

INSOLVENCY, DEBT RESTRUCTURING & BANKRUPTCY



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DEBT MANAGEMENT-ARE YOU INSOLVENT?

Introduction

When looking at your finances, the best place to start is at the beginning. This section will help you determine if you are insolvent and how to calculate your monthly budget and net worth. We encourage you to complete each section of this chapter.

Insolvency Questionnaire

"Insolvency" refers to an individual's inability to pay their debts in accordance with the contracted payments that are due or, if the individual's assets were sold in an orderly manner, they would not raise sufficient cash to pay all of the debts in full.

If you answer "Yes" to any of the following statements, you may be insolvent.

1. The net sale value of your assets is less than the sum of your debts.
2. After providing for a reasonable monthly cost of living, there is insufficient cash remaining to make all of the minimum required payments on your debts.
3. More than 20% of your net monthly income is required to make payments on outstanding consumer loans and lines of credit.
4. You have recently missed required payments on credit cards or loans.
5. You are making only minimum payments on your loans and credit cards.
6. Collection agencies are calling you for payment.
7. You have been served with a statement of claim from a creditor's lawyer.
8. A creditor has obtained a court judgment against you.
9. Your pay has been garnished (seized) by a creditor.
10. Your bank account been garnished by a creditor.
11. An asset has been seized or foreclosed upon by a creditor.
12. You do not know how to set financial priorities or budget.
13. As a self-employed business person, you have outstanding source deduction or HST arrears that you do not have the ability to pay.
14. As a director of a corporation, you have been assessed by Canada Revenue Agency for the corporation's HST or source deductions and you do not have the ability to pay the debt.
15. You frequently argue with your spouse or partner about household finances.
16. You are pre-occupied with your debt issues and do not know how to solve them.
17. Your credit report ranks you with a low rating.
18. You use credit cards for your living expenses.
19. You transfer funds between credit accounts to cover the minimum monthly payments.
20. You are borrowing money from friends and family to make ends meet.

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21. You are using pay day loan companies.
22. You use cash advances on your credit cards.
23. You have been recently denied credit.
24. Your credit cards are maxed out.

Calculate Your Monthly Budget

Completing the following monthly budget will help you begin to understand how much money you have to spend and how to prioritize your spending. Prior to beginning, we suggest that you thoroughly review your finances and related documentation:

1. To accurately determine your average monthly income, gather up several recent pay stubs, pension statements, investment income receipts, child tax benefit receipts, EI slips, estimated annual or periodic bonuses, your spouse's income particulars and bank statements etc.
2. For your fixed expenses, review several month's bills, credit card statements and bank statements in order to be able to accurately estimate monthly expenses for mortgage payments, property taxes, utilities, insurance payments, car payments, car repairs, health care premiums, alimony \ support payments, college tuition and loan payments.
3. For your variable expenses, for which you probably do not keep receipts, such as food, clothing, lunches, hobbies, alcohol, cigarettes, children's activities, gasoline purchases etc. do your best to estimate what you typically spend each week and month.

Prior to beginning your budget, speak to your spouse or partner in order to get their input on how the money in the home is spent. You may also want to consider discussing it, or parts of it, with your teenage children to get their input and buy in.

If, upon completion of the budget, your expenses exceed your income, begin to review your expenditures for items that can be reduced or eliminated. For example:

1. Reducing impulse purchasing.
2. Reducing entertainment expenses.
3. Reducing smoking or alcohol consumption.
4. Taking your lunch to work three or four days a week.
5. Planning to take a less expensive vacation.
6. Selling the second car and bussing to work.
7. Extending the amortization period of your mortgage to reduce mortgage payments.
8. Reduce \ eliminate savings and apply the funds against high interest credit card debt balances until the debts are paid in full.
9. Downsizing your house to a smaller and less expensive one.

If you are unable to reduce your expenses to comfortably pay your monthly expenses and debt payments, you may be insolvent.

GET BUDGET FORM

Net Worth

Completing the following net worth statement will help you begin to understand what assets you own, what they may be worth if sold, your debts, and whether you have sufficient assets, if sold in an orderly manner, to pay your debts in full. If, upon completion of the net worth statement, you have an apparent excess of debts over assets, you may be insolvent.

Prior to beginning to complete the net worth statement, we suggest that you gather up and determine the following:

1. Vehicle ownerships and values (scan local classified ads and online used car ads for your make and model).
2. Recreational vehicle ownerships and values (scan local classified ads and online ads for your make and model).
3. Current investment balances by review of a recent statement, less estimated applicable income tax.
4. RRSP balances by review of a recent statement, less estimated applicable income tax.
5. Cash surrender value of life insurance policies by review of recent statements.
6. Real estate deeds and the most recent municipal property tax assessment reports as to the assets estimated value.
7. Estimated net realizable value of all other assets by review of applicable documentation.
8. Recent credit card, bank loan and bank overdraft statements.
9. Real estate mortgages and a current statement of the balance owed on the mortgage.
10. Vehicle mortgages \ leases and a current statement of the balance owed on the mortgage\ lease.
11. Details of all other debts by review of relevant notes, agreements, leases, tax assessments, and judgments etc.

If the sum of your debts exceeds the estimated realizable value of your assets, you may be insolvent.

GET NET WORTH STATEMENT

If you think that you may be insolvent, please contact us for a free initial consultation. You may call us at 1-613-820-2200, 1-866-720-3330 (in Eastern Ontario), by email to ottinsolvency@bakertilly.ca or by completing the online consultation page of this web site. You may also complete the application form on this web site and then email or fax it to us.

CREDIT REPORT

A credit report is used by your current credit grantors, and potential credit grantors, to assess your ability to pay your debts. It is also becoming increasingly common for insurance companies, landlords and prospective employers to review your report.

It is a document maintained by the two credit reporting companies in Canada, Equifax Canada and TransUnion Canada. Each of these companies compiles your credit report by receiving and summarizing credit information reported to them by banks, credit card companies and consumer finance businesses.

