



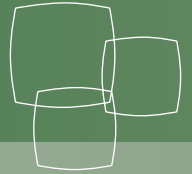
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INSPECTORS' HANDBOOK

FOR INSPECTORS APPOINTED
PURSUANT TO THE *BANKRUPTCY
AND INSOLVENCY ACT*

Canada 



Protecting the
Integrity of the
Insolvency System

Protéger l'intégrité
du système
d'insolvabilité

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PREFACE

This document is a guide for individuals who have been appointed inspectors under the *Bankruptcy and Insolvency Act* (the Act). Its aim is to provide information about the role and responsibilities of inspectors, as well as to highlight and explain relevant provisions of the Act. Although the material is often technical and complex, we have attempted to present it as clearly as possible without oversimplifying substantive aspects of the Act.

Inspectors have a significant role to play in the administration of insolvent estates. Creditors appoint inspectors to represent them during the administration of the estate. Inspectors act in a fiduciary capacity, in that they are generally responsible to the body of creditors who appoint them, and should perform their duties impartially and in the interests of the creditors.

Disclaimer

The material and information provided by the Office of the Superintendent of Bankruptcy in this guide is for informational purposes only and should not be considered as legal advice. Although every effort has been made to ensure the accuracy, the currency and the reliability of the content, the Office of the Superintendent of Bankruptcy does not offer any guarantee in that regard. This information is not intended to be a substitute for professional advice provided by lawyers or authorized bankruptcy specialists. You may wish to contact a lawyer or a trustee from your province or territory in order to get accurate information or advice tailored to the facts of your particular circumstances.

PART I – GENERAL INFORMATION

Trustee's role

Trustees in bankruptcy are licensed by the Superintendent of Bankruptcy.

When appointed to an estate, the trustee assumes certain statutory responsibilities. Some responsibilities, such as calling meetings of creditors when required by the Act and submitting various reports to the court and the Superintendent of Bankruptcy, are mandatory and fall outside the scope of discretion accorded to creditors, inspectors and trustees. However, the Act provides for many other administrative functions that are subject to the approval and control of the inspectors and creditors. Those functions will be discussed in this handbook.

The trustee is an officer of the court who acts in a fiduciary capacity for the creditors under the guidance and direction of the inspectors. If there is a disagreement between the trustee and the inspectors, they may seek guidance from either the creditors or the court to resolve the matter.

Inspector's role [subsection 102(5)]

The Act places administrative control of an estate in the hands of the creditors. This control is exercised particularly at the first meeting of creditors, when the creditors:

- confirm the trustee's appointment (or substitute another trustee);
- provide the trustee with directions; and
- appoint a board of inspectors.

The inspectors are appointed as representatives of all creditors and occupy positions of trust. They are expected to assist the trustee by virtue of their experience and are required to supervise certain aspects of the trustee's administration.

PART II – BOARD OF INSPECTORS

Appointment of inspectors

WHEN AND HOW ARE INSPECTORS APPOINTED? (sections 115 and 116)

At the first meeting of creditors, the chairperson, who may be the Official Receiver or his or her nominee, asks creditors for suggested nominations to the board of inspectors. The appointment of inspectors is decided by ordinary resolution, carried by the majority of votes, and for that purpose the votes of a creditor are calculated by counting one vote for each dollar of every claim of the creditor. The creditors may also agree to not appoint inspectors.

WHO CAN BE APPOINTED AN INSPECTOR? (section 116)

The Act does not specify criteria for the appointment of inspectors. It does, however, stipulate that no person who is party to any contested action or proceedings by or against the estate of the bankrupt may be appointed an inspector. This excludes, for example, an officer, a director, a shareholder or a representative of a corporation that is party to any contested action or proceeding against the estate of the bankrupt.

Once appointed, inspectors cannot appoint some other person to represent them at a meeting of inspectors that they are unable to attend.

Although persons appointed as inspectors generally are creditors, a person who is not a creditor or a representative of a creditor can be appointed as an inspector. For example, a lawyer representing a client may be appointed an inspector.

If there is a dispute about who should be appointed as inspectors, the nominees who receive a majority of the votes cast at the meeting of creditors, either in person or by proxy, will be appointed.

It should be noted that inspectors do not represent their employers and must perform their duties in the best interests of all creditors. Inspectors must not act for their personal advantage and must make full and complete disclosure to the trustee and co-inspectors of their personal position any time there is a possible conflict of interest.

HOW MANY INSPECTORS CAN BE APPOINTED?

In a bankruptcy of an individual under Summary Administration, there are generally no inspectors appointed unless the creditors decide otherwise [paragraph 155(e)].

In consumer proposals, creditors may appoint a maximum of three inspectors (section 66.21).

For all other proposals and bankrupt estates, a maximum of five inspectors can be appointed [section 56 and subsection 116(1)].

Defects or irregularities in the appointment of inspectors [subsection 120(2)]

No defect or irregularity in the appointment of an inspector invalidates an act done by the inspector in good faith. Accordingly, if the court finds that the appointment of an inspector is improper, any act done by the inspector honestly and lawfully will not be affected.

