

Bankruptcy and Insolvency Interacting with Family Law

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BANKRUPTCY AND INSOLVENCY INTERACTING WITH FAMILY LAW

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Introduction

As a general rule, the statutory and common law mechanisms governing divorce, child support and other family law matters only interplay with the statutory and common law mechanisms governing personal bankruptcy and insolvency in narrow circumstances. The vast majority of family law matters proceed absent considerations of bankruptcy and *vice versa*. That said, with the economy in Alberta likely headed into a recession as of the writing of this paper, the potential for such interplay will only increase. Moreover, such interplay has occurred with sufficient frequency in the past that the author has had to consider these matters several times during his practice.

While this paper cannot canvass every area where bankruptcy and family law interplay, it will address three common areas of such interplay, namely:

1. The effects of bankruptcy on matrimonial property divisions;
2. The effects of bankruptcy on spousal and child support; and
3. Changing priorities for common family law claims resulting from a bankruptcy.

Before the discussion begins, however, it is first necessary to provide some relevant and basic concepts of bankruptcy law that form the context for consideration of the foregoing issues.

Basic Bankruptcy Concepts

Bankruptcy is a statutory status in Canadian law. It is governed by Federal legislation, namely the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “*BIA*”), which is intended to be uniform across Canada.²

Insolvency is a factual status, not a statutory status. As such, it is possible for a person to be insolvent, but not yet bankrupt.³ Bankruptcy, as a statutory status, can only apply to an “insolvent person”. Not all insolvent persons will become bankrupt, but one needs to be insolvent before

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² It must be noted that because the *BIA* preserves Provincial law in several instances (most notably in respect of preserving Provincial exemptions from execution), the *BIA* does not always operate entirely uniform from Province to Province.

³ Indeed an insolvent person may never become bankrupt, as positive steps must be taken by the insolvent person or his or her creditors to become bankrupt.