going bankrupt. Credit grantors, in an attempt to dissuade people from filing bankruptcy, have also joined in with financial support of "non-profit" credit counselling companies.

It is no wonder that debtors are confused and often misinformed.

This book's purpose is to help individuals decide the best way to get control of their debt. We make no moral judgements. We give the straight facts, in plain English, on all aspects of the insolvency industry so that individuals can make the best decision on how to get **A Fresh Financial Start**.

1. The New Bankruptcy Laws

When Discharged or out of bankruptcy (Effective September 18, 2009.)

- 9 month automatic discharge for 1st. time bankrupts who fulfill all their duties and **who do not have excess income.** (Required monthly payment of less than $100.00 per month)

- 21 months (or more at the court's discretion) for 1st. time bankrupts who fulfill all their duties. and **who have excess income**. (Required monthly payment of $100.00 per month or greater)

-24 months for 2nd time bankrupts who do not have excess income. (Required monthly payment of less than $100.00 per month)

-36 months for 2nd time bankrupts who have excess income. (Required monthly payment of $100.00 per month or greater)

-Bankrupts with personal income tax debt of $200,000.00 or more representing 75 percent or more of total unsecured claims, are not eligible for an automatic discharge. They must go to court for an adjudication.

Our website has a calculator which will do this calculation for you: Mobile Site: http://mobile.bankruptcycanada.com/BankruptcyTermPredictor.php **Full Site:** http://www.bankruptcycanada.com/BankruptcyTermPredictor.php

RRSPs and RRIFs are exempt from seizure (Effective July 7, 2008)

RRSPs and RRIFs are exempt from seizure for all provinces and territories.

Contributions made in the year prior to bankruptcy will be recovered (clawed back) for the bankruptcy estates in the case of RRSPs in provinces ***without*** RRSP exemption laws;

There will be no upper cap on the amount of RRSPs that can be protected;

There will be no need to set up the RRSPs in a locked in plan to make them eligible for exemption;

Note: The court will have no jurisdiction to extend the one year claw back period. Contributions made in the year prior to bankruptcy cannot be recovered (clawed back) for those provinces that have enacted exemption laws for RRSPs; Saskatchewan, Manitoba, Quebec, Prince Edward Island and Newfoundland and Labrador.

High Income Tax Debt - *(Effective* September 18, 2009.)

Bankrupt individuals with more than $200,000 in personal income tax debt representing 75 percent or more of their total unsecured liabilities will not be eligible for an automatic discharge. GST debt is not included, only personal income tax debt. These individuals will have to seek a Court order to be discharged of their debts.

The court hearing cannot be held until after:

9 months from the date of bankruptcy if a first time bankrupt and there is no requirement to pay surplus income;

21 months from the date of bankruptcy if a first time bankrupt and there is a requirement to pay surplus income;

24 months from the date of bankruptcy if a second time bankrupt and there is no requirement to pay surplus income;

36 months after the date of bankruptcy if a second time bankrupt and there is a requirement to pay surplus income;

36 months after the date of bankruptcy in the case of any other bankrupt.

The court is to consider four factors in setting discharge terms:

1. Circumstances of bankrupt when debt was incurred;
2. Efforts made to pay debt;
3. Payments made to other creditors;
4. Bankrupt's future prospects.

If the court suspends the discharge, the bankrupt is required to file income and expense statements with the trustee each month and to file all returns of income required by law.

Dollar Threshold for a Consumer Proposal is Raised - (Effective September 18, 2009.)

A Consumer Proposal is filed by an individual and can include consumer and commercial debts, excluding debts secured by the individual's principal residence, up to a value of **$250,000.**

For debt greater than this amount a Division I Proposal can be filed.

Student Loans - (Effective July 7, 2008)

Student loan debt will be eligible for discharge in bankruptcy if seven years have passed since the former student ceased to be a full or part time student. The Court has interpreted the meaning of ceased to be a full or part time student in section 178(1) (g) to not include periods of time when the bankrupt was a student but received no student loans. (*Re Ledoux*, 2005 SKQB 75, 8 C.B.R. (5th) 225)

This applies to debtors who file bankruptcy on or after July 7, 2008 and to debtors in bankruptcy but not discharged as at July 7, 2008.

In the case of a debtor, with student loan debt, who is paying on a proposal and now is within the 7 year period he should talk with his trustee and be advised how to proceed to have the student loan debt discharged.

In addition, in cases of undue hardship, a bankrupt may apply to the Court to obtain the discharge of the student loans after five years. For the Court to discharge on hardship grounds, it must be satisfied that the debtor has acted in good faith and is expected to continue to experience financial difficulties.

Note: The "hardship provision" will be available to those people whose date of bankruptcy was prior to the coming into force of this provision.

Wage Earner Protection Program Act (WEPPA)* and Regulations. *(Effective July 7, 2008)

The *WEPP* will compensate individuals for amounts earned, but not paid, during the six months preceding the bankruptcy or receivership of their employers under the BIA. The WEPP will help protect workers by providing a guaranteed payment of a maximum of $2,000 in respect of wages, salaries, commissions, vacation pay, severance pay, termination pay or compensation for services rendered, and up to $1,000 in respect of disbursements owing to travelling salespeople incurred should their employer declare bankruptcy.

NOTE: The requirement to pay severance pay and termination pay went into effect on January 27, 2009.

Cancelling contracts if a person file bankruptcy; (Ipso Facto Clauses) (Effective September 18, 2009.)

Cancellation of contracts is not allowed in the case of consumer proposals and bankruptcy.

For consumers, the primary concern over ipso facto clauses relates to basic services, such as telephone, gas, electricity and leases

2. Debt - “The Good, The Bad, and The Ugly."

Debt is not bad in of itself. In fact, consumer debt has been one of the great dynamic factors in the Canadian economy. Governments encourage consumers to consume because we need a high level of domestic consumption for both stability and growth.

Today, Canadian consumer debt is at historic high levels. In 2010, 59% of Canadians indicated they would have difficulty making financial ends meet if their pay cheque was delayed by only a week. One in ten state they could not handle an unexpected expense of $500. Perhaps most startling is the fact that 63% feel their debt limits their ability to reach their personal and financial goals such as going back to school or saving for retirement.

According to a stress test scenario by the Bank of Canada, it would take only a 0.5% increase in interest rates for 1.1 million Canadian households to become at risk of defaulting on their consumer credit or mortgage-related debt. Projected income increases will be insufficient to offset the increases in debt payments that will occur with even such a small increase in interest rates.

Good debt is the kind of debt that helps us lead a better, more rewarding, life sooner than if we had to first save all the money to purchase a particular commodity. Not many of us could afford to buy a house or a car if we could not borrow money to do so. Debt incurred to start a business or to pay for education is also considered to be good debt.

Bad debt is debt incurred for short-term pleasure, such as a trip, expensive jewellery, or clothes. Ugly debt is debt you cannot pay off quickly. It continues to bear a high rate of interest -- in some cases, up to 21 percent.

Any debt can be an ugly debt if you let it take control of you. For example, a debt incurred for education can turn into an ugly debt if you do not complete your course of studies or you complete your course of studies but cannot earn enough money to service and then pay down the debt. Using your credit card to finance a major purchase such as furniture can also turn into an ugly debt very quickly if you cannot make the payments.

What is a credit rating?

We all know how important it is to have a good credit rating. It enables you to get a credit card, buy a car, buy a home, rent a home, and borrow funds to tide you over in an emergency. In some cases, it can even help you to get a job. But who determines your credit rating and how does it work?

Credit reporting agencies or credit bureaus collect information about consumers' financial affairs and sell that information to their business members, such as credit grantors, employers, and insurance companies. The credit bureaus charge annual fees, as well as a fee for each credit report requested by members.

Credit bureaus get their information from three major sources:

Consumers supply information, primarily from filling out application forms for credit. Credit grantors supply this information to the credit bureaus when they request a credit report on the person.

Public records provide information on such matters as bankruptcies, court judgements, foreclosures, and agreements registered with provincial authorities.

The major credit grantors and collection agencies send their credit files electronically to the credit bureau every month, resulting in files for each consumer that include the account number, outstanding balance, and a nine-point scale indicating whether a payment was made on time or late.

In Canada, there are three major credit bureaus. Most national and international creditors, such as banks and department stores, are registered with all three. So the chances are good that whatever shows up on the credit report from one bureau will also appear on the others. This makes it simple for you to check your history, as you only have to check one bureau's records.

Credit rating scales

There are a number of different credit rating scales in existence. We'll look at the two most popular ones; the nine-point rating scale and the FICO Score.

Nine-point credit rating scale

The nine-point credit rating scale is used to indicate whether a payment was made on time or late.

0 Too new to rate; approved but credit has not been used.
1 Pays (or paid) within 30 days of billing; pays account as agreed.
2 Pays (or paid) in more than 30 days but not more than 60 days, or one payment past due.
3 Pays (or paid) in more than 60 days but not more than 90 days, or two payments past due.
4 Pays (or paid) in more than 90 days but not more than 120 days, or three or more payments past due.
5 Account is at least 120 days overdue, but is not yet rated 9.
6 (Code 6 does not exist.).
7 Making regular payments under a consolidation order or similar arrangement.
8 Repossession (indicate if it is a voluntary return of merchandise by the consumer).
9 Bad debt; placed for collection; skip.

FICO score

The FICO Score was developed by Fair Isaac and Company, the pioneers in credit scoring. It is a snapshot of your credit rating at a particular point in time. Lenders use a number between 300 and 850 to determine your credit rating. The higher your FICO score, the more likely you are to be approved for loans and receive favourable rates.

Your FICO score breaks down as follows:

35% of the score is determined by payment histories on your credit accounts, with recent history weighted a bit more heavily than the distant past;

30% is based upon the amount of debt you have outstanding with all creditors;

15% is produced on the basis of how long you've been a credit user (a longer history is better if you've always made timely payments);

10% is comprised of very recent history, based on your efforts to obtain loans or credit lines in the past few months;

10% is calculated from the mix of credit you hold, including installment loans (like car loans), leases, mortgages, and credit card.

How can I check my credit rating?

The three major credit bureaus in Canada are required by law to provide any consumer who makes a request with a report of their credit rating. You must apply in writing, making sure you include all the information contained on the form. As we mentioned above, most national and international creditors are registered with all three Canadian credit bureaus, so you should only have to check one bureau's records.

You can get a free copy of your credit report mailed to you. Equifax say they will process the credit report in five to ten days. You can get your credit report online immediately for a cost of approximately $14.50. You can access the forms online at:
http://www.bankruptcycanada.com/creditreport.htm

Here is the contact information for the credit bureaus:

Equifax Canada
Consumer Relations Department
Box 190 Jean Talon Station
Montreal, Quebec
H1S 2Z2
Phone #: 1 800 465 7166
Fax: 514 355 8502
http://www.equifax.com/EFX_Canada/

NCB Inc. - Northern Credit Bureaus Inc.

336 Rideau Boulevard
Rouyn Noranda. QC
J9X 1P2
Toll Free/Fax: 1 (800) 646-5876
http://www.creditbureau.ca/

TransUnion Canada - TransUnion
P.O. Box338, LCD1
Hamilton, Ontario
L8L 7W2

http://www.tuc.ca/

For residents of Quebec:

Trans Union (Echo Group)
1600 Henri Bourassa Boul. Ouest
Suite 210
Montreal, QC H3M 3E2
Toll free: 1-877-713-3393

What happens to my credit rating if I declare bankruptcy or file a proposal?

Credit bureaus have strict policies regarding how bankruptcy and proposal information is treated on your credit file:

Purging bankruptcy files. The data included in the bankruptcy will be purged from your credit file six years from the date of the last activity. If the consumer declares several bankruptcies, the system will keep each bankruptcy for fourteen (14) years from the date of each discharge.

Purging proposal files or credit counselling payment plans. The data will be purged from your credit file three years from the date of the satisfaction of the proposal or satisfaction of the credit counselling plan.

Bankruptcy discharge. There is no change to data already appearing on the file following the posting of a bankruptcy or a discharge.

Listing balances of debts. The data that the credit grantor provides is on tape, and the credit bureau simply records the balance shown by the credit grantor.

How are consumers' rights protected?

Credit bureaus share information with each other and with their business members through a system known as the National Equifax Network. The network observes strict standards governing reporting of adverse information and purging of credit reporting records.

There is also a Registrar of Credit Reporting Agencies, which governs credit bureaus. This provincial government body oversees Consumer Reporting Agencies. If you have a problem, which you cannot resolve with the Credit Reporting Agency you can contact the Registrar of Consumer Reporting Agencies.

Protection for Ontario residents effective January 1, 2008. (See Bill 152)

Effective January 1, 2008 a consumer will be able to require a consumer reporting agency to include an alert in the consumer's file warning persons to verify the identity of any person purporting to be the consumer. The consumer reporting agency will be required to give the alert to every person to whom information from the file is disclosed.

Equifax has advised that if a consumer requests the alert notification they will post the following in the Consumer Statement segment:

****** WARNING ****ALERT TO VERIFY CONSUMER'S IDENTITY - PLEASE CONTACT CONSUMER AT (000) - 000-0000 BEFORE EXTENDING CREDIT**

The Credit Reporting Act protects several rights of consumers in the following ways:

Reports may only be given to a person seeking information for the purpose of extending credit or collecting a debt, or for a tenancy inquiry, employment or insurance verification under authority granted by a government statute or as a direct business requirement.

Before a person may obtain a report, she or he must have the consumer's consent in writing, or notify the consumer of the request by mailing a notice postmarked at least three days before obtaining the report.

If a consumer is denied credit or has an increased cost as a result of information obtained in a credit report, the person must be notified promptly by the person requesting the credit information.

A consumer has the right to see his or her file and has a right to receive a copy of any report.

Every consumer has a right to place a 100-word statement (50 recommended) on the credit bureau file, to be given to anyone who obtains a report. This statement is used to give your side of a credit reporting issue.

For example, if you had to file bankruptcy because you purchased a leaky condo and could not afford your share of the repairs (Typically about $30,000 for a condo which has also dropped in value) you could place a statement to this effect. You may have had a dispute with a creditor over a warranty they are not honouring. You can give your side of the story in the statement.

You should only have to place the statement with one of the credit bureaus but it is a good idea to get a credit report from all the credit bureaus to ensure your statement has been placed.

3. Taking Control of your Debt

You can download an Excel personal budget at this link: **Budgeting Spreadsheet.**

Warning signs of a financial problem

There are many warning signs that you might be in financial difficulties. Perhaps you find it difficult to pay your bills every month or credit collectors are calling you at work. The first step to recovering your financial health is to recognize some of the warning signs. Let's do a quick assessment of your financial situation by answering the questions below. Answer the questions as accurately and honestly as you can. If you answer "Yes" to any of the questions there, you may have a financial problem and should definitely continue reading this book. Remember, not all financial problems need to result in bankruptcy. Later in this chapter, we look at some other ways you can take control of your debt.

Do You Have a Financial Problem?

If you answer "yes" to any of these questions, you may have a financial problem and should seek financial advice as soon as possible.

- Are you making only minimum payments on your credit cards?
- Are you having difficulty paying your monthly bills regularly and on time?
- Are you using your overdraft most months?
- Are you uncertain how much you owe in total?
- Are you using credit because you don't have the money for everyday expenses?
- Do arguments about money cause problems in your family?
- Are you charging more each month than you pay on credit?
- Are you over your borrowing limit on your credit cards, overdraft, or line of credit?
- Are credit collectors calling you?
- Are you considering consolidating your debts?

Assessing your financial situation

Taking control of your debt is like breaking any other habit, such as smoking. The first and most difficult thing to do is convince yourself that you really want to control your debt! If you really want to do so, I guarantee that you can do it.

Consider Bill's story. Bill is 28 years old, single, with a well-paying job. He has lots of debt and financially is just limping along. He has a big car loan, lots of credit card debt, and a poor credit rating. Bill always paid lip service to getting control of his debt but never really got serious about it.

Then one day Bill became really motivated about taking charge of his debt. What happened? Bill met Shirley and after a few dates he knew this was the woman for him! He started to think of marriage, a house, and children.

Here is how Bill, with lots of help from Shirley, did it. They knew that in order to fix a problem they first had to understand it and identify how bad it really was. They wrote down all the debt Bill had incurred and the interest rate of each debt. Then, they identified all Bill's assets and

listed all of his income and expenses. Sounds like the dreaded "B" word doesn't it? **BUDGETING!**

We all hate budgets, but they are vital if you want to take control of your debt. Bill and Shirley persevered and set up a plan for Bill to have his debt under control within three years. Bill was surprised that once he was on the plan he and Shirley had set up, it wasn't that bad. In fact, he got a tremendous amount of satisfaction out of gaining control of his finances and setting up a solid plan for their future.

You can take the same steps as Bill did. Evaluate your personal financial situation and then take a look at some of the strategies in the next section for getting out of debt.

Twelve ways to get out of debt

Just as there are many different ways you can get into debt, there are a number of different solutions for getting out of debt. Here are some things to consider when you are wrestling with your debt problem. Which one you chose is your decision. There is a solution for everyone!

1. Do nothing

Many people are "judgement proof". This means they have income from welfare, Old Age Pension, or the Canada Pension Plan. This type of income is next to impossible to garnishee, except by Canada Revenue Agency (CRA) and in some cases, the law prohibits a garnishee. Many collectors will still contact these debtors, but there is nothing they can do to enforce collection. They can only verbally press the debtor for payment. Often setting up an unlisted telephone number will prevent calls. But be warned, a persistent creditor may be able to find out the unlisted telephone number.

2. Negotiate a compassionate write-off with creditors

You can have someone write to the collectors explaining your situation and the impossibility for you to repay your debt. Often, elderly persons or individuals with a terminal health condition, who have little income and few assets, may approach creditors and ask that they forgive or abandon the debts outstanding. This should be done in writing and make sure that all creditors respond in writing. If the creditor writes off the debt, your credit rating will be lost.

Debt owed to the Canada Revenue Agency can in some cases be reduced on compassionate grounds. CRA enacted fairness provisions in 1991 to allow for the cancellation, reduction, or waiver of certain penalties and interest owed. Usually exceptions are made when a debt is incurred due to circumstances beyond someone's control, such as:

- Natural or human-made disasters, such as flood or fire
- Civil disturbance or disruptions in services, such as a postal strike
- Serious illness or accident
- Serious emotional or mental distress, such as the death of an immediate family member.

3. Use your assets

If you have assets with some significant equity, such as a home or a car, you may be able to use these to get control of your debt. For example, you could get a loan on your home sufficient to pay off your debts. You could be saving a considerable amount of money on interest if you pay off high interest credit card debt in return for lower cost debt. If you have a car, consider selling it, paying off your debts and buying a cheaper car. Be careful though! You don't want a "cheaper" car that will cost you a fortune in repair costs.

4. Get a second job

Use the money from this job to only pay off your debts. Make a list of all your debts, noting the interest rates. Pay off the debts with the highest rates first and work your way down the list.

5. Put your credit cards on hold

One of the best steps you can take to get out of debt is to immediately stop using credit cards. At the very least, destroy all your cards, keeping just one card for emergencies.

6. Get a consolidation loan.

A consolidation loan can make lots of sense. Get a loan to pay off all your many debts and have just one payment to make. The new loan usually has a smaller payment and a lower interest rate.

7. Cut back on expenses

You will be surprised at how much money can be saved if you cut back on things such as smoking and eating out, just as two examples.

8. Use a credit counsellor

Credit counsellors can assist you in acquiring the discipline you need to get control of your debt. But be careful! Just because you have used a credit counsellor, does not necessarily mean you will get a better credit rating than if you declare bankruptcy, and in most cases, using a credit counsellor will be much more expensive than declaring bankruptcy. There are two types of credit counsellor, for profit and "non-profit." We do not distinguish between the two as they provide similar services and both charge a fee.

Before using a credit counsellor please read Chapter 12.

9. Use your province's orderly payment of debt system

Residents of some provinces such as Alberta, Saskatchewan, PEI, and Nova Scotia can apply for a Consolidation Order. This provision of the Bankruptcy and Insolvency Act allows you to pay off your debts, usually over a three-year period, and clears you from credit harassment and wage garnishment. You can contact the following offices for Orderly Payment of Debts information in your province:

Alberta:
Calgary: (403) 265-2201
Edmonton: (780) 423-5265
TOLL FREE 1-888-294-0076
info@creditcounselling.com

Saskatchewan:
Department of Justice, Provincial Mediation Board
Regina: (306) 787-5387
Saskatoon: (306) 933-6520
www.saskjustice.gov.sk.ca

Prince Edward Island:
Department of Community Affairs, Consumer, Corporate and Insurance Services
(902) 368-4580

Nova Scotia:
Access Nova Scotia, Department of Business and Consumer Services
Nova Scotia, Toll Free: 1-800-670-4357

10. Informal proposal

In some cases you can make a proposal to your creditors to set up a payment plan that will allow you to pay your creditors in an orderly way and thus help preserve your credit rating. This operates similar to a debt consolidation loan except you do not borrow the money to pay off your creditors. In a proposal, you may be able to pay less than 100 cents on the dollar. For example, a relative may be willing to pay a lump sum to the creditor of say 50% of the amount owed in order for the balance of the debt to be written off. This works best when there are very few creditors. This should be done in writing and all creditors should respond in writing. The credit rating will be lost.

