Canadian Association of Insolvency and Restructuring Professionals
Association canadienne des professionnels de l'insolvabilité et de la réorganisation

Submission on Proposed Personal Insolvency Amendments under Bill C-55

to the House of Commons Standing Committee on Industry, Natural Resources, Science and Technology [INDU]

October 21, 2005

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Introduction

We respectfully present our submission to the House of Commons Standing Committee on Industry, Natural Resources, Science and Technology [INDU] considering Bill C-55, on behalf of the Canadian Association of Insolvency and Restructuring Professionals. The current initiative of the government in proposing comprehensive reform of the insolvency and bankruptcy system is important and timely, given the economic and social challenges of the past few years.

We fully support the initiatives contained in Bill C-55 subject to our comments contained herein. Many of the amendments will improve the system but we will generally restrict our comments to the amendments where we either disagree or recommend some modification.

In this submission we address the proposed amendments to the personal insolvency provisions of the *Bankruptcy and Insolvency Act (BIA)*. Our recommendations are made with particular attention to issues of fairness and streamlining of the process in order to balance the interests of debtors, creditors and the public's interest in an accessible, transparent and efficient insolvency system. The current system has many positive aspects that promote the objectives of rehabilitation and fresh start and we believe that these goals should continue to guide legislative reform. A further goal is to maintain individual dignity while at the same time fostering the economic activity that credit allows. Our recommendations represent the collective knowledge and the many years of practical experience of insolvency and restructuring professionals.

The Canadian Association of Insolvency and Restructuring Professionals (CAIRP) is a national professional organization with more than a thousand members working in insolvency and restructuring. Our membership includes the vast majority of trustees in bankruptcy. Several members of the Insolvency Institute of Canada (IIC) joined CAIRP members in analyzing the Bill and preparing this submission. IIC is a non-profit organization that provides a national policy forum for leading members of the insolvency community, drawn from members of the legal, banking and accounting professions, the judiciary and the academic community. Our submission on the personal insolvency provisions of Bill C-55 represents the views of our respective memberships after extensive deliberation by three national working committees represented regionally and in terms of diversity of experience, a national steering committee on Bill C-55, our respective boards of directors and soliciting the views of our members.

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CAIRP also wishes to thank its members who took the time to provide us with their thoughts and comments on the provisions of the Bill.

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Executive Summary of Recommendations

Submission on Proposed Personal Insolvency Amendments under Bill C-55

to the House of Commons Standing Committee on

Industry, Natural Resources, Science and Technology [INDU]

Executive Summary

Part I of our submission focuses on three issues that we believe are most important for legislative reform in the personal insolvency provisions.

1. Student loans
2. Direct Payments to Creditors [s. 172(2.1)]
3. RRSPs
    a. Automatic claw back period
    b. Streamlining preferences, conversion of non-exempt assets

Our recommendations are intended to increase accessibility, transparency, predictability, accountability, and creditor confidence in the Canadian insolvency system.

Our recommendations with respect to these issues are:

1. Relief from Student Loan Debt

CAIRP does not support the proposed amendments under the student loan provisions of Bill C-55 as they continue to be unduly harsh and fail to meet public policy concern regarding fresh start and rehabilitation for those who have student loan debts. CAIRP recommends that cases of hardship should be dealt with at the bankrupt's discharge hearing, and the court should be given express authority under section 178 (1.1) of the *BIA* to grant full or partial relief from the student loan debt, on notice to the student loan authority.

2. Amend Proposed Section 172 (2.1) of the *BIA*

By allowing the court to direct that the bankrupt pay money directly to specific creditors, the proposed revisions disrupt the priorities set out in section 136 of the *BIA* and raise serious questions of fairness in terms of equality of creditors and notice to other affected interests. CAIRP recommends that all monies, save and except s. 178 claims, should be paid to the trustee for distribution to creditors, even where the court considers it appropriate to direct the payment to a specific creditor or class of creditors as a condition of discharge. This would ensure that the historical principle of *pari passu* to creditors underlying the *BIA*, will be maintained.

We also note that s. 105 of the Bill adds s. 172.1(1) to the BIA to give special treatment to bankrupts who have $200,000 or more of personal income tax debt representing more than 75% of the bankrupt's proven unsecured claims. We cannot help but wonder if CRA will be requesting orders for direct payment under s. 172 (2.1). This may lead to the withdrawal from the existing insolvency policy that tax liability claims receive equal treatment with all unsecured creditors.

3. RRSPs

a) Automatic claw back period

CAIRP supports in principle the protection of RRSP contributions as recognition that this form of savings has replaced many formal pension plans and should have equal protection. However, a 12 month period for claw back of contributions is an insufficient period. Most individuals can delay for one year after their last annual RRSP contribution before filing for bankruptcy. They would have difficulty delaying two years. CAIRP supports the Personal Insolvency Task Force recommendation that 3 years would be more appropriate. It reduces the probability of abuse and still offers a balance between the rights of creditors and bankrupts.

While we support three years, the important issue is that whatever period Parliament decides to implement, must provide a sufficient anti-abuse mechanism. In our view, one year is insufficient time to provide that protection.

At a minimum, contributions within 3 years of the date of bankruptcy should be reported in the statement of affairs and/or the s. 170 report to assist creditors, regulators and the trustee in determining if a court application is appropriate.

If the above recommendation is adopted, this will minimize the potential for abuse from the conversion of non-exempt assets to exempt RRSPs, which may be used to defeat the claims of creditors.

The regulations should specify a period that the exempt portion of the RRSP is locked-in to align the treatment of RRSPs with pension plan requirements and to meet the public policy goals of protecting future retirement income.

b) Streamlining preferences, conversion of non-exempt assets

CAIRP supports Bill C-55 provisions to move transactions at under value into a more streamlined, clear and consistent process. However, we recommend that section 96.1 of the *BIA* be amended to specify that if a debtor converts non-exempt property to exempt property, (RRSPs being the most notable example), or a debtor changes his or her beneficiary under an RRSP or whole life insurance policy, this action will be deemed to be a transfer at undervalue, reviewable on the same basis as non-arm's length transactions. This will align *BIA* provisions relating to self-dealing transactions with those pertaining to other transfers at under value between non-arm's length parties. CAIRP also recommends that section 96.1 of the *BIA* be amended to grant the court the discretion to void the transaction, thereby allowing the trustee to recover the property for the benefit of the estate.

Comprehensive Chart of Recommendations

Part II of our submission contains a detailed chart that outlines more comprehensively our views of the proposed amendments in Bill C-55 with respect to personal insolvency. Overall, we are very supportive of the government's proposed changes and our recommendations for amendment or clarification are aimed at achieving further fairness and streamlining of the process.

Issues not Addressed in Bill C-55

Part III of our submission discusses three important issues that are not addressed in Bill C-55. We recommend that:

- there should be an optional federally prescribed list of exemptions under the *BIA* that would reduce the disparity that currently exists among provincial exemption amounts;

- the *BIA* should be amended to avoid or nullify non-purchase money security interests in personal property that would otherwise be exempt from seizure; and

- the asset limit for summary administration bankruptcies should be increased to $15,000 from the current limit of $10,000.