A typical credit report will include, in addition to credit information, a summary of your name, birth date, current and prior addresses, employment history and, public information (liens, lawsuits, judgments, bankruptcy, proposal, debt settlement program).

The credit grantors that report to the credit bureaus rank your payment history from a zero to a nine. A zero rating indicates that the credit is too new to rate. A one rating reflects that the account is paid within 30 days, a two that it is paid within 60 days, a three that it is paid within 90 days, a four within 120 days and a five within 150 days. There is no six rating. A seven means the account was subject to a debt consolidation or proposal to creditors. An eight states that the creditor re-possessed a vehicle, home or other asset to satisfy its debt. Lastly, a nine rating indicates that the debt was written off or the debtor went bankrupt.

Your credit report will also summarize the particulars of creditors you have recently approached for credit. Shopping for credit is seen to be a negative factor as it indicates an inability to satisfy potential lenders that you are creditworthy.

A strong rating, which is critical in order to obtain and maintain credit, will reflect a good employment history, a stable residence address history and credit rankings comprised of ones. A strong credit rating permits you to borrow greater sums at lower interest rates than a lower rating.

Errors are made in credit reports. Be sure to review your credit report at least annually to ensure that it is accurate. You may request your credit report online or by writing to the credit bureaus. Equifax Canada can be reached at <http://www.consumer.equifax.ca/> or 1-800-465-7166. TransUnion of Canada can be reached at <http://www.transunion.ca/> or 1-866-525-0262. If inaccurate information is on your report, write to both of the credit bureaus, providing full particulars, and request that the information be corrected. It may take several months to see the information corrected. Be patient and persistent.

ALTERNATIVES TO BANKRUPTCY

Introduction

Bankruptcy is not your only option. Some of the solutions to financial difficulties are summarized below. As well, in the course of a no charge, confidential assessment, a Baker Tilly Ottawa Ltd.. financial counsellor will review your finances and the options available to you. The counsellor will assist you in making the decision that is best for you.

Contact Your Creditors

A frequently overlooked solution to financial difficulty is to contact your creditors directly.

Many creditors, once they understand your situation, will work with you to settle your debt and to avoid sending it to collection. For example, a creditor may defer payments for an agreed upon time period or accept smaller payments over a longer period of time. Prior to contacting creditors, prepare a monthly household budget and a summary of your debts and assets. Be prepared to be patient, to consider various payment options and to disclose full particulars about your finances. Ensure that all matters agreed to are fully documented in writing.

Credit Counselling

Credit counselling organizations also provide budgeting services. In certain circumstances, they will also speak to creditors on your behalf to make alternative payment arrangements. Of note, unlike a Licensed Insolvency Trustee ("LIT"), they do not have the authority to administer bankruptcies or consumer proposals.

Credit counselling services are available across Canada. You may be charged a fee for their services. Baker Tilly Ottawa Ltd. would be pleased to refer you to a local credit counselling office.

Debt Consolidation Loan or Second Mortgage

If you qualify, banks and other financial institutions will consolidate your debts into one loan or, if you have equity in your home, a second mortgage. In such cases, the loan is used to pay off your outstanding debts. Typically, only one monthly payment will be required on the consolidation or mortgage loan. Frequently, it is also possible to reduce the amount of interest paid and to extend the debt payment term.

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Prior to contacting potential lenders, prepare a monthly household budget and a summary of your debts and assets. Be prepared to be patient, to consider various payment options and to disclose full particulars about your finances. Ensure that all matters agreed to are fully documented in writing. It is important that you look into the best interest rate and loan terms. Qualified, licensed mortgage brokers can assist you. Baker Tilly Ottawa Ltd. can refer you to potential lenders and mortgage brokers.

CONSUMER PROPOSALS

Introduction

Under the Bankruptcy and Insolvency Act (“BIA”), if you are insolvent, you may make a consumer proposal to your creditors and avoid bankruptcy. A bankrupt may make a consumer proposal if the bankruptcy estate inspectors have approved it and an LIT has agreed to act as the consumer proposal administrator.

An individual owing not more than \$250,000, excluding the mortgage indebtedness on their principal residence, is permitted to make a consumer proposal. If more than \$250,000 is owed, excluding the mortgage debt on the principal residence, a proposal may be made under different provisions of the BIA.

Two or more individuals may file a single consumer proposal if their debts are substantially the same and, in the Trustee’s opinion, the single filing is in the best interests of the creditors and the debtors. For example, this may include married couples, common-law partners or a parent and a child. The \$250,000 debt level restriction on filing a consumer proposal is doubled to \$500,000. If the aggregate, non-mortgage principal debts of the individuals exceed \$500,000 a single joint consumer proposal may not be filed; a proposal may be made under different provisions of the BIA.

When you file a consumer proposal, collection calls, legal actions, wage garnishments and asset seizures commenced by unsecured creditors will immediately stop. Secured creditors are generally permitted to realize on their security unless you remain current in your payments or make alternative arrangements with them.

Each consumer proposal is tailored to the needs of the debtor seeking assistance. That being said, consumer proposals typically require a much lower monthly payment than the payments required prior to filing the consumer proposal. As well, it is frequently possible to settle debts for less than the full amount owed.

To begin the process, you must contact a Licensed Insolvency Trustee. Baker Tilly Ottawa Ltd. is a Licensed Insolvency Trustee (“LIT”) and consumer proposal administrator (“Administrator”). Administrators are appointed and regulated by the federal government. They are subject to comprehensive professional training and rigorous codes of ethics. As an intermediary between you and your creditors, the LIT will review your finances, provide you with advice and information about your options, prepare the consumer proposal and other forms for your signature, file the consumer proposal with the Official Receiver (an employee of the Office of the Superintendent of Bankruptcy, an agency of the federal government) and oversee the administration of the consumer proposal. The Administrator is also responsible for dealing with telephone calls and queries from creditors and providing them with various reports on the status of the consumer proposal.

