

## Innovation, Science and Economic Development Canada

[Home](#) [Bankruptcy](#) [Office of the Superintendent of Bankruptcy Canada](#)

# Office of the Superintendent of Bankruptcy Canada

## Bill C-12: Clause by Clause Analysis

[1](#) [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [10](#) [11](#) [Next](#)

Developed by Industry Canada's [Corporate and Insolvency Law Policy Directorate](#)

An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada, 2005

### Table of Contents

Amendments to the <i>Bankruptcy and Insolvency Act</i> (BIA)	Clauses of Bill C-12	Sections
<a href="#">Definitions</a>	1	s.2
<a href="#">Related Parties</a>	2	s.4(5)

<a href="#"><u>Compilation of Information</u></a>	3	s.11.1(3)
<a href="#"><u>Application</u></a>	4	s.13.3(1.1)
<a href="#"><u>Trustee May Act for Secured Creditor</u></a>	5	s.13.4(1)
<a href="#"><u>Decision Affecting a Trustee's Licence</u></a>	6	s.14.01
<a href="#"><u>Summons</u></a>	7	s.14.02(1.1) a
<a href="#"><u>Disciplinary Hearings</u></a>	8	s.14.03(2)(b)
<a href="#"><u>Trustees' Liability</u></a>	9	s.14.06
<a href="#"><u>Asset Sales</u></a>	10	s.30(5) and (6)
<a href="#"><u>Duty of Former Trustee</u></a>	11	s.36
<a href="#"><u>Inquiry or Investigation</u></a>	12	s.41(8.1)
<a href="#"><u>Place of Appointment of an Interim Receiver</u></a>	13	s.46(3)
<a href="#"><u>Interim Receivers</u></a>	14	s.47
<a href="#"><u>Interim Receivers</u></a>	15	s.47.1
<a href="#"><u>Proposals</u></a>	16	s.50
<a href="#"><u>Notice of Intention</u></a>	17	s.50.4
<a href="#"><u>Interim Financing</u></a>	18	s.50.6
<a href="#"><u>Voting Rights</u></a>	19	s.54(2)
<a href="#"><u>Voting by Equity Claimants</u></a>	20	s.54.1
<a href="#"><u>Constating Instrument</u></a>	21	s.59(4)
<a href="#"><u>Court Approval of Proposal</u></a>	22	s.60(5)
<a href="#"><u>Release from section 178 Debts</u></a>	>23	s.62(2.1)
<a href="#"><u>Directors' Indemnity</u></a>	24	s.64.1
<a href="#"><u>Third Party Costs</u></a>	24	s.64.2
<a href="#"><u>Definition of "eligible financial contract"</u></a>	25	s.65.1(8)
<a href="#"><u>Disclaimer of Agreements</u></a>	26	s.65.11
<a href="#"><u>Sale of Assets</u></a>	27	s.65.13
<a href="#"><u>Application to Proposals</u></a>	28	s.66
<a href="#"><u>Release from section 178 Debts</u></a>	29	s.66.28(2.1)

<a href="#"><u>Deemed Annulment of Proposals</u></a>	30	s.66.31
<a href="#"><u>Eligible Financial Contracts</u></a>	>31	s.66.34(7), (8)
<a href="#"><u>RRSP Exemption and Bankrupt's Income Tax Return</u></a>	32	s.67(1)(b) to (
<a href="#"><u>Surplus Income</u></a>	33	s.68
<a href="#"><u>Stay of Proceedings</u></a>	34	s.69(1)
<a href="#"><u>Stay of Proceedings</u></a>	35	s.69.1(1)
<a href="#"><u>Stay of Proceedings</u></a>	36	s.69.3(1)
<a href="#"><u>Stays of Regulatory Bodies</u></a>	37	s.69.6
<a href="#"><u>Unpaid Wages in Bankruptcy</u></a>	38	s.81.3
<a href="#"><u>Unpaid Wages in Receiverships</u></a>	38	s.81.4
<a href="#"><u>Unpaid Amounts in Prescribed Pension Plans in Receiverships</u></a>	39	s.81.6
<a href="#"><u>Assignment of Agreements</u></a>	40	s.84.1
<a href="#"><u>Ipsso Facto Clauses</u></a>	40	s.84.2
<a href="#"><u>Title</u></a>	41	s.91
<a href="#"><u>Preferences</u></a>	42	s.95(1) to (2.1
<a href="#"><u>Transfers at Undervalue</u></a>	43	s.96
<a href="#"><u>Application of Anti-Abuse Mechanisms to Proposals</u></a>	44	s.101.1
<a href="#"><u>Vote of Creditors not Dealing at Arm's Length</u></a>	45	s.109(6)
<a href="#"><u>Voting</u></a>	46	s.115.1
<a href="#"><u>Claim of Present or Former Spouse or Common-Law Partner</u></a>	47	s.137(2)
<a href="#"><u>Postponement of Wage Claims of Relatives</u></a>	48	s.138
<a href="#"><u>Postponement of Equity Claims</u></a>	49	s.140.1
<a href="#"><u>Application of Provincial Law to Lessors' Rights</u></a>	50	s.146
<a href="#"><u>Federal Claims</u></a>	51	s.149
<a href="#"><u>Evidence Available to Courts at Discharge Hearing</u></a>	52	s.172(2)
<a href="#"><u>Meaning of "Personal Income Tax Debt"</u></a>	53	s.172.1
<a href="#"><u>Debts not Released by Order of Discharge</u></a>	54	s.178(1)(e)
<a href="#"><u>Review by Parliament</u></a>	55	s.216
<a href="#"><u>Application for Consolidation Order</u></a>	56	s.219(1)