11. File a proposal under the *Bankruptcy and Insolvency Act*

Under the *Bankruptcy and Insolvency Act*, a trustee files a Proposal or an arrangement between you and your creditors to have you pay off only a portion of your debts, extend the time you have to pay off the debt, or provide some combination of both. To be acceptable, your creditors must be better off under a Proposal than if you go bankrupt. Proposals have a number of advantages for the debtor under a great deal of pressure from his creditors. For example, once a proposal is filed, by law, creditors cannot take any action against you to collect any unsecured debt. Creditors are also prohibited from seizing your assets and garnisheeing your wages. See Chapter 17 for more information on proposals.

12. File for bankruptcy

Filing for bankruptcy is the ultimate solution to taking control of your debt. Once bankruptcy is filed, by law, creditors cannot take any action against you to collect any unsecured debt. Creditors are also prohibited from seizing your assets and garnisheeing your wages. Bankruptcy

allows you to get rid of your debt, and in most cases keep your assets.

A note about student loans

Student loans are treated differently in bankruptcy than all other debt. Student loan debt is eligible for discharge in bankruptcy if seven years have passed since the former student has terminated his/her studies.

In addition, in cases of undue hardship, a bankrupt may apply to the Court to obtain the discharge of the student loans after five years. For the Court to discharge on hardship grounds, it must be satisfied that the debtor has acted in good faith and is expected to continue to experience financial difficulties.

Note: The "hardship provision" is available to those people whose date of bankruptcy was prior to the coming into force of this provision on July 7, 2008.

4. Rebuilding your Credit Rating

You will be able to rebuild your credit so that 2 years after your discharge from bankruptcy you will be able to qualify for the most difficult credit of all; a mortgage.

When a person declares bankruptcy, the Office of the Superintendent of Bankruptcy notifies the credit bureau. Once you are discharged from bankruptcy, the Office of the Superintendent of Bankruptcy again informs the credit bureau. What happens to the information on your credit file once you have been discharged?

Credit bureaus have strict policies regarding how bankruptcy and proposal information is treated on your credit file:

Purging bankruptcy files. The data included in the bankruptcy will be purged from your credit file six years from the date of the last activity. If the consumer declares several bankruptcies, the system will keep each bankruptcy for fourteen (14) years from the date of each discharge.

Purging proposal files or credit counselling payment plans. The data will be purged from your credit file three years from the date of the satisfaction of the proposal or satisfaction of the credit counselling plan.

Bankruptcy discharge. There is no change to data already appearing on the file following the posting of a bankruptcy or a discharge.

Listing balances of debts. The data that the credit grantor provides is on tape, and the credit bureau simply records the balance shown by the credit grantor.

How to rebuild your credit rating

You can use some or all of the following techniques to start to re-establish your credit:

- Consider placing a 100-word note on your credit report explaining why you had to file for bankruptcy or a proposal. (See Chapter 1 for more information on this strategy.)
- Talk to your banker and say you want to re-establish your credit rating.
- Open a savings account. Be a regular and persistent saver. Use the common techniques I am sure you have heard of:
- Pay yourself first.
- Take your next raise and save it.
- Save 5 percent of your pay.
- Have your savings come right off your pay cheque and go into a separate savings account.
- Take out a small loan using the savings account as collateral, and then pay it back.
- Get a secured credit card. When a person goes into bankruptcy he or she has to hand in all credit cards to the trustee. After that person has been discharged from bankruptcy, he or she is often a good credit risk, however often has a difficult time getting a new credit card.
    - An option is to request a secured card from your financial institution. A secured card is backed up or secured by funds you have

deposited with the bank or credit union. The card looks like a credit card and acts like one but will have a limit depending on the amount of money that secures the card.

- Purchase a car on credit. The best place to borrow is from a bank or credit union because the interest will be fairly low. The worst place to borrow is from a dealer as the interest will be high. You may have no choice in this matter. Almost all applicants who borrow from the dealer are approved albeit at a high interest rate. This type of loan will help to re-establish your credit.

- Pay your credit card balances and loans on time.

- Check your credit report periodically and correct any errors. (See Chapter 2.)

How to get credit after bankruptcy

After you have been discharged from bankruptcy or completed your proposal, you may be a good credit risk, since you have no debt. Naturally, you will find it a little harder to get credit until you can re-establish a good credit rating.

You can get credit again after a bankruptcy or a proposal. The bankruptcy and proposal laws of Canada are intended to give you a fresh financial start. The ability to rebuild credit is part of that new start. You should be able to get the hardest credit of all; a mortgage, two years after your discharge from bankruptcy or the satisfaction of your proposal.

Although bankruptcy will stay on your credit report for 6 years after your discharge and a proposal for 3 years after the proposal is satisfied, there are many things you can do to start building a good credit rating. Two of the most important things you can do are to borrow money responsibly and make your payments on time.

- Once you are discharged it is essential that you check your credit information and correct any errors. You can get a copy of your credit report via this site:

  http://www.bankruptcycanada.com/creditbureau1.htm

- Get a Secured Credit Card after bankruptcy or a proposal. Approval is virtually guaranteed:

  http://secured-credit-cards.canadian-after-bankruptcy-lenders.bankruptcy.tel/

- Get a Mortgage after bankruptcy or a proposal. BankruptcyCanada.com has After Bankruptcy Lenders all across Canada:

  http://provinces.mortgages.canadian-after-bankruptcy-lenders.bankruptcy.tel/.

- Get a Vehicle loan after bankruptcy or a proposal. BankruptcyCanada.com has After Bankruptcy Lenders all across Canada:

  http://provinces.auto-loans.canadian-after-bankruptcy-lenders.bankruptcy.tel/

5. Bankruptcy and Proposals; The Big Picture

Bankruptcy is a legal proceeding that enables an insolvent person to cope with a financial crisis by relieving the person of his or her financial obligations. To be insolvent means you owe at least $1,000 and are not able to meet your debts as they are due to be paid (your liabilities exceed your assets and/or ability to pay debt).

Bankruptcy is often a last resort for those with debt problems because they lose control over their bank accounts and future financial options and the process can negatively affect their credit rating.

A proposal enables a debtor to restructure his or her affairs, often allowing for an extension of the time for payment of debts. If a proposal is done in accordance with the *Bankruptcy and Insolvency Act*, it allows a debtor to restructure his or her affairs without having to get the consent of each of his creditors.

In this chapter, we will look at how bankruptcy and proposals developed in Canada and why they are a necessary part of our society and economy.

Where bankruptcy began

Critics of bankruptcy often give the impression it is a new invention. While there have been important changes to bankruptcy laws in recent years, there is nothing new about people and families suffering under the burden of extreme debt.

The word "bankrupt" is taken from the Italian word *bancarupta*, which means "bench broken" or "bank broken." It is believed this term alludes to the custom in the Medieval Ages of breaking a merchant's marketplace table upon failure to pay a debt. While the concept of "acts of bankruptcy" was developed in medieval Italy in response to insolvent traders, the concept of debt repayment is as old as civilization itself.

The *Code of Hammurabi*, attributed to King Hammurabi who ruled Babylon between 1792-1750 BC, contained one of the earliest attempts to set rules for settling debts:

If anyone fails to meet a claim for debt, and sell himself, his wife, his son, and daughter for money or give them away to forced labour: they shall work for three years in the house of the man who bought them, or the proprietor, and in the fourth year they shall be set free. **Hammurabi's Code of Laws** (ca. 1792 - 1750 BC)

Ancient Greece followed similar methods of debt repayment. However, by the 7th Century BC, the wealthy in and around Athens held so many of the poor in bondage that economic collapse and rebellion appeared likely. To avert potential disaster, the lawmaker Solon granted amnesty to many of those in bondage and outlawed contracts, which used a person's liberty as collateral for the debt.

Rome, in the 5th Century BC, studied Solon's reforms when it decided to codify its laws into the *Law of the Twelve Tables*.

Julius Caesar scaled down debts, enacted severe laws against excessive interest rates, and relieved extreme cases of insolvency by establish the laws of bankruptcy essentially as it stands today. ***45 BC - The story of Civilization, Caesar and Christ*** **by Will Durant.**

By the time Augustus ruled Rome (31 BC - 14 AD), a debtor could choose to give his property to his creditors, called a *cessio bonorum*, to avoid being seized himself. Due to worries about debtors who hid or squandered their property, by 379 AD, this method was only available to debtors whose insolvency was deemed to have been caused by an act of God.

Bankruptcy in modern-day Canada

From 1958 to 1971 in Canada, the consumer bankruptcy rate was at a fairly constant level, and, for a modern industrialized country, the rate was actually very low. For example, in 1968, Canada had 6 bankruptcies per 100,000 population, whereas the United States had 90.

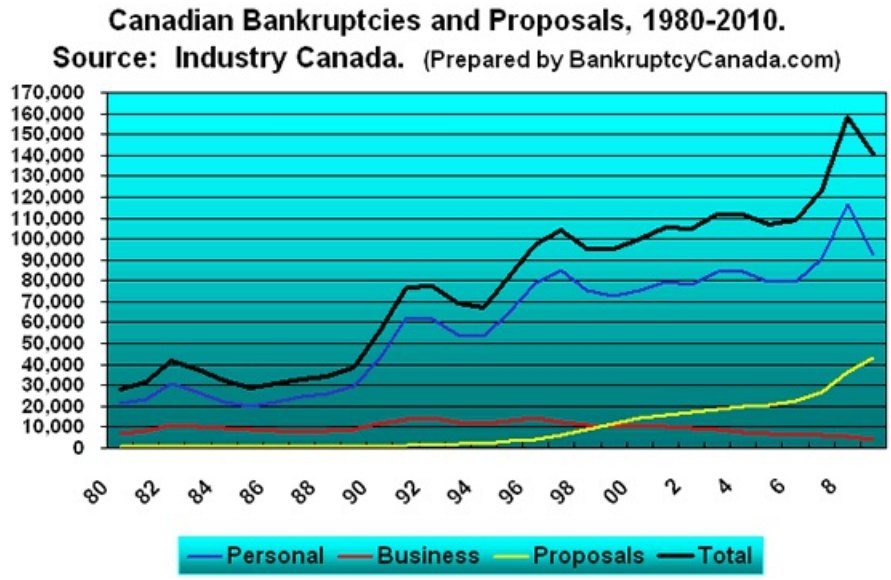
Substantive and procedural law benefits and protects landlords over tenants, creditors over debtors, lenders over borrowers, and the

poor are seldom among the favoured parties. (John N. Turner, Attorney General of Canada, in a speech to the Canadian Bar Association, December 7, 1969.)

However, many low-income people and families from coast to coast were trapped in impossible debt situations with no relief available. In 1972, in response to recommendations from a special joint committee of the Senate and House of Commons on consumer credit and a special Senate committee on poverty, the Federal Government started the Poor Debtors' Assistance Program. As a result, in the period from 1972 to 1981, the bankruptcy rate rose steeply.

In 1982 the severe worldwide recession caused consumer bankruptcies to jump dramatically from 23,000 in 1981 to more than 30,000 - an increase of 33 percent over the previous year. From 1983 to 1985, the bankruptcy rate in Canada fell in response to the strengthening economy. Since 1985, the consumer bankruptcy rate has risen steeply, hitting record numbers in 1997 and then declining slightly in 1998 and then rising again in 2001. Since 1990, the number of bankruptcies and proposals in Canada has more than doubled (see Chart).

In 2008, the consumer insolvency rate in Canada was 3.5 per 1,000 population. This compares with the US bankruptcy rate for the same period of 4.7 per 1,000 population. Saskatchewan has the lowest consumer insolvency rate of any region in Canada at 1.8 consumer insolvencies per 1,000 population, while the Atlantic provinces have the highest rate with 4.4 consumer insolvencies per 1,000 population. 2009 saw the highest number of insolvencies in history; the result of the world wide recession. In 2010 the insolvency rate declined by 11.5 % in response to the improved economy.



There are many theories to explain why the personal bankruptcy rate has been on the rise in Canada:

- The stigma of bankruptcy has lessened. This theory suggests that, because of wider knowledge of the use of the *Bankruptcy and Insolvency Act* amongst the general population and by specialists, such as Legal Aid, Community Counsellors, Credit Counsellors, and the legal profession, that more people decide to utilize bankruptcy for debt relief.

The rate of consumer bankruptcy is a function of the unemployment rate. This theory ties a rise in unemployment to an increase in the number of bankruptcies, and is supported by the experiences of the recessions of 1981/82, 1991/93 and 2008/09.

- The rate of consumer bankruptcy is a function of outstanding consumer credit. The people who postulate this theory fall into two sub-categories:

    - Those who look upon personal bankruptcy as a cost of doing business or a bad debt experience.
    - Those who might suggest that credit grantors are "authors of their own misfortune" for making credit "too easy."

My feeling is that the rate of consumer bankruptcy in Canada is under control. In a modern consumer society such as ours, with quite easy access to credit, we must accept the consequences of a certain number of bankruptcies. Canada's rate of consumer insolvencies is

considerably lower than in the United States (2007: 3.0/thousand vs. 3.7/thousand.

Why Canada needs bankruptcy laws

During the last 30 years, consumer debt has grown tremendously thanks to the increasing availability of credit cards and opportunities for debtors to take out second mortgages on their homes.

As we discussed in Chapter 2, debt is not bad in and of itself. In fact, consumer debt is required for both stability and growth in Canada.

However, society has recognized that it has a responsibility to those people who are unable to find solutions for debt repayment. Imagine if there was no debt relief. What would people hopelessly burdened with debt do? They would, without doubt, become part of the underground economy. They would not pay taxes. They could not accumulate assets and would be outcasts from society. This would not be good for them, their families, or society. The Canadian government has recognized this.

One of the main objectives of Canada's bankruptcy laws is to free people, who are hopelessly burdened with debt, so they can become contributing, tax-paying members of society.

Canada's bankruptcy laws have the following objectives:

- In the case of an individual, to permit an honest but unfortunate debtor to obtain a discharge from his or her debts.
- To provide for the orderly and fair distribution of property among the creditors.
- To allow an investigation to be made of the affairs of the bankrupt.
- In the case of an individual, to permit the rehabilitation of the bankrupt.
- To permit the setting aside of preferences, settlements, and other fraudulent transactions, so that all ordinary creditors may share equally in the administration of the bankrupt's assets.

Who files for bankruptcy or a proposal?

People, from all walks of life file for bankruptcy or a proposal.. In my practice I have had people in the following professions and trades file: teachers, carpenters, plumbers, housewives, doctors, nurses, lawyers, accountants, university professors, actors, labourers, airline pilots, truck drivers, students, airline stewards, mill workers, and more.

A study published in 1998, called *An Empirical Study of Canadians Seeking Personal Bankruptcy Protection* by *Saul Schwartz & Leigh Anderson of the* School of Public Administration, Carleton University, reported the following demographics about their sample of people filing for bankruptcy:

- 32 percent were under 30
- 59 percent were men
- For 28 per cent of the people under 30, student loans were 50 per cent or more of the overall debt
- 43 percent were married (or living in a common law arrangement)
- 29 percent were formerly married
- 28 percent were single
- 15 percent were unmarried and had at least one dependent under 21 years old (this group is 10 percent of the general Canadian population)
- Slightly better educated than the general Canadian population
- For 10 percent, student loans were more than 90 per cent of total debt
- Median household income in the sample was about $24,000, well below the median income of $37,130 for all Canadian families and unattached individuals
- Those seeking bankruptcy protection were much poorer than the general population

- The unemployment rate was 9.5 percent in the general population but more than 25 per cent among the sample of those seeking bankruptcy protection.

As you can see, bankrupts can come from all walks of life and backgrounds. Now let's take a look in more detail at personal bankruptcy.

6. A Personal Bankruptcy Story

When John lost his job due to corporate downsizing, he wasn't too concerned about getting another job. He knew he was well trained and had good references. He was only 45 years old and knew he had 20 years of good job productivity ahead of him.

John is married with two children, ages 10 and 13. John's wife, Mary, had recently re-entered the job market doing office clerical work.

Six months later John was very worried. He still had no job. He had submitted scores of job applications and been on many job interviews. No one wanted to hire him at even close to his previous salary. His savings were gone and Mary's income was not enough to live on. They had started to use credit cards to meet their living expenses.

Another six months passed. John now had a job but he was only making half what he had made before the downsizing. Between he and Mary they were still making less than his salary before the downsizing.

John and Mary had cut back on their expenses in order to meet their living expenses, but now had a debt load of $30,000 spread over six bank and department store credit cards. Some of the cards carried interest of over 18 percent per annum, and John and Mary could not meet the payments.

Collectors started to call. One collector found out where John worked and was regularly calling him at work. John was afraid that if his employer knew he was getting collection calls at work he would lose his job. Worst of all, one creditor got a judgement against him and was threatening to garnishee his wages. John knew if this happened he would lose his job for sure. John felt so much stress that he could only sleep a few hours a night. People were commenting that he didn't look well.

Fortunately, John's best friend was aware of the problems and suggested that John and Mary make an appointment to see a trustee in bankruptcy. John and Mary filled out an information form outlining their financial situation and took it to their initial consultation with the trustee.

They were both nervous about meeting the trustee, but after only a few minutes with her they felt much more at ease. The trustee had got coffee for them and told them she needed a few moments to review the financial information they had brought in.

After about five minutes, the trustee finished reviewing the financial information and asked them some questions:

- Who was putting the most pressure on them?
- Have you listed all your debt and assets?
- Have you made any extraordinary payments to any creditors including family in the last year?

The trustee explained how bankruptcy worked and asked if they had any questions.

John said he was concerned about his credit rating and said he didn't want to go bankrupt and ruin his credit rating.

The trustee had heard this concern many times and gently pointed out that John's credit rating was already so bad that a bankruptcy wasn't going to make it worse. The trustee also reminded John and Mary that they had reviewed the Superintendent's excess income standards and their income was not enough to allow a proposal to be made. In fact, the Superintendent's excess income guidelines did not require John to make any payments from excess income. John was just required to pay the trustee's expenses and costs.

John said his next big concern was that his salary was going to be garnisheed and then he would lose his job.

The trustee told John and Mary that a bankruptcy would prevent a garnishee. The trustee suggested that John and Mary discuss what they felt they should do and then let her know. She reminded them that she could get a bankruptcy in place in a few hours and would phone the judgement creditor, to inform the creditor of the bankruptcy and prevent the garnishee.

John and Mary discussed what to do that evening. The next morning John phoned the trustee and said he would like to proceed as soon as

possible. The trustee asked if John could come in at lunchtime to sign the papers. John did this.

It is now 10 months later. John has been discharged from bankruptcy and all his debts have been written off. John was surprised at how smoothly the bankruptcy proceeded. The trustee did prevent the wage garnishee. Creditors did stop calling him for payment. He could now sleep better and concentrate on doing a good job at work.

He had been concerned about the creditors' meeting and thought of creditors grilling him but the trustee said that there would only be a meeting if a sufficient number of creditors requested it. No one did. He had submitted monthly budgets and made his required monthly payments, which over 9 months totaled $1,800. He had attended his two counselling sessions and that was it!

John knows that in six years the bankruptcy will be erased from his credit record. In fact, he has already started to rebuild his credit by getting a secured credit card.

7. What is Personal Bankruptcy?

One of the most powerful features of bankruptcy is that once the bankruptcy is filed all actions against the debtor are stopped. This includes garnishees, collection calls, bank accounts attachments and repossessions.

In Chapter 5 we learned that people from all walks of life file for bankruptcy. Individuals usually assign themselves into bankruptcy in order to get a fresh financial start. Some of the factors that lead to a bankruptcy are:

- More is owed than the assets and income can support.
- There are a large number of creditors, which makes it too difficult to attempt an informal proposal (see Chapter 3 for more information on informal proposals).
- The debtor is having his or her salary garnisheed or attached by one or more creditors, is being harassed by creditors, or is being constantly examined or having other proceedings taken against him or her.
- The debt cannot be paid off in any reasonable time.

Note that deceased persons and minors can also have themselves assigned into bankruptcy. A deceased person's estate might be placed into bankruptcy if there are not enough assets available to pay all the debt of the estate. The bankruptcy would allow the orderly payment of the creditors in the priorities established by the *Bankruptcy and Insolvency Act*. A minor might file for bankruptcy if for example he got into a car accident and from that is responsible for damages he has no ability to pay.

Types of personal bankruptcy

As we discussed in the previous chapter, personal bankruptcy is a legal proceeding that relieves an insolvent person of his or her financial debts. In Canada, personal bankruptcies are governed by the *Bankruptcy and Insolvency Act,* which allows for two types of bankruptcies:

1. A Summary Administration Bankruptcy is a bankruptcy where the bankrupt is not a corporation. Realizable assets of the bankrupt, after the claims of secured creditors are deducted, will not exceed $15,000. The vast majority of personal bankruptcies are Summary Administration bankruptcies.
2. An Ordinary Administration Bankruptcy is a bankruptcy that is not a Summary Administration Bankruptcy. An Ordinary Administration bankruptcy is for an individual where the assets will exceed $15,000 and ALL corporate bankruptcies.

Summary administration (or streamlined) bankruptcy

A summary administration bankruptcy (also known as a streamlined bankruptcy) deals with consumer bankruptcies where the realizable assets of the bankrupt, after the claims of secured creditors are deducted, will not exceed $15,000. The vast majority of personal bankruptcies are summary administration bankruptcies.

A summary administration bankruptcy has streamlined procedures that attempt to reduce the expenses related to the bankruptcy. These include the following:

- Notice of the bankruptcy is not required to be published in a local newspaper;

- All notices, statements and other documents are sent by ordinary mail;
- A first meeting of creditors is required to be called by the trustee only if it is requested within 30 days after the date of the bankruptcy by the Official Receiver or by creditors who have in the aggregate at least twenty-five per cent in value of the proven claims;
- There are no inspectors unless the creditors decide to appoint them. If no inspectors are appointed, the trustee administers the bankruptcy;
- Court attendance is kept to a minimum;
- Trustee's fees are set by a tariff and capped.

