



Office of the Superintendent  
of Bankruptcy Canada

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d'Industrie Canada

# Inspectors' Handbook

For Persons Appointed as Inspectors under the  
*Bankruptcy and Insolvency Act*

Canada



Protecting the  
Integrity of the  
Insolvency System

Protéger l'intégrité  
du système  
d'insolvabilité



© Industry Canada, 2005  
Cat. lu76-1/2005E-PDF  
ISBN 0-662-39634-0

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**This booklet**

is a guide for individuals who have been appointed inspectors under the Act. Its aim is to provide information about the role and responsibilities of inspectors, as well as to highlight and explain relevant provisions of the Act. Although the material is often technical and complex, we have attempted to present it as clearly as possible without oversimplifying substantive aspects of the Act. Inspectors have a significant role to play in the administration of insolvent estates. Creditors appoint inspectors to represent them during the administration of the estate. Inspectors act in a fiduciary capacity, in that they are generally responsible to the body of creditors who appoint them, and should perform their duties impartially and in the interests of the creditors.

## Office of the Superintendent of Bankruptcy |

**T**he Superintendent of Bankruptcy is responsible for ensuring compliance with the *Bankruptcy and Insolvency Act* (Act) and has the mandate to “supervise the administration of all estates and matters to which this Act applies.” To ensure this compliance, the Act provides the Superintendent with various administrative and investigative powers. Furthermore, through the mission of the Office of the Superintendent of Bankruptcy (OSB) — to protect the integrity of the Canadian bankruptcy and insolvency system — the Superintendent helps foster and maintain investor and lender confidence in the Canadian marketplace. To achieve its mission, the OSB concentrates its efforts in three key areas, namely:

- providing an effective, efficient and uniform national program that will ensure compliance with the Act;
- maintaining a sound regulatory policy and solid legislative base in response to changing market conditions; and
- encouraging the active participation of private-sector stakeholders to ensure efficiency in estate administration.

Our Web site address is <http://osb-bsf.ic.gc.ca>

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### The trustee's role |

**T**rustees in bankruptcy are licensed by the Superintendent of Bankruptcy.

When appointed to an estate, the trustee assumes certain statutory responsibilities. Some responsibilities, such as calling meetings of creditors when required by the Act and submitting various reports to the court and the Superintendent of Bankruptcy, are mandatory and fall outside the scope of discretion accorded to creditors, inspectors and trustees. However, the Act provides for many other administrative functions that are subject to the approval and control of the inspectors and creditors. Those functions will be discussed in this booklet.

The trustee is an officer of the court who acts *in a fiduciary capacity* for the creditors under the guidance and direction of the inspectors. If there is a disagreement between the trustee and the inspectors, they may seek guidance from either the creditors or the court to resolve the matter.

### The inspector's role (subsection 102(5)) |

The Act places administrative control of an estate in the hands of the creditors. This control is exercised particularly at the first meeting of creditors, when the creditors:

- confirm the trustee's appointment (or substitute another trustee);
- provide the trustee with directions; and
- appoint a board of inspectors.

The inspectors are appointed as representatives of all creditors and occupy positions of trust. They are expected to assist the trustee by virtue of their experience and are required to supervise certain aspects of the trustee's administration.

## Part II | Appointment of inspectors |

### Board of Inspectors

#### **When and how are inspectors appointed? (sections 115 and 116)**

At the first meeting of creditors, the chairperson, who may be the Official Receiver or his nominee, asks creditors for suggested nominations to the board of inspectors. The appointment of inspectors is decided by ordinary resolution, carried by the majority of votes, and for that purpose the votes of a creditor are calculated by counting one vote for each dollar of every claim of the creditor.

#### **Who can be appointed an inspector? (section 116)**

The Act does not specify criteria for the appointment of inspectors. It does, however, stipulate that no person who is party to any contested action or proceedings by or against the estate of the bankrupt may be appointed an inspector. This excludes, for example, an officer, a director, a shareholder or a representative of a corporation that is party to any contested action or proceeding against the estate of the bankrupt.

Once appointed, inspectors cannot appoint some other person to represent them at a meeting of inspectors that they are unable to attend.

Although persons appointed as inspectors generally are creditors, a person who is not a creditor or a representative of a creditor can be appointed as an inspector. For example, a lawyer representing a client may be appointed an inspector.

If there is a dispute about who should be appointed as inspectors, the nominees who receive a majority of the votes cast at the meeting of creditors, either in person or by proxy, will be appointed.

It should be noted that inspectors do not represent their employers and must perform their duties in the best interests of all creditors. Inspectors must not act for their personal advantage and must make full and complete disclosure to the trustee and co-inspectors of their personal position any time there is a possible conflict of interest.

#### **How many inspectors can be appointed?**

In a bankruptcy of an individual under summary administration, there are generally no inspectors appointed unless the creditors decide otherwise (paragraph 155(e)).

In consumer proposals, creditors may appoint a maximum of three inspectors (section 66.21).

For all other proposals and bankrupt estates, a maximum of five inspectors can be appointed (section 56 and subsection 116(1)).

### **Defects or irregularities in the appointment of inspectors (subsection 120(2)) |**

No defect or irregularity in the appointment of an inspector invalidates an act done by the inspector in good faith. Accordingly, if the court finds that the appointment of an inspector is improper, any act done by the inspector honestly and lawfully will not be affected.