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Part I Three Key Issues in Personal Insolvency Law Reform

Submission on Proposed Personal Insolvency Amendments under Bill C-55

to the House of Commons Standing Committee on

Industry, Natural Resources, Science and Technology [INDU]

Part I

The issues that we wish to focus on in our submission are the proposed amendments in Bill C-55 in respect of student loans, direct payments to creditors as a condition of discharge and RRSPs. These three issues focus directly on the principles of fresh start, accessibility, transparency, predictability, and balancing competing interests. These are the hallmarks of the Canadian insolvency and bankruptcy process.

1. Relief from Student Loan Debt

CAIRP does not support the proposed amendments under the student loan provisions as they are currently framed in Bill C-55. Section 107 of Bill C-55 proposes a reduction in the time periods under sections 178(1)(g) and 178(1.1) of the *BIA* to seven and five years respectively in terms of relief for debt arising out of student loans. In our view, these amendments fail to satisfy public policy concern regarding fresh start and rehabilitation of those who have student loan debts.

The current law is extremely harsh and inequitable; students are the only class of citizens in Canadian society that do not have access to the court for ten years to seek relief, even where there is hardship. CAIRP believes that seven years is still too long a waiting period and will continue to create considerable hardship for bankrupts with student loan debts. This period unfairly discriminates against students as a class of bankrupts.

With respect to the proposed amendment to section 178(1.1) of the *BIA* regarding access to the court for relief due to hardship, CAIRP believes that five years is still too long a waiting period for relief from hardship. This provision may be vulnerable to a *Charter* challenge. We believe strongly that the court must be able to exercise judicial discretion in cases of hardship.

CAIRP had previously recommended one year as the period before which a bankrupt could apply to the court for relief from debts relating to student loans due to hardship. However, after further deliberation about fairness and equity in the system, CAIRP recommends that in cases of hardship, this issue should be dealt with at the bankrupt's discharge hearing, with the court having express authority under section 178 (1.1) of the *BIA* to grant full or partial relief against the student loan debt. Notice would be given to the student loan authority, so that it can make its views known to the court. The court could then review the specific circumstances surrounding

the hardship in the context of the overall debts of the bankrupt, including consideration such as medical or other factors, and make a determination as to whether to grant full or partial relief from the student loan debt.

The non-dischargeable time period should start running from the time that the student ceased the studies that were financed by the loans. This appropriately links the period to the debt, and does not create any unfairness with respect to further studies that the bankrupt might undertake that are not financed by student loans.

2. Amend Proposed Section 172(2.1) of the *BIA*

Bill C-55 proposes an amendment to section 172, to add subsection (2.1) specifying that if the court imposes as a condition of discharge that the bankrupt pay money, the court may direct that the bankrupt pay the money to any creditor, to any class of creditors, to the trustee or to the trustee and one or more creditors, in any amount and manner that the court considers appropriate.

CAIRP does not understand the intent of this amendment and has identified a number of problems associated with this provision including:

- the priorities set out in section 136 of the *BIA* will not necessarily be observed;
- it upsets the principles underlying the *BIA* in terms of equality of creditors and is contrary to section 176(3), which directs *"…all payments on account thereof shall be made to the trustee for distribution to the creditors"*;
- the issue of the OSB levy under section 147 is not addressed;
- the trustee's role in collecting such payments is not addressed;
- the dating of the bankrupt's discharge certificate and the reporting period for these payments are not addressed; and
- notice requirements to other affected creditors are not addressed.

The provision as framed may reduce fairness, predictability, consistency and transparency.

CAIRP recommends that all monies, save and except s. 178 claims, should be paid to the trustee for distribution to creditors. The amendment could be rephrased to address the issues cited above, specifically:

> "(2.1) If the court imposes as a condition of discharge that the bankrupt pay money, the court shall direct that the bankrupt pay all such monies to the trustee. In the case of section 178 claims, the court may direct that the bankrupt pay these monies to any creditor, to any class of creditors, to the trustee or to the trustee and one or more creditors, in any amount and manner that the court considers appropriate. Any such monies collected and distributed by the trustee which pertain to s. 178 claims shall be subject to the trustee's fees (Rule 128) and levy (section 147)."

3. RRSP's

a) Automatic Claw back period

CAIRP supports in principle the protection of RRSP contributions as recognition that this form of savings has replaced many formal pension plans and should be protected. There should be fairness in the treatment of pension and RRSP contributions. However, a 12 month period for claw back of contributions is an insufficient period. Most individuals can delay for one year after their last annual RRSP contribution before filing for bankruptcy. They would have difficulty delaying two years. CAIRP supports the Personal Insolvency Task Force recommendation that 3 years would be more appropriate. It reduces the probability of abuse and still offers a balance between the rights of creditors and bankrupts.

While we recommend three years, the important issue is that whatever the period Parliament decides to implement, it must provide a sufficient anti-abuse mechanism. In our view, one year is insufficient time to provide that protection.

At a minimum, contributions within 3 years of the date of bankruptcy should be reported in the statement of affairs and/or the s. 170 report to assist creditors, regulators and the trustee in determining if a court application is appropriate.

The regulations should specify a period that the exempt portion of the RRSP is locked-in to the RRSP, as recommended by the Personal Insolvency Task Force. This would ensure that at the time of discharge, the RRSP maintains its exempt status. It would also preserve the RRSP for the bankrupt's retirement years; would align the treatment of RRSPs with pension plan requirements; and meet the public policy goals of protecting future retirement income.

b) Streamlining Preferences, Conversion of Non-Exempt Assets[i]

CAIRP generally supports the sections 71, 72 and 73 of Bill C-55 that move transactions at under value into a more streamlined, clear and consistent process. However, we are concerned that with the repeal of section 91 of the *BIA*, creditors are not protected when a debtor converts non-exempt property to exempt property or when the debtor changes the beneficiary of an RRSP or a life insurance policy with cash surrender value.

CAIRP recommends that Bill C-55 be amended to specify that if a debtor converts non-exempt property to exempt property or a debtor changes his or her beneficiary, this action will be deemed to be a transfer at undervalue, reviewable on the same basis as non-arm's length transactions. This will align self-dealing transactions with other transfers at under value between non-arm's length parties. Specifically:

- If the conversion or change in beneficiary occurs within one year before the date of the initial bankruptcy event, it will be deemed to be a transfer at undervalue.

- If the conversion or change in beneficiary occurs between one and five years before the date of the initial bankruptcy event, it will be deemed to be a transfer at undervalue where (i) the debtor was insolvent at the time of, or was rendered insolvent by, the transaction, or (ii) the debtor intended to defeat the interests of creditors.

CAIRP also recommends that section 96.1 of the *BIA* be amended to grant the court the discretion to void the transaction and have the trustee recover the property. The ability to recover the property is important to the fairness objectives of the legislation. The trustee should also have the ability to register notice of an interest, for example under a caveat or against a property registry, while the trustee is seeking to void the transaction.

CAIRP further recommends that section 96.1 of the *BIA* be amended to grant the court the discretion to go back earlier than one year in the rare case where there is evidence of abuse. Such a provision will increase creditors' confidence in the integrity of the bankruptcy system.

CAIRP supports the current rights under section 72 of the *BIA* that allow trustees to have access to provincial remedies in respect of preferences in personal bankruptcy.

If the above recommendation is adopted, this will minimize the potential for abuse from the conversion of non-exempt assets to exempt RRSPs, which could be used to defeat the claims of creditors.

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Part II CAIRP Comprehensive Recommendations with Respect to the Personal Insolvency Provisions of Bill C-55

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Part II

Page # of Bill	Proposed Statutory Amendment and *BIA* Section Number	CAIRP Recommendation	Discussion
14	**2. (4) The definition "locality of a debtor" in section 2 of the English version of the Act is replaced by the following:** "locality of a debtor" means the principal place (*a*) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event, (*b*) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or (*c*) in cases not coming within paragraph (*a*) or (*b*), where the greater portion of the property of the debtor is situated;	Support, with amendment	CAIRP recommends adding a section specifying that the location for filing could be: "or the jurisdiction where the debtor has incurred the majority of debt". CAIRP recommends that "has resided" be clarified by adding "at any time during the year". The proposed amendments do not address the issue of possible forum shopping for personal exemptions (Please refer to our recommendations regarding exemptions on Part III-1 1. Federally Prescribed List of Exemptions of this submission).
15	**3. Section 2.1 of the Act is replaced by the following:** **2.1** A change in the designation of a beneficiary in an insurance contract is deemed to be a disposition of property for the purpose of this Act.	Support, with clarification	CAIRP supports this proposed amendment as a provision that codifies the *Ramgotra* decision ([1996] 1 S.C.R. 325). However, section 2.1 should be moved and included in s. 96.1, and should include conversion of non-exempt to exempt property and other self-dealing transactions (see discussion regarding s. 96.1). Also, the term "disposition of property" is no longer in the preference section and the statute should specify that these transactions can be challenged as transfers at under value under s. 96.1.
18	**6.** **…** **(4) Subsection 5(4) of the Act is amended by striking out the word "and" at the end of paragraph (*d*) and by adding the following after paragraph (*d*):** (*d.1*) issue directives respecting the rules governing hearings for the purposes of section 14.02; and	Support	The directives should follow the principles of natural justice.

Part II

Page # of Bill	Proposed Statutory Amendment and *BIA* Section Number	CAIRP Recommendation	Discussion
20	**12. Subsection 13.4(1) of the Act is replaced by the following:** **13.4** (1) No trustee shall, while acting as the trustee of an estate, act for or assist a secured creditor of the estate to assert any claim against the estate or to realize or otherwise deal with the security that the secured creditor holds, unless the trustee has obtained a written opinion of legal counsel who has not acted for the secured creditor in the previous two years and is not related to the trustee that the security is valid and enforceable as against the estate.	Support, with amendment	In some regions, it may be difficult to find experienced commercial insolvency counsel who have not acted for a major lender within the two-year period. Therefore, the trustee should be given the option of obtaining approval from either the Official Receiver or the court where it is unable to locate legal counsel who satisfies the criteria set out in s. 13.4 (1). We further recommend that lawyers should make a declaration that they can act objectively even though they do not meet the two year criterion. The *Act* or regulations should require counsel to include such a declaration of objectivity in the legal opinion.
20	**13.6** A trustee shall not engage the services of a person (*a*) whose trustee licence has been cancelled under paragraph 13.2(5)(*a*) or subsection 14.01(1); or (*b*) who is the subject of a direction made by the Superintendent under paragraph 14.03(1) (*d*).	Do not support proposed subsection 13.6(b)	CAIRP supports stronger restrictions for trustees subject to a direction and is committed to working with the Superintendent to strengthen and tighten the rules. However, the directives must provide clear direction on the conditions under which the trustee may continue to earn a living during the period of any investigation by working under the supervision of another trustee or the trustee's firm. Section 13.6(b) should also not prevent the trustee from providing assistance to the new trustee on a transition basis to close estates. A prohibition on the trustee administering any new estates should be sufficient to protect the public during the period of investigation or conservatory measures, pending disposition of the matter.
23	**19. Section 21 of the Act is replaced by the following:** **21.** The trustee shall verify the bankrupt's statement of affairs referred to in paragraph 158(*d*).	Support, with amendment	CAIRP agrees that all of the bankrupt's or debtor's statements of affairs should be verified, with a definition of verification and timeframe for verification to be specified in the regulations, including clarification as to any duty of the trustee to make inquiries and the scope of verification in terms of disclosed assets or undisclosed assets. Directive 16R, currently being developed by the Insolvency Practice Committee, will provide guidance to trustees in terms of standards and timing. We recommend that formulation of this Directive be given high priority. A Directive or a CAIRP Standard of Professional practice should set out the degree of assurance for "verify", so that trustees have some certainty as to the standard of verification that must be met.

Part II

Page # of Bill	Proposed Statutory Amendment and *BIA* Section Number	CAIRP Recommendation	Discussion
23	**20. (3) Section 25 of the Act is amended by adding the following after subsection (1.3):** (1.4) A trustee may, with the permission of the court, invest the funds in short-term securities of the Government of Canada or the government of a province held in trust for the estate.	Support, with amendment	CAIRP recommends amending the provision to delete the words "with the permission of the court". The Estate Funds and Banking Directive 5R should expressly provide the appropriate guidance. This is administratively more efficient and prevents unnecessary use of court resources while ensuring the use of appropriate investment instruments by the trustee.
24	**23. Section 30 of the Act is amended by adding the following after subsection (2):** (3) If no inspectors are appointed, the trustee may do all or any of the things referred to in subsection (1). (4) The trustee may sell or otherwise dispose of any of the bankrupt's property to a person who is related to the bankrupt only with the court's authorization. (5) For the purpose of subsection (4), in the case of a bankrupt other than an individual, a person who is related to the bankrupt includes a person who controls the bankrupt, a director or an officer of the bankrupt and a person who is related to a director or an officer of the bankrupt. (6) In deciding whether to grant the authorization, the court must consider, among other things, (*a*) whether the process leading to the proposed sale or disposal of the property was reasonable in the circumstances; (*b*) the extent to which the creditors were consulted in respect of the proposed sale or disposal; (*c*) the effects of the proposed sale or disposal on creditors and other interested parties; (*d*) whether the consideration to be received for the property is reasonable and fair, taking into account the market value of the property; (*e*) whether good faith efforts were made to sell or dispose of the property to persons who are not related to the bankrupt; and (*f*) whether the consideration to be received is superior to the consideration that would be received under all other offers actually received in respect of the property.	CAIRP only supports the requirement for court approval for consumer bankruptcies in prescribed circumstances.	This amendment is aimed at commercial insolvency situations where the only potential buyer may be a related party and the court's permission is necessary for the sale so that there is some assurance of the value extracted to settle creditors' claims. CAIRP agrees with the amendment to s. 30(4), provided that s. 155(k) of the *BIA* is also amended with our recommendations. Please refer to our comments regarding s. 94 of Bill C-55, amending s. 155(k) of the *BIA*. The amendment to section 30 of the *BIA* does not recognize that non-arm's length sales in personal bankruptcy are common, do not present an ethical or valuation problem, and that subject to some controls, they should be allowed. We recommend that court approval should not be necessary where there is no objection. This subsection applies only where there are no inspectors, as is the usual case in a consumer bankruptcy. To avoid unnecessary court approvals, the requested amendment would prevent a creditor with an insignificant claim from forcing an application in court. Hence, we recommend a condition that court approval would only be required when requested by creditors who have in the aggregate at least 25% of the value in proven claims. Where there is not a request by creditors holding 25% in value, court approval should not be required.

Page # of Bill	Proposed Statutory Amendment and *BIA* Section Number	CAIRP Recommendation	Discussion
26	**29. Subsection 40(1) of the Act is replaced by the following:** **40.** (1) Any property of a bankrupt that is listed in the statement of affairs referred to in paragraph 158(*d*) or otherwise disclosed to the trustee before the bankrupt's discharge and that is found incapable of realization must be returned to the bankrupt before the trustee's application for discharge, but if inspectors have been appointed, the trustee may do so only with their permission.	Support, with amendment	Certain assets may take a prolonged period of time for realization. If the trustee has taken steps to protect the estate's interest in the asset, the trustee should be permitted to be discharged, thereby eliminating the unnecessary accumulation of fees to the estate. If the trustee is precluded from closing the estate, no further fees may be obtained without obtaining court approval. The court should have the discretion to order that notwithstanding the trustee's discharge, the estate's interest in a specific asset is an asset that remains realizable by the discharged trustee who may be able to continue to act as the *de facto* trustee when the property is ultimately sold. If trustees elect to maintain an interest in certain assets, this must be disclosed on both the final Statement of Receipts and Disbursements and the Declaration For Discharge (Form 16). "Incapable of realization" must be defined in the regulations.
28	**33. Subsection 49(2) of the Act is replaced by the following:** (2) The assignment must be accompanied by a sworn statement in the prescribed form showing the debtor's property that is divisible among his or her creditors, the names and addresses of all his or her creditors and the amounts of their respective claims.	Support, with clarification	The amendment as currently framed is unclear in respect of the need to declare exempt property, contingent claims and property pledged as security. CAIRP recommends removing the words "that is divisible among his or her creditors" to clarify the provision.
29	**34. (2) Paragraph 50(6)(*a*) of the Act is replaced by the following:** (*a*) a statement indicating, on a weekly basis, the projected cash-flow of the insolvent person (in this section referred to as the "cash-flow statement"), or a revised cash-flow statement if a cash-flow statement had previously been filed under subsection 50.4(2) in respect of that insolvent person, prepared by the person making the proposal, reviewed for its reasonableness by the trustee and signed by the trustee and the person making the proposal;	Support, with amendment	CAIRP recommends that a different period be used for personal insolvency. The amendment as framed is more applicable to commercial situations. It is not practical for individuals to supply this information on a weekly basis. CAIRP recommends that the statement **continue** to be required on a monthly basis for individuals.

Part II

Page # of Bill	Proposed Statutory Amendment and *BIA* Section Number	CAIRP Recommendation	Discussion
30	**35. (2) Paragraph 50.4(2)(*a*) of the Act is replaced by the following:** (*a*) a statement indicating, on a weekly basis, the projected cash-flow of the insolvent person (in this section referred to as the "cash-flow statement"), prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention, and signed by the trustee and the insolvent person;	Support, with amendment	The proposed amendment should only apply to corporate debtors. It is not practical for individuals to supply this information on a weekly basis. CAIRP recommends that the statement continue to be required on a monthly basis for individuals in accordance with Directive 11.
32	**37. (2) Section 54 of the Act is amended by adding the following after subsection (4):** (5) Unless the court orders otherwise, a vote on a proposal may not be held until all disallowances of claims that could have an impact on the outcome of the vote have been dealt with by the court or until all appeal periods have elapsed.	Support, with amendment	CAIRP recommends that "could" be replaced with "will" so that the provision reads "Unless the court orders otherwise, a vote on a proposal may not be held until all disallowances of claims that will have an impact on the outcome of the vote have been dealt with by the court or until all appeal periods have elapsed". This will create a more streamlined and expeditious process. In instances where there is a claim still to be determined, the trustee should have the discretion to adjourn the meeting without having to hold a vote, until such time as the claim has been determined.

Page # of Bill	Proposed Statutory Amendment and *BIA* Section Number	CAIRP Recommendation	Discussion
46	Deemed annulment— default of payment **52. Section 66.31 of the Act is replaced by the following:** **66.31** (1) Unless the court has previously ordered otherwise or unless an amendment to the consumer proposal has previously been filed, a consumer proposal is deemed to be annulled on (*a*) in the case when payments under the consumer proposal are to be made monthly or more frequently, the day on which the consumer debtor is in default for an amount that is equal to or more than the amount of three payments; or (*b*) in the case when payments under the consumer proposal are to be made less frequently than monthly, the day that is three months after the day on which the consumer debtor is in default in respect of any payment. (2) If an amendment to a consumer proposal filed before the deemed annulment of the consumer proposal under subsection (1) is withdrawn or refused by the creditors or the court, the consumer proposal is deemed to be annulled on the day on which the amendment is withdrawn or refused. (3) Without delay after a consumer proposal is deemed to be annulled, the administrator shall (*a*) file with the official receiver, in the prescribed form, a report in relation to the deemed annulment; and (*b*) send a notice to the creditors informing them of the deemed annulment. (4) When a consumer proposal made by a bankrupt is deemed to be annulled, (*a*) the consumer debtor is deemed to have made an assignment on the date of the deemed annulment; (*b*) the trustee who is the administrator of the consumer proposal shall, within five days after the deemed annulment, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, despite section 14, affirm the appointment of the trustee or appoint another trustee in lieu of that trustee; and (*c*) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed annulment and the official receiver shall, without delay, issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49. (5) A deemed annulment of a consumer proposal does not prejudice the validity of any sale, disposition of property or payment duly made, or anything duly done under or in (Continued next page)	Support in principle, with substantial amendment	CAIRP supports the principle of reviving proposals where there has been a deemed annulment. However, while the proposed language is aimed at streamlining the process and encouraging the successful completion of proposals, as currently framed, it may do exactly the opposite and create unnecessary barriers in allowing the completion of proposals. The proposed process is too cumbersome and may involve four or more mailings to creditors, specifically: • notice of the deemed annulment and intent to revive; • notice that a creditor has objected and as a consequence there will be a meeting; • notice of the outcome of the meeting; • if the proposal was voted down and there is another proposal, notice of that proposal; and • notice as to final disposition of the file. Where there has been an annulment for a very straightforward reason, e.g. missed payments due to illness, there should not have to be such an expensive, time-consuming and inefficient process to cure the problem. However, if the proposed scheme is to be enacted, the 10 day notice period should be amended to 30 days, and creditors should continue to be stayed during the 45 day revival period. CAIRP believes that 10 days [s. 66.31(6)]is insufficient time to allow for the administrator to: be in receipt of the bank's advice of the last missed payment; contact and determine the availability of the debtor to discuss the possibility of reviving the consumer proposal; meet with the debtor in order to discuss/review the possibility of reviving the consumer proposal; allow the debtor the time required to make arrangements to replace the defaulted payment(s); have sufficient time to prepare the necessary report(s) to creditors; and to allow for sufficient time to effect the mailing to creditors. We understand that the public policy objective is to promote successful completion of proposals and to avoid their failure because of a temporary inability to make the payments. A critically important part of such an initiative is that the stay remain in place during the revival period so that creditors do not move on their claims at the point of the deemed annulment. (Continued next page)