Approval of the Consumer Proposal

Within ten days of filing the consumer proposal with the Official Receiver, we are required to send to every known creditor a copy of the consumer proposal, a report containing an opinion as to whether it is fair and reasonable and whether we believe that you will be able to perform it, a summary of your assets and liabilities, your monthly budget, a list of creditors with claims greater than \$250 and a notice explaining the creditors' voting rights and the right to request that a meeting be convened.

The creditors have forty-five days from the date the Administrator files the consumer proposal with the Official Receiver to reject the consumer proposal and request that the Administrator convene a meeting to consider the consumer proposal. Upon expiry of the forty-five days, if less than twenty-five percent in dollar value of the creditor claims received by the Administrator requests a meeting, the consumer proposal is deemed to have been accepted by the creditors.

If, following the forty-five days, at least twenty-five percent in dollar value of the creditor claims received by the Administrator reject the consumer proposal, and request a meeting or the Official Receiver requests a meeting, the Administrator must call a meeting of creditors to consider and vote on the consumer proposal. At the meeting, the consumer proposal will be accepted if a simple majority of creditors, as determined by the dollar value of the claims present and eligible to vote, accept the consumer proposal as filed or as amended at the meeting. If the creditors vote against the consumer proposal, the creditors' rights are revived, and they may once again commence or continue collection proceedings.

Within fifteen days of creditor approval, the court may be asked to review the consumer proposal. The court shall either approve it or reject it. If the court does not approve the consumer proposal, the creditors' rights are revived, and they may once again commence or continue collection proceedings. If the court approves the consumer proposal, or the court is not asked to review it, the consumer proposal is deemed, by law, to have been approved by the creditors and the court. The creditors are then bound by the terms of the Consumer proposal.

Secured creditors are bound by the terms of a consumer proposal if they file a claim with the Administrator in accordance with the BIA proof of claim filing provisions.

Assets

You will be permitted to retain possession of your personal belongings, a vehicle and tools or equipment used to earn your living, if the value of the assets does not exceed provincial exemption amounts. If you wish to retain assets that are not statutorily exempt from seizure, you may do so with the assistance of the LIT by filing a consumer proposal. The consumer proposal will be drafted by the LIT to specifically permit you to retain the assets you wish to keep. This is one of the important distinguishing aspects of consumer proposals and one of the primary reasons debtors file a consumer proposal rather than an assignment in bankruptcy.

If assets have been pledged, or mortgaged as security, you will have to continue making the agreed upon payments to the secured creditors in order to prevent them from seizing the assets. If you do not wish to retain possession of pledged assets they may be returned to the secured creditor. The shortfall on the loan can then be included in the consumer proposal.

Financial Counselling

Under the BIA, counselling sessions are mandatory. You will be required to attend two counselling sessions with a Baker Tilly Ottawa Ltd. counsellor. The first session will occur within four to six weeks of the consumer proposal being filed with the Official Receiver. It will cover the creditors' response to the consumer proposal, financial management skills, budgeting, spending and shopping habits, the warning signs of financial difficulty and obtaining and using credit. The second counselling session is generally held within six to seven months of filing the consumer proposal. At the second counselling session you will discuss the root causes of your insolvency and will develop a long-term financial rehabilitation plan. Matters addressed at the first session may also be discussed. Each session takes approximately thirty to sixty minutes.

Paying Your Consumer Proposal

The length of time that you will be required to make payments will be determined in discussion with the LIT. It will depend on a number of factors including: your household income, your cost of living, required deductions such as medical expenses and support payments, the amount of your debts and the return creditors could expect if you were to go bankrupt. Under the BIA, payments may not be made for more than sixty months.

You will be required to make payments to Baker Tilly Ottawa Ltd., as the Administrator, in the manner described in the consumer proposal. Monthly payments are appropriate in most circumstances. It is also possible to make a one-time, lump sum payment or periodic payments based on the expected receipt of bonuses or commissions. We typically require that payments commence upon the filing of the consumer proposal with the Official Receiver.

All payments set out in the consumer proposal must be made to the Administrator in order to extinguish the liability to your creditors. When the final payment has been made, and the counselling sessions completed, we will provide you with a Certificate of Full Performance. The Office of the Superintendent of Bankruptcy will notify the credit bureaus regarding the full performance.

If you default on your payments on your consumer proposal, subject to certain grace periods discussed below, the consumer proposal will be annulled. If your consumer proposal is annulled, and you were not bankrupt when the consumer proposal was filed the Administrator can, if it is appropriate to do so, send notice to your creditors that your consumer proposal will be revived sixty days after the day it was annulled. If your creditors file a notice of objection, your consumer proposal will not be automatically revived and it will be annulled. Once annulled, the creditors' rights are revived and they may once again continue or commence legal proceedings against you to collect their debts.

The payment grace periods are as follows:

- If monthly or more frequent payments are required, the consumer proposal will be in default if the amount in arrears is equal to or more than three missed payments.
- If periodic payments are required, you are permitted to be three months in arrears. If the default exceeds three months, even by a day, the consumer proposal shall be annulled.

The Administrator is paid a fee for administering the consumer proposal and for conducting the two required counselling sessions. The Administrator is also permitted to claim disbursements it must pay such as HST, the required filing fee paid to the federal government and a court fee where a court file is opened. All fees and disbursements are set out in the BIA. The fees and disbursements are paid from the money paid to the Administrator to settle the amounts owed to the creditors.

Completion of a Consumer proposal

Debtor(s) receive a Certificate of Completion once the terms of the consumer proposal have been met and the two mandatory financial counselling sessions have been completed.