### **Vacancy on the board of inspectors (subsections 116(4) and (5) and section 118) |**

A vacancy may occur by incapacity, resignation or death. If a vacancy arises on the board of inspectors, the creditors or inspectors may fill it at any meeting. The appointment of an inspector may also be revoked at any creditors' meeting or by the court. If no inspectors are appointed to fill the vacancy, the trustee is required to call a meeting of creditors for the purpose of appointing inspectors.

- ***Resignation of inspectors***

The Act contains no provision for the resignation of inspectors. In practice, an inspector resigns by delivering a written notice of resignation, and the remaining inspectors fill the vacancy.

- ***Revoking appointment of inspectors***

The trustee or any creditor may apply to the court to have an inspector's appointment revoked. As well, creditors may revoke the appointment of any inspector and appoint another at any of their meetings.

### **Inspectors' responsibilities |**

Inspectors give direction and advice to the trustee regarding specific actions to be taken in the administration of the estate. They also supervise the trustee's administration and ensure the trustee acts in accordance with their directions.

The Act sets out, in various sections, the responsibilities of inspectors appointed to bankruptcy estates. Generally, these responsibilities can be grouped into three categories: **Action**, **Authorization** and **Supervision**.

### **Action: The Taking of Some Specific Action by Inspectors**

#### **Inspectors' meetings**

*Who calls them and when are they held? (section 117)*

The first inspectors' meeting is usually held immediately after the first meeting of creditors. After this initial inspectors' meeting, the trustee calls other meetings when deemed advisable or when a meeting is requested in writing by a majority of the inspectors.

## Part II

### Board of Inspectors

When inspectors attend a meeting, they are expected to play an active role by expressing their opinions and voting on motions, when necessary.

If all of the inspectors consent, any inspector may participate in a meeting of inspectors by telephone or other communication device provided all can communicate with each other during the meeting. Inspectors who participate in a meeting in this fashion are deemed to be present at the meeting.

Individual inspectors have no power to call meetings on their own. The powers of the inspectors are exercised by the majority. Moreover, all decisions must be specific and recorded in a resolution. All discussions and resolutions must also be recorded in the minutes of the meetings. After they are signed by the chairperson (usually the trustee), these minutes form part of the proposal or bankruptcy estate file.

If there is an equal division of opinion at an inspectors' meeting, the inspectors will seek the opinion of any absent inspector to resolve the difference. If a difference cannot be resolved in this manner, the trustee has a casting vote unless the matter involves the personal conduct or interest of the trustee, in which case it must be resolved by the creditors or the court.

#### ***Conflict between creditors and inspectors (section 119)***

If there is a conflict between the directions given to the trustee by a general meeting of creditors and those given by a meeting of inspectors concerning the administration of the estate, the directions given by the creditors prevail.

If a trustee or any interested person is in doubt about a decision made by the inspectors, the trustee or the interested person may apply to the court to have the decision reviewed and to ask for direction. The court may review the inspectors' decision or action and may revoke or vary any such action or decision. It may then give such directions, permission or authority as it deems proper, including referring the matter back to the inspectors for reconsideration.

#### **Requirement to call a meeting of creditors (section 103)**

Although the trustee may call a meeting of creditors at any time, the trustee must call a meeting when:

- directed by the court;
- requested to do so in writing by a majority of the inspectors; or
- requested to do so in writing by 25% of the creditors holding at least 25% in value of the proven claims.

A majority of the inspectors may convene a creditors' meeting at any time when the trustee is not available to call a meeting or has failed to do so when directed by the inspectors.

## Examinations

### *Examination of bankrupt and others by the trustee (subsection 163(1) and section 167)*

#### *Who may be examined?*

The trustee may examine the following people, under oath, before the registrar of the court:

- the bankrupt;
- any person reasonably thought to have knowledge of the affairs of the bankrupt; and
- any person who is or has been an agent, clerk, servant, officer, director or employee of the bankrupt.

#### *Scope of the examination*

The trustee may examine a person with respect to the bankrupt, the bankrupt's dealings or property. Any person being examined is required to answer all questions about the business or property of the bankrupt, the causes of the bankruptcy and the disposition of the bankrupt's property.

#### *What is required to conduct such an examination?*

The trustee must obtain an ordinary resolution passed by the creditors or, the written request or resolution of a majority of the inspectors.

### *Examination of the bankrupt, trustee, or other interested person by creditors (subsection 163(2))*

#### *Who may apply to conduct an examination?*

On the application to the court by the Superintendent, any creditor, or "other interested person," an order may be made to conduct an examination before the registrar. "Other interested person" means a person who, like a creditor, has an interest in the administration of the bankrupt estate. An undischarged bankrupt falls within the meaning of "other interested person."

#### *Who may be examined?*

The persons who may be examined for the purpose of investigating the administration of the bankrupt estate are:

- the trustee;
- the bankrupt;
- an inspector;
- a creditor; or
- any other person named in the court order.

## Part II

### Board of Inspectors

#### *Scope of the examination*

The objective of such an examination is to investigate aspects of the administration with a view towards benefiting the creditors generally. The examiner cannot use the examination to pursue a private remedy. For example, a secured creditor cannot attempt to locate a missing piece of property covered by its security.