Ordinary administration bankruptcy

In an ordinary administration bankruptcy, the individual's assets will exceed $15,000**.** All corporate bankruptcies are also ordinary administration bankruptcies and must adhere to the full bankruptcy procedure as outlined in the *Bankruptcy and Insolvency Act*.

How a person goes into bankruptcy

There are two ways a person can go into bankruptcy. The first and more common way is to have the person make an assignment in bankruptcy (i.e., voluntarily go into bankruptcy). The second, and rarely used, way is for creditors to ask the court to make an order that a person is bankrupt.

In both these cases, a trustee in bankruptcy is required to administer the bankruptcy and you will need to make an appointment to see one. We discuss the role of the trustee and how to choose one in more detail in Chapter 10.

Meeting with the trustee

Before you meet with the trustee, he or she will likely ask you to fill out a form setting out your pertinent financial information. This makes the meeting more productive. You can find this fillable form at http://www.bankruptcycanada.com/BankruptcyForm.pdf.

The meeting lasts approximately an hour. The trustee or an administrator will review the debtor's financial information, explain any options, explain how bankruptcy or a proposal works, and answer any questions. This meeting is free. The meeting is non-judgemental and pressure free. Chapter 10 provides more detail about your first meeting with the trustee.

If there is an emergency such as a garnishee order in place that will take a portion of a person's pay cheque, the trustee can get a bankruptcy or an intention to file a proposal in place in a matter of a few hours. The bankruptcy or intention to file a proposal will stop the wage garnishee.

What happens next?

The debtor usually thinks things over a day or two before making up his mind. Once he decides to go bankrupt he will phone the trustee office and tell them he wishes to proceed. It only takes a day or two for the trustee to prepare the documents. The debtor will go to the trustee's office and sign the documents. The trustee will immediately file the documents with the office of the Superintendent of Bankruptcy. The debtor is bankrupt when the documents are filed.

Stay of proceedings

There are a number of immediate advantages for a person assigning himself or herself into bankruptcy because of the Stay of Proceedings that goes into effect immediately upon the bankruptcy being filed. The Stay of Proceedings protects the person filing bankruptcy as follows:

- Unsecured creditors are not allowed to take any collection action.
- Wage garnishees are stopped.
- Bank account attachments are stopped.
- Phone calls from creditors are stopped.
- Repossessions are stopped.

What happens during the bankruptcy?

The bankrupt must keep the trustee informed as to where he or she is living and also must respond to the trustee's requests and assist him as

required and provide whatever information is requested. The bankrupt must also provide the trustee with reports as to earnings and living expenses and any change in the bankrupt's family situation.

The trustee will provide the bankrupt with appropriate forms to be filled in that will provide the trustee with the necessary information. A meeting of creditors is not required unless requested by the Superintendent of Bankruptcy or creditors with an aggregate of at least 25 percent of the proven claims. These meetings are usually held at the office of the trustee.

How long will I be in bankruptcy?

Your discharge from bankruptcy will vary depending on whether you have excess income and whether you were previously bankrupt.

Bankruptcy Discharge Rules:

- 9 month automatic discharge for 1st. time bankrupts who fulfill all their duties and **who do not have excess income.** (Required monthly payment of less than $100.00 per month)

- 21 months (or more at the court's discretion) for 1st. time bankrupts who fulfill all their duties. and **who have excess income**. (Required monthly payment of $100.00 per month or greater)

-24 months for 2nd time bankrupts who do not have excess income. (Required monthly payment of less than $100.00 per month)

-36 months for 2nd time bankrupts who have excess income. (Required monthly payment of $100.00 per month or greater)

-Bankrupts with personal income tax debt of $200,000.00 or more representing 75 percent or more of total unsecured claims, are not eligible for an automatic discharge. They must go to court for an adjudication.

Creditors, the Superintendent of Bankruptcy or the trustee may oppose your discharge. Occasionally, creditors do object and the matter goes to mediation or is heard before a Registrar or a Judge. The discharge is usually granted where the bankrupt is only earning sufficient income to keep himself and his dependants reasonably provided for. It is the discharge of the bankrupt, with minor exceptions, that cancels the bankrupt's debts.

Bankruptcy time line

Although each person's situation may be different, there are certain key events in a straightforward bankruptcy.

Time line	**Key event**
Day 1	Initial consultation with the trustee office.
Day 3	Bankruptcy documents are signed and filed and the bankruptcy takes effect.
Day 10	The trustee mails the creditors notification of the bankruptcy.
Days 3 to 33	If the creditors who have in the aggregate at least 25 percent in value of the proven claims or official receiver wish a creditors meeting, they must notify the trustee within 30 days after the date of bankruptcy.
Days 13 to 63	First counselling session is held.
Each month	The bankrupt must submit budgets and required payments.
Days 33 to 213	Second counselling session is held.
Eighth month	The trustee reports on the conduct of the bankrupt and recommends whether a discharge should be granted. (S. 170 Report)

Ninth + month	Bankrupt is discharged. At this point the eligible debt is erased.
Tenth to 48th month	Trustee completes administration of the estate including processing tax returns and selling any assets.
48th month	Trustee applies for discharge upon the file being completed.

What happens after bankruptcy?

- Most debt is erased when a person is discharged from bankruptcy. However, the following debt is not erased:
- Fines imposed by a court
- Money owing for things stolen
- Things obtained by misrepresentation
- Alimony or maintenance payments
- Award of damages by a court for intentionally inflicting bodily harm or sexual assault
- Student loans if bankruptcy is filed prior to or within seven years after the finish of studies (see Chapter 1)

What does bankruptcy cost?

The government, in a straightforward bankruptcy (summary administration), regulates trustee fees, filing fees, and counselling fees. The trustee normally is paid out of the funds arising from the liquidation of the bankrupt's assets. If the bankrupt has no assets available, then the trustee will require a retainer or require the bankrupt, over time, to pay the trustee's fees and disbursements.

In the simplest cases this amounts to $1,800.00, which includes GST and counselling costs as follows:

O.R. Registration Fee	$75.00
Counselling	170.00
Disbursements	100.00
Tax on Counselling and Disbursements @ 12.0% HST	32.40
Trustee's Fees	1,263.75
Tax on Trustee's Fees @ 12.0% HST	151.65
Total	**$1,792.80**

The above assumes a first-time bankruptcy with the counselling sessions provided on an individual basis. Note that in Alberta, court filing fees are required to be paid so the cost will be an additional $50.00 plus taxes.

The above assumes HST of 12.0%. If GST or HST is different then the total will change.

The administration fees are taken from excess income payments. If there is no excess income, the bankrupt will make these payments usually monthly, so they are paid in full before the nine-month discharge date.

How excess income payments are calculated

These amounts are the monthly total surplus income of the bankrupt over the standards, from which the surplus income payment should be calculated.

Superintendent's Standards - 2011 -
Total Monthly Surplus

Persons	S ($)	Family Unit's Available Monthly Income ($)																	
		2026	2126	2226	2326	2426	2626	2826	3026	3226	3426	3526	3826	4026	4226	4526	4826	5126	5426
1	1926	100	200	300	400	500	700	900	1100	1300	1500	1700	1900	2100	2300	2600	2900	3200	3500
2	2398	0	0	0	0	0	228	428	628	828	1028	1228	1428	1628	1828	2128	2428	2728	3028
3	2948	0	0	0	0	0	0	0	0	278	478	678	878	1078	1278	1578	1878	2178	2478
4	3579	0	0	0	0	0	0	0	0	0	0	0	247	447	647	947	1247	1547	1847
5	4059	0	0	0	0	0	0	0	0	0	0	0	0	0	167	467	767	1067	1367
6	4578	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	248	548	848
7+	5097	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	329

(A minimum of approximately $200.00 a month,
for each of 9 months, is required to cover Bankruptcy Estate costs.)

The Superintendent's Standards ("S") are derived from the Low Income Cutoffs (LICO) released by Statistics Canada. The Superintendent uses the before-tax LICO for urban areas 500,000 people and over. The 2011 standards are updated by adding to the 2009 LICO, the 2010 Consumer Price Index (CPI) (1.84%) plus a 2.1% adjustment reflecting the 2011 CPI expectation.

Example (Family unit of 2):

Bankrupt's available monthly income:	$2,000
Other family unit member's available monthly income:	$1,000
Family unit's available monthly income:	$3,000
Minus the Superintendent's standard for a family unit of 2 as per Appendix A:	$2,398
Total monthly surplus income	$602
Bankrupt's portion of the family unit's monthly income (1,900 divided by 2,900 = 65.5 %)	
Payment required from bankrupt, as per paragraph 7(2)(a) of the Directive [($602 x 66.67 %) x 50 % = $201]	**$201**

(A minimum of approximately $200.00 a month, for each of 9 months, is required to cover Bankruptcy Estate costs.)

Where a person considered to be a member of the family who is not a bankrupt refuses or neglects to divulge his or her family income and expenses, the trustee will calculate the monthly payments excluding the non-bankruptcy spouse from the calculation but only allowing 50% of the applicable Superintendent's standards corresponding to the number of person in the family unit, including the spouse who would not divulge his or her income.

You can see the impact this will have on payments by using our Mobile Site's Calculator:
http://mobile.bankruptcycanada.com/BankruptcyTermPredictor.php or the Full Site's Calculator:

http://www.bankruptcycanada.com/BankruptcyTermPredictor.php

Answers to some common questions asked of trustees

Irregular Income

When a bankrupt's income is irregular (e.g., sale commissions or seasonal employment), the amount that the bankrupt is required to pay to the bankrupt's estate will be calculated on the average income.

Allowable deductions that reduce excess income

The excess income calculations are adjusted for things such as:

- Income that fluctuates such as income for commission sales people;
- child support payments;
- spousal support payments;
- child care expenses;
- expenses associated with a medical condition;
- court-imposed fines or penalties that are in process of being paid;
- expenses permitted by the Income Tax Act (or similar provincial legislation) that are a condition of employment; or
- any other debt where a stay of proceedings has been lifted by the court, and a recourse authorized.

The trustee will explain how the surplus income applies to the person in question at the time of the initial consultation. If there is no excess income the bankrupt will make a payment of $1,800.00 usually in monthly installments, so the administration costs are paid in full before the nine-month discharge date.

How will my spouse be affected?

One of the most common questions trustees are asked is how a bankruptcy will affect a husband or wife. Your spouse, whether common law or married, will not be affected by your bankruptcy if he or she is not responsible for any of your debt (did not sign an agreement or contract for any of your debt). If they have a supplemental credit card they are probably responsible for that debt. Your spouse's credit rating will not be affected by your bankruptcy and any assets in the spouse's name will not be part of the bankruptcy.

If your spouse is responsible for any of your debt or has his own debt then the spouse may have to file bankruptcy too.

Should your non-bankrupt spouse divulge his or her income to the trustee?

If your spouse works and is not going to file for bankruptcy, the trustee is obligated to base your monthly payments on family income including the income of the non-bankrupt spouse. The non-bankrupt spouse can refuse to divulge his or her income to the trustee, in which case the trustee will calculate the monthly payments excluding the non-bankruptcy spouse from the calculation but only allowing 50% of the applicable Superintendent's standards corresponding to the number of person in the family unit, including the spouse who would not divulge his income.

If you wish to see how this affects the monthly payments you will be obliged to make, you can get a close approximation by using the Personal Bankruptcy Predictor at our Mobile Site: **http://mobile.bankruptcycanada.com/BankruptcyTermPredictor.php** or the Full Site: **http://www.bankruptcycanada.com/BankruptcyTermPredictor.php**

Who will know I have filed bankruptcy?

Unless you are a prominent person it is likely that no one but your creditors will know you filed bankruptcy. Your employer is *not* notified.

In a bankruptcy, where there are significant assets, a notice is placed in the "legals" section of the newspaper notifying creditors of the date of the meeting of creditors. If there are minimal assets, the creditors are notified by mail only - there is no advertisement in the "legals" section of the newspaper. Any legal filing of a bankruptcy is a public document which the general public has access to. From this documentation, the Credit Bureau is notified and the bankruptcy is recorded and will remain on your credit record for 6 years. This does not mean that you cannot obtain credit during this time. Any granting of credit is the responsibility of the creditor to approve.

What if I have Canadian debt but am living in another country?

Canadians living abroad can go into bankruptcy or file a proposal for their Canadian debt in the following ways:

- **They can go bankrupt in their country of residence.** This will free them of the Canadian debt so long as they live in that foreign country. If they return to Canada that debt will have survived and they will still owe that money.
- **They can re-establish residency in Canada** and then go bankrupt or file a proposal in Canada.
- **They can go bankrupt or file a proposal under Canadian law while still living in that foreign country if:**
    - They have property in Canada (re: definition of "insolvent person") **"Property"** includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable;
    - **or** if they have carried on business in Canada in the preceding year (re: definition of "insolvent person" and definition of "locality of a debtor").

Note: If you think you qualify to go bankrupt or file a proposal while living in that foreign country the next step would be to fill out an information form and then contact a trustee, where you used to live in Canada:

1. Information Form - See **http://www.bankruptcycanada.com/BankruptcyForm.pdf**.
2. Trustee Locator - See **http://province.canadian-trustees-in-bankruptcy.bankruptcy.tel/**

The trustee will have to get permission from the Office of the Superintendent of Bankruptcy for the debtor to go bankrupt or file a proposal in that foreign country without the person coming back to Canada.

Can my bank cancel my bank account or refuse to open a bank account for me if I file bankruptcy?

If your bank cancels or refuses to open a bank account for you because you have been or are in bankruptcy they are breaking the laws of the land. The law is set out in Sections 3, 4 and 5 of the *Access to Basic Banking Services Regulations of the Bank Act*.

Call the Financial Consumer Agency of Canada (1-866-461-3222) if you believe that a financial institution has breached a consumer law. You can also lodge a complaint through the Ombudsman for Banking Services and Investments (OBSI) at: www.obsi.ca/default.aspx.

The Ombudsman for Banking Services and Investments (OBSI) is an independent organization that investigates customer complaints against financial services providers, including banks and other deposit-taking organizations, investment dealers, mutual fund dealers and mutual fund companies.

8. What Assets will I be Allowed to Keep?

Most people keep their wages and salaries and all their furniture and a vehicle and RRSPs when they file for bankruptcy.

Many people considering bankruptcy are concerned about what assets or property they will be allowed to keep, and what they will have to sell.

A common question asked by debtors is, "Will the trustee go into my home to value my furniture?" The answer is no. In special circumstances, where there is very expensive furniture in a home, such as antiques, the trustee would want the furniture appraised. The trustee uses the garage sale value for estimating the value of furniture. This means that the assets are valued by having the debtor estimate what the furniture would sell for at a garage sale. Most debtors keep all their furniture.

Earnings of a bankrupt after the start of a bankruptcy, such as wages and salaries or commissions, belong to the bankrupt person and are not interfered with by the trustee in the ordinary course of events. There are standards supplied to the trustee by the Superintendent of Bankruptcy, which instructs the trustee to collect funds, for the benefit of creditors, from any earnings above what is reasonable for the number of people in the family and the bankrupt's personal situation.

Calculating equity in the assets

Before we take a look at what assets are kept by a bankrupt, it is important to understand three concepts: equity, exemptions, and excess. Equity refers to the excess that the value of a piece of property has over any charges or encumbrances against that piece of property.

For example, if a car is worth $10,000 and $6,000 is owed on it, the car has $4,000 worth of equity.

Exemptions refer to the value of assets that can be retained by a debtor in a bankruptcy. Each province sets its own allowable exemptions. These are described in the next section.

Excess refers to any equity in assets over the allowed exemption. Any excess belongs to the bankruptcy estate or creditors. Once the excess equity has been calculated, the trustee will sell the assets and distribute the funds. Often it will happen that a home, for example, will have equity in excess of the allowance of just a few thousand dollars. In this case, a family member may buy that equity from the bankruptcy estate rather than have the home sold.

Example:

Equity in Family Home	$45,000
Exemption (Alberta)	40,000
Excess	**$5,000**

When values are given they usually refer to equity. For example in Alberta there is an exemption of $5,000 for a vehicle. If a person has a vehicle worth $7,000 (often established by a Gold Book value) and owes nothing on it he has a right to $5,000 of this equity and the bankruptcy estate (the creditors), have a right to $2,000. The vehicle can be sold or more commonly the debtor can pay an additional $2,000 into the bankruptcy and keep the vehicle.

If there is a secured debt attached to the vehicle then that is deducted in calculating the equity. For example, if a vehicle is worth $12,000 and there is a secured debt against it of $8,000 then there is $4,000 equity in the vehicle and in Alberta the debtor would keep the vehicle.

Equity in a home is calculated by hypothesizing a sale. I will use an Albertan example. The value of the home is calculated per a current Alberta Assessment valuation or an appraisal.

Value of home	$300,000
Less: Real estate commission @ 7% of the 1st $100,000 and 2.5% of the balance	12,000
Less: Property taxes	3,500
Less: Mortgage(s) per statement from mortgage holder	237,000
Estimated hypothesized equity value	**47,500**
Equity for bankrupt (home is held in joint tenancy) @ 50 percent	23,750
Home exemption (50% of $40,000)	20,000
Equity for the bankruptcy estate	**$3,750**

It is the duty of the trustee to realize this equity of $3,750 for the creditors in the bankruptcy. One thing that can be done is to sell the home. That is not the best course for either the debtor and his family or the creditors. A better solution is to have a family member, as an example, provide the $3,750 to the bankruptcy estate in return for the trustee's agreement not to pursue a sale on the home.

Allowable exemptions by province

Each province sets the value of assets that can be retained by a debtor in a bankruptcy. Therefore, what can be kept in a bankruptcy varies widely province by province.

For example, in Alberta, $40,000 of equity in a home is protected, while in Ontario no equity in a home is protected.

The property exempt from seizure is set by the provinces and territories as follows.

Please refer to our Mobile Site's Exemptions: **http://mobile.bankruptcycanada.com/bankruptcyexemptions.htm** or the Exemptions on the Full Site: **http://www.bankruptcycanada.com/bankruptcyexemptions.htm**

9. Protecting yourself before Filing Bankruptcy or a Proposal

If you fail to conduct yourself properly prior to bankruptcy you put yourself in the position of having your bankruptcy discharge postponed or denied and facing severe fines by the court.

Many people know they must file bankruptcy or a proposal but keep putting it off hoping for a change in circumstance or a miracle. If you find yourself in this situation it is important you conduct yourself properly concerning whom you pay and how you deal with your assets.

If you fail to do this you may put yourself in a position where you have your bankruptcy discharge, postponed or denied and face severe fines by the court. For more information on this please see Chapter 13.

Many people ask how they can protect their assets from being seized and sold in a bankruptcy or if it is all right to pay a relative, for example, instead of a big credit card company.

The simple answer is you cannot protect assets from seizure or give preferred payments to relatives or anyone while on the verge of bankruptcy. Some people even consider "running up" their debt just before bankruptcy since it will be written off anyway. A word of advice**: Don't!** Trustees in bankruptcy have extraordinary powers to recover preference payments and assets "sold" at below market value. Trustees in bankruptcy also have the duty to report such activities to the court where severe penalties are possible.

Your attitude

The best way to look at an impending bankruptcy or proposal is that it is the law of the land and your right to get a fresh financial start by erasing most, if not all your debt while retaining certain assets specified by your province.

Accept this without guilt and without "beating yourself up". At the same time don't cheat. Play by the rules and your fresh financial start will come about smoothly, without stress and investigation and without guilt!

What bills to pay first

Here are some tips on how to prioritize debts and protect yourself before you file for bankruptcy:

- **Family Necessities** - Provide the basic essentials for your family; food, medicine and utilities. Postpone non-essential purchases such as electronics, toys, a car or new clothes.

- **Child Support and Maintenance Payments** - Keep these up to date. This sort of debt cannot be erased in a bankruptcy so it has to be paid.

- **Secured Debt** - House mortgage and car loan payments should be made if there is equity to protect. Refer to your province's bankruptcy exemptions in the chapter Provincial Bankruptcy Exemptions (Assets you Keep).

- **Income Taxes** - You are required by law to pay income taxes. If you are self-employed, you must pay the periodic payments required. Even if you don't have enough money to pay your taxes in full, you should always file your tax returns on time.

- **Unsecured Debt** - Unsecured debts include credit card bills and bank signature loans; any loans without collateral. Although these payments are the lowest priority, often when these payments get behind, their bill collectors are the first to start harassing you to pay.

Get legal advice

If your assets are significant we strongly suggest you seek legal advice from an experienced insolvency lawyer. You can find an experienced insolvency lawyer by asking an accountant or lawyer you deal with or by referring to **BankruptcyCanada.com** or **http://canadian-bankruptcy-lawyers.bankruptcy.tel/**

Trustees in bankruptcy will refer a debtor to an insolvency lawyer if the trustee feels there is a potential conflict of interest and the debtor should have legal counsel.

Some "Don'ts"

- Don't make significant purchases on credit prior to bankruptcy or a proposal;

- Don't make significant payments or payments to creditors out of the ordinary course of your payment history. Many people want to pay a relative, for example, ahead of a credit card company. Don't do this. The law doesn't distinguish between types of creditors and severe court penalties can be imposed;

- Don't cash in RRSP's or stocks on the eve of bankruptcy or a proposal;

- Don't "sell" or transfer assets to a friend or family member;

- Don't purposefully neglect to list some of your creditors. **All debt must be listed.**

Dealing with awkward situations

Uncle John - Your uncle John co-signed a loan for you. If you go bankrupt you know the bank will look to your Uncle John for repayment. You don't want to include this debt in your bankruptcy but want to pay this debt yourself.