Completing your consumer proposal terminates and extinguishes all of a debtor's debts except those debts listed under section 178(1) of the BIA. These debts include: court fines, penalties and restitution orders; support arrears; an amount owed due to fraud or theft while acting in a trust or fiduciary capacity; debt attributable to the obtaining of property or services by false pretenses or fraudulent misrepresentation; damages awarded by a civil court in relation to intentionally inflicted bodily harm, sexual assault or wrongful death resulting therefrom; and, certain student loans, as discussed below.

Student loans made under a federal or provincial student loan program will survive a consumer proposal, if the debtor, at the date of filing the consumer proposal, had been registered as a full or part time student at college or university in the preceding seven years. Interest also continues to accrue on the student loan debts during the term of the consumer proposal. Of note, however, once five years have passed since the debtor was last enrolled as a full or part time student at a college or university, the debtor may apply to the court to ask it to discharge the student loans. For the court to discharge the student loans on such an application, the debtor must satisfy the court that he or she has acted in good faith in relation to the student loans, will continue to experience financial difficulties and will be unable to pay the debt.

Credit Rating in a Consumer proposal

Credit ratings are established and maintained by the credit bureaus and credit grantors. Our understanding of current rating procedures is as follows.

In Ontario, upon filing a consumer proposal, your credit rating will be an R7 (or R9 if you were already placed in collections). R1 is the highest rating and R9 the lowest. Upon completion of the consumer proposal your credit rating will be reported as an R7.

The filing of a consumer proposal will remain on your record for three years from the date of completion of the consumer proposal. In the future, your ability to obtain credit will turn on your ability to convince potential lenders of your financial responsibility and financial capacity (income, work and place of residence stability etc.).

A consumer proposal on your record does not mean you are not eligible for credit. It is, however, a material fact that a potential lender will take into consideration when assessing your credit application.

Once your consumer proposal has been approved by the creditors and the court, it may be possible to obtain some credit and begin rebuilding your credit history. A secured credit card may be the answer. It is a credit card on which you have deposited perhaps \$500 to \$1,000 with the issuer of the card. You then use the credit card and pay it off as you would a normal credit card. The credit card company will then report your use of the card and payments to the credit bureaus. We will discuss this with you as well as other ways to improve your credit rating in your counselling sessions.

Debts Co-signed or Guaranteed

A consumer proposal will not terminate a guarantor's liability for your debts.

BANKRUPTCY

Introduction

Bankruptcy is a legal process. It is described in the Bankruptcy and Insolvency Act (“BIA”).

Bankruptcy is appropriate if an individual is unable to resolve their financial difficulties by other means. With a few exceptions, bankruptcy immediately terminates creditor collection calls and legal proceedings. Interest on unsecured debts also stops accruing and it is not necessary to make further payments to them. Upon declaring bankruptcy, the LIT will take possession of the bankrupt’s assets (except those exempt from seizure by law), sell them and distribute the funds to the creditors. Bankruptcy terminates, upon discharge, most, if not all, of an individual’s debts.

To declare bankruptcy, one must: not be in bankruptcy; owe at least \$1,000; not be able to make regular payments as they become due; or, have debts that are greater than the realizable value of their assets.

As noted, bankruptcy immediately stops substantially all legal claims, garnishments or other legal proceedings. If you are served with legal or collection notices after bankruptcy, we will immediately advise the creditor and put an end to the proceedings. Exceptions are legal proceedings with respect to alimony claims, spouse and partner support claims and child support claims.

To begin the process you must contact a Licensed Insolvency Trustee (“LIT”). Baker Tilly Ottawa Ltd. is an LIT. LITs are appointed and regulated by the federal government. They are subject to comprehensive professional training and rigorous codes of ethics. As an intermediary between you and your creditors, the LIT will oversee the sale of your assets, if applicable, and the distribution of the proceeds to your creditors. The LIT is also responsible for dealing with telephone calls and queries from creditors and providing them with various reports on the status of the bankruptcy.

Notice of a personal bankruptcy is not typically published in the newspaper. Nor is the bankrupt’s employer normally notified. The Office of the Superintendent of Bankruptcy (a federal government department), and the court maintain a permanent record of the bankruptcy. In Ontario, credit bureaus will maintain a record of your bankruptcy for six to seven years following the date of discharge, depending on the credit bureau (six years for Equifax and seven years for TransUnion). They will also keep a record of a second or subsequent bankruptcy for fourteen years following your discharge.

As an LIT, Baker Tilly Ottawa Ltd. is required to notify your creditors of the bankruptcy. You may be required to attend a meeting with your creditors. A meeting will be scheduled if, after thirty days from the filing of the bankruptcy, at least 25% of your creditors in dollar value request a meeting, or the Official Receiver (an official of the Office of the Superintendent in Bankruptcy) requests a meeting. At the meeting, the LIT will inform the creditors of your financial situation, the reasons for your bankruptcy and the status of the bankruptcy administration. They will be given an opportunity to ask you questions. The creditors will also vote

on the appointment of the LIT, vote for the appointment of inspectors (creditor representatives who work with and advise the Trustee) and to give directions to us, as Trustee.

Assets

Upon filing bankruptcy, with certain exceptions noted below, your interest in any property or assets vests in us, as the LIT. We become the legal owner of the assets and property. This applies whether the assets are in your possession or the possession of a third party. We will take steps to sell the assets and turn them into cash. In certain circumstances, we may agree to return ownership of assets to you provided adequate payment arrangements are made.

Under provincial law, certain assets are exempt from seizure. You are permitted to retain possession of exempt assets up to the prescribed dollar limit. For example, in Ontario, you are permitted to retain possession of: personal items, furniture and household belongings (\$14,180); tools and equipment ordinarily used in the bankrupt's business or profession (\$14,405); one motor vehicle (\$7,117); and, your principal residence if the equity in it is less than \$10,783. You are also permitted to retain your RRSP, DPSP and RIF accounts with the exception of contributions made in the year preceding the bankruptcy.