#### **Insurance coverage (subsection 24(1))**

It is the trustee's duty to insure all of the bankrupt's property for such amount and against such hazards as the trustee deems advisable, until inspectors are appointed. The insurance should cover all of the debtor's property, not just unencumbered property (i.e., unsecured property).

After they are appointed, the inspectors determine the amount of the coverage and the risks against which the bankrupt's property shall continue to be insured by the trustee.

#### **Limitations on carrying on the bankrupt's business (paragraph 30(1)(c) and subsection 31(3))**

The trustee, with the permission of the inspectors, may carry on the business of the bankrupt as necessary for the beneficial administration of the bankrupt estate. However, creditors or inspectors may, by resolution, limit:

- the amount of the obligations (i.e., agreements or contracts) incurred by the trustee;
- the advances made or moneys borrowed by the trustee; and
- the period of time during which the trustee may carry on the business of the bankrupt.

#### **Authorization: Giving Permission to the Trustee to Perform Certain Acts**

##### **Powers exercisable by trustee with permission of inspectors (section 30)**

The principal powers of an inspector are conferred by section 30, which gives the trustee the power to take certain actions, with the permission of the inspectors. The purpose of this section is to protect the estate and to allow the trustee to benefit from the inspectors' business experience. Inspectors must give permission to take a specific action, not a blanket authorization to the trustee to do all or any of the actions listed in the Act. The permission given to do all or any of these actions is not to be granted by a general resolution of inspectors. These powers are the following:

- dispose of assets by tender, public auction or private contract;
- lease real property;
- carry on the business of the bankrupt;
- start or defend legal proceedings relating to the property of the bankrupt;
- hire a solicitor to deal with matters sanctioned by the inspectors;
- accept future payment and security in the sale of property;
- incur obligations, borrow money and give security;

- settle debts owing to the bankrupt;
- settle claims made by or against the estate;
- divide property among the creditors that cannot be readily or advantageously sold;
- deal with leases or other temporary interests in any property of the bankrupt; and
- appoint the bankrupt to help in the administration of the estate in such manner and upon such terms as the inspectors direct.

#### **Securities firm bankruptcies (section 259)**

In a securities firm bankruptcy, the trustee may undertake any of the following actions even before inspectors are appointed. However, after inspectors have been appointed, the trustee must obtain their permission before doing the following:

- exercising a power of attorney and transferring any security passed on to the trustee;
- selling securities, other than customer name securities;
- purchasing securities;
- discharging any security interests on securities vested in the trustee;
- completing open contractual commitments;
- maintaining customers' securities accounts and meeting margin calls;
- distributing cash and securities to customers;
- transferring securities accounts to another securities firm;
- liquidating any securities account without notice; and
- selling, without tender, assets of the securities firm essential to carrying on its business.

#### **Criminal proceedings (section 21)**

The trustee, as authorized by the creditors, the inspectors or the court, may initiate criminal proceedings against any person believed to have committed an offence under the Act.

#### **Trust account (subsection 25(1.3))**

The trustee must obtain the inspectors' permission in writing or obtain a court order before any monies can be withdrawn from the trust account of an estate, except for the payment of dividends and charges incidental to the administration of the estate.

### **Supervision: Approving Various Reports, Documents and Accounts, and Generally, Supervising the Trustee's Administration of the Estate**

#### **General**

The inspectors are expected to oversee the adequacy of the trustee's administration by examining certain documents and accounts. The Act enables the inspectors to carry out this function by giving them access to the estate's books and records as described below.

## Part II

### Board of Inspectors

#### **Access to information (sections 26 and 27)**

The books, records and documents relating to the administration of an estate are the property of that estate. The trustee must allow the estate's books and records to be inspected and copied by certain persons, including any creditor or creditor's agent, at any reasonable time. In addition, the trustee shall, from time to time, report:

- to every creditor, when required by the inspectors;
- to any specific creditor at that creditor's request; and
- to the Superintendent or to the creditors in general when required by the Superintendent of Bankruptcy.

The purpose of these reports is to show "the condition of the bankrupt's estate, the monies on hand, if any, and particulars of any property remaining unsold." The trustee is only entitled to charge against the bankrupt's estate the actual disbursements for the preparation and delivery of the reports.

#### **Specific duties of inspectors (subsection 120 (3))**

The inspectors must:

- verify the bank balance of the estate;
- examine the trustee's accounts; and
- inquire into the adequacy of the estate bond filed by the trustee with the Official Receiver.

The estate bond is issued in favour of the creditors by a bonding company, which is responsible for ensuring that the trustee accounts for, pays and transfers to the parties entitled all monies and property received by the trustee, and faithfully performs the trustee's duties. The amount of the bond should normally be based on the estimated receipts in the estate, less the trustee's fees and disbursements.

#### **Bankrupt's discharge (subsection 170(1))**

The trustee is required to prepare a report describing the circumstances of the bankruptcy before the bankrupt's discharge application, or automatic discharge, where applicable. The report must be accompanied by a resolution of inspectors declaring whether they approve or disapprove of the report. If the inspectors disapprove of the report, they must give the reason for their disapproval.

This trustee's report provides information concerning the affairs of the bankrupt, the causes of bankruptcy, the manner in which the bankrupt has performed the duties under the Act, the conduct of the bankrupt both before and after the initial bankruptcy event, whether the bankrupt has been convicted of any offence and any other facts that would justify a Court in refusing an unconditional order of discharge.



