

Bankruptcy and Insolvency – When Should a Party Seek Advice from a Licensed Insolvency Trustee?

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BANKRUPTCY AND INSOLVENCY
WHEN SHOULD A PARTY SEEK ADVICE FROM A LICENSED INSOLVENCY TRUSTEE?

INTRODUCTION

In the first part of this paper, the legislation governing bankruptcy and insolvency will be discussed. The second part of this paper will focus on the social behaviors. The paper will then focus on four options available pursuant to the Bankruptcy & Insolvency Act (BIA), a summary administration, an ordinary administration, division one and division two proposals. There are other options for Insolvency that a Trustee manages including Receivership, Companies' Creditors Arrangement Act.

LEGISLATION

"The BIA is a commercial statute, the administration of which is largely in the hands of business people and technical objections, should therefore, not be given effect to beyond what is necessary for the proper interpretation of the Act." ¹. The purpose of the BIA is to provide for financial rehabilitation of insolvent people and permits an honest and unfortunate debtor to a full discharge. The Courts have stressed that there be as much uniformity applied across the country as possible. The Assignment or Proposal must be filed within the locality of the debtor. The locality of the debtor is determined under the BIA. (Page 8) The Superintendent of Bankruptcy, appointed by the Governor General, is the regulator of the BIA. The Trustee is an Officer of the Court and is awarded Duties and Powers in the BIA. (Page 8)

An Act of bankruptcy must have occurred for the debtor or creditor to avail themselves of the options under the BIA. (Page 12) A creditor must make an application for a Bankruptcy Order to have a party placed into bankruptcy. Once a Trustee is appointed the Stay of Proceedings (Section 69 BIA) is in effect and the creditor's rights are stayed. The Trustee must then perform their duties.

- An Assignment, whether ordinary or summary administration, can be filed by an insolvent person or the executor of a deceased. The final document releasing the bankrupt is an Absolute Discharge.
- Division One Proposal can be filed by an insolvent person, a receiver acting as a receiver, a liquidator, a bankrupt or the Trustee of the estate of a bankrupt.

¹ The 2017 Annotated Bankruptcy and Insolvency Act, Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra, Thomson Reuters January 2017.

- A Division Two Proposal can be filed by an insolvent person, whose liabilities do not exceed \$250,000 excluding their personal residence mortgage. A consumer proposal may be made by a consumer debtor, unless they have filed a Notice of Intention, NOI, or a Division I proposal until the previous trustee is discharged, OR where the consumer debtor has made a previous Consumer Proposal and the Administrator has not been discharged and only then with a Court order"
- The final document discharging the debtor in proposals is a Certificate of Full Performance
- In Bankruptcies the final document discharging the bankrupt is an Absolute Discharge or a Certificate of Discharge.

Prior to distribution of any funds, the Trustee or Administrator must review all proof of claims and determine acceptability or disallowance.

Section 136 determines the distribution of the estate funds. (Page 14)

The Trustee will issue a Statement of Receipts and Disbursements and will provide a copy to all proven creditors.

The Trustee's remuneration in a bankruptcy is determined

- the Trustee applying for taxation of their fees charged at an hourly rate or
- by approval of the inspectors, ordinary administration, or
- by a tariff, summary administration Rule 58 BIA.

The Trustee's remuneration in a Division One Proposal is determined by

- applying for taxation of their fees charged at an hourly rate or
- by approval of the inspectors

The Administrator's remuneration in a Consumer Proposal is determined by a tariff (Rule 129 BIA)

In a Bankruptcy all assets "vest" with the Trustee and the Trustee shall deal with the assets, excepting

- property held in trust for any other person,