



## UNDERSTANDING YOUR OPTIONS

CONTROL YOUR FUTURE



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## Introduction

Thank you for choosing BDO as a source for information on dealing with your financial problems. BDO Canada Limited is a licensed Trustee in Bankruptcy, and we help more people in Canada than any other professional firm. We want to ensure that you have a full understanding of the options available to you and the consequences of them.

We have prepared this booklet as a guide to the events and procedures either for filing an assignment in bankruptcy or the filing of a consumer proposal under *The Bankruptcy and Insolvency Act*. As well, we have provided some basic information as it relates to an individual who may own a business. We have done this purposely so that an individual's introduction to procedures under *The Bankruptcy and Insolvency Act* is not overwhelming or confusing. We have attempted to answer the most frequently asked questions, and in so doing certain details of applicable information have been abbreviated or omitted. Each proceeding is unique to the individual, and it is therefore important to discuss and assess the individual's particular circumstances in detail with a Trustee before taking any formal proceeding.

Filing an assignment in bankruptcy (declaring bankruptcy), or filing a consumer proposal is a very difficult decision for most individuals. People approach the process of dealing with financial challenges and meeting with a Trustee with a variety of emotions, and often confusion as to how things work and what it means to them.

For over fifty years, we have worked with many individuals who have considered using *The Bankruptcy and Insolvency Act* to assist in resolving their problems. We recognize that people in this situation need simple yet comprehensive answers to their questions so that they understand exactly what they can expect and what is expected of them.

At BDO, we help more people than any other firm in Canada get back on the road to financial stability. Please let us help you.

## Understanding the Consumer Proposal Process

For most people, the process for deciding between filing a bankruptcy or a consumer proposal is a serious and confusing one.

We recognize the need for debtors to understand the consumer proposal process and the impact on the individual and their creditors. The purpose of this section is to explain in simple terms the benefits, duties, and the responsibilities affecting a person who files a consumer proposal.

The provisions of *The Bankruptcy and Insolvency Act* ("*the Act*") dealing with consumer proposals are intended to help reduce the number of bankruptcy filings by allowing the consumers who owe less than \$250,000 (excluding mortgages on their principal residences), to negotiate with their creditors for the reduction of their debt and/or for an extension of the time for payments of their debts.

### What is a Consumer Proposal?

A consumer proposal is a legal process which provides a debtor or a bankrupt with an opportunity to modify their payment arrangements with creditors by extending the time for payment, reducing the amount to be paid and eliminating interest, usually by offering a payment plan over time.

### What is the purpose of a Consumer Proposal?

The purpose of a consumer proposal is to give a debtor or a bankrupt an opportunity to make a settlement with their creditors while avoiding bankruptcy. Garnishees, execution, and other actions by creditors will be stopped once the consumer proposal is filed.

### Who can make a Consumer Proposal?

To qualify to make a consumer proposal a debtor must owe between \$1,000 and \$250,000 (excluding the mortgages on a personal residence). If the debts exceed \$250,000, there are other proposal provisions in *the Act* to deal with these debts. An individual who has filed an assignment in bankruptcy may make a consumer proposal if circumstances change. A joint consumer proposal may be filed by two or more individuals, if the consumer proposal can be reasonably dealt with together because of the financial relationship of the consumer debtors involved (e.g. married couple, common-law partners).

## Major Steps in a Consumer Proposal

### Contact a Trustee

The first step in the process is to contact a Trustee in your local BDO office. A Trustee is an individual or corporation who is licensed by the Government to administer bankruptcies and consumer proposals. The Trustee will inform you of the effects of a consumer proposal and will prepare the necessary documents to file the consumer proposal with the Office of the Superintendent of Bankruptcy (the "Superintendent").

### Notification

Upon filing of the consumer proposal with the Superintendent, the Trustee will send a notice, together with a copy of the consumer proposal and some relevant personal and financial information to all of your creditors. At the time of filing a consumer proposal a creditor is prevented from starting or continuing any legal action unless they obtain permission (leave) from the Bankruptcy Court. Interest on the amounts owing to the unsecured creditors stops at the time of filing the consumer proposal.

### Request for Meeting

*The unsecured creditors will have up to forty-five days to request a meeting to vote on the consumer proposal. Unless at least 25% of the creditors request a meeting within forty-five days, they will be considered to have accepted the consumer proposal.*

Unsecured creditors may request a meeting. If the unsecured creditors requesting a meeting are owed more than 25% of the total value of creditors who have responded to the consumer proposal within the forty-five day period, the Trustee will arrange a meeting for the creditors to vote on whether they accept or reject the consumer proposal.