If an asset is mortgaged or encumbered, the secured creditor is permitted to seize and sell it unless you comply with your contractual payment obligations or the arrangements that may be agreed to.

As the LIT, we must prepare the prior year's income tax return (if it has not already been filed) and a pre-bankruptcy income tax return for the period January 1st to the day before the date of bankruptcy. The LIT will retain refunds from the pre return and prior years' return(s) (if the prior returns have not previously been filed and the refunds have not been already received prior to filing for bankruptcy). A post-bankruptcy return will also be prepared for the period from the date of bankruptcy to December 31st. Refunds from this return will also be paid to us. You will be responsible for the payment of any balance owed on the post- bankruptcy return.

Once you declare bankruptcy, the Canada Revenue Agency will mail GST credits to us until we are discharged as Trustee. We will retain the GST credits until there are sufficient funds in the bankruptcy estate, from other sources, to pay the prescribed amount of LIT's fees. The GST credits will then be refunded to you upon the discharge of the Trustee.

All windfalls, such as lottery winnings and inheritances that you receive or become entitled to prior to your discharge from bankruptcy must be given to the LIT. If there is a surplus of funds after payment of the creditors' claims, and the Trustee's fees and disbursements, it will be paid to you.

Bankruptcy and Your Spouse or Partner

Assets owned entirely by your spouse or partner are not included in your bankruptcy. If you and your spouse or partner own assets jointly, your interest will vest in the LIT, as described above. The LIT will seek to sell your interest in the jointly owned assets to a third party or, possibly, to your spouse or partner.

Financial Counselling

You will be required to attend two counselling sessions with a Baker Tilly Ottawa Ltd. counsellor. The first session will occur within four to six weeks of your filing for bankruptcy. It will cover financial management skills, budgeting, spending and shopping habits, the warning signs of financial difficulty and obtaining and using credit. The second counselling session is generally held six to seven months after your bankruptcy. You will discuss the root causes of your bankruptcy and will develop a long-term financial rehabilitation plan. Matters addressed at the first session may also be discussed. Each session takes approximately thirty to sixty minutes.

Surplus Income

Until the date of your discharge, a portion of the net income you earn in excess of that necessary to maintain a reasonable standard of living (“Surplus Income”) must be paid to the LIT. The payment amount is determined by taking into account the cost of living standards issued by the Office of the Superintendent of Bankruptcy and your personal and family situation. We will explain how the Surplus Income amount is calculated. If you or your creditors object to the amount of Surplus Income to be paid, we must request mediation. Failure to pay the required Surplus Income payments to us, as LIT, may affect your discharge. Until discharged, you are required to inform us of any material changes in your personal or family financial situation. This may change the amount of the required Surplus Income payments.

Mediation

Mediation is a dispute resolution process in which a neutral third party, the mediator, assists the participants to reach a settlement. The mediator does not make the final decision. The parties involved make the decision together. Under the BIA, the LIT must arrange for mediation if the bankrupt and LIT cannot agree on the Surplus Income payments or a creditor requests that the Surplus Income payments be reviewed. Mediation is also required if the LIT has opposed the bankrupt’s discharge on the grounds that the bankrupt could have filed a viable proposal or did not comply with the Surplus Income rules. If the matters submitted to mediation are not resolved by the mediation, or the bankrupt does not comply with the conditions established by the mediation, the court will hear the matter.

Discharge from Bankruptcy

A discharge from bankruptcy terminates and extinguishes all of a bankrupt's debts except those debts listed under section 178(1) of the BIA. These debts include: court fines, penalties and restitution orders; support arrears; an amount owed due to fraud or theft while acting in a trust or fiduciary capacity; debt attributable to the obtaining of property or services by false pretenses or fraudulent misrepresentation; damages awarded by a civil court in relation to intentionally inflicted bodily harm, sexual assault or wrongful death resulting therefrom; and, certain student loans, as discussed below.

First and second time bankrupts (except income tax debtors, as discussed below), who do not have Surplus Income, will be discharged after nine and twenty-four months, respectively, if they have completed their duties to the LIT's satisfaction and their discharge has not been opposed by the LIT, a creditor or the Superintendent of Bankruptcy.

First and second time bankrupts (except income tax debtors, as discussed below), with a Surplus Income payment obligation, will be discharged after twenty-one and thirty-six months, respectively, if the required Surplus Income payments have been paid, they have completed their duties to the LIT's satisfaction, and their discharge has not been opposed by the LIT, a creditor or the Superintendent of Bankruptcy.

All other discharges are heard by the court. It makes an order setting the terms and conditions of the bankrupt's discharge. This includes the discharge of first and second time bankrupts who have not completed their duties to the LIT's satisfaction, or whose discharge has been opposed by the LIT, a creditor or the Superintendent of Bankruptcy. The court also hears and orders the terms of discharge of individuals who have been bankrupt three or more times and all income tax debtors. An income tax debtor is defined as a bankrupt who owes \$200,000 or more in personal income tax debt, and such debt comprises seventy-five percent or more of the bankrupt's total unsecured debt.

An opposition to the bankrupt's discharge may be made by the LIT, a creditor or creditors and the Superintendent of Bankruptcy. The opposition must refer to at least one of the facts listed under section 173(1) of the BIA. These facts include, but are not limited to: if a bankrupt fails to pay the required Surplus Income; fails to attend the mandatory counselling sessions; has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities; or, the bankrupt has on any previous occasion been bankrupt or made a proposal to creditors. If any of the section 173(1) facts are proven to the court it may not grant an absolute discharge. It must refuse a discharge, suspend the discharge for a time period it believes is proper, or it must impose a condition or conditions on the bankrupt. A conditional discharge typically requires the bankrupt to pay a sum to the LIT.

Student loans made under a federal or provincial student loan program will survive bankruptcy, and not be discharged, if the bankrupt, at the date of bankruptcy, had been registered as a full or part time student at college or university in the preceding seven years. Interest also continues to accrue on the student loan debts during the term of the bankruptcy. Of note, however, once five years have passed since the bankrupt was last

enrolled as a full or part time student at a college or university, the bankrupt may apply to the court to ask it to discharge the student loans. For the court to discharge the student loans on such an application, the bankrupt must satisfy the court that he or she has acted in good faith in relation to the student loans, will continue to experience financial difficulties and will be unable to pay the debt.

The various discharge orders the court may make are discussed below.

Types of Discharges

Absolute: An absolute discharge is effective immediately and relieves you from the debts incurred before you declared bankruptcy, except for those debts described in section 178 of the BIA.

Suspended: A suspended discharge is similar to an absolute discharge but will not be effective until a certain date in the future.

Conditional: The court may impose conditions that must be met before your discharge becomes absolute. For example, the court may require you to pay an amount to us, as LIT, for distribution to your creditors.

Adjourned: In the event that there is an objection to your discharge, the court will generally postpone the hearing to a later date.

Refused: In certain rare situations, the court may refuse a discharge entirely.

Credit Rating in a Bankruptcy

Credit ratings are established and maintained by the credit bureaus and credit grantors. Our understanding of current rating procedures is as follows.

Declaring bankruptcy will typically leave you with the lowest possible credit rating. In Ontario, this is referred to as an R9. As a first time bankrupt in Ontario, it will stay on your credit record for six to seven years following the date of discharge, depending on the credit bureau (six years for Equifax and seven years for TransUnion). A second, third or additional bankruptcy will remain on your credit rating for fourteen years following your discharge. Following your discharge, it is important to review your credit report to confirm that your credit report has been updated.

A bankruptcy record does not mean you are not eligible for credit post-bankruptcy. It is, however, a material fact that a potential lender will take into consideration when assessing your credit application.

Post-bankruptcy (i.e. you have been discharged), it may be possible to obtain some credit and begin rebuilding your credit history. A pre-paid credit card may be the answer. It is a credit card on which you have deposited perhaps \$500 to \$1,000 and you then draw on as you need funds. The credit card company will then report your use of the card to the credit bureaus. We will discuss this with you as well as other ways to improve your credit rating in your counselling sessions.

Debts Co-signed or Guaranteed

Bankruptcy does not terminate the liability of a co-signer or guarantor.

DEBT SOLUTIONS FOR ALL CANADIANS

College and University Students

It is increasingly common for students, and recent graduates of colleges and universities, to be struggling with an overwhelming debt load. We find that the debts are not only comprised of federal and provincial student loans but, as well, credit card debt and bank loans. Students have told us that their debts are attributable to not only their need to borrow to pay tuition fees but to also meet their monthly expenses and cost of living. Students being in debt may also be due to the banks now marketing their loan products to students who are no doubt seen as fertile territory in the banks' efforts to expand and grow their businesses and profitability.

If you are a student, and you are insolvent, non-student loan debt does not typically present any unique issues or matters of concern and can be dealt with in the normal course of a bankruptcy or proposal. Unfortunately, this cannot be said of student loans issued by federal and provincial student loan programs. In particular, if you go bankrupt, or file a proposal within seven years of completing or abandoning your studies, the student loan debt will not be discharged and will have to be paid. Not only will the principal amount of the debt have to be paid, the debt will continue to accrue interest during the term of the bankruptcy or proposal and, thereafter, until the entire debt is paid.

Of note, however, once five years have passed since the bankrupt/debtor was last enrolled as a full or part time student at a college or university, the bankrupt/debtor may apply to the court to ask it to discharge the student loans. For the court to discharge the student loans on such an application, the bankrupt must satisfy the court that he or she has acted in good faith in relation to the student loans, will continue to experience financial difficulties and will be unable to pay the debt.

Despite the above comments about federal and provincial student loans, do not despair if you are insolvent and owe money to a federal or provincial student loan program. Depending on many factors, including, the amount of your student loans, the total amount of your debt load, your monthly income and expenses and whether or not you are current in the student loan payments, bankruptcy or a proposal may be an appropriate solution to your debt problems. Ideally, bankruptcy or a proposal will facilitate the discharge of all of your debts, including your student loan obligations. Failing that, bankruptcy or a proposal filing may still be appropriate, and of value to you, as you will obtain time to re-organize your finances, without the threat of student loan and other creditor collection proceedings, such that you are able to pay the student loan debts once you are discharged from bankruptcy or have completed a proposal.

If you are not sure if you are insolvent, we suggest that you review the pages under "Debt Management". This section of the site will assist you in drafting a budget and calculating your personal net worth. It also provides you with an insolvency questionnaire which will assist you in further assessing your financial condition.

Disabled Debtors

We meet with many individuals who were more than able to meet their debt payment obligations but, upon becoming disabled, can no longer do so. They are insolvent and are being harassed night and day by collection agents. Typically, due to the limited income received from CPP Disability or ODSP, a consumer proposal is not appropriate and the individual will choose to resolve their debt crisis by making an assignment in bankruptcy.

As monthly CPP Disability and ODSP payments fall below the income level at which statutorily required Surplus Income payments must be made to the LIT as a condition of being discharged from bankruptcy, we typically look to be paid a fee for our services, over an extended period that the individual is comfortable with. Often, it is possible to recover our fee from income tax refunds and minimal payments to the LIT is required.

If you are not sure if you are insolvent, we suggest that you review the pages under “Debt Management”. This section of the site will assist you in drafting a budget and calculating your personal net worth. It also provides you with an insolvency questionnaire which will assist you in further assessing your financial condition.

New Canadians

If you are a recent immigrant to Canada, or you are living and working here and have a Social Insurance Number, you may, if you are insolvent, declare bankruptcy or file a consumer proposal.