<a href="#"><u>Application of Part X</u></a>	57	s.242
<a href="#"><u>Secured Creditors and Receivers</u></a>	58	s.243
<a href="#"><u>Forms of Cooperation</u></a>	59	s.275(3)
<a href="#"><u>Public Policy Exception</u></a>	60	s.284(2)

<b>Amendments to the <i>Companies' Creditors Arrangement Act</i> (CCAA)</b>	<b>Clauses of Bill C-12</b>	<b>Sections</b>
<a href="#"><u>Definitions</u></a>	61	s.2(1)
<a href="#"><u>Stay of Proceedings</u></a>	62	s.11.02(3)
<a href="#"><u>Eligible Financial Contracts</u></a>	63	s.11.05
<a href="#"><u>Member of the Canadian Payments Association</u></a>	64	s.11.06
<a href="#"><u>Stays of Regulatory Bodies</u></a>	65	s.11.1
<a href="#"><u>Interim Financing</u></a>	65	s.11.2
<a href="#"><u>Assignment of Agreements</u></a>	65	s.11.3
<a href="#"><u>Critical Supplier</u></a>	65	s.11.4
<a href="#"><u>Directors' Indemnification Charge</u></a>	66	s.11.51
<a href="#"><u>Third Party Costs</u></a>	66	s.11.52
<a href="#"><u>Monitors' Liability</u></a>	67	s.11.8
<a href="#"><u>Deadlines</u></a>	68	s.12
<a href="#"><u>Claims</u></a>	69	s.19
<a href="#"><u>Partial Claims</u></a>	70	s.20(3)
<a href="#"><u>Voting by Equity Claimants</u></a>	71	s.22.1
<a href="#"><u>Voting by Related Parties</u></a>	71	s.22
<a href="#"><u>Duties and Functions of Monitors</u></a>	72	s.23(1)
<a href="#"><u>Compilation of Information</u></a>	73	s.26(3)
<a href="#"><u>Rights during Investigations</u></a>	74	s.29(2)
<a href="#"><u>Subpoena or Summons</u></a>	75	s.30(3)
<a href="#"><u>Disclaimer of Agreements</u></a>	76	s.32
<a href="#"><u>Ipsso Facto Clauses</u></a>	77	s.34

<a href="#"><u>BIA Provisions</u></a>	78	s.36.1
<a href="#"><u>Sale of Assets</u></a>	78	s.36
<a href="#"><u>Crown Securities</u></a>	79	s.39(1)
<a href="#"><u>Forms of Cooperation</u></a>	80	s.52(3)
<a href="#"><u>Public Policy Exception</u></a>	81	s.61(2)
<a href="#"><u>Regulation Making Authority</u></a>	82	s.62

<b>Amendments to the <i>Bankruptcy and Insolvency Act</i> (BIA)</b>	<b>Clauses of Bill C-12</b>	<b>Sections</b>
<a href="#"><u>Investments in Government Securities</u></a>	95	s.25(1.4)
<a href="#"><u>Directions to Interim Receiver</u></a>	96	s.47(2)
<a href="#"><u>Directions to Interim Receiver</u></a>	97	s.47.1(2)
<a href="#"><u>Vote on Proposals</u></a>	98	s.54
<a href="#"><u>Payment of Equity Claims in a Proposal</u></a>	99	s.60(1.7)
<a href="#"><u>Mediation Request</u></a>	100	s.170.1
<a href="#"><u>Directions to Pay</u></a>	101	s.172(2.1)
<a href="#"><u>Court May Grant Certificates</u></a>	102	s.175
<a href="#"><u>Enforcing a Security</u></a>	103	s.244(4)
<a href="#"><u>Distribution of Kind</u></a>	104	s.262(3)

<b>Amendments to the <i>Companies' Creditors Arrangement Act</i> (CCAA)</b>	<b>Clauses of Bill C-12</b>	<b>Sections</b>
<a href="#"><u>Definitions</u></a>	105	s.2
<a href="#"><u>Approval Restrictions</u></a>	106	s.6