### Voting

At the meeting, if a majority in value of the unsecured creditors who are voting accept the consumer proposal, it will become binding on the debtor and all creditors. It is possible to negotiate with creditors during a meeting in order to reach an agreement regarding an acceptable payment. When a consumer proposal is accepted by the creditors, it is deemed approved by the Court after fifteen days have expired, unless a court hearing to approve the consumer proposal is requested.

## Court Approval

In rare circumstances the Court may be requested to review the consumer proposal after the creditors have approved it. In circumstances where the Court rules that the consumer proposal is not approved, the effect is the same as creditors not approving the consumer proposal.

### What happens if the Consumer Proposal is rejected?

If the creditors or the Court do not approve the consumer proposal, the debtor will no longer be protected by *the Act* and the creditors will again be able to take steps to recover their debts. The debtor can file another consumer proposal, however would not be entitled to protection from the actions of creditors for six months after nonapproval. If the consumer proposal is not approved the debtor may wish to consider other alternatives for dealing with their debt with the assistance of the Trustee.

### Counselling

The Trustee will arrange for two counselling sessions during the consumer proposal. The counselling will help the debtor understand the cause(s) of their financial difficulties, which may also include non-budgetary causes. These sessions will also provide information to assist a debtor in managing their financial affairs in the future.

The debtor must attend both of the counselling sessions in order to complete the consumer proposal. Additional counselling is available if more assistance is required.

### Payments

After signing the documents, the debtor will make payments to the Trustee as provided for in the consumer proposal. This may involve a lump sum payment or monthly payments for a period of no more than five years or a combination of both.

Payments will be made by the Trustee to the creditors in accordance with the terms of the consumer proposal.

Once all payments under the consumer proposal have been made, and both counselling sessions have been completed, the Trustee will issue a certificate which shows that the terms of the consumer proposal have been completed.

Any balance still owing to the unsecured creditors, with the exception of debts listed in Section 178 of *the Act* (see page 22), is legally forgiven. In the event that an excluded creditor specifically agrees to terms releasing their debt, that debt too will be forgiven.

### What happens if the debtor stops making the payments?

The consumer proposal will be in default:

- If you are required to make monthly payments and three of the monthly payments under the consumer proposal are missed, or
- If you are required to make the payments less frequently than monthly and you miss any payment for more than three months,

The consumer proposal will be deemed to be annulled and creditors will again be able to take steps to recover their debts, less any payments paid to them during the consumer proposal.

If the debtor was bankrupt at the time of filing the consumer proposal, they again become bankrupt.

### Revival of Annulled Consumer Proposal

If a consumer proposal (other than a consumer proposal filed by a bankrupt) is annulled, it may be possible for it to be revived if the debtor has made up all of the missed payments and the administrator considers it appropriate.

The process for revival involves notification to creditors within thirty days of annulment. If there is an objection by any creditor to the revival, then there is no automatic revival. In the event there are no objections, the revival is effective sixty days after notice is sent.

It may be possible for there to be a court application if there is an objection to a revival.

### What happens if the debtor's circumstances change?

Until the consumer proposal is accepted by creditors, the debtor is required to advise the Trustee of any changes in his/her circumstances.

After the consumer proposal is accepted by the creditors, the debtor is required to advise the Trustee of any changes in his/her circumstances that could jeopardize his/her ability to make payments or fulfill any terms required under the proposal. Please note: this will not change the amounts to be paid, although it may be possible to amend the consumer proposal. In this case, a debtor should speak to his/her Trustee before defaulting on payments.

### How long will the Consumer Proposal last?

A consumer proposal can be made for any period up to a maximum of five years.

### Does the debtor require a lawyer?

Generally, a lawyer is not required. However, if the debtor feels the need for legal advice, they may retain a lawyer. A Trustee is not a lawyer and is not able to give legal advice.

### How are secured creditors dealt with?

If a creditor has a lien on any assets (known as a secured creditor), the debtor may wish to do one of the following:

- surrender the asset to the secured creditor and obtain a receipt. Any balance left owing after the asset has been sold by the creditor may or may not be a claim in the consumer proposal, depending on Provincial legislation, or
- continue to pay the secured creditor in order to keep the asset.

If payments are up to date and you wish to continue to make payments to keep the asset you may do so.

### How does a Consumer Proposal affect co-signers?

Consumer proposals will not cancel the liability of anyone who has guaranteed or cosigned any loans. These guarantors will still be responsible for the debts less any payments the creditor receives from the consumer proposal.

### What happens to the debtor's assets?

Unless otherwise provided in the consumer proposal, the assets generally remain with the debtor. This includes any assets acquired during the term of the consumer proposal such as gifts, inheritances or winnings.

### What happens to the credit cards in the possession of the debtor?

It is possible for the credit cards to remain with the debtor if there is no balance owing. However, one should recognize that the granting of the credit cards is a privilege provided at the option of the credit company. When the credit card company learns about the consumer proposal they may suspend this privilege. As well, a debtor should carefully consider whether the use of credit cards will be of benefit as they try to set your financial house in order.



## What happens to the debtor's credit rating?

Once the level of debt has become so great that a consumer proposal is required, the credit rating is usually at its lowest. After a consumer proposal is completed by a debtor, credit reporting agencies generally report the fact of the consumer proposal as a "R7" occurrence for a period of 3 years. The ability to obtain and use credit after completion of the consumer proposal will depend upon the debtor's ability to convince a potential lender of their ability to repay new credit.

## Who pays the Trustee?

The Trustee's fee is based on a tariff set in *the Act*. It is deducted from the amounts paid by the debtor and before payments are made to the creditors.

A summary of the steps in the consumer proposal process is as follows:

- Contact the Trustee and file the consumer proposal.
- Creditors are notified of the consumer proposal and may request a meeting.
- The creditors vote on the acceptance of the consumer proposal.
- The debtor makes payments to the Trustee, who in turn makes payments to the creditors according to the terms of the consumer proposal.
- If the consumer proposal is not accepted, the debtor will have to consider other alternatives.
- If the debtor defaults in their payments, the consumer proposal will be annulled.
- Attend two mandatory counselling sessions.
- Once the payments are completed, the Trustee issues a Certificate of Full Performance of consumer proposal.

## Understanding the Bankruptcy Process

For most people, the decision to declare bankruptcy is a serious and often emotional one.

In many cases, individuals who are considering bankruptcy do not understand the bankruptcy process. At BDO, we recognize the need for debtors to understand the process. We also understand that there may be alternatives to bankruptcy that may be more appropriate. The purpose of this section is to explain in simple terms the duties, restrictions and responsibilities imposed on a person who declares bankruptcy.

### What is bankruptcy?

Bankruptcy is a legal process that provides immediate financial relief to individuals with financial problems by stopping legal actions by creditors. Bankruptcy usually releases an individual from most, if not all, of their debts. The procedure is referred to as "filing an assignment" and the person filing an assignment in bankruptcy is referred to as "the bankrupt".

Bankruptcy is intended to give a person with financial problems a fresh start.

Bankruptcy provides for a fair split of certain of the bankrupt's assets among his or her creditors.

If you are considering bankruptcy, the following pages provide a summary of these steps and address many of the questions you may have.

### Who can go bankrupt?

In order to declare bankruptcy, a debtor must:

- owe at least \$1,000;
- be unable to meet regular payments as they become due;
- their debts must be greater than the realizable value of their assets.

### Major steps in bankruptcy

#### Contact a Trustee

The first step in the bankruptcy process is to contact a Trustee in your local BDO office. A Trustee is an individual or corporation who is licensed by the Government to administer bankruptcies.

The bankrupt is not a client of the Trustee. The Trustee is an intermediary who has responsibility to both the bankrupt and the creditors.

The Trustee will provide information on how the process works and how the process will affect you and your creditors. The Trustee will prepare the necessary documents to file the assignment in bankruptcy with the Office of the Superintendent of Bankruptcy (the "Superintendent"). The act of filing an assignment in bankruptcy does not eliminate the debt immediately, but it does protect a bankrupt from actions started by their creditors unless permission (leave) is obtained from Bankruptcy Court. The release from the debts is achieved by getting a "discharge" from bankruptcy.

## Meeting

The Trustee will notify the creditors of your bankruptcy. A meeting with your creditors will be arranged if it is requested by 25% of your creditors. The purpose of this meeting, which you must attend, is to allow creditors to obtain information about the bankruptcy. The meeting is chaired by the Trustee or its representative. In most cases, meetings are not requested by creditors.

## Payments

In your meeting with the Trustee, the need to ensure that some monies need to be paid to the Trustee will be discussed. If the amounts constitute a hardship, it may in certain circumstances be possible to spread the payments out over a longer period of time.

*Please discuss this with your Trustee.*

## Surplus Income - What happens to salary, wages and other income?

If you earn or receive income in excess of a standard amount of income set by the Superintendent, based on family size, you will be expected to make payments to the Trustee from that excess until the date of the discharge. This amount is called surplus income. The amount of these payments are set taking into consideration the standards issued by the Superintendent and the bankrupt's personal and family situation. If the bankrupt does not agree with the amount of surplus income to be paid, the bankrupt must request mediation in writing. Further, if any of the creditors do not agree with the amount of surplus income to be paid, they may submit a written request to the Trustee asking for mediation. Failure to make the required payments will affect your discharge from bankruptcy.

During your bankruptcy the amount of surplus income will be determined by the bankrupt's actual monthly income. A bankrupt is required to report their income and expenses every month, along with proof of income and any other requested documentation to the trustee during bankruptcy so that monitoring can occur.

If a bankrupt does not provide income and expense information, or make the required payments, their discharge from bankruptcy will be opposed by the trustee.

## **Counselling**

The Trustee will arrange for two counselling sessions during the bankruptcy. The counselling will help the bankrupt to discover and understand the cause(s) of their bankruptcy, which may include non-budgetary causes. These sessions will also provide information to assist a debtor in managing their financial affairs in the future.

The bankrupt must attend both of the counselling sessions in order to obtain their discharge from bankruptcy. Additional counselling may be available if more assistance is required.

## **Discharge**

For first-time bankrupts, an automatic discharge is available after nine months if they do not have surplus income and have performed all of their duties.

If a bankrupt has surplus income an automatic discharge is available after 21 months if they have performed all of their duties. The determination is made after considering the income of the bankrupt during the first 8 months of bankruptcy.

For second-time bankrupts, an automatic discharge is available after twenty-four months if they do not have surplus income and have performed all of their duties. If a second-time bankrupt has surplus income an automatic discharge is available after 36 months if they have performed all of their duties. The determination is made after considering the income of the bankrupt during the first twenty-three months of bankruptcy.

- A first-time bankrupt without surplus income will be automatically discharged from bankruptcy nine months from the date of the assignment, provided that neither the Superintendent, the Trustee, nor any creditor has opposed the discharge.
- A first-time bankrupt with surplus income will be automatically discharged from bankruptcy twenty-one months from the date of the assignment, provided that neither the Superintendent, the Trustee, nor any creditor has opposed the discharge.

- A second-time bankrupt without surplus income will be automatically discharged from bankruptcy twenty-four months from the date of the assignment, provided that neither the Superintendent, the Trustee, nor any creditor has opposed the discharge.
- A second-time bankrupt with surplus income will be automatically discharged from bankruptcy thirty-six months from the date of the assignment, provided that neither the Superintendent, the Trustee, nor any creditor has opposed the discharge.

Where a debtor is eligible for an automatic discharge, it is possible to make an application to the Court to be discharged from bankruptcy early. This is an unusual step but may be considered by the Court in certain circumstances. Discuss the possibility of applying for an early discharge with your trustee.

If a bankrupt does not qualify for an automatic discharge, the Trustee will apply to the Bankruptcy Court for an appointment to hear the application for discharge within one year after the filing of the bankruptcy. The Trustee will prepare a report that is considered by the Court at the discharge hearing. The Court may issue one of the following Orders:

- **Absolute:** is effective immediately and means that the bankrupt is no longer responsible for the debts that existed at the date of filing bankruptcy, except for non-dischargeable debts described below;
- **Suspended:** same as an Absolute Order but there is a delay before the discharge comes into effect;
- **Conditional:** certain conditions may be imposed by the Court that must be met before the discharge becomes absolute, for example the bankrupt may have to pay a certain sum of money to the Trustee for distribution to creditors;
- **Adjourned:** any objection to the granting of a discharge order will usually cause the hearing to be postponed to either a later date or indefinitely;
- **Refused:** the Court has the right to refuse a discharge, however, it only exercises this power in exceptional cases.

Upon being discharged, the bankrupt is released from all debts **EXCEPT** for the following:

- fines or penalties imposed by a Court for an offense or for default on a bond bail;
- alimony or support of child or spouse;
- debts arising from fraud or theft while acting in a fiduciary capacity;

- debts for property or services obtained by fraudulent misrepresentation i.e. borrowing money without full and/or honest disclosure of existing debts or other relevant facts;
- dividends payable to creditors that were not disclosed by the bankrupt to the Trustee, (these creditors will be entitled to the dividend that would have been paid to them if they had filed a claim in the bankruptcy)
- damages awarded by a court in respect of bodily harm intentionally inflicted, or sexual assault, or wrongful death resulting therefrom;
- Student Loans - if the bankruptcy occurs before or within seven years after the bankrupt ceases to be a full or part-time student.

### **High Income Tax Debt**

In circumstances where an individual owes more than \$200,000 for personal income taxes, and this amount is more than 75% of their total unsecured debt, the bankrupt is not eligible for an automatic discharge.

For a first time bankrupt the discharge hearing will take place after 9 months from the date of bankruptcy if no surplus income payments are required, and after twenty-one months if surplus income payments are required.

For a second time bankrupt the discharge hearing will take place after twenty four months from the date of bankruptcy if no surplus income payments are required, and after thirty six months if surplus income payments are required.

For a third time or subsequent bankrupt the discharge hearing will take place after thirty-six months regardless of whether there is surplus income or not.

### **Trustee's Report**

The Trustee prepares a report for the Superintendent in the following circumstances:

- the bankrupt has surplus income;
- there is opposition to discharge by the Trustee, a creditor or the Superintendent;
- there has been a previous bankruptcy;
- a Court hearing is required.

The report will comment on the administration of the bankruptcy and outline the bankrupt's current financial situation. The bankrupt will be required to provide information to the Trustee for the preparation of this report.

### What happens if there is an objection to the bankrupt's discharge?

If the Superintendent, the Trustee or any creditor has opposed the discharge the matter will be dealt with by the Court. However, if the discharge has occurred only because the bankrupt failed to pay surplus income as required or could have made a proposal and failed to do so, then mediation is required. If the parties do not reach an agreement on the conditions for the bankrupt's discharge through mediation, the Trustee must apply to the Court for a hearing.

### What is Mediation?

Mediation is a way of resolving conflict between two or more people. The parties involved in the disagreement agree to work with an independent person called a "mediator" who helps them settle their dispute. The mediator will help the parties explain their point of view and discuss ways to settle the disagreement. The mediator does not decide what the settlement will be. The parties decide that together. A separate brochure on the mediation process is available from your BDO Trustee if required.

### In bankruptcy, what happens to assets?

With some exceptions, a bankrupt's assets, whether in their possession or in possession of a third party, will be transferred to the Trustee for the benefit of the creditors. Assets belonging to others which are in the bankrupt's possession will be turned over to them once they have proved to the Trustee that the assets belong to them.

While a bankrupt may normally keep a vehicle, a portion of RRSP's, household furniture, clothing and personal effects, the value of assets exceeding specified amounts must be turned over to the Trustee. These assets will be sold and the proceeds will be distributed among the creditors.

If assets were mortgaged or subject to a lien to any creditor, such as a finance company or bank, these creditors can seize and sell the assets unless arrangements can be made by you to pay them.

### What property will not be taken?

Certain assets are considered exempt from seizure under the laws of the province of residence. Contact your local BDO office for details of exemptions in your province.

### Can I still be sued?

At the time of filing an assignment in bankruptcy, all legal actions such as garnishees, seizures or lawsuits are stopped. Anyone wishing to continue with a lawsuit must apply to the Bankruptcy Court for permission. Child support or alimony claims are dealt with outside of the bankruptcy and therefore these actions can still continue.

### What happens to my credit rating?

Once your level of debt has become so great that bankruptcy is required, a debtor's credit rating is usually at its lowest. The ability to obtain and to use credit after bankruptcy will depend on the individual's ability to convince a potential lender of their future financial ability. After a first bankruptcy, the bankruptcy is reported as a "R9" (the worst possible rating) for a period after discharge. The period is determined by provincial laws and the regulations of the credit reporting agencies. After that time the bankruptcy cannot be reported. After a second bankruptcy the fact of bankruptcy is generally reported for a longer period.

In many circumstances the bankruptcy actually reduces the period of time that bad credit information is reported by the credit reporting agency.

### Will other people know about my bankruptcy?

While an individual's bankruptcy and discharge are matters of public record, notice of personal bankruptcy is not usually advertised in the newspaper and an employer is not normally notified. Bankruptcy records are permanently maintained in the Court and with the Superintendent.

### What happens if I win a lottery or receive an inheritance while I am bankrupt?

If a bankrupt receive assets, such as lottery winnings or an inheritance, after the date of bankruptcy but prior to discharge, they must be turned over to the Trustee as they are considered assets that must be shared among creditors. The Trustee will pay creditors and the expenses of the process and any surplus is returned to the debtor.

### How do I handle income tax returns?

The Trustee prepares a pre-bankruptcy tax return for the year of bankruptcy from January 1st to the date of bankruptcy and any refund for that period, as well as refunds of previous years not yet received, will be kept by the Trustee. A post-bankruptcy tax return for the period from the date of the bankruptcy



to December 31st may be completed by the Trustee. Any refund resulting from this tax return belongs to the Trustee. Any taxes payable regarding this post-bankruptcy return must be paid by the bankrupt whether or not they are discharged.

### GST Refunds

Any GST cheques based on the tax returns filed by the Trustee for the period(s) up to and including the year of bankruptcy will be sent to the Trustee. Because of the way the Government calculates GST refunds, a bankrupt may not receive a refund for a period of up to two years from the date of bankruptcy. However, if the funds realized by the Trustee are sufficient to pay the costs of the bankruptcy, then the Trustee will turn over GST refund cheques to the bankrupt.

### What about Child Tax Benefits?

A bankrupt will continue to receive the child tax benefit if they already receive it. While the income is considered in the surplus income calculation, it is not seized. It is important to realize that if there is a delay in providing the Trustee with income tax information there may be an interruption in the Child Tax Benefit as a result.

### What about special gifts, transfers of property, or special treatment?

Gifts or transfers of property by a bankrupt to others during the twelve months or in some cases five years prior to the date of bankruptcy are subject to review by the Trustee and may be reversed by the Court. If a creditor or a person related to the bankrupt received special treatment, such as being paid while others were not, the Trustee may demand repayment from them. The Trustee must be advised of any such payments or transfers made during the twelve months, and any transactions involving related parties within five years, prior to the date of bankruptcy.

### How does bankruptcy affect co-signers of my loans?

Bankruptcy will not cancel the liability of anyone who has guaranteed or co-signed a loan to a bankrupt.

### What do I do if a creditor sues me?

If a creditor commences a court action against a bankrupt, they should immediately inform the Trustee of the action and send any legal documents to the Trustee who will take steps to stop the action.

## Duties imposed upon the bankrupt

An individual filing for bankruptcy must fulfill all of the following duties:

- tell the Trustee and turn over, as required, all assets in their possession or control;
- deliver to the Trustee for cancellation all credit cards issued to them and in their control;
- make available to the Trustee all books and records relating to their assets or affairs;
- meet with the Official Receiver, to be examined under oath as to the facts relating to the bankruptcy, if and when requested;
- provide to the Trustee a complete statement of your assets, whether in Canada or not, and liabilities including creditors names, addresses, account numbers, invoices and amounts. Where additional bills or legal documents are received by a bankrupt, they should be forwarded to the Trustee. If assets were accidentally omitted, the Trustee must be told promptly. This statement must be completed under oath;
- inform the Trustee of the details of all assets disposed of during the twelve months prior to the bankruptcy;
- inform the Trustee of the details of all assets disposed of by gift or settlement (without adequate consideration) during the five years prior to the bankruptcy;
- attend the first meeting of creditors and any other meetings if called upon by the Trustee;
- inform the Trustee of any material change in their financial situation;
- assist the Trustee as required;
- keep the Trustee advised of their place of residence until they are discharged.

## Bankruptcy offences

Besides any offences under the *Criminal Code of Canada* which may apply, a bankrupt is also liable to imprisonment for up to three years if they are found guilty of any of the following offences under *The Bankruptcy and Insolvency Act*:

- failing to perform the above-mentioned duties as a bankrupt;
- fraudulently disposing of assets before or after bankruptcy;

- failing to answer fully and truthfully all questions when examined under oath;
- making false statements regarding assets or liabilities;
- destroying or concealing books or documents relating to your property or affairs;
- obtaining property or credit by false representation during the period twelve months prior to the bankruptcy and until the date of discharge;
- not disclosing to the person(s) with whom they are dealing, prior to obtaining credit in excess of \$1,000.00, that they are an undischarged bankrupt. (This would also apply to leasing a vehicle during the bankruptcy).

The steps in the bankruptcy process can be summarized as follows:

- Contact the Trustee and file the assignment in bankruptcy;
- Appear before the Official Receiver to be questioned. (This step may be waived in some cases);
- Attend the meeting of creditors, if required;
- Attend two counselling sessions within the time frames set out in *the Act*;
- Provide the Trustee with income information throughout the period of the bankruptcy;
- Make payments to the Trustee while awaiting discharge, if required;
- Attend Court for the discharge hearing, if required.

### Information for Business Owners

Many individuals who face financial problems have also been self employed either as sole proprietors or as owners of corporations. We are providing additional basic information for you in this booklet however we caution that all business situations must be discussed comprehensively with your BDO Trustee prior to proceeding.

### Sole Proprietors

The options available are essentially those outlined in the first two sections of this book. In the event that a debtor wishes to file a proposal but their total debts exceed \$250,000, a more rigorous proposal process will apply. If assets exceed the limits set under the consumer bankruptcy rules, a different type of bankruptcy proceeding is possible. Your BDO Trustee will be able to explain the differences and implications.

As a sole proprietor, the assets and liabilities considered include those related to the business as well as personal assets and liabilities.

*A separate proceeding for a sole proprietorship is not possible.*

### **Owners of Corporations**

Individuals who own corporations must discuss their business affairs fully with their BDO Trustee. The shares of a corporation will belong to the Trustee after the filing of bankruptcy. As well, a bankrupt individual may not serve as a director of a corporation.

An individual may have liabilities either as a director pursuant to provincial or federal legislation, or as a guarantor of corporate debts. *The Income Tax Act (Canada)*, *The Excise Tax Act (Canada)* and various other federal and provincial statutes impose direct obligations on directors for deductions and withholdings not remitted. These obligations can be significant and should be discussed fully with the Trustee. In addition, most banks and many other suppliers require that a business owner give a personal guarantee to support obligations of the corporation. Upon the closure of the business, these debts are also relevant to a debtor's personal financial situation, and should be discussed with a BDO Trustee.

To discuss options available for dealing with the financial problems of the corporate entity itself, please contact BDO for additional information. Bankruptcy, proposal or receivership proceedings for corporations are, by their nature, more complex. Each situation is unique and will require a full analysis.

*You are hereby notified of the duties imposed upon you by the Bankruptcy and Insolvency Act and other features of this Act that affect you in your capacity as a bankrupt. You are expected to study carefully the following APPENDIX 1 - EXCERPTS FROM THE BANKRUPTCY AND INSOLVENCY ACT - Sections 67, 158, 159, 178, 198, 199 and 200 of the Bankruptcy and Insolvency Act. A breach of your duties could make you liable to prosecution.*

## **APPENDIX I**

### **EXCERPTS FROM THE BANKRUPTCY AND INSOLVENCY ACT**

#### **Section 67. - Property of the Bankrupt**

- (1) The property of a bankrupt divisible among his creditors shall not comprise
  - (a) property held by the bankrupt in trust for any other person;

- (b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides;
  - (b.1) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b);
  - (b.2) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b); or
  - (b.3) without restricting the generality of paragraph (b), property in a registered retirement savings plan or a registered retirement income fund, as those expressions are defined in the *Income Tax Act*, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy, but it shall comprise
- (c) all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge, including any refund owing to the bankrupt under the *Income Tax Act* in respect of the calendar year — or the fiscal year of the bankrupt if it is different from the calendar year — in which the bankrupt became a bankrupt, except the portion that
  - (i) is not subject to the operation of this *Act*, or
  - (ii) in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on Her Majesty under the *Family Orders and Agreements Enforcement Assistance Act*, is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and
- (d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.

***In summary, the above means that unless specific assets are exempted from seizure by the Trustee under Provincial laws, the Trustee would be entitled to take possession of and realize all other assets belonging to the bankrupt.***

## Section 158 - Duties of Bankrupt

A bankrupt shall

- (a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;

- (a.1) in such circumstances as are specified in directives of the Superintendent, deliver to the trustee, for cancellation, all credit cards issued to and in the possession or control of the bankrupt;
- (b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;
- (c) at such time and place as may be fixed by the official receiver, attend before the official receiver or before any other official receiver delegated by the official receiver for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;
- (d) within five days following the bankruptcy, unless the time is extended by the official receiver, prepare and submit to the trustee in quadruplicate a statement of the bankrupt's affairs in the prescribed form verified by affidavit and showing the particulars of the bankrupt's assets and liabilities, the names and addresses of the bankrupt's creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a proper statement of affairs, the official receiver may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement;
- (e) make or give all the assistance within his power to the trustee in making an inventory of his assets;
- (f) make disclosure to the trustee of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event or beginning on such other antecedent date as the court may direct, and ending on the date of the bankruptcy, both dates included, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;
- (g) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within the period beginning on the day that is five years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;

- (h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereat to examination;
- (i) when required, attend other meetings of his creditors or of the inspectors, or attend on the trustee;
- (j) submit to such other examinations under oath with respect to his property or affairs as required;
- (k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;
- (l) execute any powers of attorney, transfers, deeds and instruments or acts that may be required;
- (m) examine the correctness of all proofs of claims filed, if required by the trustee;
- (n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;
  - (n.1) inform the trustee of any material change in the bankrupt's financial situation;
- (o) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee, or may be prescribed by the General Rules, or may be directed by the court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested; and
- (p) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all times of his place of residence or address.