Vacancy on the board of inspectors [subsections 116(4) and (5) and section 118]

A vacancy may occur by incapacity, resignation or death. If a vacancy arises on the board of inspectors, the creditors or inspectors may fill it at any meeting. The appointment of an inspector may also be revoked at any creditors' meeting or by the court. If no inspectors are appointed to fill the vacancy, the trustee is required to call a meeting of creditors for the purpose of appointing inspectors.

- *Resignation of inspectors*

The Act contains no provision for the resignation of inspectors. In practice, an inspector resigns by delivering a written notice of resignation, and the remaining inspectors fill the vacancy.

- *Revoking appointment of inspectors*

The trustee or any creditor may apply to the court to have an inspector's appointment revoked. As well, creditors may revoke the appointment of any inspector and appoint another at any of their meetings.

Inspectors' responsibilities

Inspectors give direction and advice to the trustee regarding specific actions to be taken in the administration of the estate. They also supervise the trustee's administration and ensure the trustee acts in accordance with their directions.

The Act sets out, in various sections, the responsibilities of inspectors appointed to bankruptcy estates. Generally, these responsibilities can be grouped into three categories: **Action**, **Authorization** and **Supervision**.

Action: The Taking of Some Specific Action by Inspectors

INSPECTORS' MEETINGS

Who calls them and when are they held? (section 117)

The first inspectors' meeting is usually held immediately after the first meeting of creditors. After this initial inspectors' meeting, the trustee calls other meetings when deemed advisable or when a meeting is requested in writing by a majority of the inspectors.

When inspectors attend a meeting, they are expected to play an active role by expressing their opinions and voting on motions, when necessary.

If all of the inspectors consent, any inspector may participate in a meeting of inspectors by telephone or other communication device provided all can communicate with each other during the meeting. Inspectors who participate in a meeting in this fashion are deemed to be present at the meeting.

Individual inspectors have no power to call meetings on their own. The powers of the inspectors are exercised by the majority. Moreover, all decisions must be specific and recorded in a resolution. All discussions and

resolutions must also be recorded in the minutes of the meetings. After they are signed by the chairperson (usually the trustee), these minutes form part of the proposal or bankruptcy estate file.

If there is an equal division of opinion at an inspectors' meeting, the inspectors will seek the opinion of any absent inspector to resolve the difference. If a difference cannot be resolved in this manner, the trustee has a casting vote unless the matter involves the personal conduct or interest of the trustee, in which case it must be resolved by the creditors or the court.

Conflict between creditors and inspectors (section 119)

If there is a conflict between the directions given to the trustee by a general meeting of creditors and those given by a meeting of inspectors concerning the administration of the estate, the directions given by the creditors prevail.

If a trustee or any interested person is in doubt about a decision made by the inspectors, the trustee or the interested person may apply to the court to have the decision reviewed and to ask for direction. The court may review the inspectors' decision or action and may revoke or vary any such action or decision. It may then give such directions, permission or authority as it deems proper, including referring the matter back to the inspectors for reconsideration.

REQUIREMENT TO CALL A MEETING OF CREDITORS (section 103)

Although the trustee may call a meeting of creditors at any time, the trustee must call a meeting when:

- directed by the court;
- requested to do so in writing by a majority of the inspectors; or
- requested to do so in writing by 25 percent of the creditors holding at least 25 percent in value of the proven claims.

A majority of the inspectors may convene a creditors' meeting at any time when the trustee is not available to call a meeting or has failed to do so when directed by the inspectors.

EXAMINATIONS

Examination of bankrupt and others by the trustee [subsection 163(1) and section 167]

Who may be examined?

The trustee may examine the following people, under oath, before the registrar of the court:

- the bankrupt;
- any person reasonably thought to have knowledge of the affairs of the bankrupt; and
- any person who is or has been an agent, clerk, servant, officer, director or employee of the bankrupt.

Scope of the examination

The trustee may examine a person with respect to the bankrupt, the bankrupt's dealings or the bankrupt's property. Any person being examined is required to answer all questions about the business or property of the bankrupt, the causes of the bankruptcy and the disposition of the bankrupt's property.

What is required to conduct such an examination?

The trustee must obtain an ordinary resolution passed by the creditors, or the written request or resolution of a majority of the inspectors.

Examination of the bankrupt, trustee or other interested person by creditors [subsection 163(2)]

Who may apply to conduct an examination?

On the application to the court by the Superintendent, any creditor, or "other interested person," an order may be made to conduct an examination before the registrar. "Other interested person" means a person who, like a creditor, has an interest in the administration of the bankrupt estate. An undischarged bankrupt falls within the meaning of "other interested person."

Who may be examined?

The persons who may be examined for the purpose of investigating the administration of the bankrupt estate are:

- the trustee;
- the bankrupt;
- an inspector;
- a creditor; or
- any other person named in the court order.

Scope of the examination

The objective of such an examination is to investigate aspects of the administration with a view toward benefiting the creditors generally. The examiner cannot use the examination to pursue a private remedy. For example, a secured creditor cannot attempt to locate a missing piece of property covered by its security.

INSURANCE COVERAGE [subsection 24(1)]

It is the trustee's duty to insure all of the bankrupt's property for such amount and against such hazards as the trustee deems advisable, until inspectors are appointed. The insurance should cover all of the debtor's property, not just unencumbered property (i.e., unsecured property).

After they are appointed, the inspectors determine the amount of the coverage and the risks against which the bankrupt's property shall continue to be insured by the trustee.

LIMITATIONS ON CARRYING ON THE BANKRUPT'S BUSINESS

[paragraph 30(1)(c) and subsection 31(3)]

The trustee, with the permission of the inspectors, may carry on the business of the bankrupt as necessary for the beneficial administration of the bankrupt estate.

Authorization: Giving Permission to the Trustee to Perform Certain Acts

POWERS EXERCISABLE BY TRUSTEE WITH PERMISSION OF INSPECTORS (section 30)

The principal powers of an inspector are conferred by section 30, which gives the trustee the power to take certain actions, with the permission of the inspectors. The purpose of this section is to protect the estate and to allow the trustee to benefit from the inspectors' business experience. Inspectors must give permission to take a specific action, not blanket authorization to the trustee to take all or any of the actions listed in the Act. Permission to take all or any of these actions is not to be granted by a general resolution of inspectors. These powers are the following:

- dispose of assets by tender, public auction or private contract;
- lease real property;
- carry on the business of the bankrupt;
- start or defend legal proceedings relating to the property of the bankrupt;
- hire a solicitor to deal with matters sanctioned by the inspectors;
- accept future payment and security in the sale of property;
- incur obligations, borrow money and give security;
- settle debts owing to the bankrupt;
- settle claims made by or against the estate;
- divide property among the creditors that cannot be readily or advantageously sold;
- deal with leases or other temporary interests in any property of the bankrupt; and
- appoint the bankrupt to help in the administration of the estate in such manner and upon such terms as the inspectors direct.

However, if no inspectors are appointed, the trustee may decide on his or her own initiative to take one or more of the above-mentioned actions.

SECURITIES FIRM BANKRUPTCIES (section 259)

In a securities firm bankruptcy, the trustee may undertake any of the following actions even before inspectors are appointed. However, after inspectors have been appointed, the trustee must obtain their permission before doing the following:

- exercising a power of attorney and transferring any security passed on to the trustee;
- selling securities, other than customer name securities;
- purchasing securities;
- discharging any security interests on securities vested in the trustee;
- completing open contractual commitments;
- maintaining customers' securities accounts and meeting margin calls;
- distributing cash and securities to customers;
- transferring securities accounts to another securities firm;
- liquidating any securities account without notice; and
- selling, without tender, assets of the securities firm essential to carrying on its business.

TRUST ACCOUNT [SUBSECTION 25(1.3)]

The trustee must obtain the inspectors' permission in writing or obtain a court order before any monies can be withdrawn from the trust account of an estate, except for the payment of dividends and charges incidental to the administration of the estate.

Supervision: Approving Various Reports, Documents and Accounts, and, Generally, Supervising the Trustee's Administration of the Estate

GENERAL

The inspectors are expected to oversee the adequacy of the trustee's administration by examining certain documents and accounts. The Act enables the inspectors to carry out this function by giving them access to the estate's books and records as described below.

ACCESS TO INFORMATION (sections 26 and 27)

The books, records and documents relating to the administration of an estate are the property of that estate. The trustee must allow the estate's books and records to be inspected and copied by certain persons, including any creditor or creditor's agent, at any reasonable time. In addition, the trustee shall, from time to time, report:

- to every creditor, when required by the inspectors;
- to any specific creditor at that creditor's request; and
- to the Superintendent or to the creditors in general when required by the Superintendent of Bankruptcy.

The purpose of these reports is to show "the condition of the bankrupt's estate, the monies on hand, if any, and particulars of any property remaining unsold." The trustee is entitled to charge against the bankrupt's estate only the actual disbursements for the preparation and delivery of the reports.

SPECIFIC DUTIES OF INSPECTORS [subsection 120(3)]

In addition to performing the functions conferred on them by the Act, the inspectors must:

- verify the bank balance of the estate;
- examine the trustee's accounts; and
- inquire into the adequacy of the estate bond filed by the trustee with the Official Receiver.

The estate bond is issued in favour of the creditors by a bonding company, which is responsible for ensuring that the trustee accounts for, pays and transfers to the parties entitled all monies and property received by the trustee, and faithfully performs the trustee's duties. The amount of the bond should normally be based on the estimated receipts in the estate, less the trustee's fees and disbursements.

BANKRUPT'S DISCHARGE [subsection 170(1) and rule 121.1]

The trustee must prepare a report on the debtor's bankruptcy in the following situations:

- the bankrupt has surplus income;
- there is opposition to the bankrupt's discharge;
- the bankrupt has been bankrupt before; or
- the court must hold a hearing on the bankrupt's discharge.

This report is prepared prior to the bankrupt's application for discharge or, where applicable, prior to automatic discharge. The report is accompanied by a resolution of the inspectors indicating whether they approve or disapprove of this report. If they disapprove, the inspectors must provide reasons.

This trustee's report provides information concerning the affairs of the bankrupt, the causes of bankruptcy, the manner in which the bankrupt has performed the duties under the Act, the conduct of the bankrupt both before and after the initial bankruptcy event, whether the bankrupt has been convicted of any offence, and any other facts that would justify a court in refusing an unconditional order of discharge.

DISCHARGE OF TRUSTEE [subsections 120(4) and 152(3)]

Inspectors are required to approve, at a properly called meeting, the trustee's final statement of receipts and disbursements, the dividend sheet and the disposition of unrealized property. The meeting may be convened by telephone if physical attendance is not possible.

