

November
2003

- **SENATE COMMITTEE REFORM**
- **BILL COURAGE NEW CAIRP CHAIRMAN**
- **BDO RECOMMENDS REFORM ADOPTION**

SENATE COMMITTEE REFORM RECOMMENDATIONS FOR INSOLVENCY

TORONTO – (November 4th, 2003) – The Standing Senate Committee on Banking Trade and Commerce has made recommendations for significant amendments to the Bankruptcy and Insolvency Act (BIA), and the Companies Creditors Arrangement Act (CCAA). The Insolvency community has praised the report as a welcome improvement to the fairness and efficiency of the industry.

The three key areas discussed by the report are Consumer Insolvency, Commercial Insolvency and Administrative & Procedural issues. Each area includes substantial recommendations reflecting changes in the Canadian Bankruptcy and Insolvency service landscape which is adjusting to factors such as decreased government subsidization, increased dependence upon personal financial management and changing regulatory statutes.

Highlights of the recommendations in the Consumer Insolvency Section include:

- Exemption for RRSPs recognizing the increased dependence of Canadians upon personal retirement savings, and exemptions for RESPs recognizing the need for savings to fund the educational needs of our students.
- Significant modifications in the treatment of Canada Student Loan debt, by reducing the period of time after which a discharge is possible from ten years to five years, and allowing access to Court in hardship cases.
- Amending the current rules relating to payments made to the Trustee after discharge of the bankrupt to allow improved access to the Bankruptcy System for debtors who do not have surplus income or assets.
- For debtors filing proposals (i.e. compromise of debt), their taxation year would end at the date of filing, and debt forgiveness provisions of the Income Tax Act would not apply to individuals filing proposals.

Noteworthy recommendations in the Commercial Insolvency section include:

- Unpaid wages and vacation pay for one pay period, up to \$2,000 per employee, are to be paid as a super-priority over secured claims to inventory and accounts receivable, where the employer is bankrupt.
- Subordination of equity claims in reorganization proceedings until claims of ordinary creditors have been satisfied in full. Currently, the difference in treatment of equity claims has resulted in a number of reorganization proceedings being moved to the United States from Canada, even where the debtor has a majority of its operations in Canada.

- The repeal of unpaid supplier rights, for identifiable goods shipped within 30 days of bankruptcy or receivership, except for farmers, fishers and aquaculturalists.
- The ability of the Court to permit disclaimer of executory contracts, including collective agreements, where such disclaimer is proven to be necessary for the successful restructuring of a business. The recommendations provide that the debtor show that negotiations post filing must have been carried out in good faith prior to the disclaimer being authorized.
- The codification of Debtor in Possession (DIP) financing practices which are currently being exercised without rules pursuant to the "inherent jurisdiction of the Court", including the ability to prime existing security interests.
- The amendment of the CCAA to clarify that the auditor of the debtor may not act as the monitor and that, in a failed restructuring, the monitor may not become the trustee or a receiver for a secured creditor.

Recommendations on Administrative and Procedural Issues of interest include:

- Allowing the Superintendent of Bankruptcy to use unclaimed dividend funds to finance research and education programs.
- Amending the definition of a consumer debtor by increasing the current dollar limit from \$75,000 to \$100,000, with future increases to be determined by reference to the Consumer Price Index.
- Legislating the review of the BIA, CCAA, Winding-Up & Restructuring Act and Farm Debt Mediation Act every five years indicating a shift towards more modern legislation and greater improvement of efficiency.

At a time when Canadians are faced with increased costs of living, decreased government funding, privatization and a diminishing pension fund, the reforms recommended in the Senate Committee's report suggest

welcome amendments to the act which will assist individuals and companies by facilitating restructurings and compromises of debt, and by clarifying Conflict of Interest rules for professionals assisting in the insolvency process. At the same time rules for asset exemptions and retirement income plans are standardized across Canada for consumer debtors unable to avoid bankruptcy, and harsh student loan terms are softened for those unable to repay.