#### **Discharge of trustee (subsections 120 (4) and 152(3))**

Inspectors are required to approve, at a properly called meeting, the trustee's final statement of receipts and disbursements, the dividend sheet and the disposition of unrealized property. It is possible to meet by telephone if physical attendance is not possible.

The inspectors must meet certain conditions before they can approve the trustee's final statement of receipts and disbursements. The inspectors must satisfy themselves that:

- all the property has been properly accounted for;
- the administration of the estate has been completed as far as is reasonable;
- the disbursements and expenses incurred are proper and have been duly authorized; and
- the fees and remuneration are fair and reasonable.

If an inspector is dissatisfied with any of the above aspects of the statement, the inspector should notify the trustee in writing explaining the reasons for concern.

The trustee must then forward the final statement of receipts and disbursements to the Superintendent of Bankruptcy for comment before the trustee presents the accounts to the court for taxation.

The statement of receipts and disbursements is a complete accounting of all monies received and disbursed by the trustee concerning the administration and the realization of the estate assets. The remuneration claimed by the trustee is disclosed.

#### **Sale of assets |**

##### **How may assets be sold? (paragraph 30(1)(a))**

The trustee, with the inspectors' permission, can sell estate assets by:

- tender,
- public auction, or
- private contract.

##### **To whom can the trustee sell? (paragraph 30(1)(a), subsection 120(1) and rules 42 and 43)**

As a general rule, trustees can sell the estate's assets to "any person or company." "Any person" includes the bankrupt person.

However, trustees cannot sell the property:

- to their employees or agents;
- to other trustees or to employees of other trustees; or
- to related persons of the trustee or to related person of the above mentioned individuals.

## Part II

### Board of Inspectors

Trustees cannot purchase the property of any debtor for whom they are acting in respect to a professional engagement. Also, they cannot obtain the property of any estates for which they are not acting unless the property is purchased at the same time and for the same price as it is offered to the public, and during the normal course of business of the bankrupt or debtor.

Furthermore, inspectors may not acquire estate assets, either directly or indirectly, except with the prior approval of the court.

#### Consideration

##### **Sale for consideration other than cash (paragraph 30(1)(a))**

The trustee can sell all or any property of the bankrupt for consideration other than cash. All the realized property is then divided among the creditors.

##### **Sale for a sum of money payable in the future (paragraph 30(1)(f))**

The trustee can accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as security and otherwise as the inspectors think fit.

- *Disclaimer on secured assets (section 20)*

Sections 127 to 134 deal with the rights of secured creditors.

The trustee may, with the approval of the inspectors, issue a disclaimer relinquishing all or any part of the trustee's right, title or interest in any real or immovable property of the bankrupt. This section is usually applied where there is no equity in an estate asset because of the claim of a secured creditor.

- *Return of property to debtor (section 40)*

With the inspectors' permission, the trustee is required to return any property incapable of realization to the bankrupt. The purpose of this provision is to permit a trustee to complete his or her administration of the estate.

#### **Requirement to pay dividends (sections 136 and 148) |**

Generally, estate funds are distributed in the following order:

- a) the costs of estate administration (e.g., trustee's fees and disbursements, filing fees, counselling fees, legal fees and court fees);
- b) certain claims such as employees' salaries, municipal taxes and landlords' rental arrears;
- c) all other unsecured creditors.

When a trustee has sufficient estate funds, the trustee should pay an interim dividend to creditors who have proven their claim. Under subsection 148(3), inspectors are to direct when an interim dividend should be paid. If they direct the trustee to pay a dividend and the trustee refuses or fails to do so, then the court may order the trustee to pay it with interest.

If the inspectors refuse to authorize the payment of an interim dividend when the funds are available to pay it, the trustee can apply to the court in accordance with subsection 119(2) to overrule the decision of the inspectors.

### **Proposals under Part III of the Act |**

A proposal is an agreement between an insolvent person and his creditors which alters the debtor's financial obligations towards the creditors. The Act provides for two types of proposals.

- a) Division I is primarily for corporations and for individuals who have not made a consumer proposal under Division II. Where a debtor has made a proposal under Division II, he or she cannot make a proposal under Division I until the administrator under the consumer proposal has been discharged.
- b) Division II provides a streamlined procedure for individuals who have debts under a prescribed dollar amount.

Inspectors may be appointed in a proposal. When inspectors are appointed in a proposal, they assume the same roles and responsibilities as in a bankruptcy, subject to any provision in the proposal expanding or restricting their functions.

### **Proposal by a bankrupt (subsection 50(3) and paragraph 66.4(2)(a))**

When a bankrupt intends to make a proposal, the inspectors appointed in the bankruptcy must approve the proposal before any further action is taken.

### **Waiving a default (subparagraph 62.1(b)(i))**

If the debtor defaults in the performance of a Division I proposal, the inspectors have the authority to waive the default and to wait and see if the debtor is capable of rectifying the problem at the root of the default.