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	(Continued from previous page) pursuance of the consumer proposal, and despite the deemed annulment, a guarantee given under the consumer proposal remains in full force and effect in accordance with its terms. (6) If the administrator, in the case of a deemed annulment of a consumer proposal made by a person other than a bankrupt, considers it appropriate to do so in the circumstances, he or she may, with notice to the official receiver, send to the creditors, within 10 days after the day on which the consumer proposal was deemed to be annulled, a notice in the prescribed form informing them that the consumer proposal will be automatically revived 45 days after the day on which it was deemed to be annulled unless one of them files with the administrator a notice of objection, in the prescribed manner, to the revival. (7) If the notice is sent by the administrator and no notice of objection is filed during the 45-day period, the consumer proposal is automatically revived on the expiry of those 45 days. (8) If a notice of objection is filed with the administrator during the 45-day period, the administrator must, without delay, send to the official receiver and to each creditor a notice in the prescribed form informing them that the consumer proposal is not going to be automatically revived on the expiry of the 45-day period. (9) The administrator may at any time apply to the court, with notice to the official receiver and the creditors, for an order reviving any consumer proposal of a consumer debtor who is not a bankrupt that has been deemed to be annulled, and the court, if it considers it appropriate to do so in the circumstances, may make an order reviving the consumer proposal, on any terms that the court considers appropriate. (10) Without delay after a consumer proposal is revived, the administrator shall (*a*) file with the official receiver, in the prescribed form, a report in relation to the revival; and (*b*) send a notice to the creditors informing them of the revival. (11) The revival of a consumer proposal does not prejudice the validity of anything duly done — between the day on which the consumer proposal is deemed to be annulled and the day on which it is revived — by a creditor in the exercise of any rights revived by subsection 66.32(2) .		(Continued from previous page) Given that this provision is likely to be used only in situations where there are valid reasons for the missed payments, such as medical or other problems, it would be unfair to leave these debtors vulnerable during the period that they are trying to cure the reason for the deemed annulment. CAIRP recommends a three-pronged streamlined approach to cure annulled proposals within the 30 day period discussed above: A. i. Revival of Existing Proposal with Time Extension: Where only an extension of time is required to cure the deemed annulment, the administrator should have the discretion to extend the length of time for proposal payments by a maximum of 6 months, provided that the total proposal does not exceed 66 months. The administrator should be required to give creditors notice of the time extension, with reasons. ii. Revival of Proposal with Amendment: If a change in terms of the proposal is sought, such as the amount to be paid, then the administrator would follow the same process as currently required by the *BIA* for amending a proposal. CAIRP recommends that the language be clarified to state expressly that the stay continues during the 45 day revival period. B. Subsequent Division II Proposal: If the debtor, whose circumstances have changed, seeks to file a new proposal after a deemed annulment, the *BIA* should allow a debtor to file a subsequent Division II proposal. The current provision of the *BIA* does not permit a debtor to file another Division II proposal. This only leaves the debtor with two options: filing a Division I proposal, or filing an assignment in bankruptcy. CAIRP's streamlined procedure will be less costly than the proposed amendments in Bill C-55. (Continued next page)

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			(Continued from previous page) Even one creditor with an insignificant claim could block the revival of the proposal under the current proposed amendments. CAIRP recommends significantly raising the threshold for calling a meeting to object to revival of a proposal, aligning it with the current thresholds used for the consumer proposal process. CAIRP recommends a threshold of 25% in value of creditors' claims to request a meeting, and a minimum of 50% of creditors be required to reject revival of the proposal. The revival process requires substantial additional administrator time and additional disbursements (i.e. court fees, travel, photocopying and postage). Rule 128(2)(e) recognizes similar disbursements required in summary bankruptcy administrations and this amount, ($100), should be available for revived proposals.
47	**55. The portion of subsection 66.34(1) of the Act before paragraph (*a*) is replaced by the following:** **66.34** (1) If a consumer proposal has been filed in respect of a consumer debtor, no person may terminate or amend any agreement, including a security agreement, with the consumer debtor, or claim an accelerated payment, or the forfeiture of the term, under any agreement, including a security agreement, with the consumer debtor, by reason only that	Support	We are pleased that the recommendation of both the PITF and the Senate has been implemented in the Bill. This will prevent creditors from terminating agreements solely because the debtor is insolvent, even though the agreement is not in default. The PITF says "*Consumers remain no less human beings after bankruptcy and still have need for the same access to banking and utility services as before bankruptcy , and should not be deprived of rental property or goods bought on credit simply because they are trying to restructure their financial futures.*" This will harmonize the treatment of personal insolvencies.
48	**56. Sections 66.37 and 66.38 of the Act are replaced by the following:** **…** **66.38 (**1) If a consumer proposal is fully performed, the administrator shall issue a certificate to that effect, in the prescribed form, to the consumer debtor and to the official receiver. (2) Subsection (1) does not apply in respect of a consumer debtor who has refused or neglected to receive counselling provided under paragraph 66.13(2)(*b*).	Support, with amendment	CAIRP concurs that the debtor should not receive a certificate of full performance if she or he has not completed all the required counselling. Additionally, CAIRP recommends that if the debtor has not completed the required counselling, all available funds should be distributed to creditors. If the debtor wishes to complete counselling in the future and receive the certificate of full performance, it will be at the debtor's expense, which is consistent with procedures currently followed for bankruptcy summary administrations.

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48	**57. (1) Paragraphs 67(1)(*b*) and (*b.1*) of the Act are replaced by the following:** (*b*) any property, other than 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, 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*), (*b.3*) subject to any prescribed conditions and limitations, property in a registered retirement savings plan or a registered retirement income fund, as those expressions are defined in the *Income Tax Act*, other than property contributed to any such plan or fund in the 12 months, or in any longer period that the court may specify, before the date of bankruptcy,	Support in principle, however support amending the timeframe and adding locked-in provision	CAIRP supports in principle the protection of RRSP contributions as recognition that this form of savings has replaced many formal pension plans and should be protected. There should be fairness in the treatment of pension and RRSP contributions. However, a 12 month period for claw back of contributions is an insufficient period. Most individuals can delay for one year after their last annual RRSP contribution before filing for bankruptcy. They would have difficulty delaying two years. CAIRP supports the Personal Insolvency Task Force recommendation that 3 years would be more appropriate. It reduces the probability of abuse and still offers a balance between the rights of creditors and bankrupts. While we recommend three years, the important issue is that whatever the period Parliament decides to implement, it must provide a sufficient anti-abuse mechanism. In our view, one year is insufficient time to provide that protection. At a minimum, contributions within 3 years of the date of bankruptcy should be reported in the statement of affairs and/or the s. 170 report to assist creditors, regulators and the trustee in determining if a court application is appropriate. If the above recommendation is adopted, this will minimize the potential for abuse from the conversion of non-exempt assets to exempt RRSPs, which may be used to defeat the claims of creditors. The regulations should specify a period that the exempt portion of the RRSP is locked-in to the RRSP, as recommended by the Personal Insolvency Task Force. This would ensure that at the time of discharge, the RRSP maintains its exempt status. It would also preserve the RRSP for the bankrupt's retirement years; would align the treatment of RRSPs with pension plan requirements; and meet the public policy goals of protecting future retirement income.

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48	**(2) Paragraph 67(1)(*c*) of the Act is replaced by the following:** (*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 his or her 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 of any such refund that is not subject to the operation of this Act,	Support, with amendment	It is not clear what is meant by "the portion of any such refund that is not subject to the operation of this *Act*". We are not aware of any portion of any refund not subject to the operation of the *Act.* We recommend deletion of the final part of the sentence under this provision, specifically, delete: " except the portion of any such refund that is not subject to the operation of this Act,"
49	**58. (1) Subsections 68(1) to (7) of the Act are replaced by the following:** **68. …** (2) The following definitions apply in this section. "surplus income" means the portion of the total income of an individual bankrupt that exceeds that which is necessary to enable the bankrupt to maintain a reasonable standard of living, having regard to the applicable standards established under subsection (1). "total income", for the purposes of the definition "surplus income", (*a*) includes, despite paragraphs 67(1)(*b*) and (*b.1*), all of a bankrupt's revenues from whatever nature or source that are received by the bankrupt between the date of the bankruptcy and the date of the bankrupt's discharge, including any amounts received as damages for wrongful dismissal, as a pay equity settlement or under any Act of Parliament or Act of the legislature of a province that relates to workers' or workmen's compensation; but (*b*) does not include any amounts received by the bankrupt between the date of the bankruptcy and the date of the bankrupt's discharge, as a gift, a legacy or an inheritance or as any other windfall.	Support, with amendment	The provision is intended to exclude items contained in s. 68(2)(b) for the purpose of calculating total income of the bankrupt. These items will not be eligible to be "shared" with creditors, but rather, be included as property of the bankrupt as an after-acquired asset under s. 67. In order to create greater certainty, CAIRP recommends that section 67 be amended to clarify that these items are the property of the bankrupt for the benefit of all creditors. Some forms of lottery winnings, inheritances etc. do not contemplate lump sum payments, but rather, monthly instalments or stipends; accordingly, under the proposed wording, it may be argued that these items are not property and have been "exempted" for inclusion as income. CAIRP recommends that ss. 68(2)(b.1) be amended to add "or the debtor becomes entitled to receive" after the words "received by the bankrupt", in order to deal with situations such as that in *Re Landry* (2000) 50 O.R. (3d) 1 (Ont. C.A.).
52	**58. (4) Subsection 68(14) of the Act is replaced by the following:** (14) For the purpose of this section, a requirement that a bankrupt pay an amount to the estate of the bankrupt is enforceable against all the bankrupt's property, including property referred to in paragraphs 67(1)(*b*) and (*b.1*).	Do not support	CAIRP notes that 67(1)(b) refers only to exempt property. The proposed change appears to be contrary to public policy, specifically how can property be exempt **and** subject to the trustee's claim at the same time?

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64	**71. Section 91 of the Act and the heading before it are replaced by the following:** PREFERENCES **72. Section 94 of the Act is repealed.** **73. Section 96 of the Act is replaced by the following:** **96.** If the transfer, charge, payment, obligation or judicial proceeding referred to in section 95 has the effect of giving a creditor who is not at arm's length a preference over other creditors, the period referred to in subsection 95(1) is one year instead of three months. **96.1** (1) If a debtor has entered into a transaction with another party, the court may, on the application of the trustee, inquire into whether the transaction was a transfer at under-value and whether or not the other party was at arm's length with the debtor. (2) If the court finds that the other party in the transaction was at arm's length with the debtor and that the transaction was a transfer at undervalue, the court may give judgment to the trustee against the other party to the transaction, against any other person being privy to the transaction with the debtor or against all those persons for the difference between the actual consideration given or received by the debtor and the fair market value, as determined by the court, of the property or services concerned in the transaction, if (*a*) the transaction occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy; and (*b*) the debtor was insolvent at the time of, or was rendered insolvent by, the transaction, and the debtor intended to defeat the interests of creditors. (3) If the court finds that the other party in the transaction was not at arm's length with the debtor and that the transaction was a transfer at undervalue, the court may give judgment to the trustee against the other party to the transaction, against any other person being privy to the transaction with the debtor or against all those persons for the difference between the actual consideration given or received by the debtor and the fair market value, as determined by the court, of the property or services concerned in the transaction, if the transaction occurred during the period (*a*) that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy; or (*b*) that begins five years before the date of the initial bankruptcy event and that ends one day before one year before the date of the initial bankruptcy event in the case where (Continued next page)	Support, with amendment	CAIRP supports moving transactions at under value (TUV) into a more streamlined, clear and consistent process. However, we are concerned that with the repeal of section 91, creditors are not protected where a debtor converts non-exempt property to exempt property or where the debtor changes the beneficiary of an RRSP or life insurance policy with cash surrender value, both of which may be a form of settlement or benefit to oneself. CAIRP recommends that Bill C-55 be amended to specify that if a debtor converts non-exempt property to exempt property or a debtor changes his or her beneficiary, it will be deemed to be a transfer at undervalue on the same basis as non-arm's length transactions. This will align self-dealing transactions with the requirements of other transfers at under value between non-arm's length parties. Specifically: • If the conversion or change in beneficiary occurs within one year before the date of the initial bankruptcy event, it will be deemed to be a transfer at undervalue. • If the conversion or change in beneficiary occurs between one and five years before the date of the initial bankruptcy event, it will be deemed to be a transfer at undervalue where (i) the debtor was insolvent at the time of, or was rendered insolvent by, the transaction, or (ii) the debtor intended to defeat the interests of creditors. CAIRP also recommends that s. 96.1 be amended to grant the court the discretion to void the transaction and have the trustee recover the property. The trustee should also have the ability to register notice of an interest, for example under a caveat or against a property registry, while the trustee is seeking to void the transaction. CAIRP also recommends that s. 96.1 be amended to grant the court the discretion to extend its review beyond one year where there is evidence of abuse. Such a provision will increase creditors' confidence in the integrity of the bankruptcy system. (Continued next page)

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	(Continued from last page) (i) the debtor was insolvent at the time of, or was rendered insolvent by, the transaction, or (ii) the debtor intended to defeat the interests of creditors. (4) In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services concerned in the transaction and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor in the transaction, and the values on which the court makes any finding under this section are the values so stated by the trustee unless other values are proved. ... **76. Section 100 of the Act is repealed.**		(Continued from last page) CAIRP supports the current rights under section 72 of the *BIA* that trustees have to access provincial remedies in respect of preferences in personal bankruptcy. Section 173 of the *BIA* should be amended to recognize transfers at undervalue as a fact for which discharge may be refused, suspended or granted conditionally. Section 96.1 imposes additional responsibility on trustees to prove the requirements of the provision, such as proving fair market value and/or proving the debtor had the intention to defeat the interests of creditors. CAIRP supports subsection (4) that specifies: that in making the application, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services concerned in the transaction and the value of the actual consideration given or received by the debtor in the transaction, and the values on which the court makes any finding are the values so stated by the trustee unless other values are proved. This provision is important as it is likely to be utilized more often under the new statutory scheme of transactions at under value. There should be some consideration of where the burden of cost for these new responsibilities falls. A complete evaluation of property can be difficult and costly, particularly when the trustee may not have access to the asset or easy access to information to make a determination of value.