For further details, please refer to the document located on the BDO Corporate Recovery Services website: <http://www.bdo.ca/en/library/publications/crspub/index.cfm>, or speak to one of our BDO Business Recovery Professionals.

BILL COURAGE, CA, CA-CIRP, CFE APPOINTED TO CAIRP CHAIRMAN

On August 19, 2003 Bill Courage of BDO Dunwoody Limited was appointed to the position of Chairman of the Canadian Association of Insolvency and Restructuring Professionals (CAIRP). Bill is a partner with BDO Dunwoody LLP, a licensed Trustee In Bankruptcy and Senior Vice President of BDO Dunwoody Limited, responsible for the Insolvency and Business Restructuring practice in the Mid-Western Ontario region. Bill brings extensive knowledge and experience to the position, along with a diverse background in corporate and personal recovery services. Bill's experience in this regard represents an invaluable asset in this time of change in Bankruptcy and Insolvency legislation.

To learn more about BDO Dunwoody Limited services, visit <http://www.bdo.ca/en/services/businessrecoveryandinsolvency/index.cfm>, or speak to one of our BDO Business Recovery Professionals.

BDO DUNWOODY LIMITED RECOMMENDS QUICK ADOPTION OF INSOLVENCY REFORMS BY FEDERAL GOVERNMENT

TORONTO – (November 4th, 2003) – The Report of the Standing Senate Committee on Banking, Trade and Commerce recommending significant amendments to the Bankruptcy and Insolvency Act (BIA) and the Companies Creditors Arrangement Act (CCAA) has been received with enthusiasm and approval by the Canadian Insolvency and Restructuring Profession.

Uwe Manski, president of BDO Dunwoody Limited, Trustee in Bankruptcy, a past President of the Canadian Association of Insolvency and Restructuring Professionals (CAIRP) and a member and past director of the Insolvency Institute of Canada (IIC) expressed his support commenting, “The substantial changes advocated in the report will enable the system to better serve the interests of debtors, creditors and the Canadian economy as a whole.” Given that many of the recommendations were based upon proposals made by CAIRP and IIC, he conveyed industry hopes that amendments to the act could be legislated without delay saying, “We therefore look forward to early implementation of the report’s recommendations.”

As a change in leadership takes place at the federal level, there will be a great deal of interest in the timely development and implementation of legislation based upon the Senate Report. Bill Courage, the newly elected Chairman of CAIRP and Senior Vice-President of BDO Dunwoody Limited added “With the Liberal leadership convention approaching next weekend and a federal election approaching in 2004, the government of Canada has an opportunity to affirm the integrity of Canadian Bankruptcy and Insolvency legislation and provide reassurance to the national and international investment community.”

Amongst several other items, the Report was praised for its direction towards improving the fairness and efficiency of the insolvency system. For consumer

debtors, significant items were the Committee’s proposed reduction, from 10 years to five years, for the period before bankrupts can be discharged from student loan obligations and the recommendation calling for a debtor’s Registered Retirement Savings Plans (RRSP) to be given greater exemption from seizure in a bankruptcy. Both recommendations were complimented for being reflective of the current economic climate and recognizing changes in people’s financial role with regard to post-secondary studies and retirement savings.

For commercial debtors, there were a number of significant recommendations as well, such as the repeal of 30 day goods claims, the creation of a taxation year end at the date of a proposal under the BIA, Debtor In Possession (DIP) Financing in proposals and Companies Creditors Arrangement Act (CCAA) reorganizations, the disclaimer of executory contracts, including collective agreements in certain circumstances, and the creation of super-priority wage-earner protection for unpaid wages and vacation pay up to \$2,000.

To learn more about BDO Dunwoody Limited services, visit <http://www.bdo.ca/en/services/businessrecoveryandinsolvency/index.cfm>, or speak to one of our BDO Business Recovery Professionals.