## Part III

### Dealing with Bankruptcy Abuses

#### Powers of the Superintendent of Bankruptcy |

**S**ection 10 of the Act empowers the Superintendent of Bankruptcy to investigate an offence that may have been committed in connection with a bankruptcy. These investigations relate to the conduct, dealings and transactions of the bankrupt, the causes of the bankruptcy and the disposition of the bankrupt's property. The main objective of this section of the Act is to detect evidence of statutory offences, although any information uncovered during the investigation that leads to the recovery of assets is to be provided to the trustee.

Section 161 of the Act permits the Official Receiver to examine the bankrupt under oath and to ask questions about the bankrupt's conduct, the causes of bankruptcy and the disposition of property.

The Superintendent of Bankruptcy is assisted by staff in major centres across Canada in detecting and reporting possible offences (see page 16). Investigations are normally carried out by the Royal Canadian Mounted Police.

#### Trustee Compliance |

Trustees who do not perform their duties professionally and in compliance with the Act, Rules and Directives, may be subject to professional conduct measures in the event of wrongdoing (for example, a trustee's licence may be subject to certain conditions or limitations, suspended or cancelled). Where warranted, criminal charges may also be laid.

In addition, trustees are required to comply with the *Code of Ethics* for trustees (Rules 34-53). The code establishes standards for activities such as providing creditors with information, handling trust funds, dealing with conflicts of interest, and overseeing the sale of the property of a bankrupted business or individual. The code also sets standards for advertising and for maintaining the good reputation of the trustee community.

Complaints about trustees should be addressed to the nearest divisional office of the Superintendent of Bankruptcy (see page 16).

#### Inspectors' role in handling abuses |

When creditors have information regarding assets, fraudulent preferences (for example, a payment by the debtor to a creditor that gives the creditor preference over other creditors), improper dealings between the bankrupt and relatives or a related company, or other possible irregularities, these matters should be brought to the attention of the trustee or the inspectors.

The inspectors and the trustee should choose the best course of action to benefit the creditors in these situations.

If the inspectors suspect an offence has been committed, they should discuss the matter with the trustee, who should then report it to the Office of the Superintendent of Bankruptcy. When they consider it appropriate (for example, for matters related to the trustee's conduct), inspectors may also report concerns directly to the Superintendent of Bankruptcy.

#### **Statutory offences |**

The Act describes various bankruptcy offences under sections 198 to 208.

#### **Offences by bankrupts (sections 198, 199 and 200)**

A bankrupt is guilty of an offence if he/she:

- a) makes any fraudulent disposition of his or her property before or after the date of the initial bankruptcy event;
- b) refuses or neglects to answer fully and truthfully all proper questions posed at any examination held pursuant to the Act;
- c) makes a false entry or knowingly omits information in a statement or accounting;
- d) after or within the year before the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or knows about the concealment, destruction, mutilation, falsification, omission from or disposal of, a book or document affecting or relating to his or her property or affairs, unless the bankrupt had no intent to conceal the state of his or her affairs;
- e) after or within the year before the initial bankruptcy event, obtains any credit or any property by false representations or by someone else giving false representations with the bankrupt's knowledge;
- f) after or within the year before the initial bankruptcy event, fraudulently conceals or removes any property valued at fifty dollars or more or any debt owed to or by the bankrupt; or
- g) after or within the year before the initial bankruptcy event, mortgages, pawns, pledges or disposes of any property he or she has obtained on credit and has not paid for, unless the bankrupt is a trader and the mortgage, pawning, pledging or disposing is part of normal trading activities, and unless the bankrupt had no intent to defraud.

The bankrupt is also guilty of an offence if he or she fails to comply with an order of the court requiring a monthly payment to the bankrupt's estate, based on his or her income and family situation. Moreover, the bankrupt is guilty of an offence if he or she fails to comply with the required duties throughout the bankruptcy. For example, the duties include delivering, for cancellation, all credit cards to the trustee as well as informing the trustee of any changes pertaining to his or her financial situation.

## Part III

### Dealing with Bankruptcy Abuses

It is an offence for an undischarged bankrupt to engage in a trade or business or to obtain credit exceeding \$500.00 without disclosing that he or she is an undischarged bankrupt.

It is also an offence for a person who is currently bankrupt and who has previously been bankrupt or made a proposal not to have kept proper books of account (detailing the person's day-to-day transactions and financial position) of any trade or business done within the two-year period before the initial bankruptcy event. Also, an offence is committed if, within that period of time, the bankrupt conceals, destroys, mutilates, falsifies or disposes of any book or document affecting his/her property or affairs, unless there was no intent to conceal the state of the affairs.

#### **Offences by creditors (subsection 201(1))**

It is an offence for a creditor to willfully and with intent to defraud make any false claim or any proof, declaration or statement of account that is untrue.

#### **Offences by trustees (sections 202, 203.1 and 203.2)**

Section 202 deals mainly with the failure of a trustee to perform duties imposed by the Act. However, some paragraphs, such as 202(1)(a) and (f), and subsection 202(2), are wider in scope and apply to persons who are not trustees.

It is an offence for a trustee to act as a trustee under the following conditions:

- while the trustee's licence has ceased to be valid for failure to pay licence fees;
- after the trustee's licence has been suspended or cancelled by the Superintendent; or
- after the trustee has been informed of the intention to cancel the licence.

If a trustee's licence has been restricted, it is an offence for a trustee to exercise powers beyond those authorized by the restricted licence.