***The above duties relate to attending various meetings as described by the Trustee and to providing the Trustee with specific information and documentation. In particular, a bankrupt will be required to provide the Trustee with documentation relating to assets, insurance and recent income tax records. If the bankrupt was self-employed or involved in a business, they will be required to provide books of records for the business. Many of the above-described duties will actually be completed before the filing of the assignment.***

## Section 178 - Debts not Released by Order of Discharge

- (1) An order of discharge does not release the bankrupt from
- (a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence, or any debt arising out of a recognizance or bail;
    - (a.1) any award of damages by a court in civil proceedings in respect of
      - (i) bodily harm intentionally inflicted, or sexual assault, or
      - (ii) wrongful death resulting therefrom;
  - (b) any debt or liability for alimony or alimentary pension;
  - (c) any debt or liability arising under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse, former common-law partner or child living apart from the bankrupt;
  - (d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;
  - (e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;
  - (f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;
  - (g) any debt or obligation in respect of a loan made under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred
    - (i) before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable *Act* or enactment, or
    - (ii) within seven years after the date on which the bankrupt ceased to be a full- or part-time student; or
  - (h) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g).



Court may order non-application of subsection (1)

- (1.1) At any time after five years after a bankrupt who has a debt referred to in paragraph (1)(g) ceases to be a full- or part-time student, as the case may be, under the applicable Act or enactment, the court may, on application, order that subsection (1) does not apply to the debt if the court is satisfied that
- (a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the debt; and
  - (b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the debt.

Claims released

- (2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

***It is very important to understand that the debts described above are not affected by bankruptcy and that the bankrupt will still be liable for these debts after discharge.***

## Section 198 - Bankruptcy Offences

(1) Any bankrupt who

- (a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event,
- (b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act,
- (c) makes a false entry or knowingly makes a material omission in a statement or accounting,
- (d) 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 the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,
- (e) after or within one year immediately preceding the date of the initial bankruptcy event, obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge,

- (f) after or within one year immediately preceding the date of the initial bankruptcy event, fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from the bankrupt, or
- (g) after or within one year immediately preceding the date of the initial bankruptcy event, hypothecates, pawns, pledges or disposes of any property that the bankrupt 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 the bankrupt had no intent to defraud is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both, or on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

#### Failure to comply with duties

- (2) A bankrupt who, without reasonable cause, fails to comply with an order of the court made under section 68 or to do any of the things required of the bankrupt under section 158 is guilty of an offence and is liable
  - (a) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or
  - (b) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

The above offenses relate to the bankrupt fraudulently disposing of or concealing assets and knowingly providing false information to their creditors and to the Trustee. If a debtor believes that any of their actions relate to any of the above categories, they should discuss the matter with the Trustee immediately.

#### Section 199 - Failure to Disclose Fact of Being Undischarged

An undischarged bankrupt who

- (a) engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt, or
- (b) obtains credit to a total of \$1,000 or more from any person or persons without informing them that the undischarged bankrupt is an undischarged bankrupt,

is guilty of an offense punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

***This section means that if you enter into any financial obligation during the period of your bankruptcy, you must first advise the other party that you are bankrupt.***

***Practical examples of this would be as follows:***

- ***if you carry on a business and accept deposits for work to be done in that business;***
- ***if you obtain credit for \$1,000 or more;***
- ***if you wish to lease a car during the bankruptcy.***

### **Section 200 - Bankrupt Failing to Keep Proper Books of Account**

- (1) Any person becoming bankrupt or making a proposal who has on any previous occasion been bankrupt or made a proposal to the person's creditors is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both, if
- (a) being engaged in any trade or business, at any time within the period beginning on the day that is two years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, that person has not kept and preserved proper books of account; or
  - (b) within the period mentioned in paragraph (a), that person conceals, destroys, mutilates, falsifies or disposes of, or is privy to the concealment, destruction, mutilation, falsification or disposition of, any book or document affecting or relating to the person's property or affairs, unless the person had no intent to conceal the state of the person's affairs.

### **Proper books of account defined**

- (2) For the purposes of this section, a debtor shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual and other stock-takings.

***This section emphasizes the need for anyone who is or has been bankrupt to keep proper books and records for any business venture that they are involved in and to ensure that all information provided to the Trustee is accurate and truthful.***

### Section 159 - Where Bankrupt is a Corporation

Where a bankrupt is a corporation, the officer executing the assignment, or such

(a) officer of the corporation, or

(b) person who has, or has had, directly or indirectly, control in fact of the corporation as the official receiver may specify, shall attend before the official receiver for examination and shall perform all of the duties imposed on a bankrupt by section 158, and, in case of failure to do so, the officer or person is punishable as though that officer or person were the bankrupt.

***This section only applies to situations where the bankrupt is a corporation or limited company. In such cases, one or more of the officers of the company would be required to perform the duties set out in Section 158.***

**NOTE:** You are also notified that, under the *Canada Corporations Act* and the *Companies Act* of the various Provinces, you may not be the Director of a limited Company while an undischarged bankrupt.

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