This is not allowed and if you attempt this and are caught you risk severe penalties.

A better way to handle this situation is to talk to your Uncle John explaining the situation. It is not allowed for you to make an agreement to repay Uncle John. But, after you receive your discharge you will be free to pay back Uncle John or any creditor.

You must have a credit card for work

You know you cannot keep any of your credit cards if you file for bankruptcy but you have to have a credit card for your job.

Solution # 1 - Have your spouse or a friend get a supplemental card for you. It will have your name on it but the responsibility for payment will be the primary card holder;

Solution # 2 - Use a debit card.

Note: A person filing a proposal is allowed to retain a credit card that has a zero balance.

You are self-employed by being a director of a small company

You know that you cannot be the director of a company while in bankruptcy. You are self-employed and in conjunction with your small business you incorporated a company with yourself as sole director. The business earns you the equivalent of wages and you know you

can keep the business while in bankruptcy since there are no assets in the business.

What to do? One solution is to have your spouse or a friend appointed as a director and you resign and become an employee of the business. This should be done just before the bankruptcy and the change in directors registered by a lawyer. Copies of the changes should be supplied to your trustee so he/she knows everything is "above board".

10. What is a Trustee?

You can find a list of trustees in all provinces and territories in the Yellow Pages or at: Bankruptcy.tel/

You've decided you may need to file bankruptcy and you've considered how to protect yourself before doing so (see Chapter 9). Now it's time to choose a trustee in bankruptcy.

You cannot go bankrupt or file a proposal unless you use the services of a trustee in bankruptcy.

What does a trustee do?

A trustee is one of the key persons in the bankruptcy process. You cannot go bankrupt or file a proposal unless you use the services of a trustee in bankruptcy.

Some of the duties of the trustee in bankruptcy are to:

- Administer the bankruptcy estate
- Prepare the bankruptcy documents that assign the person into bankruptcy
- Review the file for any fraudulent preferences or reviewable transactions
- Chair meetings of creditors
- Sell any available assets
- Perform counselling for the debtors
- Recommend whether the bankrupt should be discharged

When a person assigns himself or herself into bankruptcy he also assigns all his assets, except assets that are exempt, to the trustee. (See

Chapter 8 for more information on exempt assets.) The assets are said to "vest in" or are owned by the trustee in bankruptcy. Property acquired by, or devolving upon the bankrupt up to the date of the bankrupt's discharge, are called "after-acquired" assets. A trustee must intervene to obtain title to these assets.

Let's take a look at a couple of examples of how the trustee recovers assets formally owned by the bankrupt.

Example 1

A month before Susan goes into bankruptcy she pays her best friend, Natalie, the $2,000 that she owes her. Susan (the debtor in this case) does not pay any of her other creditors. The trustee has the power to recover that payment to Natalie. In order to recover the money, the trustee has to prove the following:

- The transaction took place within three months prior to the bankruptcy.
- The debtor was insolvent at that time.
- The debtor intended to prefer the creditor.

Example 2

Five months before going into bankruptcy Robert pays his Uncle John the $4,000 he owes him. Robert does not pay any other creditors in full. In order to recover the money, the trustee has to prove the following:

- The transaction took place within 12 months prior to the bankruptcy.
- The debtor was insolvent at that time.
- The parties were related.
- The debtor intended to prefer the creditor.

Example 3

Four months before going into bankruptcy, Jamal gives his boat, which he owns free and clear and is worth $5,000, to his girlfriend, Regina. This sort of transaction is said to be "void as against the trustee" and the trustee can recover this asset if the trustee can prove that that debtor was unable to pay all debts without the property given away. Trustees can go back as far as five years in order to recover assets.

To whom is the trustee responsible?

Trustees in bankruptcy are subject to a Code of Ethics (see Appendix) which is an integral part of the General Rules of the *Bankruptcy and Insolvency Act.*

A trustee is an officer of the court in respect of any estate under his or her administration. Although you, as the debtor, chose the trustee who will administer your bankruptcy, it is not the same as hiring a lawyer. The trustee is not the agent of the bankrupt, nor of the creditors, although he or she does have responsibilities to each.

The trustee's responsibilities arise from the duties the trustee has to perform under the *Bankruptcy and Insolvency Act*:

1. taking possession of the debtor's assets on appointment;

2. converting or realizing on the assets;
3. assisting the debtor in preparing the bankruptcy documents and setting up the first meeting of creditors;
4. reviewing and finalizing the claims against the bankrupt;
5. reporting to the creditors;
6. preparing a report to the court on the bankrupt's discharge; and
7. reporting to the court on the trustee's discharge.

The Superintendent of Bankruptcy licenses trustees. In order to be considered for a trustee licence a person has to have:

- Worked for a trustee company;
- Taken and passed a three-year course;
- Sat and passed an oral examination where he or she is questioned by a prominent insolvency lawyer, a prominent trustee in bankruptcy, and two members of the office of the Superintendent of Bankruptcy.

Most trustees have accounting designations.

The good news is that trustees in bankruptcy are so highly trained and are under such close scrutiny by the Office of the Superintendent of Bankruptcy that almost any trustee you choose will be highly skilled, and very ethical.

How to find a trustee

You can find a trustee in bankruptcy at the **BankruptcyCanada.com** website or at the mobile site **Bankruptcy.tel** or in the **Yellow Pages** under "Bankruptcy". Your lawyer or accountant may be able to recommend a trustee to you. Perhaps you have a friend or acquaintance or co-worker who filed bankruptcy or a proposal who can recommend a trustee.

Conflicts of interest

Before accepting an appointment, the trustee must make sure he or she does not have a conflict of interest. The *Bankruptcy and Insolvency Act* sets out the situations where a trustee is not qualified to act.

A trustee may not administer a bankruptcy where the trustee is, or at any time during the two preceding years was, any of the following:

- A director or officer of the debtor
- An employer or employee of the debtor or of a director or officer of the debtor
- Related to the debtor or to any director or officer of the debtor
- The auditor, accountant, or solicitor of the debtor, or a partner or employee of the auditor, accountant, or solicitor of the debtor
- Furthermore, the trustee may not act in the following circumstances:
- Where the trustee is under a trust indenture issued by the debtor or any person related to the debtor, or
- Where the trustee is related to the trustee under a trust indenture referred above.

What happens if I disagree with the trustee's actions?

Where the bankrupt or any of the creditors or any other person disagrees with any act or decision of the trustee, that person has the right to apply to court for the court to decide the issue.

A special circumstance sometimes arises where creditors want the trustee to take some action, such as to pursue the recovery of an asset. The trustee may decide not to take any action because he or she does not have the funds to do this or for some other reason. The creditors in this circumstance have the right to apply to court for the power to pursue the action. If the court approves the action and the creditor recovers the asset, the creditor has the right to recover his or her expenses and debt from the proceeds. Any funds remaining are turned over to the bankruptcy estate.

Mediation is available to resolve two kinds of disputes:

1. Disagreements over the amount of money the bankrupt will pay to creditors (called surplus income).
2. Disagreements regarding the conditions for a bankrupt to be declared free from the status of being bankrupt (called a discharge from bankruptcy).

Remuneration of the trustee

In simple bankruptcies (i.e., summary administration bankruptcies) the trustee fees and disbursements are set by and regulated by the federal government. Summary administration bankruptcies make up the vast majority of personal bankruptcies. See Chapter 7 for more information on regulated tariffs.

Where the bankruptcy is more complex, the trustee charges an hourly rate. In these cases, the trustee's fees are approved by any of the following:

- A creditors' meeting
- Inspectors of the bankruptcy estate
- The court.

If an interested party objects to the trustee's fees, an application to court for a review can be made.

Trustees have first call for their fees and costs from the contributions the debtor is required to make from surplus income. The Office of the Superintendent of Bankruptcy sets surplus income payments. (See Chapter 7 for more information on surplus income payments.)

If your required surplus income payments are not enough to cover the minimum administration costs of approximately $1,800, then most trustees will set up monthly payments for you so the costs are paid over the nine months prior to your discharge from bankruptcy.

Discharge of trustee

The estate is considered to have been fully administered when:

- a trustee's accounts have been approved by the inspectors and taxed by the court
- all objections, applications, and appeals have been settled or disposed of
- all dividends have been paid.

The trustee will then make an application to court to be discharged.

11. Meeting with your Trustee in Bankruptcy

Your initial meeting may be with an administrator and not the trustee in bankruptcy. Administrators are highly skilled and trained. They are also under the close supervision of a trustee in bankruptcy.

Once you have chosen a trustee in bankruptcy you will need to make an appointment to meet with him or her. The initial consultation will be free.

Your initial meeting may be with an Administrator and not the trustee in bankruptcy. This is alright. Administrators are highly skilled and trained. They are also under the close supervision of a trustee in bankruptcy. Before you sign any bankruptcy or proposal documents, a trustee in bankruptcy will meet with you and do an assessment of your financial situation. The trustee in bankruptcy will also sign some of the documents along with you.

Preparing for your meeting

Your meeting with the Trustee or Administrator is your opportunity to get information to find out if bankruptcy or a proposal is right for you.

It is a good idea to do some research so you know something about bankruptcy and proposals. Of course, since you are reading this book you have an excellent resource at hand. The **BankruptcyCanada.com** website is another very good resource.

It pays to be well organized. You can only get the best advice if you provide the trustee with all relevant information about your situation. We suggest you use the **form on BankruptcyCanada.com**. This form can be downloaded to your computer and filled out on your computer. It can also be printed or emailed to your trustee. Having this information available means your meeting will go very smoothly and be very productive.

Write down any questions that come to mind as you fill out the information form so that you don't forget to ask them if the administrator or trustee do not cover them.

Key issues before you proceed

Remember, that at your first meeting with the administrator or trustee, you are deciding whether this person is the right person to administer your bankruptcy or proposal. You may want to consider whether you are going to be comfortable dealing with this person and whether you trust the advice he or she is giving you.

Your key duties should be in writing

The trustee will provide you with a list of important things you have to do such as:

- Monthly payments required
- Monthly Income & Expense Reports to be completed
- The two counselling sessions you must attend

- Tax return information required
- Creditor's meeting date (If required)
- Any other items forming part of your duties

Make sure you complete everything in a timely manner. If you do not, it may mean the trustee will have to oppose your discharge from bankruptcy. If you do not get a discharge from bankruptcy, then after the trustee is discharged the stay of proceedings is lifted. At this point the creditors can pursue you for payment of your debts. It is just as though you were never in bankruptcy.

Checklist for Choosing a Trustee in Bankruptcy:

- When I first phoned the trustee office were they responsive when I told them why I was calling? If I had to have someone phone me back did they get back to me quickly?
- Is the initial consultation free?
- If I wanted to see a trustee as soon as possible did the trustee office set up the initial consultation in a matter of a day or two?
- If I had an emergency because someone was going to garnishee my pay was the trustee able to see me that day or early the next day?
- Do the people at the trustee office treat me with sensitivity and respect?
- Am I going to be comfortable dealing with the administrator or trustee?
- Did the administrator or trustee answer all my questions so I could understand how bankruptcy will affect my family and me?
- Will I be given all my duties in writing?

12. What about Credit Counsellors?

Be careful! Many people do not fully understand all the ramifications of using credit counsellors.

In the last ten years, more and more credit counselling firms have opened up, fuelled by the growing debt problem in Canada and debtors' desires to do almost anything to avoid going bankrupt.

CAUTION! **Some Credit Counsellors exist only to collect a fee from you for referring you to a trustee. I have heard of charges from $800 to $1,500 for this "service". Never, never pay anyone for a referral to a trustee. Set up your own initial meeting with a trustee which will be free. You can find trustees in every province and territory in Canada at: Bankruptcy.tel.**

Credit counsellors, who do have payment plans, have you make regular payments to them and they in turn make payments to your creditors. Credit Counsellors get paid by holding back a certain percent of your payments for their fees. Most of the "non-profit" Credit Counselling firms also get funding from various credit grantors.

Be careful! Many people do not fully understand all the ramifications of using credit counsellors:

- **Impact on your credit rating**. If you use a credit counsellor to help get control of your debt, the credit bureau will record that a proposal is in place. Three years after the proposal is satisfied, the record will be removed from the credit bureau. (See the Chapter 17 for more information on proposals.)
- **Your ability to make monthly payments**. The monthly payments that your credit counsellor and you agree on should be high enough to significantly reduce your debt but not so high that you have "no life". If you do not have money left over at the end of the month to pay for the small pleasures in life you may find that you end up defaulting on your payments to the credit counsellor.

  The Industry Canada Standards on required payments in a bankruptcy are quite accurate in establishing the maximum payments that should be made in a monthly payment schedule set up by a credit counsellor.

The standards for 2011/12 are:

- One Person - 50% of take home pay in excess of $1,926/mo;
- Two People - 50% of take home pay in excess of $2,398/mo;
- Family of Three - 50% of take home pay in excess of $2,948/mo;
- Family of Four - 50% of take home pay in excess of $3,578/mo;
- Family of five - 50% of take home pay in excess of $4,059/mo.

Bankruptcy may well permit you to recover a good credit rating much faster than credit counselling.

Length of time you should pay. Most trustees in bankruptcy feel that the term for repayment should be three to four years. It is a stipulation in the *Bankruptcy and Insolvency Act* that the term for a "Consumer Proposal" be no more than five years. Terms longer than this have a very high failure rate because people cannot see a "light at the end of the tunnel".

Independent versus non-profit credit counsellors

"Non-profit" credit counsellors perform the same services as independent credit counsellors and have similar training and services. The major difference is that "non-profit" credit counsellors are credit counsellors who are supported, and funded by major credit grantors such as banks, credit card companies, and department stores.

Credit counsellors versus trustees in bankruptcy

Are there advantages for a person using the services of a credit counsellor rather than a trustee in bankruptcy? Let's consider the facts and then you decide. Remember, that your objective is to get out of debt and re-establish a good credit rating in an honourable and cost-effective way, as quickly as possible.

Key Considerations	**Credit Counsellors**	**Trustee in Bankruptcy or a Proposal**
When will my debt be erased from the credit bureau?	3 years after the debt is repaid.	Bankruptcy: 6 years after the discharge**. Proposal: 3 years after the Proposal is satisfied.
What about costs?	Credit counsellors hold back a portion of the payments you make for their fees.	Fees in almost all bankruptcies and in consumer proposals are set and regulated by the government.
Which is cheaper?		A bankruptcy or a proposal is usually cheaper.
Can income tax debt and other CRA debt be included and eventually written off?	No	Yes. Almost all debts can be written off.
Once I agree to a debt repayment plan with a credit counsellor or file for bankruptcy or a proposal, will my creditors, including CRA, be forced to stop all actions against me including trying to collect money; phoning me; garnisheeing my wages or repossessing my assets?	No. They will not be forced to stop but the creditors, that agree to a plan, will voluntarily stop collection calls and other actions.	Yes. By law, all actions must cease and garnishees are stopped or prevented once a proposal or bankruptcy is filed. Collection calls will stop once the collector knows you have filed a bankruptcy or a proposal.

Which will give me a better credit rating?		In most circumstances a bankruptcy or proposal will give you a better credit rating because it will deal with your debt more quickly thus allowing you to start to rebuild your credit sooner.
Can I pay back less then I owe and have the rest of the debt erased?	Only in rare circumstances.	Yes.
What training and education do credit counsellors and trustees in bankruptcy have?	There are no set standards. Please refer to this report on credit counsellors by Canadian Consumer Affairs. The report raises concerns about poorly trained credit counsellors and the conflict of interest "non profit" credit counsellors have because they are funded by credit grantors.	Almost all trustees have both an accounting designation and a university degree. In addition, all must complete and pass a rigorous three-year bankruptcy and law course and be investigated by the RCMP before being granted a trustee licence. Ongoing professional development is mandatory.
Are they regulated?	No	Yes, by the Federal Government. The government performs regular audits on each trustee office. Also stringent codes of ethics are in place by the *Bankruptcy and Insolvency Act*, the CAIRP and the accounting bodies.
What kinds of debt repayment plans are offered?	Payment plans, where monthly payments are made which are distributed to the creditors.	Bankruptcy and two kinds of Proposal.
Is Government approved Credit Counselling offered?	In some cases.	Yes. Government tested and approved counsellors provide credit counselling in all bankruptcies and consumer proposals.
What if I have a dispute?	There is no dispute mechanism in place.	You have the right to have your dispute mediated.

Canadian Consumer Affairs funded report on the credit counselling industry

Not-for-profit credit counselling services may be receiving secret commissions or

generous financial support from creditors, the Government, United Way and the industry at large.

For more information on this report on credit counsellors, funded by Canadian Consumer Affairs **please refer to this link**.

The report raises concerns about poorly trained credit counsellors and the conflict of interest "non profit" credit counsellors have because they are funded by credit grantors.

The following are some excerpts:

- Consider that the alternative, bankruptcy, may well permit you to recover a good credit rating much faster than credit counselling.
- Not-for-profit credit counselling services may be receiving secret commissions or generous financial support from creditors, the Government, United Way and industry at large.
- Not for profit does not mean that the employees and/or operators of many of these services are not collecting salaries and growing a business.
- Lack of regulation of the industry make consumers vulnerable to receiving poor advice from untrained or poorly qualified counsellors
- Some non-profits may advise only those solutions that bring in funding via commissions or donations from creditors
- Organizations offering budget counselling may face a difficult balancing act as they seek to maintain complete independence vis-a-vis creditors and the need for funding, which could quite logically come from creditors who benefit, directly and indirectly, from the results of effective budget counselling.

13. What are the Duties of a Bankrupt?

In Chapter 5 we discussed how bankruptcy developed in Canada and looked at the objectives of Canada's bankruptcy laws. These include the following:

- In the case of an individual, to permit an honest but unfortunate debtor to obtain a discharge from his or her debts.
- To provide for the orderly and fair distribution of property among the creditors.
- To allow an investigation to be made of the affairs of the bankrupt.
- In the case of an individual, to permit the rehabilitation of the bankrupt.
- To permit the setting aside of preferences, settlements, and other fraudulent transactions, so that all ordinary creditors may share equally in the administration of the bankrupt's assets.

In order for this to happen, Canadian law imposes certain duties on a bankrupt, establishes bankruptcy offences, and sets rules under which bankrupts are discharged.

The bankrupt's duties

The debtor's duties are mostly common sense and in most cases the path to discharge is relatively free of stress and conflict.

Major duties:

The trustee will give the debtor a list of his or her major duties in writing, which include the following:

- Monthly payments required
- Monthly Income and Expense Reports to be completed
- Detail of the two counselling sessions you must attend
- Tax return information required
- Creditor's meeting date (if required)
- Any other items forming part of your duties.

The debtor also has to cooperate with the trustee for all reasonable things the trustee asks him or her to do.

Complete list of duties:

The *Bankruptcy and Insolvency Act* spells out in great detail what the debtor's duties are and what the penalties are for breach of those duties (see next section). The bankrupt must:

- Deliver all non-exempt property to the trustee or an authorized agent.
- Deliver to the trustee all books, records, and documents relating to his other property or affairs, including:

  title papers (deeds)
  insurance policies
  tax records
  tax returns

RRSP information

- Attend before an Official Receiver for the purposes of being examined on the following areas:

  conduct
  causes of bankruptcy
  disposition of property

- Within five days following the bankruptcy, submit a sworn statement of affairs to the trustee. If the complexity of the task is beyond the bankrupt's capabilities, the Official Receiver can authorize the employment of a qualified person to assist.
- Provide all assistance to the trustee in making an inventory of his or her assets.
- Disclose the following matters with regard to the disposition of property during the year preceding bankruptcy or longer if the court orders:

  the property disposed
  how the property was disposed of
  to whom the property was transferred
  consideration for the disposition
  whether the disposition was made in the ordinary manner of trade
  whether any of the proceeds were used for other than reasonable personal expenses

- Disclose to the trustee all property disposed of by way of gift or settlement without adequate valuable consideration within five years preceding the bankruptcy.
- Attend the first meeting of creditors, if called, and submit to examination.
- Attend other meetings of his or her creditors and inspectors, or attend meetings called by the trustee.
- Submit to other examinations under oath as required with respect to the bankrupt's property or affairs.
- Aid in the realization of property and distribution of proceeds, including executing any required documents and examining proofs of claims for correctness.
- Inform the trustee of any material change in the bankrupt's financial situation.
- Keep the trustee informed of his or her address during the bankruptcy process.
- Do all such things as the trustee may "reasonably require" or as directed by the court.

Bankruptcy offences

The *Bankruptcy and Insolvency Act* imposes a minimum standard of conduct on all participants involved with a bankrupt estate. If the bankrupt is a corporation, every officer, director, or agent of the corporation who directed, authorized, etc. the commission of an offence is liable as if he had committed the offence personally.

The *Bankruptcy and Insolvency Act* outlines various offences for which criminal proceedings may be undertaken against a bankrupt, a trustee in bankruptcy, or other persons.

A bankrupt who commits any of the offences outlined in that Part may, according to S.173, have his discharge refused, suspended or granted conditionally. A bankrupt who fails without reasonable cause to do any of the things required of him under S.158 ("Bankrupt's Duties“ See above) is guilty of a bankruptcy offence.