#### **Offences by inspectors (subsection 201(2))**

It is an offence for an inspector to accept a fee, commission or other benefit of any kind from the bankrupt, the trustee or any person or company acting on behalf of the bankrupt, other than the regular fees allowed by the Act.

## Range of Payments (subsections 120(5) and (6) and Rule 135) |

## Part IV

### Inspectors' Fees

Inspectors' fees range from \$10 to \$40 per meeting. The fee is based on the net receipts of the estate, which are calculated by subtracting the payments to secured creditors from the total receipts received by the trustee:

| Net receipts          | Fee per meeting |
|-----------------------|-----------------|
| less than \$10,000    | \$10            |
| \$10,000 to \$50,000  | \$20            |
| \$50,000 to \$100,000 | \$30            |
| more than \$100,000   | \$40            |

Inspectors may also be reimbursed for out-of-pocket travel expenses for the performance of their duties.

Finally, an inspector duly authorized by the creditors or by the inspectors to perform special services for the estate may be paid a special fee for his or her services, subject to the approval of the court. The approval of the court must be given before the rendering of the special services. To be allowed an extra fee, the services rendered by the inspector must require the special attention and skills of the inspector. For example, an inspector who is a chartered accountant may be paid a special fee to conduct an accounting investigation for the bankrupt estate.

## Division Offices

### Division Offices of the Superintendent of Bankruptcy |

#### Industry Canada

300 West Georgia Street  
Suite 1900  
Vancouver, British Columbia  
V6B 6E1

Tel.: (604) 666-5007  
Fax: (604) 666-4610

400 St. Mary Avenue  
4<sup>th</sup> Floor  
Winnipeg, Manitoba  
R3C 4K5

Tel.: (204) 983-3229  
Fax: (204) 983-8904

5, Place Ville-Marie  
8<sup>e</sup> étage, pièce 800  
Montréal (Québec)  
H3B 2G2  
N6A 5C9

Tel.: (514) 283-6192  
Fax: (514) 283-9795

Standard Life Tower Building  
639-5<sup>th</sup> Avenue South West  
Suite 510  
Calgary, Alberta  
T2P 0M9

Tel.: (403) 292-5607  
Fax: (403) 292-5188

55 Bay Street North  
9<sup>th</sup> Floor  
Hamilton, Ontario  
L8R 3P7

Tel.: (905) 572-2847  
Fax: (905) 572-4066

1141, Route de l'Église  
4<sup>e</sup> étage  
Sainte-Foy (Québec)  
G1V 3W5

Tel.: (418) 648-4280  
Fax: (418) 648-4120

Canada Place  
9700 Jasper Avenue  
Suite 725  
Edmonton, Alberta  
T5J 4C3

Tel.: (780) 495-2476  
Fax: (780) 495-2466

The Federal Building  
451 Talbot Street  
Room 303  
London, Ontario  
N6A 5C9

Tel.: (519) 645-4034  
Fax: (519) 645-5139

2665, rue King Ouest  
Bureau 600  
Sherbrooke (Québec)  
J1L 1C1

Tel.: (819) 564-5742  
Fax: (819) 564-4299

1945 Hamilton Street  
Suite 600  
Regina, Saskatchewan  
S4P 2C7

Tel.: (306) 780-5391  
Fax: (306) 780-6947

Bell Canada Building  
160 Elgin Street  
11<sup>th</sup> Floor, B-119  
Ottawa, Ontario  
K1R 5B4

Tel.: (613) 995-2994  
Fax: (613) 996-0949

1505 Barrington Street  
16<sup>th</sup> Floor  
Halifax, Nova Scotia  
B3J 3K5

Tel.: (902) 426-2900  
Fax: (902) 426-7275

123-2<sup>nd</sup> Avenue South  
7<sup>th</sup> Floor  
Saskatoon, Saskatchewan  
S7K 7E6

Tel.: (306) 975-4298  
Fax: (306) 975-5317

25 St. Clair Avenue East  
6<sup>th</sup> Floor  
Toronto, Ontario  
M4T 1M2

Tel.: (416) 973-6486  
Fax: (416) 973-7440



### A

#### **Act**

*Bankruptcy and Insolvency Act*, a federal statute of Canada governing bankruptcy and insolvency.

#### **Advance notice**

A legal document under the Act whereby a secured creditor provides 10 days notice to an insolvent debtor of its intention to enforce its security.

#### **Arm's length**

Describes dealings between two parties who are not related by blood or marriage and who are presumed to have approximately equal bargaining power.

#### **Assets**

Items that are owned and have value; in the context of bankruptcy it means all the property of the debtor available for the general benefit of creditors.

#### **Assignment (in bankruptcy)**

Made by insolvent persons who assign all their property to a trustee for the benefit of their creditors.

#### **Automatic discharge**

A first time bankrupt whose discharge is not opposed by the Superintendent, a trustee or a creditor and who has not refused or neglected to receive counselling, is automatically discharged on the expiration of the nine month period immediately following the bankruptcy.

### B

#### **Bankrupt**

A natural person or corporation who has made an assignment or against whom a bankruptcy order has been made; it also means the legal status of that person.

#### **Bankruptcy**

The state of being bankrupt or the fact of becoming bankrupt.

### C

#### **Charge**

A lien, preference or financial obligation attached to property.

#### **Collateral**

Property that is pledged as security against a debt.

#### **Conditional discharge**

Discharge of a bankrupt with specific conditions to be fulfilled before receiving an absolute discharge.

## Glossary

### ***Conditional sale***

The sale of goods where the buyer receives possession of goods or property, but does not receive title to them until specific conditions are fulfilled.

### ***Conservatory measures***

Actions taken to preserve the interests of the bankrupt's estate under the Act.

### ***Corporation***

An entity (usually a business) having authority under law to act as a single person distinct from the shareholders who own it, and has the legal powers that its articles of incorporation grant it.

### ***Creditor***

One to whom a debt is owed; in insolvency matters, a person or corporation having a claim provable under the Act.

## **D**

### ***Debt***

Liability on a claim; a specific sum of money due by agreement or otherwise; aggregate of all existing claims against a person or a corporation.

### ***Debtor***

One who owes an obligation to another, usually to pay money.

### ***Deemed trust***

A trust established by statute, considered to be a trust even though there may be no assets in it. For example, employee source deductions prescribed in the *Income Tax Act* are deemed to be held in trust for the Crown.

### ***Default***

Failure to pay or perform a legal or contractual obligation.

### ***Discharge***

The release of a debtor from most debts. A bankrupt's discharge may be automatic, suspended, conditional or absolute. The court may also refuse the bankrupt's discharge.

### ***Dividend***

The proportional share of a bankrupt's estate paid out by the trustee to creditors who have proven claims against that estate.

### ***Division I Proposal***

An offer made by debtors to their creditors in order to modify their payments. The procedure for a Division I Proposal applies to companies and individuals who want to avail themselves of it. This procedure also allows for a restructure of business debts while the business continues to operate.

### ***Division II Proposal (Consumer Proposal)***

A simplified proposal for repayment of debt to creditors, available under the Act to a consumer debtor whose aggregate debts, excluding a home mortgage, do not exceed the amount prescribed in the Act.

## **E**

### ***Equity***

The difference between the market value of an asset and the debt against it.

### ***Estate***

The aggregate of possessions, including real rights, movable and immovable property, and personal and real property of an individual or a corporation.

### ***Examination***

Questioning of the bankrupt under oath with respect to the bankrupt's conduct, causes of bankruptcy and disposition of the bankrupt's property. The examination may be conducted by an Official Receiver, a trustee, a creditor or other interested person in accordance with conditions prescribed in the Act.

### ***Exempt Assets***

Assets made exempt from execution or seizure by provincial legislation that are not available to the trustee for the benefit of creditors.

## **F**

### ***Fair market value***

The price that a buyer would be willing to pay for an asset and the seller would be willing to accept in an open and unrestricted market.

## **G**

### ***Garnishment***

A legal process whereby a creditor requires a third party to turn over a debtor's property, such as wages or bank accounts, to a creditor.

### ***General Rules***

Rules enacted under the *Bankruptcy and Insolvency Act*.

### ***Guarantor***

An individual or a corporation who takes on financial responsibility for another's debt.

# Glossary

## H

### *Hypothec*

A right on property given to a creditor as performance for an obligation. It confers on the creditor the right to follow the property (even if it undergoes successive changes of ownership), to take possession of it, to take it in payment, or to sell it.

## I

### *Insolvency*

The condition of being unable to pay debts as they become due or in the ordinary course of business, or having liabilities that exceed the total value of assets.

### *Insolvent person*

A person who is not bankrupt and who resides, carries on business, or has property in Canada, whose liabilities to creditors provable as claims under the Act amount to \$1000.00 or more, and:

- who is unable to meet obligations as they become due;
- who has ceased paying current obligations in the ordinary course of business as they become due, or;
- 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 obligations, due and accruing due.

### *Inspector*

A person appointed by creditors to represent them before the trustee during the administration of a bankruptcy or proposal.

### *Interim receiver*

A trustee appointed by the court to safeguard the estate assets for such time as the court may determine.

## J

### *Judgment*

A formal decision issued by a court on a matter under its consideration.

## L

### *Levy*

An assessment payable to the Superintendent of Bankruptcy for the purpose of defraying the expenses of the supervision by the Superintendent in the administration of estates.

### ***Liabilities***

Financial obligations or debt of an individual or a corporation, including unpaid taxes, salaries, accounts payable etc.

### ***Lien***

A legal right or interest that a creditor has in the debtor's property, lasting usually until the debt that it secures is satisfied.

### ***Liquidation***

The act of converting assets of an individual or a company to cash, especially in bankruptcy or in the dissolution of a corporation.

## **M**

### ***Monitor***

A person appointed by the Court to review and report on day-to-day transactions of a business, usually in the restructuring of an insolvent business.

### ***Mortgage***

A conveyance of title to property that is given as security for the payment of a debt. *NOTE:* In the province of Quebec, it is a real right on property securing the performance of an obligation, without relinquishment of its owner.

## **O**

### ***Offences***

The offence and sanction provisions are contained in Part VIII of the Act. These are criminal or quasi-criminal in nature; a person guilty of an offence is liable to a fine and/or imprisonment.

### ***Official Receiver***

A person appointed by the Governor in Council deemed to be an Officer of the Court who performs statutory duties as specified by the Act, such as: accepting the documents for the filing of proposals and bankruptcies, examining bankrupts under oath and chairing meetings of creditors.