We are often asked about travel outside Canada and the sending of funds to assist family members overseas. If you are in bankruptcy, or you have filed a consumer proposal, you are not restricted from traveling abroad or returning to your home country provided you keep the LIT informed of your whereabouts, particulars of your planned return to Canada and attend all meetings the LIT directs you to attend. You are also not prohibited from providing financial assistance to family members in your native country while you are in bankruptcy, or completing a proposal, provided you satisfy your payment obligations to the LIT.

We also refer you to the discussion under Non Resident Canadians concerning the disclosure to the LIT of your World income, assets and debts.

We are also asked if filing bankruptcy or a consumer proposal will cause difficulties in assisting family members in immigrating to Canada. It is our understanding while in bankruptcy, the bankrupt cannot sponsor someone to immigrate to Canada. However, given the complexity of immigration law and regulations, and that we are not experts in this area of law, we do caution you to speak to us about your particular situation if you wish to go into bankruptcy, or file a proposal, and to also assist family members in coming to Canada. We will make the necessary enquiries or refer you to experienced legal counsel.

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Non Resident Canadians

If you are insolvent, you are currently living in another country, and do not anticipate returning to Canada in the near future, you may go bankrupt, or file a proposal, as a means to extinguishing your debts, in certain circumstances.

Going into bankruptcy, or filing a proposal will prevent Canadian and non-Canadian creditors, from commencing or continuing collection proceedings against assets located in Canada and your Canadian sources of income. Upon being discharged from bankruptcy, or your full completion of a consumer proposal, your creditors’ right to collect and realize upon their debts in Canada will, with the exception of a certain limited number of claims described in the bankruptcy law, be permanently extinguished and discharged.

As a non-resident Canadian considering going in to bankruptcy, or filing a consumer proposal, you should be aware of the following:

1. You will be fully subject to all provisions of the BIA.
2. You must declare all of your debts, whether owed to creditors in Canada or elsewhere. Of note, a Canadian bankruptcy or proposal will not prevent your non-Canadian creditors from taking collection proceedings against assets, property and income sources located outside of Canada.
3. You must declare full particulars of all of your assets, wherever they are located in the World. Subject to the laws in the country or countries you may have assets located in which may place restrictions on the Canadian Trustee in Bankruptcy, it will be required to seize and sell your foreign property and assets for the benefit of the creditors in your Canadian bankruptcy.
4. You will be required to declare full particulars of your World income to the LIT for the entire term of the bankruptcy. As with bankrupts resident in Canada, the LIT will determine if you have earned Surplus Income and what, if any, payments are required to be made to it for the benefit of the Canadian bankruptcy creditors.

If you are not sure if you are insolvent, we suggest that you review the pages under “Debt Management”. This section of the site will assist you in drafting a budget and calculating your personal net worth. It also provides you with an insolvency questionnaire which will assist you in further assessing your financial condition.

Professionals and Self-Employed Individuals

Professionals and self-employed business individuals who are insolvent may go bankrupt, or file a proposal, as the means to resolve any debt problems. In addition to owing money to the usual creditors we see, such as credit card issuers, banks and finance companies, they are often indebted to employees, landlords and the taxation authorities for arrears in personal income tax and HST. The arrears in tax remittances are often compounded by out of date or a lack of proper accounting records.

The credit card and bank loan debts do not usually present any unique issues and can typically be addressed in the normal course of administering a bankruptcy or proposal. Taxation debts, however, especially if they are substantial in amount, or represent a significant percentage of the insolvent person's debt load, require the personal attention of an experienced LIT who will invest the time and effort to tailor a solution to the needs of the debtor and his or her creditors. The reasons for this are numerous and include: the substantial statutory collection powers available to the taxation authorities; the hands on approach they take to participating in the debt resolution process; their insistence that the debtor deal with their claim in a manner, and for a settlement amount, they consider equitable and in accordance with established policy; and, that as a condition of any settlement, the debtor clearly states his or her preparedness to fully comply with the tax authority's compliance requirements in the future.

It should be noted, that while taxation authorities can, under certain circumstances, waive or reduce penalties and interest that may be owed, they are only permitted to compromise or write off all or part of the principal portion of their claim if the tax debtor has filed for bankruptcy or filed a proposal with an LIT pursuant to the BIA.

We have substantial experience in addressing and successfully resolving the accounting, debt settlement and compliance issues that arise when a professional or self-employed individual is insolvent and indebted to Canada Revenue Agency ("CRA") or the Ontario Ministry of Finance ("the Ministry"). Whether bankruptcy, or a proposal, is the appropriate solution will turn on numerous factors including: the amount owed to CRA or the Ministry, the amount of your non tax debts, your present and expected future earnings, the nature and value of your assets, the status of CRA's or the Minister's collection proceedings and your compliance record in filing required returns.

If you are not sure if you are insolvent, we suggest that you review the pages under "Debt Management". This section of the site will assist you in drafting a budget and calculating your personal net worth. It also provides you with an insolvency questionnaire which will assist you in further assessing your financial condition.

Senior Citizens

If you are a senior citizen, and you are insolvent, you may go bankrupt or file a consumer proposal as the means to resolve your debt problems.

We have assisted many senior citizens in resolving their debt loads. Five to ten years ago seniors rarely consulted us about their finances; however, today, it is a growing segment of our business. The reasons for this are numerous and appear to include: fewer companies having pension plans; lower interest rates and, thus, lower income from investments; the increased prevalence of debt in our society and the banks' preparedness to offer credit to senior citizens; and, providing financial assistance to their children and grandchildren who, themselves, are in financial need due to illness and family breakdown.

We are often asked by seniors considering bankruptcy as to whether or not the LIT must seize their OAS or CPP payments. The LIT will not seize or garnish these payments. As with all bankrupts, however, the bankrupt must keep the LIT apprised of their monthly income and, if there is Surplus Income, a portion of it, typically fifty percent of the surplus, will have to be paid to the LIT as a condition of being discharged from bankruptcy.