<b>Amendments to chapter 47 on the <i>Statutes of Canada, 2005</i></b>	<b>Clauses of Bill C-12</b>	<b>Sections</b>
<a href="#"><u>Transitional Clause</u></a>	107	s.132 to 134
<a href="#"><u>Consequential Amendments to Other Acts</u></a>	108	s.137 to 139
<a href="#"><u>Coming into Force</u></a>	109	s.141

<a href="#"><u>BIA and CCAA Transitional Provisions</u></a>	110 and 111	
<a href="#"><u>Coordinating Amendments</u></a>	112	
<a href="#"><u>Coming into Force</u></a>	113	



Date modified: 2015-03-24

# Bill Clause No. 58

## Section No. BIA s.243

### Topic: Secured Creditors and Receivers

#### Proposed Wording

**243.(1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:**

**(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;**

**(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or**

**(c) take any other action that the court considers advisable.**

**(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless**

**(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or**

**(b) the court considers it appropriate to appoint a receiver before then.**

**(2) Subject to subsections (3) and (4), in this Part, "receiver" means a person who**

**(a) is appointed under subsection (1); or**

**(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under**

**(i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or**

**(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.**

**(3) For the purposes of subsection 248(2), the definition "receiver" in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).**

**(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).**

**(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of**

**the debtor.**

**(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.**

**(7) In subsection (6), "disbursements" does not include payments made in the operation of a business of the insolvent person or bankrupt.**

## **Rationale**

Section 243 sets out the rules related to the appointment of a receiver. Chapter 47 created the ability to appoint a receiver under the Act. This differs from current practice, in which receivers are appointed under provincial law. The new BIA receiver will be entitled to act across the country, increasing efficiency by removing the need to have a receiver appointed in each jurisdiction in which the debtor's assets are located. Creditors will still be entitled to have a provincially appointed receiver act on their behalf under the Act.

Subsection (1) is amended to provide grounds for the court to consider when appointing a receiver. Chapter 47 was silent, leaving it open to judicial discretion, which could lead to different standards depending on the province or territory. The subsection is further amended by providing specific powers that may be exercised by the court-appointed receiver.

Subsection (1.1) mandates that a notice of an intention to enforce security (a section 244 notice) must be provided before a receiver may be appointed. The intention of the section 244 notice is to provide the debtor with an opportunity to repay the liability that underlies the security being enforced. The waiting period is not necessary where the debtor consents or the court determines that it is appropriate to appoint a receiver.

Subsection (2) is amended to clarify that a receiver under the BIA includes one appointed under this Act or another Act. Chapter 47 inadvertently limited receivers to those appointed under the Act.

Subsection (3) is amended to correct cross-referencing.

Subsection (5) is added to clarify that an application for the appointment of a receiver must be made in the locality of the debtor. The existing legislation is silent on where the application may be made. Accordingly, the application is often brought in a location that is more convenient for the creditor who is making the application, which may not have any connection with the place in which the debtor's business is located or where other creditors are located. This can have the effect of preventing smaller creditors from participating in the process because of the prohibitive cost of hiring legal counsel in a distant jurisdiction.

Subsections (6) and (7) provide a court the ability to grant to receivers a priority charge over the assets of



the debtor similar to the charge available to interim receivers pursuant to section 47.2.

## Present Law

### As enacted by Chapter 47, Clause 115(1):

**243.**(1) On the application of a secured creditor, the court may appoint a person to act as a receiver to take possession or control of all or substantially all of the inventory, the accounts receivable or the other property of an insolvent person or a bankrupt that was acquired for, or is used in relation to, a business carried on by the insolvent person or bankrupt.

(2) Subject to subsections (3) and (4), in this Part, "receiver" means a person who has been appointed to take, or has taken, possession or control, under

(a) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or

(b) a court order made under subsection (1) that provides for or authorizes the appointment of a receiver or receiver-manager, of all or substantially all of

(c) the inventory,

(d) the accounts receivable, or

(e) the other property of an insolvent person or a bankrupt that was acquired for, or is used in relation to, a business carried on by the insolvent person or bankrupt.

### *Bankruptcy and Insolvency Act:*

(3) For the purposes of subsection 248(2), the definition "receiver" in subsection (2) shall be read without reference to paragraph (b) thereof.

### As enacted by Chapter 47, Clause 115(2):

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(a) or (b).

---

## Bill Clause No. 59

### Section No. BIA s.275(3)

### Topic: Forms of Cooperation

## Proposed Wording

**275.**(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

trustee and one or more creditors, in any amount and manner that the court considers appropriate.

---

## **Bill Clause No. 102**

### **Section No. BIA s.175**

### **Topic: Court May Grant Certificates**

#### **Proposed Wording**

Section 106 of the Act is repealed.

#### **Rationale**

Section 175 was repealed by Chapter 47 because it was believed to be an outdated provision. