



BDO Dunwoody Limited
Financial Recovery Services

BDO News Bulletin

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- WEPP
- Employee Remuneration Charge
- Pension Charge
- Aircraft Objects

- RRSP, RIF & Deferred Profit Sharing Plans
- Student Loans
- Security Agreements in Proposals
- Non-Dischargeable Debts

This is a publication of BDO Dunwoody Limited on developments in the area of financial recovery. This material is general in nature and should not be relied upon to replace the requirement for specific professional advice. The information in this document is current as of July 10, 2008.

For further inquiries or to discuss how these changes may affect your clients please contact your local BDO professional.

INSOLVENCY REFORM

Years have passed since the insolvency legislation reform was first proposed to parliament.

At long last, the first part of the legislative reform package came into effect on Monday, July 7, 2008. There are no timelines on the balance of proposed legislative changes at this time. However, the changes that have been made may be significant to you and your clients. The following is a summary of some of the changes to the Bankruptcy and Insolvency Act and a briefing on the newly proclaimed Wage Earner Protection Program Act.

WEPP (Wage Earner Protection Program)

The reform package introduces the Wage Earner Protection Program Act, a new statute designed to protect the wages of unpaid workers in formal insolvency proceedings. This statute is the result of discussions that have been ongoing for over 30 years, and in our view, has provided the political impetus that has resulted in the enactment of the reform package after a protracted and unusual passage through Parliament and the Senate.

The key feature of the WEPP provides that unpaid employees of an employer that is bankrupt or in receivership may have their unpaid wages paid by out of the Consolidated Revenue Fund of the Government of Canada. The wages that are eligible only include earnings and vacation pay and do not include severance or termination pay. Directors, officers, those with financial control of the employer or those not at arm's length with the directors and officers are not eligible. Only outstanding wages earned in the 6 months prior to the filing are eligible and there is a cap of about \$3,000.

To apply, first the trustee or receiver gathers the information and sends a copy of the information to the employee. The employee takes the information from the trustee or receiver and applies for payment in person at their local Service Canada office. It is thought then that Service Canada will in turn take an assignment of the employee's remuneration charge (discussed below) so that they may file a secured claim against the bankrupt estate of the employer. This employee remuneration charge ranks in priority to existing security interests in current assets, except deemed trust amounts and 30 day goods. Greater details on this program will be known as this program is put into practice.

Inquiries on this program are being directed to Service Canada's website at: <http://www.servicecanada.gc.ca/en/sc/wepp/index.shtml> or by calling 1-866-683-6516. Readers should take note that the WEPP program does not apply to unpaid employees of non-bankrupt employers or employers not subject to the appointment of a receiver.

Employee Remuneration Charge

Unpaid wages and commissions of employees are given a priority charge against the assets of an employer who is bankrupt or an employer who is subject to the appointment of a receiver. This charge is limited to \$2,000 per employee for unpaid wages earned in the 6 month period prior to the date of bankruptcy or receivership plus \$1,000 in expenses for a traveling salesperson. As mentioned above, this new charge ranks in priority to existing security interests in current assets, except deemed trust amounts and 30 day goods.

Pension Charge

A prior charge is now given against all assets of a bankrupt or the property in the possession of a receiver for any unremitted employee pension contributions and costs in respect of a defined benefit pension plans and any unpaid employer contributions regarding defined contribution pension plans. This charge will be subordinate to the unpaid wage charge.

The Employee Remuneration Charge and the Pension Charge could materially affect the amount recoverable to both secured and unsecured creditors. The impact of these amendments on credit availability has yet to be determined.

Aircraft Objects

The Bankruptcy and Insolvency Act has been amended to remedy the international security interests against aircraft equipment.



RRSP, RIF & Deferred Profit Sharing Plans

RRSP's and RIF's are now exempt from seizure by a trustee in bankruptcy. The only limitation is that contributions made in the 12 months prior to the date of bankruptcy are excluded from this exemption and can be recovered by a trustee, except in provinces where exemption legislation is already in force. There is no limitation on the total value of the RRSP or RIF of a bankrupt that is protected. Deferred Profit Sharing Plans have also been added as property of a bankrupt that is entirely unavailable to a trustee. These revisions apply to bankruptcies filed on or after July 7, 2008.

Student Loans

The length of time that a bankrupt must have completed full or part time schooling in order to be eligible for a discharge of student loan debt has been reduced from 10 years to 7 years. Further, the period of time that a bankrupt must wait to make an application to court for a discharge of the student loan debt on the basis of hardship has been reduced from 10 years to 5 years. These changes apply to bankrupts who have not been discharged on or before July 7, 2008.

Security Agreements in Proposals

Provisions have been amended to now restrict secured creditors from terminating or amending security agreements following the filing of a Proposal or a Consumer Proposal.

Non-Dischargeable Debts

Paragraph 178(1)(e) now includes services as a debt that is non-dischargeable when the services are obtained by false pretences or fraudulent misrepresentation. These revisions apply to proceedings filed on or after July 7, 2008.