We note that many senior citizens who have gone bankrupt experience an improvement in the quality of their day-to-day life: collection calls stop, money previously spent on debt payments is available for better housing, much needed drugs and medication and for enjoying your time with friends and family.

We can assist insolvent elderly debtors who can no longer deal with their affairs provided an individual, usually an adult child, has been legally named as power of attorney for the care and responsibility of their parent's finances. The Office of the Superintendent of Bankruptcy, which reviews and approves bankruptcies submitted to it by LIT's will permit the authorized individual to sign the required documents provided it is made aware of the power of attorney and receives a copy of the documents from the LIT.

If you are not sure if you are insolvent, we suggest that you review the pages under "Debt Management." This section of the site will assist you in drafting a budget and calculating your personal net worth. It also provides you with an insolvency questionnaire which will assist you in further assessing your financial condition.

Separated and Divorced Debtors

Separated and divorced individuals represent a substantial portion of our clientele. This trend is a reflection of the growing rate of marriage and common law relationship failure in Canada. Indeed, separation and divorce often contribute to insolvency and, as a consequence, filing for bankruptcy or the filing of a consumer proposal.

INSOLVENCY, DEBT RESTRUCTURING AND BANKRUPTCY

Common reasons cited as to why separation and divorce contribute to insolvency include: the reduction of income due to the time taken off work to resolve child support and custody issues; the reduction of income due to the time taken off work to address sickness and depression brought on by the separation; the need to borrow money to pay for legal fees, moving costs and new furnishings; having to pay the entire cost of monthly living expenses without the contribution of a second income; and having co-signed for the debts of an ex-spouse or partner who has gone bankrupt or otherwise does not have the resources to pay the debts.

Some of the matters you should be aware of if you are insolvent and considering separation or divorce include:

1. Filing for bankruptcy, or filing a consumer proposal, does not suspend or discharge your ongoing support payment obligations.
2. If support payments are in arrears at the time you file for bankruptcy, or you file a consumer proposal, the bankruptcy or consumer proposal filing will not prevent your ex-spouse, or partner, from continuing to take proceedings to collect the arrears.
3. If support payments are in arrears at the time you file for bankruptcy, or you file a proposal, the ex-spouse or partner may file a claim for the arrears in your bankruptcy or proposal. The arrears will rank as a preferred claim in the bankruptcy or proposal, thus giving the claim priority over ordinary unsecured creditors to recovery should there be funds distributed to the creditors. That said, however, to the extent the claim is not satisfied in its entirety from the funds distributed by the LIT to the creditors, it will survive the bankruptcy or proposal filing and an ex-spouse or partner may, if you do not make arrangements to pay the arrears, take legal proceedings to collect the debt.
4. Filing for bankruptcy, or filing a consumer proposal, will typically suspend an ex-spouse's ability to collect on a claim against you with respect to the settlement of his or her interest in your property. In addition, a property settlement claim will typically be discharged upon the bankrupt being discharged from bankruptcy or the completion of a consumer proposal.
5. Depending on whether or not you are legally married, the date you legally separated and which spouse was the legal owner of property at the time of separation, are important considerations in determining whether or not assets comprise property of the bankruptcy.

It is important that you address the legalities of your separation or divorce with legal counsel. If you, or your ex-spouse or partner, are insolvent it is also critical that you be fully advised as to the potential implications of bankruptcy or the filing of a proposal. We would be pleased to speak with you and your legal counsel.

CONTACTING A LICENSED INSOLVENCY TRUSTEE

To begin the process of filing either a Consumer proposal or a Bankruptcy, you must contact a Licensed Insolvency Trustee ("LIT"). Baker Tilly Ottawa Ltd. is a Licensed Insolvency Trustee. LIT's are appointed and regulated by the federal government. They are subject to comprehensive professional training and rigorous codes of ethics. An LIT is an intermediary between you and your creditors. The LIT will review your finances, provide you with advice and information about your options, and prepare the necessary paperwork to be filed with the Official Receiver (an employee of the office of the Superintendent of Bankruptcy, an agency of the federal government).

When a Consumer proposal is filed, the LIT is also responsible for the administration of the Consumer proposal, dealing with telephone calls and queries from creditors and providing them with various reports on the status of the Consumer proposal.

In the event a bankruptcy is filed, the LIT will oversee the sale of your non-exempt assets, if applicable, and the distribution of the proceeds to your creditors. The LIT is also responsible for dealing with telephone calls and queries from creditors and providing them with various reports on the status of the bankruptcy.

Meeting with an LIT

At the initial meeting, we will assess your financial situation, explain your options and advise you as to which is your best option. Once you decide how to proceed, we will prepare the required documents and have you review and sign them. We will then file them with the Official Receiver of the Office of the Superintendent of Bankruptcy. Once the forms have been received and accepted by the Official Receiver, you will either be in a consumer proposal or be bankrupt.

To prepare for your initial meeting, you should gather together as much of your financial information as possible including: credit cards, birth certificate, recent credit card/debt statements, loan documents, car and ownership details, asset statements, mortgage statement, mortgage deed, a current pay stub and last year's income tax return and assessment notice.

BAKER TILLY OTTAWA LTD., LICENSED INSOLVENCY TRUSTEE

Many Canadians will face a financial crisis at some point in their lives. Baker Tilly Ottawa Ltd. is sensitive to the worries, stress and uncertainties that accompany financial distress. We have a team of professionals, working full-time in this area, to ensure that individuals in financial difficulty will be fully advised of their options and the professional services that are available to them. We have found, that in a large proportion of cases, bankruptcy can be avoided if the underlying cause of financial distress is recognized and addressed in a timely manner with the aid and advice of our counsellors.

If you think that you may be insolvent, please contact us for a free initial consultation. You may call us at 1-613-820-2200, 1-866-720-3330 (in Eastern Ontario), by email to ottinsolvency@bakertilly.ca or by completing the online consultation page of this website.

Please Contact:

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