The inspectors must meet certain conditions before they can approve the trustee's final statement of receipts and disbursements. The inspectors must satisfy themselves that:

- all the property has been properly accounted for;
- the administration of the estate has been completed as far as is reasonable;
- the disbursements and expenses incurred are proper and have been duly authorized; and
- the fees and remuneration are fair and reasonable.

If an inspector is dissatisfied with any of the above aspects of the statement, the inspector should notify the trustee in writing explaining the reasons for concern.

The trustee must then forward the final statement of receipts and disbursements to the Superintendent of Bankruptcy for comment before the trustee presents the accounts to the court for taxation.

The statement of receipts and disbursements is a complete accounting of all monies received and disbursed by the trustee concerning the administration and the realization of the estate assets. The remuneration claimed by the trustee is disclosed.

Sale of assets

HOW MAY ASSETS BE SOLD? [paragraph 30(1)(a)]

The trustee, with the inspectors' permission, can sell estate assets by:

- tender;
- public auction; or
- private contract.

TO WHOM CAN THE TRUSTEE SELL?

[paragraph 30(1)(a), subsections 120(1) and 30(4), (5) and (6), and rules 42 and 43]

As a general rule, trustees can sell the estate's assets to "any person or company." "Any person" includes the bankrupt person.

However, trustees cannot sell the property:

- to their employees or agents;
- to other trustees or to employees of other trustees; or
- to related persons of the trustee or to related persons of the above-mentioned individuals.

Trustees cannot purchase the property of any debtor for whom they are acting with respect to a professional engagement. Also, they cannot obtain the property of any estates for which they are not acting unless the property is purchased at the same time and for the same price as it is offered to the public, and during the normal course of business of the bankrupt or debtor.

Furthermore, inspectors may not acquire estate assets, either directly or indirectly, except with the prior approval of the court.

The trustee must obtain court approval in order to dispose of, notably through sale, property of the bankrupt to a person related to the bankrupt. In determining whether to grant such approval, the court considers several factors, including whether the consideration to be received for the property is reasonable and fair, whether the creditors were consulted, and whether the process was reasonable in the circumstances.

Consideration

SALE FOR CONSIDERATION OTHER THAN CASH [paragraph 30(1)(a)]

The trustee can sell all or any property of the bankrupt for consideration other than cash. All the realized property is then divided among the creditors.

SALE FOR A SUM OF MONEY PAYABLE IN THE FUTURE [paragraph 30(1)(f)]

The trustee can accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as security and otherwise as the inspectors think fit.

- *Disclaimer on secured assets (section 20)*
Sections 127 to 134 deal with the rights of secured creditors. The trustee may, with the approval of the inspectors, issue a disclaimer relinquishing all or any part of the trustee's right, title or interest in any real or immovable property of the bankrupt. This section is usually applied where there is no equity in an estate asset because of the claim of a secured creditor.
- *Return of property to debtor (section 40)*
With the inspectors' permission (if inspectors were appointed), the trustee is required to return any property incapable of realization to the bankrupt. The purpose of this provision is to permit a trustee to complete his or her administration of the estate.

Requirement to pay dividends (sections 136 and 148)

Generally, estate funds are distributed in the following order:

- a. the costs of estate administration (for example, trustee's fees and disbursements, filing fees, counselling fees, legal fees and court fees);
- b. certain claims such as employees' salaries, municipal taxes and landlords' rental arrears; and
- c. all other unsecured creditors.

When a trustee has sufficient estate funds, the trustee should pay an interim dividend to creditors who have proven their claim. Under subsection 148(3), inspectors are to direct when an interim dividend should be paid. If they direct the trustee to pay a dividend and the trustee refuses or fails to do so, then the court may order the trustee to pay it with interest.

If the inspectors refuse to authorize the payment of an interim dividend when the funds are available to pay it, the trustee can apply to the court in accordance with subsection 119(2) to overrule the decision of the inspectors.

Proposals under Part III of the *Bankruptcy and Insolvency Act*

A proposal is an agreement between an insolvent person and his or her creditors that alters the debtor's financial obligations toward the creditors. The Act provides for two types of proposals.

- a. Division I is primarily for corporations and for individuals who have not made a consumer proposal under Division II. Where a debtor has made a proposal under Division II, he or she cannot make a proposal under Division I until the administrator under the consumer proposal has been discharged.
- b. Division II provides a streamlined procedure for individuals who have debts under a prescribed dollar amount.

Inspectors may be appointed in a proposal. When inspectors are appointed in a proposal, they assume the same roles and responsibilities as in a bankruptcy, subject to any provision in the proposal expanding or restricting their functions.

PROPOSAL BY A BANKRUPT [subsection 50(3) and paragraph 66.4(2)(a)]

When a bankrupt intends to make a proposal, the inspectors appointed in the bankruptcy must approve the proposal before any further action is taken.

WAIVING A DEFAULT [subparagraph 62.1(b)(i)]

If the debtor defaults in the performance of a Division I Proposal, the inspectors have the authority to waive the default and to wait and see if the debtor is capable of rectifying the problem at the root of the default.