S.198 provides that a bankrupt is guilty of an offence where he or she:

- Makes a fraudulent disposition of his property before or after the date of the initial bankruptcy event.
- Refuses or neglects to answer fully and truthfully all proper questions put to him in an examination under the BIA.
- Makes a false statement or knowingly makes a material omission in a statement or accounting.
- 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 such acts, from books or documents affecting or relating to his property or affairs, unless he can prove he had no intent to conceal the state of his affairs.

- After or within one year immediately preceding the date of the initial bankruptcy event, obtains credit or any property by false representations made by him or made by any other person to his knowledge.
- After or within one year immediately preceding the date of the initial bankruptcy event, fraudulently conceals or removes any property of a value of $50 or more or any debt due to or from him.
- After or within one year immediately preceding the date of the initial bankruptcy event, hypothecates, pawns, pledges, or disposes of any property that he 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 in any case he proves that he had no intent to defraud.

Section 199 further provides that an undischarged bankrupt who engages in a trade or business or obtains credit for more than $1,000 without disclosing that he is an undischarged bankrupt is also guilty of an offence.

Section 200 provides that a person has committed an offence where he has been bankrupt or has made a proposal in the past, and has not kept adequate records as defined in the BIA in the period of two years before the initial bankruptcy event.

Bankrupts are rarely aware of these provisions and it is the duty of a trustee to advise a bankrupt of these provisions.

These offences can be prosecuted in both the Bankruptcy Court and also Criminal Court as they are classified as criminal offences. The prosecutions may also be brought after the bankrupt is discharged.

Discharge from bankruptcy

The discharge from bankruptcy is very important to the bankrupt as it results in the following:

- The debtor is no longer bankrupt and therefore not under any more obligations under the BIA.
- The bankrupt no longer has a restriction on being a director of a corporation under provincial law.
- The countdown to when the credit bureau clears the person's record of having gone bankrupt begins its 6 years term.
- All debts are erased except for the following:
    - Fines imposed by a Court;
    - Money owing for things stolen;
    - Things obtained by misrepresentation;
    - Alimony or maintenance payments;
    - Award of damages by a court for intentionally inflicting bodily harm or sexual assault;
    - Student loans if bankruptcy is filed prior to or within seven years after the finish of studies.

The vast majority of bankrupts are discharged without any opposition. The trustee has a duty to report on the conduct of the bankrupt in a report filed at the eighth month of the bankruptcy. This is called the 170 report as it is required pursuant to Section 170 of the BIA.

In addition, creditors or the superintendent of bankruptcy may oppose the discharge of a bankrupt.

Creditors sometimes disagree with the trustee when the trustee recommends that the bankruptcy be discharged unconditionally. The Bankruptcy and Insolvency Act gives creditors the right to oppose the discharge and appear in court to give their reasons why there should be a further penalty of paying more money, or having the discharge postponed or some other penalty. Creditors, who oppose the bankrupt's discharge, must be able to establish one or more of the Section 173 facts that are listed below.

The BIA Sets out Facts for which a Discharge may be Refused, Suspended or Granted Conditionally:

Section 173 Fact	**Probable Penalty (Note: #1)**

The bankrupt has been guilty of any fraud or fraudulent breach of trust.	The trustee can make a recommendation but it is common that the penalty is set by the court and can be the payment of monies and/or a delay in time before the discharge.
The bankrupt has not paid the payments required under the Superintendent's Guidelines.	Discharge is delayed until the funds are paid.
The bankrupt has committed an offence in connection with the bankrupt's property or any proceedings under the bankruptcy.	The trustee can make a recommendation but it is common that the penalty is set by the court and can be the payment of monies and/or a delay in time before the discharge.
The bankrupt could have filed a viable proposal.	The trustee recommends that the payments required under the Superintendent's Guidelines continue for 12 more months.
The bankrupt has not performed his duties under the BIA or did not comply with an order of the court.	The trustee can make a recommendation but it is common that the penalty is set by the court and can be the payment of monies and/or a delay in time before the discharge.
The unencumbered assets are worth less than 50% of the unsecured debt, unless it is for reasons for which the bankrupt cannot be held responsible.	This is a "catch all" reason for getting the matter into court; usually used by creditors and not trustees.
The bankrupt has, in the 3 months prior to bankruptcy, incurred debt in order to bring his assets equal to 50% of the liabilities.	The trustee can make a recommendation but it is common that the penalty is set by the court and can be the payment of monies and/or a delay in time before the discharge.
The bankrupt, in the 3 years prior to the bankruptcy, did not keep books and records of a business he engaged in.	The trustee can make a recommendation but it is common that the penalty is set by the court and can be the payment of monies and/or a delay in time before the discharge.
The bankrupt has continued to trade after becoming aware of being insolvent.	This is seldom used.
The bankrupt has failed to satisfactorily account for any loss of assets.	The trustee can make a recommendation but it is common that the penalty is set by the court and can be the payment of monies and/or a delay in time before the discharge.
The bankrupt has brought on or contributed to his bankruptcy by rash and hazardous speculation, by unjustified extravagance in living, by gambling or by culpable neglect of the bankrupt's business.	The trustee can make a recommendation but it is common that the penalty is set by the court and can be the payment of monies and/or a delay in time before the discharge.
The bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defense to any action properly brought against the bankrupt.	The trustee can make a recommendation but it is common that the penalty is set by the court and can be the payment of monies and/or a delay in time before the discharge.
The bankrupt has, within the 3 months prior to bankruptcy, incurred unjustifiable expenses by bringing a frivolous or vexatious action.	The trustee can make a recommendation but it is common that the penalty is set by the court and can be the payment of monies and/or a delay in time before the discharge.
The bankrupt has, within the 3 months prior to bankruptcy, made a	The trustee can make a recommendation but it is common that the

The bankrupt has, within the 3 months prior to bankruptcy, made a payment to any of his creditors in preference to the other creditors.	penalty is set by the court and can be the payment of monies and/or a delay in time before the discharge.

Note: #1 - These are the author's personal opinions and are in no way to be accepted as a standard nor should they be relied upon as a probable outcome.

If the penalties are not met then the trustee will seek his discharge. Once the trustee is discharged the Stay of Proceedings is lifted the debt of course is not erased and creditors can pursue the debtor as if he or she has never been bankrupt.

14. Meeting of Creditors

A meeting of creditors is seldom held in a Summary Administration Bankruptcy.

Once you have decided that filing for bankruptcy is the best course of action to resolve your financial situation, the trustee will prepare the documents for you to sign. You are officially bankrupt when the documents have been filed with the office of the Superintendent of Bankruptcy.

In a Summary Administration Bankruptcy (Streamlined Personal Bankruptcy) a creditors' meeting is not held unless it is requested within 30 days after the date of the bankruptcy by the Official Receiver or by creditors who have in the aggregate at least 25 per cent in value of the proven claims. A creditors' meeting is mandatory for all other bankruptcies, both personal and commercial.

Purpose of the first meeting of creditors

The first meeting of creditors is a very important aspect of bankruptcy administration in that it sets the stage for creditor involvement and the direction to be taken by the trustee. It is the creditors who have suffered the financial loss and it is important they are aware of their rights and options to minimize this loss. Accordingly, the trustee must always be properly and fully prepared for the initial meeting with creditors and have all relevant information at hand.

The trustee calls the first meeting of creditors for the following purposes:

- To consider the affairs of the bankrupt
- To affirm the appointment of the trustee or substitute another in place thereof
- To appoint inspectors
- To give such directions to the trustee as the creditors may see fit with reference to the administration of the estate.

Calling the meeting

It is the duty of the trustee to send a notice of the first meeting of creditors within five working days after the date of his or her appointment to every known creditor, the Superintendent, and the bankrupt.

The trustee is required to include the following with the notice:

- A list of creditors with claims amounting to $25 or more, and the amounts of their claims
- A proof of claim in prescribed form (Instructions are included)
- A general proxy
- Statement of affairs

For all ordinary administration bankruptcies, the trustee must also publish a notice of the first meeting of creditors in a local newspaper.

The first meeting of creditors is generally to be held within the 21 day period following the appointment of the trustee and normally provides creditors with a 1 to 2 week lead time to accumulate their documentation, assess their position, and file their proofs of claim.

The meeting is usually held at the office of the trustee.

Quorum

In order for a creditors' meeting to be held, there must be a quorum of creditors. A quorum exists where there is present, in person or by proxy, at least one creditor entitled to vote. Note that a quorum is not required for the appointment of the trustee or to adjourn the meeting.

Particularly in smaller estates, there will often be situations where a creditor has proven its claim prior to the meeting and has appointed the trustee as its proxy. Where this occurs and no other creditors are represented, a quorum will exist. In this situation, the trustee can be expected to confirm its appointment by proxy and to make a motion that no inspectors are appointed. Certainly, the trustee does have the option call another meeting where it is warranted.

What happens at the first meeting?

The chair of the meeting is responsible for ensuring that creditors attending the meeting have:

- Filed a proper proof of claim, and
- Are entitled to vote.

To ensure that adequate information is available to creditors, the trustee is required to prepare a preliminary report. The preliminary report is a report to the creditors by the trustee on the debtor. The report gives background on the debtor and the reasons why the debtor filed bankruptcy. The trustee comments on the conduct of the debtor and whether the trustee is aware of any fraudulent preferences or reviewable transactions the debtor may have been party to. The preliminary report also includes an estimate of the money that will be available to pay the secured creditors and the estimate of trustee fees.

This is usually reviewed at the first meeting of creditors once the meeting is called to order.

The chair will then request a resolution confirming the appointment of the trustee or appointing a new trustee. The rest of the meeting should not be conducted until it is determined who will be acting as trustee.

The chair will table relevant documents including the following:

- Proofs of claim of creditors not present
- The Assignment and the Certificate of the Appointment of the Trustee or, alternatively, the Bankruptcy Order
- Proof of Service of the Notice calling the first meeting of creditors
- Proof of Advertisement in the local newspaper, if applicable
- The Statement of Affairs
- A copy of the Examination of the bankrupt, if held prior to the meeting. The Official Receiver can examine the bankruptcy under oath. Examinations are conducted at random or more commonly at the request of the trustee or a creditor because there are some contentious transactions that need further exposure. An example is that the trustee is aware that the creditors are suspicious of the debtor because the debtor received a large inheritance two years ago and is now broke.

If applicable, third party deposit or guarantee agreements must be disclosed. It is common that the person going into bankruptcy has no money to pay the administration costs made up of filing fees, taxes and trustee fees. A relative, for example will put up funds that the trustee will hold in trust to be used to pay the administration costs if the bankruptcy estate does not generate enough to cover these costs.

The chair will also call for a resolution for the appointment of inspectors. An inspector is a person appointed by creditors at the first or subsequent meeting of creditors, as part of a committee to examine and give direction to the trustee's administration of the estate of the bankrupt. This resolution is usually called for near the end of the meeting, after the affairs of the bankrupt have been fully addressed.

Questioning the bankrupt

After the affairs of the bankrupt have been discussed, the creditors can question the bankrupt directly. *The Bankruptcy and Insolvency Act* requires the bankrupt to attend the first meeting of creditors, and submit to an examination. In practice, a formal examination of the bankrupt, under oath, does not occur at the first meeting of creditors, but the bankrupt is required to answer truthfully all proper questions of the creditors.

The chair of the meeting needs to exercise judgement regarding the appropriateness of the questioning of the bankrupt, particularly where the issues raised are such that it would be advisable for the bankrupt to obtain legal counsel. In such circumstances, creditors should consider a formal examination of the bankrupt in which case the creditors can be invited to forward their questions to the Trustee. It will be necessary for the chair to exercise his judgement as it relates to a proper balancing of the rights of the creditors and of the bankrupt.

The role of the Chair of the Meeting

The chair of the first meeting of creditors shall be the Official Receiver (an official at the office of the Superintendent of Bankruptcy) or his nominee. Often, the Official Receiver will appoint the trustee as his nominee. At all subsequent meetings, the trustee shall be the chair of the meeting unless by resolution at the meeting some other person is appointed.

In those situations where the Official Receiver chooses to chair the first meeting of creditors, it is required for the trustee to be in attendance and provide relevant information.

The chair is responsible for deciding any questions or disputes arising at the meeting. Creditors have the right to appeal any such decisions to the Court.

There may be situations that arise at meetings of creditors which cannot be immediately resolved. In these situations, it is available to the chair, with the consent of the meeting, to adjourn the meeting from time to time. This may be a practical alternative to those situations where creditors wish to resolve or clarify certain matters, but are not interested in becoming appointed as inspectors. Also, adjournments may be used to provide an opportunity to clarify a creditor's position and its entitlement to vote.

In the event of a tie vote by creditors (including proxy holders), the chair shall cast the deciding vote.

Voting

Voting at a meeting of creditors can be for any matter requiring the decision of the creditors such as:

- A creditor objects to the appointment of the existing trustee and proposes a new trustee in his place. A vote by special resolution is required. Where this resolution is not passed, there still remains the need to pass a vote by ordinary resolution confirming the appointment of the existing trustee;
- Seven individuals are nominated to be inspectors; however, the BIA provides for the appointment of up to five inspectors;
- A creditor who is known to be a personal friend of the bankrupt is nominated as an inspector. Another creditor objects. The matter is put to a vote at the meeting.

The *Bankruptcy and Insolvency Act* sets out who may vote at the creditors' meeting:

The trustee, as a creditor or a proxy for a creditor, may vote at any meeting of creditors. However, the trustee is not entitled to vote on any resolution affecting his remuneration or dealing with his conduct.

Where a creditor has an unliquidated claim, he is not entitled to vote until the claim has been proved and valued by the trustee. The claim is deemed a proved claim to the amount of its valuation.

An example of an unliquidated claim is a claim a business landlord has for rent for the balance of the lease. The trustee would not allow the landlord to vote since the landlord is obligated by law and common sense to lease out the property as soon as possible thereby reducing the claim.

A creditor is not entitled to vote at any meeting of creditors if the creditor did not, at all times deal with the debtor at arm's length. If a person is a "related person" as defined in the BIA, and therefore deemed not to have been dealing at arm's length, that person is not entitled to vote at the meeting of creditors

The definition of related people include the father, mother, child, sister, brother, uncle or aunt by blood or marriage and the spouse of the bankrupt.

A secured creditor (i.e., a creditor who is guaranteed a portion of the debt owed to him or her) is entitled to vote only on the unsecured portion of his debt.

Subsequent meetings

Usually, only one meeting of creditors is held. However, the trustee is required to call another meeting of creditors in the following circumstances:

- When so directed by the Court; or
- Whenever requested in writing by a majority of the inspectors; or
- Whenever requested in writing by 25% in number of the creditors holding 25% in value of the proved claims.
- Subsequent meetings are called by sending a notice of the time and place thereof not less than five days before the time of each meeting to each creditor at the address given in the creditor's proof of claim. Notices need only be given to those creditors who have proved their claims.

As previously noted, subsequent meetings of creditors are rare. Generally, where ongoing creditor involvement is warranted, it is accomplished through the appointment of inspectors. Accordingly, meetings of inspectors can occur regularly in an administration.

15. Bankruptcy Counselling

The debtor pays the cost of counselling, which is set by regulation, at $85 for an individual session or $25 for a group session.

All personal bankrupts and persons filing consumer proposals are required to take two counselling sessions before they are given a discharge or a certificate of completion. The counselling can be one-on-one, between you and your administrator or trustee or another authorized counsellor. It can also be in a group consisting of other bankrupts and a qualified counsellor. The trustee must provide, or arrange for, counselling for individual debtors. The trustee may also provide, or arrange for, counselling for a person financially associated with an individual debtor.

Counselling first came into effect in Canada in 1993, and Canada has been one of the world innovators in requiring counselling by bankrupts and persons filing a consumer proposal. Insol International, an international federation of insolvency professionals, in their *Consumer Debt Report* published in May of 2001 recommended that competent and independent debt-counselling be available to consumer debtors for both pre and post bankruptcy counselling. The US, as part of the implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act in October 2006, required a person going into bankruptcy to take two counselling sessions; one within the 6 months before filing and a second one before the person is discharged.

Qualifications of the counsellor

A qualified counsellor is a trustee or a person who has taken the required counselling course and passed a written examination. The course material was prepared by Ryerson University at the instigation of the Office of the Superintendent of Bankruptcy. Before being granted a counselling certificate by the Office of the Superintendent of Bankruptcy, the counsellor also has to have at least 100 hours of counselling experience under the supervision of a trustee.

A good counsellor requires strong insolvency knowledge as well as good "people" skills such as being a good listener, empathetic, and being able to read non-verbal signs.

First stage of counselling

The first stage counselling has to be taken within 60 days of the filing of the bankruptcy or the consumer proposal.

The objective for the first stage counselling is to provide the bankrupt (and relative) or consumer proposal debtor, with counselling advice regarding:

- money management
- spending and shopping habits
- warning signs of financial difficulties
- obtaining and using credit

Second stage of counselling

The second stage counselling has to be taken within 210 days following the date of bankruptcy or the filing of a consumer proposal.

The second stage requires the qualified counsellor to arrive at an understanding with the debtor as to the causes of insolvency, including non-budgetary causes.

Where non-financial underlying causes are present such as drugs, gambling, compulsive shopping, or alcohol or some other factor, the counsellor is required to offer the debtor a referral to appropriate agencies, organizations and professional advisors available within the community.

The objectives for the second stage counselling are to:

- determine budgetary and/or non-budgetary causes of the insolvency
- follow up on the debtor's application of the principles presented in the first stage
- assist the debtor to better understand his/her financial strengths and weaknesses
- assist the debtor to better understand his/her behaviour in financial management and consumption habits
- make the debtor aware of resources available that will assist in achieving and maintaining economic stability
- In cooperation with the debtor, develop a plan of action including, if appropriate, referral for specialized counselling for non-budgetary causes.

Note that mandatory bankruptcy counselling should not be confused with the use of credit counsellors. Credit counsellors may in some circumstances be used to avoid bankruptcy. See Chapter 12 for more information.

16. A Personal Proposal Story

Peter was worried sick. He felt like a failure. He had always been supremely confident and felt he could accomplish almost anything he set his mind to. Now he had grave doubts. He was a failure, he thought, at 27 years of age!

Peter had started a business a few years ago. The business supplied and installed customized audio systems in vehicles. There was excellent demand in this niche market and the business thrived. Peter had opened a second location in a town about 100 kilometres away and his best friend was managing this location.

Then things started to go wrong. The second location was not doing well and sales were poor. Peter had spent the whole weekend going over the books and it was a disaster! Not only were the sales low but also he found out that extending credit made up a large part of the sales. He knew a large percentage of the debt was not collectable.

He had made it clear to his friend that under no circumstance was he to extend credit. It was cash up front or payment by credit card.

"Why did you do this?" he asked his friend.

The friend was contrite. "I am sorry, Peter. What can I say? I thought I was doing the right thing."

Peter knew the business could not survive. He went to the bank and they immediately appointed a receiver. In time, the bank was paid out from the proceeds from the inventory and the collection of accounts receivable. So was Canada Revenue Agency (CRA).

When the dust settled, Peter found he was personally liable for the business debt he had personally guaranteed. There was also his personal debt to contend with, made up of credit card debt of $5,000 and income tax owing of $5,000. In total he owed $80,000.

Peter went to see his father, a successful businessman. Peter's father listened to Peter's story. He didn't criticize Peter and didn't say, "I told you so." Instead, he asked a few questions about the debt and said that Peter had to get professional advice as soon as possible. Peter's father said he knew a trustee in bankruptcy and did Peter want him to set up an appointment? Peter said he did.

"Do you want me there too?" asked Peter's father.

"I do," replied Peter.

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Peter and his father were now meeting with the trustee. The trustee had reviewed Peter's financial information and had asked a number of questions. One question concerned Peter's current income.

Peter said he was working as a salesman in an audio store and was making about $1,800 a month, take-home pay.

The trustee said he could only see two options for Peter. One was bankruptcy, which would see all the debt erased, including the CRA debt, and would see Peter discharged in nine months.

"What is the second option", asked Peter.

"It's a proposal," the trustee replied. "But since you do not have an income sufficient to make payments on a proposal it would have to be a "Lump sum" proposal with funds put up by a third party."

The trustee explained that if Peter earned enough to pay say $20,000 over 40 months, he thought that would be acceptable to the creditors and Peter could file a proposal, thus avoiding bankruptcy.

Peter's father said he would like to know more about this and said he might be prepared to put up the money.

The trustee explained that there were two types of proposal available; a consumer proposal and a division I proposal. There was some discussion on the major differences between the two:

Item	Consumer Proposal	Division I Proposal
Votes required for the Proposal to be accepted by the Creditors.	Deemed to be accepted after 45 days if creditors do not call for a creditors' meeting and fewer than 50% of the dollars are voted against the proposal.	At least 66.6 percent (2/3) in dollars and 50% plus one in number of eligible creditors who vote must approve.
Amount of time before the vote by the creditors is known.	45 or more days.	21 days
Debtor automatically bankrupt if creditors do not accept the proposal?	No.	Yes.
Stay of proceedings is withdrawn if the creditors do not accept the proposal.	Yes.	No.

The trustee explained that the terms of a proposal were only limited by imagination and the following rules:

- Creditors had to be better off than in a bankruptcy;
- Creditors have to approve the proposal or have it deemed to be approved by them not voting 50.0+ % of the dollars against a consumer proposal;
- The proposal had to be approved by the court or in the case of a consumer proposal have it deemed to be court approved.

The trustee explained that the creditors who voted would bind all unsecured creditors to the proposal, even the creditors who did not vote and those who voted against the proposal. He further explained that if the creditors did not accept the Division I Proposal, then Peter would be bankrupt effective the date of the creditors' meeting, at which votes were cast.