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66	**75. The Act is amended by adding the following after section 98:** **98.1** (1) If a person engaged in any trade or business makes an assignment of their existing or future book debts, or any class or part of those debts, and subsequently becomes bankrupt, the assignment of book debts is void as against, or, in the Province of Quebec, may not be set up against, the trustee with respect to any book debts that have not been paid at the date of the bankruptcy. **75. La même loi est modifiée par adjonction, après l'article 98, de ce qui suit :** **98.1** (1) Lorsqu'une personne se livrant à un métier ou commerce fait une cession de ses créances comptables actuelles ou futures, ou d'une catégorie ou d'une partie de ces créances, et devient par la suite en faillite, la cession des créances comptables est inopposable au syndic en ce qui concerne les créances comptables qui n'ont pas été acquittées à la date de la faillite.	Discrepancy between English and French versions.	The English version of this text includes the words: "the province of Quebec" and the French does not. CAIRP believes that the language should be consistent.
69	**83. Subsection 116(1) of the Act is replaced by the following:** **116. (1)** At the first or a subsequent meeting of creditors, the creditors shall, by resolution, appoint up to five inspectors of the estate of the bankrupt or agree not to appoint any inspectors.	Support, with amendment	CAIRP recommends that the "shall" in this provision be amended to "may". Often there are no creditors attending a meeting, making it difficult to make any decisions to appoint or not appoint inspectors. The language should reflect this reality.
73	**93. (1) Subsection 152(1) of the Act is replaced by the following:** **152.** (1) The trustee's final statement of receipts and disbursements shall contain (*a*) a complete account of … (iv) all moneys disbursed by the trustee for services provided by persons related to the trustee, and	Support, with clarification	There is some question as to whether or not this provision contradicts current disclosure requirements for use of parties related to the trustee and whether the payments are to be included as part of the trustee's remuneration or as disbursements (Reference Directive 3R, paragraph 9).
74	**94.** **…** **(2) Section 155 of the Act is amended by striking out the word "and" at the end of paragraph (*i*), by adding the word "and" at the end of paragraph (*j*) and by adding the following after paragraph (*j*):** (*k*) the court's authorization referred to in subsection 30(4) for a sale or disposal of any of the bankrupt's property to a person who is related to the bankrupt is required only if the creditors decide that the authorization is required.	Support, with amendment	CAIRP supports this amendment if the wording "only if the creditors decide that the authorization is required" is replaced with the existing wording used in s. 155(d.1)(i), specifically, "only if it is requested within thirty days after the date of the bankruptcy by the official receiver or by creditors who have in the aggregate at least twenty-five per cent in value of the proven claims".

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79	**103. (1) Subsections 170.1(1) to (5) of the Act are replaced by the following:** **170.1** (1) If the discharge of an individual bankrupt is opposed by a creditor or the trustee in whole or in part on a ground referred to in paragraph 173(1)(*m*) or (*n*), the trustee shall send an application for mediation, in the prescribed form, to the official receiver within five days after the day on which the bankrupt would have been automatically discharged had the opposition not been made, or within any further time after that day that the official receiver may allow.	Support, with amendment	CAIRP recommends amending the "trustee shall" in this provision to read "barring an agreement among the trustee, the bankrupt and the objecting creditor, the trustee shall". This amendment would address the situation where the bankrupt consents and mediation is not necessary. Section 170.1(1) should be amended to change "within five days after the day" to "before five days after the day". The language should ensure that there is pressure to hold the mediation in a timely manner. Under s. 68 and the extension of automatic discharge to 21 months, in the event of a material change, the trustee should be permitted, pursuant to s. 173(1)(m), to enter into an amended term of agreement with the bankrupt for an additional 12 months.

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80	**104.** **…** **(3) Section 172 of the Act is amended by adding the following after subsection (2):** (2.1) If the court imposes as a condition of discharge that the bankrupt pay money, the court may direct that the bankrupt pay the money to any creditor, to any class of creditors, to the trustee or to the trustee and one or more creditors, in any amount and manner that the court considers appropriate.	Not support	CAIRP does not understand the intent of this amendment and has identified a number of problems associated with this provision including: • the priorities set out in section 136 of the *BIA* will not necessarily be observed; • it upsets the principles underlying the *BIA* in terms of equality of creditors and is contrary to section 176(3), which directs *"…all payments on account thereof shall be made to the trustee for distribution to the creditors"*; • the issue of the OSB levy under section 147 is not addressed; • the trustee's role in collecting such payments is not addressed; • the dating of the bankrupt's discharge certificate and the reporting period for these payments are not addressed; and • notice requirements to other affected creditors are not addressed. The provision as framed may reduce fairness, predictability, consistency and transparency. CAIRP recommends that all monies, save and except s. 178 claims, should be paid to the trustee for distribution to creditors. The amendment could be rephrased to address the issues cited above, specifically: "(2.1) If the court imposes as a condition of discharge that the bankrupt pay money, the court shall direct that the bankrupt pay all such monies to the trustee. In the case of section 178 claims, the court may direct that the bankrupt pay these monies to any creditor, to any class of creditors, to the trustee or to the trustee and one or more creditors, in any amount and manner that the court considers appropriate. Any such monies collected and distributed by the trustee which pertain to s. 178 claims shall be subject to the trustee's fees (Rule 128) and levy (section 147)."

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80	**105. The Act is amended by adding the following after section 172:** **172.1** (1) In the case of a bankrupt who has $200,000 or more of personal income tax debt and whose personal income tax debt represents 75% or more of the bankrupt's total unsecured proven claims, the hearing of an application for a discharge may not be held before the expiry of… **105. La même loi est modifiée par adjonction, après l'article 172, de ce qui suit :** **172.1** (1) Dans le cas d'un failli qui a une dette fiscale impayée d'un montant de deux cent mille dollars ou plus ou qui représente soixantequinze pour cent ou plus de la totalité des réclamations non garanties prouvées, l'audition de la demande de libération ne peut se tenir avant l'expiration :	Discrepancy between English and French versions	The English text specifies: **172.1** (1) In the case of a bankrupt who has $200,000 or more of personal income tax debt **and** whose personal income tax debt represents 75% or more of the bankrupt's total unsecured proven claims,… The French text specifies "or" (**ou**), not "and": **172.1** (1) Dans le cas d'un failli qui a une dette fiscale impayée d'un montant de deux cent mille dollars ou plus **ou** qui représente soixantequinze pour cent ou plus de la totalité des réclamations non garanties prouvées,… CAIRP believes that the English version is what was intended. We support the English version.
82	**106. Section 175 of the Act is repealed.**	Query	Section 175(1) of the *BIA* currently specifies: **175.** (1) A statutory disqualification on account of bankruptcy ceases when the bankrupt obtains from the court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part. (2) The court may, if it thinks fit, grant a certificate mentioned in subsection (1), and a refusal to grant such a certificate is subject to appeal. Why is section 175 being repealed? We are aware of instances where this section has been used and it reinforces the principles of the *BIA* that the honest but unfortunate debtor is allowed to re-establish his or her professional status.

Page # of Bill	Proposed Statutory Amendment and *BIA* Section Number	CAIRP Recommendation	Discussion
82	**106.** **…** **(2) Subparagraph 178(1)(*g*)(ii) of the Act is replaced by the following:** (ii) within seven years after the date on which the bankrupt ceased to be a full- or part-time student; or … **(3) Subsection 178(1.1) of the Act is replaced by the following:** (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.	Not support, as not sufficient improvement	The current law is extremely harsh and inequitable; students are the only class of citizens in Canadian society that do not have access to relief from the court for ten years, even where there is hardship. CAIRP believes that the seven years proposed under Bill C-55 is still too long a waiting period and will create considerable hardship for students. This period unfairly discriminates against students as a class of bankrupts. The amendments must provide students with fairer access to the fresh start principle, particularly under hardship circumstances. With respect to the proposed amendment to s. 178(1.1) regarding access to the court for relief due to hardship, CAIRP believes that five years is still too long a period for relief from hardship. A five year prohibition may be vulnerable to a *Charter* challenge. The court must be able to exercise judicial discretion in cases of particular hardship. CAIRP had previously recommended one year as the period before which a bankrupt could ask the court for relief from debts relating to student loans due to hardship. However, after further consideration, taking into account fairness and equity in the system, CAIRP recommends that in cases of hardship, this issue should be dealt with at the discharge hearing, where the court would be given express authority under s. 178 (1.1) to grant full or partial relief from the student loan debt, on notice to the student loan authority. The court could then review the specific circumstances surrounding the hardship in the context of the overall debts of the bankrupt, including consideration of any medical or other factors, in making a determination as to whether to grant full or partial relief from the student loan debt. The non-dischargeable time period should start running from the time that the student completed the studies that were financed by the loans. This appropriately links the prescribed period to the debt, and does not create any unfairness with respect to further studies that the bankrupt might undertake that are not financed by student loans.

Canadian Association of Insolvency and Restructuring Professionals

Association canadienne des professionnels de l'insolvabilité et de la réorganisation

Part III Issues Not Addressed in Bill C-55

Submission on Proposed Personal Insolvency Amendments under Bill C-55

to the House of Commons Standing Committee on

Industry, Natural Resources, Science and Technology [INDU]

Part III

The Personal Insolvency Task Force, the Senate Standing Committee on Banking Trade and Commerce and CAIRP/IIC have previously made a number of recommendations aimed at enhancing the efficiency and fairness of the system that were not included as proposed reforms in Bill C-55. Among these, we believe that the following are important enough to ask Parliament to consider additional amendments to Bill C-55.

1. Federally Prescribed List of Exemptions

CAIRP believes that there should be a federally prescribed list of exemptions that the debtor could choose to elect in place of otherwise applicable provincial or territorial exemptions. This was recommended by both the Personal Insolvency Task Force and the Senate Committee.

This optional federally prescribed list of exemptions would reduce the disparity that currently exists among provincial and territorial exemption allowances on specific assets.

The wide range of exemptions in the provinces and territories can be illustrated by the current exemptions for equity in homes and vehicles:

Homes:

British Columbia: $12,000 in Capital Regional District or Greater Vancouver Regional District; $9,000 for rest of province

Alberta: $40,000

Saskatchewan: $32,000

Manitoba: The residence or home, not held in joint tenancy or tenancy in common, of any judgment debtor other than a farmer, where the value does not exceed $2,500; or where held in joint tenancy or tenancy in common, the value of interest of the debtor does not exceed $1,500.

Ontario: Nil

Québec: Nil

New Brunswick: Nil

PEI: Nil

Nova Scotia: Nil

Newfoundland and Labrador: $10,000

Yukon, NWT, Nunavut: $3,000

Vehicles:

British Columbia: $5,000 if debtor is not a maintenance debtor under the *Family Maintenance Enforcement Act*; $2,000 if the debtor is a maintenance debtor.

Alberta: $5,000

Saskatchewan: Vehicle, if required for work

Manitoba: $3,000 if required to travel to work

Ontario: $5,000

Québec: Nil

New Brunswick: Vehicle, if market value not more that $3,000 and if required in course of, or to retain employment, or necessary to trade, profession or occupation

PEI: $3,000

Nova Scotia: $3,000

Newfoundland and Labrador: $2,000

Yukon, NWT, Nunavut: Nil

If there is a federally prescribed list of exemptions enacted, the bankrupt would have the option to choose either the federal or applicable provincial or territorial system for exemptions, but not be allowed to "cherry pick" among the federally and provincially prescribed exemptions. As well, it should be clearly specified that exemption amounts refer to the equity held in the particular asset.

Enactment of an optional federal list of exemptions would create a minimum base standard for bankrupts across Canada by recognizing a reasonable set of exemptions regardless of place of residence. It would enable the bankrupt and his or her family to meet their essential needs, to retain a level of dignity, and to obtain relief where the provincial or territorial exemptions are too low in terms of recognizing the cost of living of bankrupts and their families.

2. Non-purchase Money Security Interests in Exempt Personal Property

The *BIA* should clearly specify that creditors are not permitted to take security on pre-owned goods that would normally be exempt assets. Bankrupts do not always appreciate their rights in respect of exempt property.

CAIRP recommends that the *BIA* be amended to avoid (nullify) non-purchase money security interests in personal property that would otherwise be exempt from seizure. The avoidance should apply to personal proposals as well as bankruptcies. The avoidance should extend to all non-purchase money security interests in exempted property intended for the personal use or consumption of the debtor or the debtor's family, including apparel, household furnishings and motor vehicles.

There may be cases in which the value of the creditor's non-purchase money security interest exceeds the value of the *BIA* exemption. When this is true of apparel and household furnishings, the debtor should be entitled to select the items that are to be exempt from seizure. In the case of a motor vehicle or other specific assets that the creditor has financed, the lender would be obligated to pay the debtor the exempted amount before the lender could enforce its security, which would prevent undue hardship for the debtor.

3. Increase the Asset Limit for Summary Administration Bankruptcies

CAIRP recommends that the asset limit for summary administration bankruptcies be increased from the current $10,000 to a limit of $15,000, pursuant to section 49(6) of the *BIA* and Rule 130. Currently, where a trustee opts to limit the calculation of the tariff to the value of assets to a maximum $10,000, the summary process may continue. CAIRP recommends that the trustee should have the option to continue the summary process where asset realization exceeds $15,000. In such cases, the trustee will have elected to limit its fees by calculating it on the capped amount of $15,000.

While CAIRP supports an asset-based limit for the summary administration tariff, in some instances it may be too restrictive. Some bankrupts should continue to be governed by the streamlined summary administration process and tariff, but do not currently meet the asset criteria, particularly in instances where the summary administration assets have realized more than originally anticipated. In such cases, the trustee should have the discretion to permit the bankruptcy to proceed through the summary

process, saving both time and resources in the administration of the estate by preventing unnecessary conversion to ordinary administration in straight forward cases. Such an amendment would provide flexibility to assist bankrupts in having access to a streamlined and cost-effective bankruptcy process, would prevent unnecessary court appearances, and would reduce administration costs for the benefit of creditors and the bankrupt.

Endnotes

[i] section 96