PART III – DEALING WITH BANKRUPTCY ABUSES

Powers of the Superintendent of Bankruptcy

Section 10 of the Act empowers the Superintendent of Bankruptcy to investigate an offence that may have been committed in connection with a bankruptcy. These investigations relate to the conduct, dealings and transactions of the bankrupt, the causes of the bankruptcy and the disposition of the bankrupt's property. The main objective of this section of the Act is to detect evidence of statutory offences, although any information uncovered during the investigation that leads to the recovery of assets is to be provided to the trustee.

Section 161 of the Act permits the Official Receiver to examine the bankrupt under oath and to ask questions about the bankrupt's conduct, the causes of bankruptcy and the disposition of property.

The Superintendent of Bankruptcy is assisted by staff in major centres across Canada in detecting and reporting possible offences (see Appendix C). Investigations are normally carried out by the Royal Canadian Mounted Police.

Trustee compliance

Trustees who do not perform their duties professionally and in compliance with the Act, Rules and Directives may be subject to professional conduct measures in the event of wrongdoing (for example, a trustee's licence may be subject to certain conditions or limitations, suspended or cancelled). Where warranted, criminal charges may also be laid.

In addition, trustees are required to comply with the *Code of Ethics* for trustees (Rules 34–53). The code establishes standards for activities such as providing creditors with information, handling trust funds, dealing with conflicts of interest, and overseeing the sale of the property of a bankrupted business or individual. The code also sets standards for advertising and for maintaining the good reputation of the trustee community.

Complaints about trustees should be addressed to the nearest divisional office of the Superintendent of Bankruptcy (see Appendix C).

Inspectors' role in handling abuses

When creditors have information regarding assets, fraudulent preferences (for example, a payment by the debtor to a creditor that gives the creditor preference over other creditors), improper dealings between the bankrupt and relatives or a related company, or other possible irregularities, these matters should be brought to the attention of the trustee or the inspectors.

The inspectors and the trustee should choose the best course of action to benefit the creditors in these situations.

If the inspectors suspect an offence has been committed, they should discuss the matter with the trustee, who should then report it to the Office of the Superintendent of Bankruptcy. When they consider it appropriate (for example, for matters related to the trustee's conduct), inspectors may also report concerns directly to the Superintendent of Bankruptcy.

Statutory offences

The Act describes various bankruptcy offences under sections 198 to 208.

OFFENCES BY BANKRUPTS (sections 198, 199 and 200)

A bankrupt is guilty of an offence if he or she:

- a. makes any fraudulent disposition of his or her property before or after the date of the initial bankruptcy event;
- b. refuses or neglects to answer fully and truthfully all proper questions posed at any examination held pursuant to the Act;
- c. makes a false entry or knowingly omits information in a statement or accounting;
- d. after or within the year before the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or knows about the concealment, destruction, mutilation, falsification, omission from or disposal of, a book or document affecting or relating to his or her property or affairs, unless the bankrupt had no intent to conceal the state of his or her affairs;
- e. after or within the year before the initial bankruptcy event, obtains any credit or any property by false representations or by someone else giving false representations with the bankrupt's knowledge;
- f. after or within the year before the initial bankruptcy event, fraudulently conceals or removes any property valued at \$50 or more or any debt owed to or by the bankrupt; or
- g. after or within the year before the initial bankruptcy event, mortgages, pawns, pledges or disposes of any property he or she has obtained on credit and has not paid for, unless the bankrupt is a trader and the mortgage, pawning, pledging or disposing is part of normal trading activities, and unless the bankrupt had no intent to defraud.

The bankrupt is also guilty of an offence if he or she fails to comply with an order of the court requiring a monthly payment to the bankrupt's estate, based on his or her income and family situation. Moreover, the bankrupt is guilty of an offence if he or she fails to comply with the required duties throughout the bankruptcy. For example, the duties include delivering, for cancellation, all credit cards to the trustee, as well as informing the trustee of any changes pertaining to his or her financial situation.

It is an offence for an undischarged bankrupt to engage in a trade or business or to obtain credit exceeding \$1000 without disclosing that he or she is an undischarged bankrupt. It is also an offence for a person who is currently bankrupt and who has previously been bankrupt or made a proposal not to have kept proper books of account (detailing the person's day-to-day transactions and financial position) of any trade or business done within the two-year period before the initial bankruptcy event. Also, an offence is committed if, within that period of time, the bankrupt conceals, destroys, mutilates, falsifies or disposes of any book or document affecting his or her property or affairs, unless there was no intent to conceal the state of the affairs.

OFFENCES BY CREDITORS [subsection 201(1)]

It is an offence for a creditor to willfully and with intent to defraud make any false claim or any proof, declaration or statement of account that is untrue.

OFFENCES BY TRUSTEES (sections 202, 203.1 and 203.2)

Section 202 deals mainly with the failure of a trustee to perform duties imposed by the Act. However, some paragraphs, such as 202(1)(a) and (f), and subsection 202(2), are wider in scope and apply to persons who are not trustees.

It is an offence for a trustee to act as a trustee under the following conditions:

- while the trustee's licence has ceased to be valid for failure to pay licence fees;
- after the trustee's licence has been suspended or cancelled by the Superintendent; or
- after the trustee has been informed of the intention to cancel the licence.

If a trustee's licence has been restricted, it is an offence for the trustee to exercise powers beyond those authorized by the restricted licence.

OFFENCES BY INSPECTORS [subsection 201(2)]

It is an offence for an inspector to accept a fee, commission or other benefit of any kind from the bankrupt, the trustee or any person or company acting on behalf of the bankrupt, other than the regular fees allowed by the Act.

PART IV – INSPECTORS’ FEES

Range of payments [subsections 120(5) and (6) and rule 135]

Inspectors’ fees range from \$10 to \$40 per meeting. The fee is based on the net receipts of the estate, which are calculated by subtracting the payments to secured creditors from the total receipts received by the trustee.

Net receipts	Fee per meeting
Less than \$10 000	\$10
\$10 000 to \$50 000	\$20
\$50 000 to \$100 000	\$30
More than \$100 000	\$40

Inspectors may also be reimbursed for out-of-pocket travel expenses for the performance of their duties.

Finally, an inspector duly authorized by the creditors or by the inspectors to perform special services for the estate may be paid a special fee for his or her services, subject to the approval of the court. The approval of the court must be given before the rendering of the special services. To be allowed an extra fee, the services rendered by the inspector must require the special attention and skills of the inspector. For example, an inspector who is a chartered accountant may be paid a special fee to conduct an accounting investigation for the bankrupt estate.

APPENDIX A

Glossary

A

Act

Bankruptcy and Insolvency Act, a federal statute of Canada governing bankruptcy and insolvency.

Advance notice

A legal document under the Act whereby a secured creditor provides 10 days' notice to an insolvent debtor of its intention to enforce its security.

Arm's length

Describes dealings between two parties who are not related by blood or marriage and who are presumed to have approximately equal bargaining power.

Assets

Items that are owned and have value; in the context of bankruptcy, it means all the property of the debtor available for the general benefit of creditors.

Assignment (in bankruptcy)

Made by insolvent persons who assign all their property to a trustee for the benefit of their creditors.

Automatic discharge

Where there is no opposition from the Superintendent, a trustee or a creditor, or in some circumstances, where the bankrupt does not have a significant tax debt, any person who has not refused or neglected to receive counselling services is automatically discharged at the end of the period anticipated by the Act. This period may be 9, 21, 24 or 36 months after the date of the bankruptcy, depending on whether the bankrupt was required to make payments out of his or her income, surplus or not, and whether the bankrupt has previously been bankrupt.

B

Bankrupt

A natural person or corporation that has made an assignment or against whom a bankruptcy order has been made; it also means the legal status of that person.

Bankruptcy

The state of being bankrupt or the fact of becoming bankrupt.

C

Charge

A lien, preference or financial obligation attached to property.

Collateral

Property that is pledged as security against a debt.

Conditional discharge

Discharge of a bankrupt with specific conditions to be fulfilled before receiving an absolute discharge.

Conditional sale

The sale of goods where the buyer receives possession of goods or property, but does not receive title to them until specific conditions are fulfilled.

Conservatory measures

Actions taken to preserve the interests of the bankrupt's estate under the Act.

Corporation

An entity (usually a business) having authority under law to act as a single person distinct from the shareholders who own it, and having the legal powers that its articles of incorporation grant it.

Creditor

One to whom a debt is owed; in insolvency matters, a person or corporation having a claim provable under the Act.

D

Debt

Liability on a claim; a specific sum of money due by agreement or otherwise; aggregate of all existing claims against a person or a corporation.

Debtor

One who owes an obligation to another, usually to pay money.

Deemed trust

A trust established by statute, considered to be a trust even though there may be no assets in it. For example, employee source deductions prescribed in the *Income Tax Act* are deemed to be held in trust for the Crown.

Default

Failure to pay or perform a legal or contractual obligation.

Discharge

The release of a debtor from most debts. A bankrupt's discharge may be automatic, suspended, conditional or absolute. The court may also refuse the bankrupt's discharge.

Dividend

The proportional share of a bankrupt's estate paid out by the trustee to creditors who have proven claims against that estate.

Division I Proposal

An offer made by debtors to their creditors in order to modify their payments. The procedure for a Division I Proposal applies to companies and individuals who want to avail themselves of it. This procedure also allows for restructuring of business debts while the business continues to operate.

Division II Proposal (Consumer Proposal)

A simplified proposal for repayment of debt to creditors, available under the Act to a consumer debtor whose aggregate debts, excluding a home mortgage, do not exceed the amount prescribed in the Act.

E

Equity

The difference between the market value of an asset and the debt against it.

Estate

The aggregate of possessions, including real rights, movable and immovable property, and personal and real property of an individual or a corporation.

Examination

Questioning of the bankrupt under oath with respect to the bankrupt's conduct, causes of bankruptcy and disposition of the bankrupt's property. The examination may be conducted by an Official Receiver, a trustee, a creditor or other interested person in accordance with conditions prescribed in the Act.

Exempt assets

Assets made exempt from execution or seizure by provincial legislation that are not available to the trustee for the benefit of creditors.

F

Fair market value

The price that a buyer would be willing to pay for an asset and the seller would be willing to accept in an open and unrestricted market.

G

Garnishment

A legal process whereby a creditor requires a third party to turn over a debtor's property, such as wages or bank accounts, to a creditor.

General rules

Rules enacted under the *Bankruptcy and Insolvency Act*.

Guarantor

An individual or a corporation that takes on financial responsibility for another's debt.

H

Hypothec

A right on property given to a creditor as performance for an obligation. It confers on the creditor the right to follow the property (even if it undergoes successive changes of ownership), to take possession of it, to take it in payment, or to sell it.

|

Insolvency

The condition of being unable to pay debts as they become due or in the ordinary course of business, or having liabilities that exceed the total value of assets.

Insolvent person

A person who is not bankrupt and who resides, carries on business, or has property in Canada, whose liabilities to creditors provable as claims under the Act amount to \$1000 or more, and:

- who is unable to meet obligations as they become due;
- who has ceased paying current obligations in the ordinary course of business as they become due; or
- the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all obligations, due and accruing due.

Inspector

A person appointed by creditors to represent them before the trustee during the administration of a bankruptcy or proposal.

Interim receiver

A trustee appointed by the court to safeguard the estate assets for such time as the court may determine.

J

Judgment

A formal decision issued by a court on a matter under its consideration.

L

Levy

An assessment payable to the Superintendent of Bankruptcy for the purpose of defraying the expenses of the supervision by the Superintendent in the administration of estates.

Liabilities

Financial obligations or debt of an individual or a corporation, including unpaid taxes, salaries, accounts payable, etc.

Lien

A legal right or interest that a creditor has in the debtor's property, lasting usually until the debt that it secures is satisfied.

Liquidation

The act of converting assets of an individual or a company to cash, especially in bankruptcy or in the dissolution of a corporation.

M

Monitor

A person appointed by the court to review and report on day-to-day transactions of a business, usually in the restructuring of an insolvent business.

Mortgage

A conveyance of title to property that is given as security for the payment of a debt. *Note:* In the province of Quebec, it is a real right on property securing the performance of an obligation, without relinquishment of its owner.

O

Offences

The offence and sanction provisions are contained in Part VIII of the Act. These are criminal or quasi-criminal in nature; a person guilty of an offence is liable to a fine and/or imprisonment.

Office of the Superintendent of Bankruptcy (OSB)

The Office of the Superintendent of Bankruptcy, an agency of Industry Canada, supervises the administration of the *Bankruptcy and Insolvency Act*.

Official Receiver

A person appointed by the Governor-in-Council deemed to be an Officer of the Court who performs statutory duties as specified by the Act, such as accepting the documents for the filing of proposals and bankruptcies, examining bankrupts under oath and chairing meetings of creditors.

Opposition

An objection to the bankrupt's discharge by the Superintendent, the trustee or a creditor.

Ordinary creditor

A creditor with no priority or security under the Act.

Ordinary resolution

A resolution carried by the majority of votes (one vote for each dollar of debt) of claims of creditors; disallowed claims do not vote.

P

Person

Includes a human being (natural person), a partnership, and a corporation that is recognized by law as having rights and duties.

Personal bankruptcy – Ordinary Administration

An Ordinary Administration applies to bankruptcy files of individuals whose realizable assets are estimated to be worth \$15 000 or more. This type of bankruptcy procedure provides, for example:

- the publication of a notice of bankruptcy in a local newspaper;
- a meeting of creditors within the 21-day period following the day of bankruptcy;
- the possibility for the creditors to appoint five inspectors; and
- the approval of the trustee's fees by the inspectors.

Personal bankruptcy – Summary Administration

A Summary Administration applies to individuals whose realizable assets do not exceed \$15 000. The Summary Administration of a bankruptcy estate is a simplified procedure in which, for example:

- there is no publication of the notice of bankruptcy in a local newspaper;
- a meeting of creditors is called only if requested by creditors and according to certain conditions;
- no inspectors are appointed unless the creditors decide to appoint them;
- joint assignments are permitted;
- the trustee's fees are prescribed; and
- the trustee is discharged without a court appearance, except when a creditor or the Superintendent opposes the discharge.

Power of attorney

A legal instrument setting out an individual's authority to act as the agent of the person giving the power of attorney.

Preference

The payment of money or the granting of security by a debtor that benefits one or more creditors to the detriment of the other creditors.

Preferred creditor

A creditor who has been given a priority under the Act over other creditors in the distribution of dividends.

Priority

The order in which creditors are ranked for payment of claims provable under the Act.

Proof of claim

A creditor's written statement that is submitted to prove the creditor's claim; used as the basis for paying dividends, if accepted by the trustee.

Property

Assets, including money, land, movable and immovable property, and personal and real property, situated

in Canada or elsewhere.

Provable claim

Any liability of the debtor for a debt incurred before the date of the bankruptcy.

Proxy

A document signed by a creditor granting another person the authority to represent them at creditors' meetings. The proxy holder can exercise the creditor's right to vote.

Q

Quorum

The minimum number of creditors who must be present in person or by proxy to conduct business or to take a vote. At a meeting of creditors, one creditor present, in person or by proxy, who has filed a provable claim with the trustee prior to the meeting, constitutes a quorum.

R

Receiver

A person who has taken possession pursuant to a security agreement of substantially all of the inventory, accounts receivable or the other property of the debtor. "Receiver" also includes a person who has been appointed privately pursuant to a security agreement or by an order of the court for the protection or collection of property that is the subject of diverse claims, usually to seize and sell the property of the debtor.

Registrar

An officer of a provincial court appointed by the Chief Justice with the powers and jurisdiction as specified under the Act.

Related persons

Persons who are connected by a blood relationship, marriage, common-law partnership or adoption; while so related, they are deemed not to deal with each other at arm's length. The Act provides that the definition of related persons extends to corporations, shareholders and directors in certain specified situations.

S

Secured creditor

A person holding an instrument, such as a mortgage or hypothecary claim, a lien or a preference on or against the whole or part of the property of a debtor, as security for a debt due to him or her from the debtor.

Security

Property or asset given or pledged to guarantee the fulfillment of an obligation, for example, for the payment of a loan.

Seizure

The act of taking possession of property by legal right or process.

Special resolution

A resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, in person or by proxy, at a meeting of creditors and voting on the resolution.

Statement of affairs

The bankrupt's financial statement or a balance sheet of assets and liabilities showing the estimated value of the debtor's property and the names and addresses of creditors and the amounts owed.

Stay of proceedings

Upon the filing of a bankruptcy, a proposal or a notice of intention to make a proposal, no creditor with a claim provable in bankruptcy shall have any remedy against the debtor or the debtor's property or shall commence or continue any action, execution or other proceedings for the recovery of a claim provable in bankruptcy.

Superintendent of Bankruptcy

The official appointed by the Governor-in-Council to supervise the administration of all estates and matters to which the Act applies.

Surplus income

Amount of a bankrupt's total income that exceeds what is necessary to maintain a reasonable standard of living according to the standards set by the Superintendent. The bankrupt must make payments out of this surplus income to the bankruptcy estate for distribution among the creditors. The amount of these payments is determined by the trustee, in accordance with the standards established by the Superintendent and in view of the personal and family situation of the bankrupt.

T

Taxation of accounts

Application for court approval of the fees and disbursements of the trustee, interim receiver or legal counsel.

Trust

A property interest held by one person at the request of another for the benefit of a third party.

Trustee in bankruptcy

A person licensed by the Superintendent of Bankruptcy to administer bankruptcy and proposal estates.

V

Voting letter

A document by which a creditor with a provable claim registers his or her vote.

APPENDIX B

Mandate and Mission of the Office of the Superintendent of Bankruptcy

The Superintendent of Bankruptcy is mandated to “supervise the administration of all estates and matters under insolvency legislation.”

To fulfill its legislative mandate, the Office of the Superintendent of Bankruptcy (OSB) has undertaken the mission “to contribute to a fair and efficient marketplace by protecting the integrity of the Bankruptcy and Insolvency system for the benefit of investors, lenders, consumers and public interest.”

The OSB intends to achieve this mission by concentrating its efforts on the following four strategic objectives:

- (a) maintain an efficient and effective regulatory framework;
- (b) promote awareness of the rights and responsibilities of the stakeholders in the insolvency system;
- (c) ensure trustee and debtor compliance with the legislative and regulatory framework; and
- (d) be an integral source of information on Canadian insolvency matters.

APPENDIX C

Division Offices of the Superintendent of Bankruptcy

NOVA SCOTIA

Maritime Centre
1505 Barrington Street, 16th Floor
Halifax, Nova Scotia B3J 3K5
Tel.: 1-877-376-9902 | Fax: 902-426-7275

QUEBEC

1141, Route de l'Église, 4th Floor
Québec, Quebec G1V 3W5
Tel.: 1-877-376-9902 | Fax: 418-648-4120

5 Place Ville-Marie, Suite 800
Montréal, Quebec H3B 2G2
Tel.: 1-877-376-9902 | Fax: 514-283-9795

ONTARIO

Place Bell Building
160 Elgin Street, 11th Floor, Suite B-100
Ottawa, Ontario K2P 2P7
Tel.: 1-877-376-9902 | Fax: 613-996-0949

25 St. Clair Avenue E, 6th Floor
Toronto, Ontario M4T 1M2
Tel.: 1-877-376-9902 | Fax: 416-973-7440

Federal Building
55 Bay Street N, 9th Floor
Hamilton, Ontario L8R 3P7
Tel.: 1-877-376-9902 | Fax: 905-572-4066

Federal Building
451 Talbot Street, Suite 303
London, Ontario N6A 5C9
Tel.: 1-877-376-9902 | Fax: 519-645-5139

MANITOBA

400 St. Mary Avenue, 4th Floor
Winnipeg, Manitoba R3C 4K5
Tel.: 1-877-376-9902 | Fax: 204-983-8904

SASKATCHEWAN

1945 Hamilton Street, Suite 600
Regina, Saskatchewan S4P 2C7
Tel.: 1-877-376-9902 | Fax: 306-780-6947

123 Second Avenue S, 7th Floor
Saskatoon, Saskatchewan S7K 7E6
Tel.: 1-877-376-9902 | Fax: 306-975-5317

ALBERTA

Standard Life Tower
639 Fifth Avenue SW, Suite 510
Calgary, Alberta T2P 0M9
Tel.: 1-877-376-9902 | Fax: 403-292-5188

Canada Place Building
9700 Jasper Avenue, Suite 725
Edmonton, Alberta T5J 4C3
Tel.: 1-877-376-9902 | Fax: 780-495-2466

BRITISH COLUMBIA

300 West Georgia Street, Suite 2000
Vancouver, British Columbia V6B 6E1
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