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1st Session, 38th Parliament

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## Issue 99 - Appendix

Thursday, November 24, 2005  
1:30 p.m.

**The Honourable Shirley Maheu, Speaker *pro tempore***

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Thursday, November 24, 2005

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

### SEVENTEENTH REPORT

Your Committee, to which was referred Bill C-55, An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts, has, in obedience to the Order of Reference of Wednesday, November 23, 2005, examined the said Bill and now reports the same without amendment but with observations, which are appended to this report.

Respectfully submitted,

JERAHMIEL S. GRAFSTEIN

*Chair*

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## APPENDIX

### **Bill C-55, An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts**

#### **Unanimous observations of the Standing Senate Committee on Banking, Trade and Commerce**

The Committee wishes to indicate our disappointment with the process by which the Bill arrived in the Senate. We recognize the extraordinary circumstances that exist with the impending dissolution of Parliament, but believe we had an inadequate opportunity to review comprehensively such an important piece of framework legislation.

Notwithstanding the foregoing, the Committee has decided to report Bill C-55 without amendment and without having conducted the customary comprehensive study and review. We do so not because we approve of the legislation in its entirety, as drafted, but rather because of three key factors.

First, the Committee unanimously supports and approves of the long-overdue wage earner protection provisions of the Bill and does not wish to delay, or in any way deny — or appear to deny — access to enhanced legislated protection for this vulnerable group of creditors.

Second, the witnesses heard by the Committee, including the Minister of Labour and Housing and the Parliamentary Secretary to the Minister of Industry, gave unqualified assurance to the Committee, to be confirmed in writing forthwith, that Bill C-55 would not be proclaimed into force prior to 30 June 2006 at the earliest.

Third, the Committee expects that between now and the proclamation of Bill C-55, we will receive a timely Order of Reference that will enable us to undertake the thorough review of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* that would have occurred with respect to Bill C-55 had it been referred to us on a more timely basis.

In connection with the Committee's study in 2006, we look forward to receiving, from Industry Canada officials, the legislative and regulatory changes they undertook to provide to improve Bill C-55 and Canada's insolvency regime more generally. All stakeholders should have an opportunity to share with us their views on key aspects of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* as well as other insolvency legislation.

Unfortunately, too few witnesses were heard and there was insufficient study at Committee in the House of Commons during its examination of Bill C-55 which may, in part, explain why obviously needed amendments were not introduced before the Bill was sent to the Senate.

The Committee has in-depth knowledge of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*. In 2002 and 2003 we reviewed these Acts and, in November 2003, tabled our report *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act*. In that report, we comprehensively examined and made recommendations respecting the full range of consumer and commercial insolvency issues as well as on administrative and procedural issues.

While the Committee wholeheartedly supports the principle of the wage earner protection regime, even in that instance we have questions. In our view, workers should be compensated in the timeliest manner possible, and we are not certain that the Bill's provisions meet the test of timeliness. For example, we wonder why the administrator is not able to pay the workers immediately, rather than waiting for workers to be paid out of the Wage Earner Protection Program.

Moreover, the Bill contains a number of provisions unrelated to wage earner protection that we believe fall well short of what the Committee wishes to see. In particular, we believe further study is needed in a number of areas to ensure the effectiveness of Canada's insolvency legislation, including:

- the protection, during insolvency and corporate restructuring, of eligible financial contracts in derivatives and other structured transactions
- cross-border insolvencies
- debtor-in-possession financing
- transfers at undervalue and preferences
- executory contracts
- governance
- insolvency of other vehicles, including income trusts
- discharge from bankruptcy, including for students.

These areas, among others, need thorough study and review by the Committee in order to ensure that new insolvency framework legislation goes forward in the proper form.

The Committee notes that we have some experience with delayed proclamation of legislation. A similar approach was adopted in December 1997, when the Minister of Finance delayed the coming into force of the governance and investment provisions of the *Canada Pension Plan Investment Board Act* until April 1998 in order that we could study them. The Minister also agreed to refer the draft regulations governing the Investment Board to us for review and comment. We believe that this approach was successful then, and will be successful when we have the opportunity to study and review, in a comprehensive manner, the subject matter of Canada's new insolvency framework legislation in 2006.

The Committee continues to believe that the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* constitute critical framework legislation that affect, in a very fundamental manner, the Canadian economy and all Canadians who participate in it. The Committee understands that the appropriate government legislative initiatives will be taken to ensure the foregoing.

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