Peter's father asked the trustee what the advantages were of the proposal compared with a bankruptcy.

The trustee said that the bankruptcy was cheaper and would only cost about $1,800. The fact of a bankruptcy would be erased from the credit bureau report 6 years after the discharge from bankruptcy or about 7 years after an assignment into bankruptcy.

The advantages of a proposal were that the credit bureau record would be erased 3 years after the proposal terms were satisfied or about 40 months after the proposal was filed.

There was another possible advantage, the trustee stated but it would depend on a value judgement by Peter as to whether it really was an advantage. That was that a proposal was not a bankruptcy.

The trustee asked Peter if it was important to Peter not to go bankrupt.

Peter said it was.

Peter's father asked the trustee how much the lump sum should be. The trustee said it was up to Peter and his father to come up with the dollar amount. The trustee informed them that if the creditors accepted the proposal they would be paid the proposal amount in approximately three months.

Peter and his father conferred for a few minutes and then Peter's father told the trustee that he was prepared to put up $16,000.

Peter told the trustee that he would like to file a Division I Proposal rather than a Consumer Proposal because he wanted to know the result as

soon as possible. i.e. in 21 days and did not want to wait 45 plus days.

He also said that he liked the idea of immediately going into bankruptcy if the creditors did not accept the proposal. Peter explained that this perhaps would encourage the creditors to vote for the proposal since the alternative was they would get nothing if he went into bankruptcy. He also said that if the creditors did not accept the proposal he would have to file bankruptcy in any case so why not have it happen immediately.

Peter also felt that maintaining the continuity of the stay of proceeding was important to him. He explained that since in a consumer proposal the stay of proceeding was dropped if the creditors did not accept the proposal this made him vulnerable to having his wages garnisheed.

He asked the trustee if he thought that would work. He also asked the trustee how he would be paid.

The trustee said he felt that that amount would be acceptable. He said his fees would be about $4,000 and would come out of the $16,000.

The trustee said he would draft the proposal and have it ready to sign in two days. He said he would need a bank draft from Peter's father in the amount of $16,000 at that time. He explained that he and Peter's father would sign an agreement that the $16,000 would be returned to Peter's father if the creditors did not accept the proposal, or the court did not approve it.

The trustee also reminded them that the creditors' meeting would vote on the proposal 21 days after the proposal was filed and if the proposal was not accepted that Peter would be bankrupt effective that date. The trustee said that Peter was required to attend the meeting and that he thought Peter's father should also attend.

Peter and his father said they understood and made an appointment for Peter to attend at the trustee's office in two days to sign the proposal and associated documents. Peter's father said he would have the funds in the hands of the trustee the next day.

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Peter and his father were now at the trustee's office at the creditors' meeting. There were three creditors in attendance, including a representative from CRA. The trustee had checked the Proofs of Claim that the attending creditors had provided.

The trustee chaired the meeting. He reviewed the report he had sent to all the creditors giving the background and the terms of the proposal. He also reminded the creditors that he was recommending that the proposal be accepted since the creditors in the proposal would get about $12,000 or 15 cents on the dollar. While, if they voted against the proposal and Peter was placed into bankruptcy they would get nothing.

The trustee said that the purpose of the meeting was to consider and vote on the proposal. The trustee told the meeting that he had three voting letters voting in favour of the proposal. The trustee asked if there were any questions.

The creditors asked a number of questions of Peter concerning how the business failed.

The representative of CRA informed the meeting that she would be voting against the proposal unless CRA received 100 cents on the dollar of the $5,000.00 CRA debt.

Peter and his father conferred for a few minutes.

Peter informed the meeting that he was prepared to go into bankruptcy if the creditors did not accept the proposal. Peter's father said that he was not prepared to put up any more money.

The trustee called for voting letters to be filled out by the three creditors present.

The trustee took a few minutes to tally the votes and then announced that the creditors had accepted the proposal as follows:

	FOR	**AGAINST**	**%**
# Votes	5	1	83.3

$ Amount of Votes	$30,000	$5,000	85.7

The trustee said he would immediately make an application to court to have the proposal approved by the court. He informed the creditors he would notify the creditors of the court date.

The court did approve the proposal. Later the trustee paid out the required monies to the creditors and issued Peter a Certificate of Completion as evidence of the successful completion of the proposal and erasing of his unsecured debt.

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This proposal story illustrates some of the most powerful features of a proposal:

- Creditors representing only $35,000 of the $80,000 in debt voted to accept the proposal but ALL the creditors are bound by the terms of the proposal.
- CRA (Canada Revenue Agency) voted against acceptance of the proposal but they too are forced to accept the terms of the proposal.
- A third party (the father) funded the proposal with the funds he advanced to be refunded to him if the creditors did not approve the proposal. This is a fairly common occurrence and provides a very persuasive motive for the creditors to accept the proposal. i.e. The creditors will get $12,000 if they accept the proposal and nothing if they refuse to accept it.

17. Personal Proposals

What is a personal proposal?

A proposal is an agreement between a person and his creditors whereby the person pays only a portion of his debts (Say one-half), thus avoiding bankruptcy. A proposal is made to the creditors through a trustee. If the creditors vote in favour of the proposal, and the court approves it, then the proposal is a binding contract, which all creditors must accept -- even the creditors who did not vote for the proposal. The proposal settles the creditors' rights if there are differences in priorities or treatment amongst them. If the creditors vote against the proposal, in a Division I Proposal, then the person is bankrupt. Proposals are a better deal for the creditors than bankruptcy and in the vast majority of cases are accepted!

Advantages of a proposal

The immediate advantage of filing a proposal is that all legal actions undertaken or contemplated by unsecured creditors are stopped (stayed). The filing of a Proposal also gives the debtor some "breathing space" so that he can approach the creditors and explain his financial situation and ask for support.

Proposals must provide a better result to creditors than a bankruptcy. Otherwise, there is no reason for creditors to vote in favour of the Proposal. Note, however, that a "better" result can stem from a quicker distribution, lower costs of administration and a certain outcome of issues that may otherwise be contentious. Proposals are particularly useful in the following situations:

- Where the insolvent desires a "certain" result or a quick resolution and is prepared to pay a premium to achieve that result
- Where discharge is likely to be contentious or a substantial condition is likely to be imposed
- Where the insolvent finds bankruptcy unacceptable
- Where the insolvent wishes to continue in business and will be prevented from so doing if obliged to disclose that he is a bankrupt when dealing with third parties or obligated to resign as a director under provincial law
- Where professional accreditation may be lost or put at risk by a bankruptcy
- Where a bankruptcy will result in a secured creditor acting on its security
- Where the insolvent wishes to retain some key asset (e.g., a home, heirloom, secret process or impending inheritance)
- Where the insolvent has previously been bankrupt

If a person has the ability to make a proposal (i.e., his or her income exceeds living expenses), then he or she should consider making a proposal.

Two types of personal proposals

There are two types of personal proposal a person can file:

- **Consumer Proposal:** This is a simplified form of Proposal available to debtors owing only consumer debt amounting to less than $250,000, excluding a mortgage on the principal residence.
- **Division I Proposal:** This type of proposal can be for personal or business debt. There is no dollar limit on the amount of debt.

Comparison between Consumer proposals and Division I Proposals

	Consumer proposals	Division I proposals
Who proposal is available to	Individuals owing consumer or commercial debt amounting to less than $250,000, excluding a mortgage on the principal residence.	Debtors who have personal or business debt. There is no dollar limit on the amount of debt.
Stay of proceedings	Proposal stays all legal actions undertaken or contemplated by unsecured creditors.	Proposal stays all legal actions undertaken or contemplated by unsecured creditors.
Term	Cannot be for a term of more than five years.	Can be for any term that makes economic sense.
No. of counselling sessions required	Two	None
Period for acceptance of proposal by creditors	Deemed to be accepted after 45 days if creditors do not call for a creditors' meeting and fewer than 50% of the dollars are voted against the proposal.	21 days
Period for court approval of proposal (after acceptance by creditors)	Deemed to be approved after 15 days following creditor acceptance if there is no request to take the proposal to court for approval.	The trustee applies for court approval expeditiously, usually within three weeks.
Creditors' meeting	Held if requested within 45 days of the filing.	Held approximately three weeks after the proposal is filed.
How proposal is accepted or rejected	It is either deemed to be accepted (See above) or if there is a creditors' meeting by simple majority of the dollars voted.	At least 66.6 percent (2/3) in dollars and 50% plus one in number of eligible creditors who vote must approve.
What happens if proposal is not accepted or approved?	Debtor cannot make another consumer proposal. Note that the debtor is not automatically bankrupt if the consumer proposal is not accepted. Stay of proceedings is lifted.	Debtor is immediately bankrupt effective on the date of the creditors meeting.

Consumer proposals

- Available to individuals owing consumer or commercial debt amounting to less than $250,000, excluding a mortgage on the principal residence;
- Cannot be for a term of more than 5 years;
- Stay of Proceedings is in effect;
- Can only be filed through a trustee in bankruptcy or an administrator of consumer proposals;
- The creditors must be better off under a Proposal than under a bankruptcy.

- Administrator must file a report to the creditors on the affairs of the person and the causes of financial difficulty;
- If fewer than 50% of the dollars are voted against the consumer within 45 days of the filing of the consumer proposal it is deemed to have been accepted by the creditors;
- If no objection to the consumer proposal is received within 15 days after the deemed acceptance of the consumer proposal it is deemed to have been approved by the court;
- Creditors vote at the meeting with a simple majority of the dollars voted deciding on acceptance or refusal of the proposal;
- Debtor is required to take two counselling sessions;
- If the creditors do not accept or the court does not approve the consumer proposal the debtor cannot make another consumer proposal;
- The debtor is not automatically bankrupt if the consumer proposal is not accepted.
- The stay of proceedings is lifted if the consumer proposal is not accepted.

Division I proposals

- A Proposal can only be filed through a Trustee in Bankruptcy;
- A Proposal is simply an agreement between the debtor and his creditors;
- The filing of a Proposal stays all legal actions undertaken or contemplated by unsecured creditors;
- Secured creditors are not bound by the terms of a Proposal and therefore must concur in the filing of the Proposal;
- The creditors must be better off under a Proposal than under a bankruptcy;
- Creditors vote on the Proposal, in person or by mail, at a creditors' meeting held approximately three weeks after the Proposal is filed;
- The trustee must file a report to the creditors on the affairs of the person and the causes of financial difficulty;
- In order to be accepted by the creditors, the Proposal must receive approval by at least 66.6% (2/3) in dollars and 50% plus one in number of eligible creditors who vote;
- The court must approve the Proposal. If the Proposal does not receive the required votes, the individual is immediately bankrupt effective on the date of the creditors meeting;
- Once the Proposal is approved by the Court then all unsecured creditors are bound by the Proposal; not just the creditors who voted in favour of the Proposal;
- If the terms of the Proposal are not honoured, then the trustee or a creditor may apply to Court for the Proposal to be annulled and the individual placed into bankruptcy.

Which is better?

If the trustee, in a Division I proposal, sets his fees at a level similar to a consumer proposal the vast majority of people will chose a Division I proposal, because the Division I Proposal, in this writer's opinion, is vastly superior to a consumer proposal for the following reasons:

- Costs are the same
- Funds distributed to the creditors are the same
- Will conclusively deal with the person's financial problem as either the proposal will be accepted or the person will be in bankruptcy
- Will let the creditors know the debtor is serious about the proposal terms since if the creditors vote against the proposal the person will be in bankruptcy
- Will ensure the continuity of the Stay of Proceedings. There is the danger that once a consumer proposal is voted down and the stay is thereby lifted that creditors such as CRA could place a lien against an asset.

- The person is not required to take two counselling sessions under a Division I proposal
- Will allow the person to file the proposal with a minimum payment since the trustee's fees are more protected in a Division I Proposal. A prudent trustee in a consumer proposal should protect his fees by getting an "up front" payment of at least $952.50 ($750.00 plus the $50.00 court fee and the OR fee of $100.00 plus GST of $52.50)
- The result is known quicker in a Division I Proposal; 21 days vs. 45 days for a deemed acceptance in a Consumer Proposal.

The meeting of creditors (Division I Proposal)

Please note that the following pertains to Division I Proposals. We are explaining Division I Proposals because Division I Proposals are more complicated than Consumer Proposals and often have difficult issues to deal with.

After the proposal has been filed, a creditors' meeting must be held within three weeks where the creditors will consider the proposal and vote. Creditors vote on the proposal in person or by mail. It is a good idea for the debtor to be kept up to date by the Trustee as to the Voting Letters received. This will give the debtor a good idea if the Proposal is going to be accepted or refused at the creditors' meeting.

The creditors' meeting is always stressful as so much is riding on the outcome of the vote. The trustee usually chairs the meeting although a representative from the Office of the Superintendent of Bankruptcy could chair the meeting. The purpose of the meeting is to consider the Proposal and vote on its acceptance or refusal.

Before the meeting the trustee or one of his representatives will have checked the claims of all the people attending to ensure they all have valid claims. Voting letters received by mail and fax will also have been checked and recorded by the trustee's office. Everyone attending the meeting will be asked to sign an attendance form.

The chair calls the meeting to order. The trustee will summarize the proposal and inform the meeting of his review and whether he found any fraudulent preferences or reviewable transactions. The trustee will also inform the meeting that he is recommending that the creditors accept the proposal because they will receive more money than if the debtor is placed into bankruptcy.

The chair will then ask the meeting if there are any questions. This is the opportunity for the creditors to ask questions of the debtor, such as how he or she got into financial difficulty. The creditors may also review the budget and the chances of those results being met.

It sometime happens at the meeting that creditors will say that they are not prepared to vote in favour of the proposal unless the Proposal is amended to provide more money for the creditors. The debtor will have to be very careful how he or she deals with this question:

- Are the creditors bluffing?
- How much more money do the creditors want?
- If the debtor says he cannot provide any more funds will the creditors really refuse the Proposal thus placing the debtor in bankruptcy?
- Can the debtor afford to pay more money?
- If the debtor can afford to pay more money, how much can he afford?

If the debtor is not sure how to answer he should ask the trustee for a short adjournment to consider the offer. If the decision is going to be very difficult, you can ask for an adjournment of the meeting to another date.

It is my opinion that the most important thing that the debtor can do at the meeting of creditors is to be very respectful and to never show any frustration or anger. Getting angry, and being rude or being disrespectful will only antagonize the creditors and cause them to vote against the proposal.

In my practice I have seen all sorts of answers and results:

- I have seen the debtor explain how he arrived at the proposal amount and why he cannot increase that amount. The creditors voted in favour of the Proposal.
- I have seen the debtor explain how he arrived at the proposal amount and why he cannot increase that amount. The creditors voted against acceptance of the Proposal.

- I have seen the debtor explain how he arrived at the proposal amount and seen him offer a small increase in the Proposal amount. The creditors voted in favour of the Proposal.
- I have seen the debtor explain how he arrived at the proposal amount and seen the debtor accept the additional payments the creditors wanted. The creditors voted in favour of the Proposal. The Proposal was successfully completed.
- I have seen the debtor explain how he arrived at the proposal amount and seen the debtor accept the additional payments the creditors wanted. The creditors voted in favour of the Proposal. The Proposal was **NOT** successfully completed because the debtor could not afford the addition payments.

As you can see there is no hard and fast rule. It is negotiation time and a bit of a "poker game".

How is a proposal approved?

In order for the Proposal to be justified:

- the creditors must be better off under the Proposal than they would be under a bankruptcy;
- The Proposal must receive acceptance by at least 66.6% (2/3) in dollars and 50% plus one in number of eligible creditors who vote, and;
- The court must approve the Proposal.

If the Proposal is accepted by the creditors and approved by the Court then all unsecured creditors are bound by the Proposal; not just the creditors who voted in favour of the Proposal.

Secured creditors are not bound by the terms of a Proposal and therefore must concur in the filing of the Proposal.

What happens if the proposal is refused?

If the Proposal is refused, the debtor is bankrupt immediately after the vote. The trustee will carry on the meeting as the First Creditors Meeting in the matter of the Bankruptcy.

What happens if the proposal terms cannot be met?

If the terms of the Proposal are not honoured, then the trustee or a creditor may apply to Court for the Proposal to be annulled and the individual placed into bankruptcy.

The best thing to do is to make sure you keep the trustee up to date. If the proposal terms cannot be met and it is just a temporary thing you will be able to get permission to miss a payment or two.

If there is a serious problem you should contact the trustee who will set up a meeting of inspectors. It may be that the debtor needs a revision to the Proposal. It could also mean that the Proposal cannot be completed and the debtor should go into bankruptcy.

Canada Revenue Agency (CRA) and Personal Proposals

Most lawyers and accountants, at one time or another, have attempted to talk to CRA in regard to one of their clients, in order to have their client pay part of their debt to CRA, and thus avoid going bankrupt. A few years ago, CRA enacted the "Fairness Package".

This has not proved to be a very flexible plan to enable people to make a deal with CRA.

To the frustration of the professionals who have tried to make a deal, they have found it impossible because CRA staff do not have the discretion to compromise any debt.

However, if a company or an individual files a Proposal under *The Bankruptcy and Insolvency Act*, even with CRA as a major creditor, then CRA will consider the case on its own merits and, if the proposal has merit, will support the proposal. We have filed many proposals, for companies and individuals with considerable CRA debt, where only a fraction of what is owed is paid.

It is our experience that CRA will support a Proposal so long as it has merit.

A Bulletin from the Canadian Association of Insolvency and Restructuring Professional (CAIRP) reported on a meeting with senior officials of CRA and the CRA policy regarding Proposals as follows:

- CRA will either reject or accept proposals based on common sense and a practical assessment of what the debtor can pay.

- The only exception to this policy is in the case of a strategic insolvency or the debtor has been supporting an extravagant lifestyle and has made no attempt to meet his or her tax obligations. In this case, CRA may opt for a more punitive route by bankrupting the debtor, even if the proposal appears to be more favourable, and opposing the bankrupt's discharge to attempt to obtain a higher recovery.

18: Code of Ethics for Trustees

The Code of Ethics for Trustees in Bankruptcy is an integral part of the General Rules of the *Bankruptcy and Insolvency Act*. Trustees in bankruptcy are also subject to the rules of professional conduct of professional associations to which they belong such as:

- Canadian Association of Insolvency and Restructure Professionals. (CAIRP);
- Certified General Accountants Association (CGA)
- Canadian Institute of Chartered Accountants (CICA).

Note: The following text reflects Sections 34 to 53 of the *Bankruptcy and Insolvency Act* General Rules;

34. Every trustee shall maintain the high standards of ethics that are central to the maintenance of public trust and confidence in the administration of the Act.

35. For the purposes of sections 39 to 52, "professional engagement" means any bankruptcy or insolvency matter in respect of which a trustee is appointed or designated to act in that capacity pursuant to the Act.

36. Trustees shall perform their duties in a timely manner and carry out their functions with competence, honesty, integrity and due care.

37. Trustees shall cooperate fully with representatives of the Superintendent in all matters arising out of the Act, these Rules or a directive.

38. Trustees shall not assist, advise or encourage any person to engage in any conduct that the trustees know, or ought to know, is illegal or dishonest, in respect of the bankruptcy and insolvency process.

39. Trustees shall be honest and impartial and shall provide to interested parties full and accurate information as required by the Act with respect to the professional engagements of the trustees.

40. Trustees shall not disclose confidential information to the public concerning any professional engagement, unless the disclosure is

(*a*) required by law; or

(*b*) authorized by the person to whom the confidential information relates.

41. Trustees shall not use any confidential information that is gathered in a professional capacity for their personal benefit or for the benefit of a third party.

42. Trustees shall not purchase, directly or indirectly,

(*a*) property of any debtor for whom they are acting with respect to a professional engagement; or

(*b*) property of any estates in respect of which the Act applies, for which they are not acting, unless the property is purchased

(i) at the same time as it is offered to the public,

(ii) at the same price as it is offered to the public, and

(iii) during the normal course of business of the bankrupt or debtor.

43. (1) Subject to subsection (2), if trustees have a responsibility to sell property in connection with a proposal or bankruptcy, they shall not sell the property, directly or indirectly,

(*a*) to their employees, agents or mandataries, or persons not dealing at arms-length with the trustees;

(*b*) to other trustees or, knowingly, to employees of other trustees; or

(*c*) to related persons of the trustees or, knowingly, to related persons of the persons referred to in paragraph (*a*) or (*b*).

(2) If trustees have a responsibility to act in accordance with subsection (1), they may sell property in connection with a proposal or bankruptcy to the persons set out in paragraph (1)(*a*), (*b*) or (*c*), if the property is offered for sale

(*a*) at the same time as it is offered to the public;

(*b*) at the same price as it is offered to the public; and

(*c*) during the normal course of business of the bankrupt or debtor.

44. Trustees who are acting with respect to any professional engagement shall avoid any influence, interest or relationship that impairs, or appears in the opinion of an informed person to impair, their professional judgment.

45. Trustees shall not sign any document, including a letter, report, statement, representation or financial statement that they know, or reasonably ought to know, is false or misleading, and shall not associate themselves with such a document in any way, including by adding a disclaimer of responsibility after their signature.

46. Trustees may transmit information that they have not verified, respecting the financial affairs of a bankrupt or debtor, if

(*a*) the information is subject to a disclaimer of responsibility or an explanation of the origin of the information; and

(*b*) the transmission of the information is not contrary to the Act, these Rules or any directive.

46.1 [Repealed, SOR/98-240, s. 1]

47. Trustees shall not engage in any business or occupation that would compromise their ability to perform any professional engagement or that would jeopardize their integrity, independence or competence.

48. Trustees who hold money or other property in trust shall

(*a*) hold the money or property in accordance with the laws, regulations and terms applicable to the trust; and

(*b*) administer the money or property with due care, subject to the laws, regulations and terms applicable to the trust.

49. Trustees shall not, directly or indirectly, pay to a third party a commission, compensation or other benefit in order to obtain a professional engagement or accept, directly or indirectly from a third party, a commission, compensation or other benefit for referring work relating to a professional engagement.

50. Trustees shall not obtain, solicit or conduct any engagement that would discredit their profession or jeopardize the integrity of the bankruptcy and insolvency process.

51. Trustees shall not, directly or indirectly, advertise in a manner that

(*a*) they know, or should know, is false, misleading, materially incomplete or likely to induce error; or

(*b*) unfavourably reflects on the reputation or competence of another trustee or on the integrity of the bankruptcy and insolvency process.

52. Trustees, in the course of their professional engagements, shall apply due care to ensure that the actions carried out by their employees, agents or mandataries or any persons hired by the trustees on a contract basis are carried out in accordance with the same professional standards that those trustees themselves are required to follow in relation to that professional engagement.

53. Any complaint that relates to a contravention of any of sections 36 to 52 must be sent to the Division Office in writing.

19. Insolvency Dictionary

Absolute:
Complete and without conditions. For example, a bankrupt, usually after nine months receives an Absolute Order of Discharge, which means all of his debts, with certain exceptions, are wiped out.

Abstract of Title:
A chronological history of property showing the chain of title from its original grant to the present ownership.

Acceleration Clause:
Any clause in a contract which spells out that when certain actions are taken, the clause comes into effect. A common acceleration clause is the clause in a lease that says if a company goes into bankruptcy, three months rent is due as a preferred claim.

Acceptance:
The act of accepting something, usually a contract. For example, an offer is made to some person that that person buys certain goods for a certain amount of money. If the person to whom the offer is made agrees, then the offer is considered to be accepted.

Accessions:
Goods that are installed in or affixed to other goods.

Act:
A bill which has passed through the various legislative steps and, hence, has become law.

Action:
A proceeding in a Court of law where one person seeks a Court Order for the enforcement of that person's or company's rights.

Adjournment:
The delay or postponement usually to another time of a meeting or action.

Adjustment Date:
The date on which parties agree that certain financial adjustments will be made to a contract. For example, on the sale of property, there is an adjustment date set which is the time for the costs, such as property taxes, water, etc., to be apportioned between the purchaser and the vendor.

Administrator of Consumer Proposal:
A trustee or a person appointed or designated by the Superintendent of Bankruptcy to administer consumer proposals.

Affidavit:
A statement by a person in which the person states that to the best of his or her knowledge, the facts in question are true. An affidavit is sworn before a Notary, Commissioner for Taking Oaths, lawyer or some other judicial officer who can administer oaths.

After Acquired Property:
Property of a bankrupt acquired between the date of bankruptcy and prior to the bankrupt's discharge from bankruptcy.

Agent:
A person who has received, usually by appointment, the power to act on behalf of another.

Agent - Section 427 of the Bank Act:
A person, usually a Trustee in Bankruptcy, appointed by a bank to realize on its security as defined under Section 427 of the Bank Act. The security covered is inventory.

Alimony:
An amount given to one spouse by another while they are separated or divorced.

Annulment:
To make void or to cancel.

Appeal:
To ask a more senior Court or person to review a decision of a subordinate Court or person.

Appearance:
The act of showing up in Court as either plaintiff, defendant, accused, or any other party to a Court action.

Application:
The act of making a request usually of the Court, for example, an application to have a bankrupt discharged.

Application for a Bankruptcy Order: (Petition):
The application made under the *Bankruptcy and Insolvency Act* for the Court to hand down a Receiving Order (Bankruptcy Order) stating the person is in bankruptcy. In an amendment dated December 15, 2004 this term was changed to **Application for a Bankruptcy Order.**

Appointment:
The act of designating, or the acquisition of some, responsibility or position. For example, the Court can appoint a Trustee in Bankruptcy as Receiver of some property.

Appurtenances:
Things attached to real property or, by their nature, belonging with real property; e.g., an easement or a right of way.

Arbitration:
A dispute resolution mechanism, whereby an independent neutral third party is appointed to hear and consider the merits of the dispute, and who renders a final and binding decision called an award.

Arm's Length:
The act of dealing with a person who is not a relative but an independent third party.

Arrears:
The amount of money by which a contract or obligation is in default.

Assessment:
The valuing of a thing or property

Assessment Interview:
An interview conducted by a trustee or an administrator of a consumer proposal before a bankruptcy or a consumer proposal is made. Its purpose is to evaluate the debtor's financial situation, explain the options available and discuss the merits and the consequences of the debtor's choice.

Asset:
A thing, chattel, resource or item or piece of property owned or controlled by a person or company.

Assign:
To give or to transfer responsibility to another.

Assignment of Book Accounts:
The assigning by a company or business to a lender, usually a bank, the interest that the person or company has in accounts receivables.

Assignment into Bankruptcy:
The act of a person who places himself or his company into bankruptcy pursuant to the *Bankruptcy and Insolvency Act*.

Atonement:
Satisfaction or reparation of a wrong or injury; to make up for errors or deficiencies.

Attorn:
To turn over; e.g., rent; a tenant agrees to recognize a new party as landlord.

Automatic Discharge:
First-time bankrupts receive an automatic discharge nine months after they became bankrupt unless it is opposed by either a creditor, the trustee or the Superintendent of Bankruptcy.

Bailiff:
A person who, in British Columbia, is appointed under the Debt Collection Act who will act or assist any other person to repossess, cease or distrain pursuant to conditions set out in various Acts.

Bankrupt:
A person who has made an assignment or against whom a receiving order has been made, or the legal status of that person.

Bankruptcy:
The state of being bankrupt.

Bankruptcy Order (Receiving Order):
An Order handed down by the Court following the successful petition to have a person or company placed into bankruptcy. In an amendment dated December 15, 2004 this term was changed to **Bankruptcy Order from Receiving Order.**

Beneficiary:
The person who is in receipt, or will be in receipt, of some asset, thing, or thing of value. For example, a person can make a will naming someone, usually their spouse, as beneficiary of their estate.

Beneficial Ownership:
Where a person has the right of enjoying use and advantage of another's property.

Bill of Exchange:
A legal document, such as a cheque, where one person in writing specifies that a third party will pay a person a specific sum of money at a specific time, or upon demand.

Bill of Lading:
A document received by a transportation company acknowledging that it has received certain goods and, for the purpose of transportation, serves as title to that property.

Bill of Sale:
An agreement in writing signifying that one person for a specific sum of money has acquired specific assets.

Book Debts:
Accounts receivables owned by a company.

Bona Fide:
In good faith; genuine; without fraud or deceit.

Bond:
A written instrument with sureties, guaranteeing faithful performance of acts or duties contemplated.

Bond (in bond):
Stored under charge of customs until importer pays duty.

Builder's Lien:
The action that a supplier of goods or services, in respect of construction, can take by filing an entitlement against that property for monies he is owed. Refer to the Builder's Lien Act.

CAIRP (Canadian Association of Insolvency and Restructuring Professionals):
The Canadian Association of Insolvency and Restructuring Professionals is the national professional organization representing 913 general members acting as trustees in bankruptcy, receivers, agents and consultants in insolvency matters. There are also another 430 members (in the articling, life and corporate categories). The Association is a non-profit corporation, established in 1979 to "advance the practice of insolvency administration and the public interest related to it".
The CAIRP website is: http://www.cairp.ca/

Case Law:
That body of Court decisions that act as precedents in the interpretation of various Acts. In some cases, the rule is not in statute books but can be found as a principle of law established by a judge in some recorded case.

Caveat:
A formal warning. Beware!

Caveat Emptor:
Let the buyer beware.

Central Bank:
Canada - Bank of Canada;
United States - Federal Reserve Bank.

Certificate of Indefeasible Title:
Certificate obtained from land titles office indicating charges and encumbrances against a particular piece of property.

CCAA - Companies' Creditors Arrangement Act:
An Act under which proposals or arrangements or compromising of debt is structured. For a company to be eligible to file under the CCAA, it must have at least $5 million in debt.

Charge:
An encumbrance, lien or financial obligation that is attached to some property. For example, a person who files a lien against a piece of property might say that he has a charge against that property.

Chattel:
Asset that is movable and not attached to land or real property.

Chattel Mortgage:
An interest that is given by one person in, say, a piece of property such as a piano to another person to secure a debt.

Chose In Action:
The right of property in intangible things which are not in one's possession, but that are enforceable through legal or Court action, such as debts, insurance claims, shares in a company, pensions and salaries.

Claim Provable In Bankruptcy:
Any claim or liability that is provable in a proceeding under the *Bankruptcy and Insolvency Act*.

Claw Back:
The cancellation of an action. For example, a one year claw back will be in effect for RRSPs in provinces *without* RRSP exemption laws. In other words, RRSP contributions made in the 12 months prior to bankruptcy (in those provinces) will be taken into the bankruptcy estate.

Clearance Certificate:
A certificate issued by a statutory body signifying that they are not owed any money in regards to a certain file or company.

Collateral:
Property that has been given or committed in order to guarantee a loan.

Collusion:
A secret agreement and co-operation for a fraudulent or deceitful purpose.

Commissioner of Oaths:
Commissioner for taking affidavits in a province as authorized by provincial statute.

Committal Order:
A written order of a Court directing that someone be confined to prison, normally issued as a result of non-compliance with a previous Court order.

Common-Law Partner:
A person (defined under the *Income Tax Act*) who is cohabitating with an individual in a conjugal relationship and has been so for a period of at least one year.

Completion Date:
That date on which the transfer of title is to be made.

Condition Precedent:
A contractual condition that is required to be met before a contract can be completed.

Conflict of Interest:
The circumstance of a person who finds that one of his activities, interests, etc. may have a contrary interest on another of his interests or

activities.

Conforming Use:
To comply with a specified use, particularly involving real estate zoning by-laws.

Consideration:
Under common-law, one of the three criteria that have to be met before a contract is binding. Refers to money or payment of money or some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.

Consign:
To hand over or give possession of an asset to someone.

Consumer Debtor:
A natural person who is bankrupt or insolvent and whose aggregate debts, excluding any debts secured by the person's principle residence, do not exceed $75,000 or such other maximum as is prescribed.

Consumer Goods:
Goods that are used or acquired for use primarily for personal, family or household purposes.

Consumer Proposal:
A simplified form of Proposal available to debtors owing less than an amount prescribed under the *Bankruptcy and Insolvency Act*. In 2002 the amount was $75,000.00, excluding a mortgage on the principal residence.

Contingency Fee:
That fee which a person, often a lawyer, is entitled to per agreement upon the successful completion of some action. For example, a lawyer can take on an action for, say, 25% of the proceeds which he would only be entitled to if the action is successful.

Contra:
The setting off of mutual debt. For example, if a company owes $100 to another company that is owed $30 by that company in turn, the company is allowed to set off the $30 against the $100 and make a net payment of $70.

Contract:
An oral or written agreement between two or more parties which is enforceable by law. In order to be valid, a contract requires an offer, an acceptance of that offer and, in common-law jurisdictions, consideration.

Conveyance:
That act which transfers property from one person to another.

Counselling:
Individuals are required to take counselling from trustees or administrators when they file for bankruptcy or make consumer proposals. If they do not take counselling they may not be discharged from bankruptcy or have their consumer proposal satisfied.

Creditor:
That person who has a claim, preferred, secured or unsecured, provable under the *Bankruptcy and Insolvency Act*.

Credit Rating:
Credit reporting agencies collect information about consumers' financial affairs and sell this information to their clients. Credit ratings are set by creditors who pass this information to the reporting agencies. It consists of a nine-point rating scale, for example: R1 indicating that payment was made on time; R2 that payment was made 30 days late, but not more than 60 days; and R9 indicating a bad debt or one that has been placed for collection and it also applies to bankruptcy.

Crystallization:
That point in time where a contract or agreement triggers certain clauses in that contract. For example, when a bank appoints an Agent pursuant to its General Security Agreement, all the assets of the company in question, that are not secured by other creditors, are captured by that General Security Agreement.

Damages:
Cash compensation awarded by a Court to offset losses or suffering caused by another person's negligence or fault.

Date of the Initial Bankruptcy Event:
In respect of a person, it means the earliest of the date of filing or making:

an assignment into bankruptcy;

a proposal;

a Notice of Intention to Make a Proposal;

the first petition for a Receiving Order.

Debenture:
Security instrument evidencing a debt due from one party to another, payable on demand or otherwise, which can be a fixed and/or floating charge on assets and which can grant the lender broad powers to recover the amount due upon default, including the appointment of a receiver or receiver-manager.

Debtor:
A person who owes money, goods or services to another.

Debts not Released by Order of Discharge:
These are found in subsection 178(1) of the Act. They include: an award for damages in respect of an assault; a claim for alimony, or for support of a spouse or child; a debt arising out of fraud; any court fine; or debts or obligations for student loans when the bankruptcy occurs while the debtor is still a student or within ten years after the bankrupt has ceased to be a student.

Decree Nisi:
A provisional decision of the Court that does not have absolute effect until certain conditions are met.

Decree Absolute:
The name given to the final and conclusive Court Order after the condition of a "decree nisi" is met.

Deemed Trust:
A trust that is established by statute to be in effect even though there may not be any actual asset or monies held in that trust. For example, Revenue Canada in a bankruptcy or insolvency situation takes the position that it has a deemed trust covering source deductions that they claim rank even ahead of certain secured creditors.

De Facto:
In fact, rather than in law; e.g. de facto trustee.

Default:
Failure to pay or otherwise perform obligations under a contract.

Defer:
To delay to a future time.

De Jure:
According to law.

Demand:
To ask for with authority; claim as a right.

Demand Letter:
A letter usually from a lawyer on behalf of a client that makes a demand for payment or some other action which is in default. Under the *Bankruptcy and Insolvency Act*, a financial institution before it takes any action must give demand and notice of intention if it intends to enforce its security and must wait 10 days before it can enforce its security by, say, the appointment of a Receiver or Agent.

Directive:
Subsection 5(4) of the Act empowers the Superintendent to issue directives. Every person to whom a directive is issued must comply with the directive. Directives may be issued concerning: counselling; the administration of the Act; any decision of the Superintendent pursuant to this Act; the carrying out of the purposes and provisions of this Act and General Rules; the criteria to be applied by the Superintendent in determining whether a trustee licence is to be issued to a person and governing the qualifications and activities of trustees; and prescribing the form of any document that is to be prescribed by the Act and the information to be given therein. Subsection 68(1) requires that a directive be

issued by the Superintendent to establish the standards for determining the portion of total income of an individual bankrupt that exceeds that which is necessary to enable the bankrupt to maintain a reasonable standard of living.

Disallowance:
To refuse or to set aside. For example, the Trustee in Bankruptcy, under the *Bankruptcy and Insolvency Act*, can disallow a claim submitted by a creditor.

Discharge:
To cancel or relieve a person of an obligation or responsibility.

Discharge of Bankrupt:
For bankrupts who do not qualify for the automatic discharge, the trustee is required within one year from the beginning of the bankruptcy to apply to the court for a hearing of the application for a discharge.

The court official has several options from which to choose. At the hearing, the court decides whether to postpone the hearing to a later date, refuse the discharge, or issue any of the following orders:

Order of absolute discharge which relieves the bankrupt of the debts incurred before the bankruptcy, except for the exceptions provided in the Act.

Order of conditional discharge where certain conditions must be met before an absolute order of discharge is issued.

Order of suspended discharge where the court orders a delay before the discharge becomes effective.

Disclaim:
The act of denying, refusing, renouncing or repudiating an interest that one might have in some item.

Dissolution:
The act of ending, terminating or winding up of a company or state of affairs.

Distraint:
The right that a landlord has to seize the property of a tenant on the premises being rented and sell that property for payment of rent arrears.

Dividend:
Under the *Bankruptcy and Insolvency Act* it refers to those monies paid by a Trustee in Bankruptcy to the creditors.

DPSP:
Deferred Profit Sharing Plan.

Easement:
The right held by one person to make use of the land held by another person for a limited interest. For example, a utility may have an easement over a piece of real property which allows that utility to have, for example, electrical power lines running over that property.

Effective Date:
The date an agreement comes into force.

Effluxion:
Flowing out; e.g., an effluxion of funds.

Encumbrances:
Those charges or the security that attaches to any kind of property. For example, if there is a mortgage on a piece of property, then the property is said to be encumbered by that mortgage.

Equity:
This refers to the excess that the value of a piece of property has over any charges or encumbrances against that piece of property.

Escrow:
The holding on to of money or a written document, such as shares or a deed, until certain conditions are met by the two contracted parties.

Estate:
Under the *Bankruptcy and Insolvency Act*, the name given to the file or bankruptcy estate.

Estoppel:
A person's own acts, statement of facts or acceptance of facts which preclude his later making claims to the contrary.

Ethics:
Trustees in Bankruptcy are subject to the Codes of Ethics under:

CAIRP, The Canadian Association of Insolvency and Restructuring Professionals;

The *Bankruptcy and Insolvency Act*;

The Canadian Institute of Chartered Accountants, and where applicable;

The CGA Association;

Ex Parte:
For one party only. Ex parte refers to those proceedings where one of the parties has not received notice and therefore is neither present nor represented in a court of law.

Examination For Discovery:
A legal proceeding whereby one party examines the party on the other side, usually under oath for the purpose of confirming facts and perhaps obtaining admissions from that other party.

Execution:
To carry out.

Exemptions:

Ontario Bankruptcy Exemptions are:

Clothing	$5,600.00
Household Goods	$11,300.00
Tools of the Trade	$11,300.00
Farmers	$28,300.00
Motor Vehicle	$5,650.00

Registered retirement savings plans (RRSP's, RRIF's and DPSP's (Deferred Profit Sharing Plans) are exempt except for contributions made in the 12 months prior to the date of bankruptcy.

For exemptions in other jurisdictions in Canada refer to Chapter 8.

Expunge:
To strike out; to obliterate, erase or mark for deletion.

Fair Market Value:
That hypothetical value of a piece of property, given a willing purchaser and a willing vendor, and a reasonable amount of time for the property

to be exposed to sale.

Fee Simple:
Title to ownership without restriction or limitation. For example ownership of land in fee simple means the land is owned out right as compared to a person who leased land.

Fiduciary:
Sometimes considered to be synonymous with the word Trustee. A fiduciary holds certain rights which he or she must exercise for the benefit of the beneficiary.

Final Statement of Receipts and Disbursements:
This document, prepared by the trustee, must contain a complete account of all moneys received by the trustee out of the property of the bankrupt or otherwise, the amount of interest received by the trustee, all moneys disbursed and expenses incurred and the remuneration claimed by the trustee, together with full particulars, description and value of all property of the bankrupt that has not been sold or realized, setting out the reason why the property has not been sold or realized and the disposition made thereof. Once approved by the inspectors, it is submitted to the Superintendent for comments.

Financing Statement:
Form prescribed under the *Personal Property Security Act* setting out essential information such as the name of the debtor and the collateral; the secured party must file the financing statement at the Personal Property Registry to perfect a security interest by registration.

First Meeting of Creditors:
The meeting called by the Trustee in Bankruptcy to consider the affairs of the bankrupt or a debtor under a proposal. NOTE: Under the *Bankruptcy and Insolvency Act*, as amended on September 30, 1997, there is not a meeting of creditors required for simple personal bankruptcy cases, unless the Superintendent of Bankruptcy or creditors holding 25% of the proven claims request one.

Fixtures:
Those assets that are attached to or are part of a building, or are fixed to land.

Floating Charge:
A type of security interest that charges the debtor's property but does not specify particular assets or pieces of equipment until the security interest or instrument is crystallized.

Foreclosure:
That action that a lender will take to repossess and sell a piece of property for defaults in mortgage payments.

Fraudulent Preference:
Under the *Bankruptcy and Insolvency Act*, this is the preferring by a debtor of one or more creditors over others by the payment to those creditors of some extraordinary amounts of money. Under the *Bankruptcy and Insolvency Act*, the Trustee can, under certain circumstances, set aside fraudulent preferences up to three months prior to the date of bankruptcy in the case of arm's length parties and one year in the case of non-arm's length parties. The Provinces also have Acts that can set aside these transactions.

Fungibles:
Goods which are comprised of many identical parts. For example, a bushel of grain, a barrel of apples or oil, which can be easily replaced by other identical goods. One of the tests of whether items are fungible or not is whether they can be sold by weight or number.

Garnishee:
The seizure of property, monies, earnings, receivables belonging to a debtor that are in the hands of a third party.

Gazette:
Official Government (both Provincial and Federal) publication in which public notices and statutory regulations are advertised. Published by Queen's Printer.

Gazump:
To increase by subsequent bidding by an individual with effect of annulling any previous offer.

General Security Agreement (GSA):
A contract under which all the personal property of a debtor is pledged as security to a lender.

Goodwill:

That value attributed to a business that is not tangible, but arises from the reputation, expertise, service or some other intangible that attaches to the business and makes it have more worth than just the value of its assets.

Guarantor:
A person who pledges collateral for the contract of another or who guarantees to pay a certain debt of a debtor if the debtor defaults.

Hypothecate:
To mortgage or pledge without delivery of title or possession. To place or leave an item of property in the custody of another.

Indefeasible:
A right or a title in property that cannot be made void or cancelled by any past event, error or omission in the title.

Indemnity:
The act of one party protecting or guaranteeing protection, or freedom from liability, of a third party for actions of that party.

Indenture:
Any deed, written contract or sealed agreement.

Injunction:
A mandatory or prohibitive order or judgment issued by a Court.

Insolvent:
A person not able to pay debts generally as they become due.

Insolvent Person:
A person who is not bankrupt and whose liabilities exceed his assets and/or ability to pay.

The *Bankruptcy and Insolvency Act* contains a statutory definition that differs from this general definition as follows: "means a person who is not bankrupt and who resides or carries on business in Canada whose liabilities to creditors provable as claims under the *Bankruptcy and Insolvency Act* amount to at least $1,000.00 and

(a) who is, for any reason, unable to meet his obligations as they generally become due, or

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due."

Inspector:
A person appointed by creditors at the first or subsequent meeting of creditors, as part of a committee, to examine and give direction to the trustee's administration of the estate of the bankrupt. Inspectors may also be appointed pursuant to the provisions of a proposal.

Instrument:
A formal document with legal consequences; e.g., a debenture, mortgage, chattel mortgage.

Intangible:
Long-term or non-current asset that lacks physical substance, but which confers valuable rights or privileges upon the holders; e.g., patents, goodwill.

Interim Dividend:
Dividend paid to creditors before the administration of the estate of the bankrupt has been finalized; any dividend that is not a final dividend.

Interim Order:
A temporary Court Order intended to be of limited duration, usually until the Court has had an opportunity of hearing the full case and the opportunity of making a Final Order.

Interim Receiver:
A person appointed by the Court to be a watchdog regarding the assets of a debtor during that time between the application to the Court for a Receiving Order and the time where the Receiving Order is handed down. An Interim Receiver may also be appointed where a secured creditor is about to send out, or has sent out, a Notice of Demand under the *Bankruptcy and Insolvency Act* of its intention to enforce its security, or the debtor has filed a Notice of Intention to Make a Proposal or has filed a proposal.

Interim Dividend:
A dividend paid to creditors before the estate is finalized.

Interplead:
The placing of funds in the Courts by a person when there are two or more competing claims for those monies.

Invoice:
An itemized bill showing goods purchased or services provided together with the charges and terms. An invoice is a bill of sale.

Ipso Facto:
By the fact itself.

Ipso Facto Clause:
An "ipso facto clause" is a contractual term that generally allows a creditor to terminate a contract or a supply of service if an individual enters into proceedings under an insolvency statute.

Joint Assignment:
Paragraph 155(f) of the Act, provides that in circumstances specified in directives of the Superintendent, the estates of individuals who, because of their relationship, could be reasonably be dealt with as one estate may be dealt with as one estate.

Joint and Several Liability:
The liability of more than one person for which each person may be sued for the entire amount of the damages.

Joint Tenancy:
The situation where two or more persons are equally owners of a property.

Judgement:
A formal decision, sentence or Order of a Court of Justice.

Judgement Proof:
A term to describe assets protected from being seized by a creditor. i.e. assets a creditor cannot seize by going to court and getting a judgement.

Leasehold Improvements:
Those assets which are attached to a building and cannot be removed from any property being leased.

Liability:
Any legal obligation for which a person is responsible.

Lien:
Security for the holder against a debtor's assets, usually arising by operation of law rather than express contract between the parties.

Liquidated Damages:
Compensation for non-performance or loss which is cash or easily converted into cash.

Lis Pendens:
A dispute which is the subject of ongoing or pending litigation. Oftentimes, a lis pendens can be filed at the Land Registry Office against real property to denote to third parties that another party may have an interest in the property.

Litigation:
A dispute that results in formal Court action or a law suit.

Locality of Debtor:
Means the principal place during the year immediately preceding the bankruptcy where the debtor has carried on business or where the debtor has resided, or where the greater portion of the property of the debtor is situated.

"Look-See":
Slang expression meaning "Business Review".

Letter of Comment: This refers to the letter from the Superintendent commenting on the trustee's statement of receipts and disbursements. When the statement needs to be taxed, this letter must be placed by the trustee before the taxing officer.

Levy:
Under the *Bankruptcy and Insolvency Act* the government has imposed a levy (in 1997 equal to 5%) over all dividends paid to creditors. Therefore, if a creditor is entitled to a $100 dividend, he will only get $95 with $5 being paid to the government.

Maintenance:
The obligation that one person has to contribute in part or in whole to the cost of living of another person.

Marine Registry:
Federal registry for registering title documents against ships.

Mechanic's Lien:
See: Builder's lien and Repairer's lien.

Mediation:
An alternate dispute mechanism whereby the mediator acts as a facilitator assisting the parties in coming to a mutually agreed settlement. Under the *Bankruptcy and Insolvency Act*, mediation can be used, for example, if a creditor or the Trustee opposes a bankrupt's discharge.

Misappropriation of Funds:
The wrongful taking of funds by a person to whom funds are entrusted.

Misrepresentation:
To describe or present incorrectly, improperly or falsely.

Monitor:
A person or firm appointed to review and report on, without controlling or approving, the day-to-day transactions of a business. Particulars of the engagement are usually set out in an exchange of letters, an agreement or court order.

Mortgage:
An interest given on real property to guarantee the payment of a debt or execution of some action.

Mutatis Mutandis:
With appropriate changes as applicable. For example, in proposals all other sections of the *Bankruptcy and Insolvency Act*, over and above the section on proposals, applies to proposals, mutatis mutandis.

Notice of Disclaimer - Lease:
In a proposal, the company may disclaim a lease or, in other words, state that it does not require that lease and is cancelling it. The proposal must indicate one of the options that is given to the landlord for him to file a claim as follows actual losses resulting from the disclaimer or the lesser of
(i) three years rent, or
(ii) the aggregate of the rent provided for in the lease for the first year of the lease following the date on which the disclaimer becomes effective and 15% of the rent for the remainder of the term of the lease after that year.

Nulla Bona:
Unable to locate assets.

Oath:
A solid affirmation to tell the truth, oftentimes sworn in front of a Notary or Commissioner for Taking Oaths.

Official Receiver:
A person deemed to be an officer of the Court who reports to the Superintendent of Bankruptcy and performs duties as specified by the *Bankruptcy and Insolvency Act*.

Order:
A command of a Court or Judge.

Order Absolute:
A judgment or decree that is free from restriction or limitation.

Orderly Payment of Debts:
A scheme governed by Provincial Court to allow a debtor to pay his debts in accordance with the sections under Part X of the *Bankruptcy and*

Insolvency Act.

Order Nisi:
A judgment or decree that will become final on a particular date unless set aside or invalidated by certain specified contingencies. In mortgage foreclosure actions, it is the order of the Court which accelerates the amount due under the mortgage document.

Order of Sale:
Legal status pursuant to a Court Order whereby a person can obtain the authority to arrange a sale, subject to Court approval, with the sale proceeds being available to satisfy valid encumbrances.

Ordinary Creditor:
A general creditor with no priority or security.

Overturn:
Upset or change around; e.g., if certain security is proven to be invalid.

Pari Passu:
Equally and without preference. This term is often used in bankruptcy proceedings where creditors are said to be paid pari passu, or each creditor is paid pro rata in accordance with the amount of his claim.

Perfection:
An action that has to be taken before a security interest is secured.

Personal Property:
Property that is not real property; things moveable, also known as chattels.

Petition (Application for a Bankruptcy Order):
The application made under the *Bankruptcy and Insolvency Act* for the Court to hand down a Receiving Order (Bankruptcy Order) stating the person is in bankruptcy. In an amendment dated December 15, 2004 this term was changed to **Application for a Bankruptcy Order.**

Plaintiff:
A person who initiates a case in Court. That person may also be referred to as the Claimant, Petitioner or Applicant. The person who is being sued is generally called the Defendant or Respondent.

Possession Date:
That time that is mutually agreed that the person buying property will take ownership, control or possession of it.

Possessory Lien:
Charge for an unpaid debt, enforced by having physical custody of the asset to which the lien applies.

Post:
To affix a notice to a post, wall or the like; to supply or put up; e.g., post a bond.

Postponement:
To place after in order of importance; to put off to a later time.

Power of Attorney:
An instrument authorizing another to act as one's agent or attorney.

Power of Sale:
The right to sell land when a mortgage is in default.

PPSA - *Personal Property Security Act*:
The system, for example, in British Columbia and most common-law provinces, whereby a person is required to register any interest that he has in the property of another before the security is valid. The Registry can therefore be used if an institution is considering taking security on various assets, or if a person is contemplating purchasing an item such as a vehicle and wants to ensure that he purchases it free and clear of any encumbrances.

Praecipe:
An original writ commanding the defendant to do the thing required; also an order addressed to the Clerk of the Court requesting him to issue a

particular writ.

Preference or Preferred Creditors:
Those creditors, in the *Bankruptcy and Insolvency Act* specified in Section 136, that rank ahead of ordinary or unsecured creditors. Some preferred creditors are employees for wages, and a landlord for some specified rental arrears.

Preliminary Report:
Report presented by the trustee at the first meeting of creditors which details trustee's finding with regard to taking possession of the debtor's records and property; conservatory and protective measures; any legal proceedings undertaken or proposed to review provable claims, anticipated realization, and projected distribution.

Prescribed:
The term given to the fact that the information is in a directive issued by the Superintendent of Bankruptcy.

Prima Facie:
On the face of it or at first sight.

Pro Rata:
To divide proportionately amongst people having a claim.

Pro Bono:
Provided for free.

Promissory Note:
An unconditional, written, signed promise to pay a certain amount of money on demand or at a certain date defined in the future.

Proof of Claim:
A prescribed form that will be sent along with the notice of bankruptcy or notice of proposal. Creditors are required to fill out and return this form to the trustee, or to the administrator of the consumer proposal, in order to prove their claim. If a meeting of creditors is called, those creditors wishing to vote at the meeting must file their proof of claim with the trustee before the time set for the opening of the meeting.

Property:
Includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, and whether situated in Canada or elsewhere, and includes obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property.

Proposal:
Under the *Bankruptcy and Insolvency Act* there are two types of proposals that can be made. A proposal filed under Division I, which is applicable to companies and any individual who wants to avail himself of it. There are also "consumer proposals", which are a special type of proposal that a consumer can avail himself of but only if his debts, excluding mortgages on real property, do not exceed $250,000. One of the main features of a consumer proposal is that if the creditors do not accept the proposal, the person is not automatically bankrupt as in a Division I proposal.

Provable Claims:
All those debts of a bankrupt outstanding as of the date of the bankruptcy.

Proven Claims:
Claims that have been filed in the proper manner with evidence to prove what is owed and subsequently accepted by the Trustee in Bankruptcy and used as the basis for the payment of dividends when there are monies to distribute.

Proxy:
Under the *Bankruptcy and Insolvency Act* a written statement can be made whereby a creditor appoints another person to act on his behalf in a creditors meeting and any other matters pertaining to that bankruptcy.

Purchase Money Security Interest (PMSI - pronounced "pimzee"):
A security that a person takes in property, such as inventory for example, that secures payment with regard to those assets of all or part of its purchase price.

Quantum:
Amount.

Quit Claim:
A deed releasing interest in real property. Sometimes, when a Trustee has real property vested in him pursuant to the bankruptcy and there is no equity in that property, he may quit claim it to the mortgage holder, thereby saving the mortgage holder time and expense. The Trustee should charge the mortgage holder for executing this deed.

Quorum:
Under the *Bankruptcy and Insolvency Act* there must be one person present, either in person or by proxy, at a meeting of creditors before the meeting is considered to be a properly constituted one and hence can carry on with the business of the meeting.

Rank:
Having a rightful place on the list of claims for a bankrupt estate.

Real Property:
Immovable property such as a building and land.

Reaffirmation Agreement:
An agreement between a debtor and a creditor whereby a debtor revives a pre-bankruptcy debt, for which the debtor was discharged under section 178 of the Act.

Realization:
The amount of money received from the sale of assets.

Receiver:
A person or corporation appointed by a person who holds a debenture or other security agreement, giving that person authority to take possession of and sell the asset(s) specified in the debenture. A Receiver cannot manage or operate a company for more than 14 days.

Receiver's Certificate:
Certificates given by a Receiver or Receiver-Manager to secure borrowings required by the Receiver or Receiver-Manager. Any debt secured by a Receiver's Certificate has a first charged over the property, ranking ahead of any other secured charge.

Receiver-Manager:
Similar to Receiver above, except the Receiver-Manager can manage or operate the company.

Receiver of Rents:
A person appointed by the Court to enforce the collection of rent as is specified in the charge on the property.

Receiving Order (Bankruptcy Order):
An Order handed down by the Court following the successful petition to have a person or company placed into bankruptcy. In an amendment dated December 15, 2004 this term was changed to **Bankruptcy Order**.

Redemption:
Buying back.

Redemption of Security:
Subsection 128(3) of the Act, allows the trustee to redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in the proof of security, by the secured creditor. Before doing so, the trustee will ensure that there is a benefit for the estate.

Registrar:
An Officer of the Supreme Court appointed by the Chief Justice and empowered to deal with various matters as set out in the *Bankruptcy and Insolvency Act*.

Remuneration of Trustee:
In estates under summary administration and in consumer proposals the trustee's, or administrator's, fees and expenses are set by the Bankruptcy and Insolvency Rules.

In all other cases, the remuneration of the trustee falls under the provisions of section 39 of the Act. Subsection 39(1) states that the remuneration of the trustee shall be such as is voted to the trustee by ordinary resolution at any meeting of creditors. Where the remuneration is not fixed pursuant to subsection 39(1), subsection 39(2) states that the remuneration shall not exceed seven and one-half per cent of the amount remaining out of the realization of the property of the debtor after the claims of the secured creditors have been paid or satisfied.

Subsection 39(5) empowers the court to increase or reduce the remuneration.

Repairer's Lien:
A mechanic or other person who, by bestowing money, skills or material on any chattel, is entitled to a lien on the chattel, which empowers that person to sell the chattel if he is not paid within a prescribed period of time.

Respondent:
The party who responds to a claim filed in Court against him by a Plaintiff or the person who is being sued. Another term for the Respondent is the Defendant.

Retainer:
Under the *Bankruptcy and Insolvency Act* it is common for the Trustee in Bankruptcy to ask for a retainer before he accepts an appointment. There is also a special type of retainer called a Third Party Retainer, whereby funds are put up that secure the fees and disbursements of the Trustee but are returned to the party putting up the funds if the Trustee realizes enough out of the estate to cover the fees and costs and, in the case of a proposal, returned to the party putting up the funds if the proposal is refused by the creditors or not approved by the Court.

RRIF:
Registered Retirement Income Fund.

RHOSP:
Registered Home Ownership Savings Plan.

RRSP:
Registered Retirement Savings Plan.

Secured:
The status a creditor has when he has security or a right in some property that he can sell or realize on.

Security:
Something given or pledged to a person who is lending money in order to secure or guarantee payment of that debt.

Security Agreement:
A verbal or written agreement between a secured party and a debtor giving the secured party a security interest in personal property; a written agreement is not necessary if the secured party is in possession of the collateral.

Seize or Sue:
That phrase referring to a concept that, in British Columbia under the *Personal Property Security Act*, allows a secured creditor, in regard to consumer goods, to either seize or sue for the goods but not do both. For example, a financial institution holding security over a vehicle that is used for personal use and not for business can on default either seize that vehicle and sell it in satisfaction of its debt or sue the person for what is owed, but cannot do both.

Settlement:
The transferring of property to another person or a gift. Under certain circumstances, settlements are void against the Trustee and are brought back into the bankruptcy estate.

Shortfall:
A dollar realization on assets that is not sufficient to clear the debt completely.

Sine Die:
Adjourned without giving any future date of meeting or hearing.

Small Claims/Small Claims Court:
A Court which has simplified rules, thus encouraging non-lawyers to attend at the Court without legal representation. In British Columbia, the amount that can be considered in a small claims action is $25,000 or less:

Special Resolution:
A term under the *Bankruptcy and Insolvency Act* whereby voting is carried out, for example when creditors accept or refuse a proposal. In order for the Special Resolution to pass, of those creditors who vote there must be in excess of 2/3 of the dollars voting in favor and a simple majority in number of the creditors voting in favour.

Specific Charge:
A lien or security interest in a specific piece of property that can be distinguished from other pieces of property. For example, security over a vehicle.

Stalking Horse: (US term - This strategy is seldom used in Canada)
This is the name given to the party submitting the first bid to purchase assets. The stalking horse bid can be used to solicit interest from other bidders and also acts as a floor for what will be realized at an auction.

Statement of Affairs:
The listing of a debtor's assets and liabilities and sworn under oath by the debtor before a lawyer or Commissioner for Taking Oaths.

Statement of Receipts and Disbursements:
A statement prepared in the matter of receivership or agency appointment or a bankruptcy appointment, whereby the realizations and disbursements are set out.

Status Quo:
The current state of affairs, or current position.

Stay of Proceedings:
The stopping or preventing of legal actions undertaken. In the *Bankruptcy and Insolvency Act*, there is a stay of proceedings in the case of a bankruptcy or in the case of a proposal. This stops all legal actions against the company or person.

Subrogation:
The legal right that a person or corporation has when he pays someone's debt to recover that money from the debtor.

Superintendent of Bankruptcy: A federally appointed official who oversees the administration of the *Bankruptcy and Insolvency Act* in Canada. The Superintendent is responsible for: supervising the administration of estates in bankruptcy, commercial reorganizations, consumer proposals and receiverships; maintaining a publicly accessible record of bankruptcy and insolvency proceedings; recording and investigating complaints regarding possible wrong doing by someone involved in the insolvency process; licensing of private sector trustees to administer estates and appointing administrators of consumer proposals; setting and enforcing professional standards for the administration of estates.

The Superintendent's Web site address is: http://osb-bsf.ic.gc.ca

Summary Administration:
Under the *Bankruptcy and Insolvency Act* a summary administration bankruptcy is a consumer bankruptcy defined as a bankruptcy where the free and clear assets are less than $15,000. Summary administration bankruptcies have stream lined procedures, making them less costly to administer.

Surplus Income:
Payments required, if any, to be made by a bankrupt to the trustee for distribution to creditors. The amount of the payment is fixed by the trustee, at the beginning of the bankruptcy, having regard to the standards established by the Superintendent and to the personal and family situation of the bankrupt. This amount is subject to change if there are material changes in the personal or family situation of the bankrupt, or if the official receiver so recommends.

Trustee:
The person under the *Bankruptcy and Insolvency Act* who administers bankruptcy and proposal estates.

Trustee's Report on the Bankrupt's Application for Discharge (also known as the 170 Report):
The trustee must prepare a report in the prescribed form with respect to the affairs of the bankrupt, the causes of the bankruptcy, the manner in which the bankrupt has performed the duties imposed under the Act or obeyed the orders of the court, the conduct of the bankrupt both before and after the date of the initial bankruptcy event, whether the bankrupt has been convicted of any offence under the Act, and any other fact, matter or circumstance that would justify the court in refusing an unconditional order of discharge. This report needs to be approved by the inspectors or provide the reasons why the inspectors did not approve it. The trustee is required to send a copy of this report to the creditors who have requested it.

Ultra Vires:
Without authority.

Unsecured Creditors:

Creditors who do not have any security for the debt owing to them.

Usury:
Excessive or illegal interest rates.

Vesting of Property in Trustee:
All property owned by the bankrupt or in which the bankrupt may have a beneficial interest, with certain exceptions, passes on to the trustee in bankruptcy.

Vesting Order:
An Order by the Court that gives to a person, possession, control or title of property.

Vexatious:
An act done by a person in order to annoy, embarrass or otherwise aggravate that person.

Voting Letter:
A document in which a proven creditor registers his vote for or against the acceptance of a proposal.

Warehouseman's Lien:
The charge that a warehouseman has on goods left for storage in his care. The warehouseman has the right to hold onto the goods until he is paid or to sell the goods to recover his account.

Without Prejudice:
Without dismissing, damaging or otherwise affecting a legal interest or demand; without detriment to existing right or claim; relates to fact, not to opinion. This expression is used when a person, in the desire to avoid litigation or dispute without admitting that the other party has a claim, offers to do something he need not do, such as to compromise a claim of his own or to pay when he feels he is not liable.

Writ:
Form of written notice or command issued by a Court or other official. Can include Writ of Summons, Writ of Subpoena, Writ of Attachment, Writ of Habeas Corpus, etc.

Writ of Summons:
Form of written notice prepared by the Plaintiff which is registered at the appropriate Court Registry, giving notice to the defendants that a legal action has been commenced against them and containing details of the Plaintiff's claims.

20: Resources

Bankruptcy and Insolvency Act

BankruptcyCanada.com

Canada's most popular and most comprehensive insolvency website includes:

- Trustee in Bankruptcy Locator;
- Steps in a Bankruptcy (PowerPoint Presentation)

Bankruptcy.tel

Contact Bankruptcy Trustees in Canada and Bankruptcy Lawyers in Canada and the US.

CAIRP (Canadian Association of Insolvency and Restructuring Professionals)

CanadianLawSite.ca - (Canadian law information in plain, straightforward English.)

Companies' Creditors Arrangement Act

Credit Reports - (Free credit report and credit reports online instantly)

Insolvency Name Search

This database contains a record of all bankruptcies and proposals filed in Canada from 1978 to date. It also contains a record of all private and court appointed receiverships filed in Canada from 1993 to date. There is a cost $8.00 a search.

Secured Credit Cards

Rebuild your credit after bankruptcy by getting a secured credit card.

Superintendent of Bankruptcy