### ***Opposition***

An objection to the bankrupt's discharge by the Superintendent, the trustee or a creditor.

### ***Ordinary creditor***

A creditor with no priority or security under the Act.

### ***Ordinary resolution***

A resolution carried by the majority of votes (one vote for each dollar of debt) of claims of creditors; disallowed claims do not vote.

## Glossary

### **OSB**

Office of the Superintendent of Bankruptcy, an agency of Industry Canada. The Office of the Superintendent of Bankruptcy supervises the administration of the *Bankruptcy and Insolvency Act*.

### **P**

#### ***Person***

Includes a human being (natural person), a partnership, and a corporation that is recognized by law as having rights and duties.

#### ***Personal Bankruptcy — Ordinary Administration***

An Ordinary Administration applies to bankruptcy files of individuals whose realizable assets are estimated to be worth \$10,000 or more. This type of bankruptcy procedure provides, for example:

- the publication of a notice of bankruptcy in a local newspaper;
- a meeting of creditors within the 21 day period following the day of bankruptcy;
- the possibility for the creditors to appoint 5 inspectors;
- the approval of the trustee's fees by the inspectors;

#### ***Personal Bankruptcy — Summary Administration***

A Summary Administration applies to individuals whose realizable assets are estimated at less than \$10,000. The Summary Administration of a bankruptcy estate is a simplified procedure in which, for example:

- there is no publication of the notice of bankruptcy in a local newspaper;
- a meeting of creditors is only called if requested by creditors and according to certain conditions;
- no inspectors are appointed unless the creditors decide to appoint them;
- joint assignments are permitted;
- the trustee's fees are prescribed;
- the trustee is discharged without a court appearance, except when a creditor or the Superintendent opposes the discharge.

#### ***Power of attorney***

A legal instrument setting out an individual's authority to act as the agent of the person giving the power of attorney.

#### ***Preference***

The payment of money or the granting of security by a debtor that benefits one or more creditors to the detriment of the other creditors.

### ***Preferred creditor***

A creditor who has been given a priority under the Act over other creditors in the distribution of dividends.

### ***Priority***

The order in which creditors are ranked for payment of claims provable under the Act.

### ***Proof of Claim***

A creditor's written statement that is submitted to prove the creditor's claim; used as the basis for paying dividends, if accepted by the trustee.

### ***Property***

Assets including money, land, movable and immovable property, personal and real property, situated in Canada or elsewhere.

### ***Provable Claim***

Any liability of the debtor for a debt incurred before the date of the bankruptcy.

### ***Proxy***

A document signed by a creditor granting another person the authority to represent them at creditors' meetings. The proxy holder can exercise the creditor's right to vote.

## **Q**

### ***Quorum***

The minimum number of creditors who must be present in person or by proxy to conduct business or to take a vote. At a meeting of creditors, one creditor present, in person or by proxy, who has filed a provable claim with the trustee prior to the meeting, constitutes a quorum.

## **R**

### ***Receiver***

A person who has taken possession pursuant to a security agreement of substantially all of the inventory, accounts receivables or the other property of the debtor. "Receiver" also includes a person who has been appointed privately pursuant to a security agreement or by an order of the court for the protection or collection of property that is the subject of diverse claims, usually to seize and sell the property of the debtor.

### ***Registrar***

An Officer of a provincial court appointed by the Chief Justice with the powers and jurisdiction as specified under the Act.

## Glossary

### *Related persons*

Persons who are connected by a blood relationship, marriage, adoption or common law partnership; while so related, they are deemed not to deal with each other at arm's length. The Act provides that the definition of related persons extends to corporations, shareholders and directors in certain specified situations.

## S

### *Secured Creditor*

A person holding an instrument such as a mortgage or hypothecary claim, a lien or preference on or against the whole or part of the property of a debtor as security for a debt due to him from the debtor.

### *Security*

Property or asset given or pledged to guarantee the fulfillment of an obligation, e.g., for the payment of a loan.

### *Seizure*

The act of taking possession of property by legal right or process.

### *Special resolution*

A resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution.

### *Statement of Affairs*

The bankrupt's financial statement or a balance sheet of assets and liabilities showing the estimated value of the debtor's property and the names and addresses of creditors and the amounts owed.

### *Stay of Proceedings*

Upon the filing of a bankruptcy, a proposal or a notice of intention to make a proposal, no creditor with a claim provable in bankruptcy shall have any remedy against the debtor or the debtor's property or shall commence or continue any action, execution or other proceedings for the recovery of a claim provable in bankruptcy.

### *Superintendent of Bankruptcy*

The official appointed by Governor-in-Council to supervise the administration of all estates and matters to which the Act applies.

### *Surplus income*

Payment required, if any, to be made by a bankrupt to the estate for distribution to creditors. The amount of the payment is fixed by the trustee, having regard to the standards established by the Superintendent and to the personal and family situation of the bankrupt.



### T

#### *Taxation of accounts*

Application for court approval of the fees and disbursements of the trustee, interim receiver or legal counsel.

#### *Trust*

A property interest held by one person at the request of another for the benefit of a third party.

#### *Trustee in Bankruptcy*

A person licensed by the Superintendent of Bankruptcy to administer bankruptcy and proposal estates.

### V

#### *Voting letter*

A document by which a creditor with a provable claim registers his vote.





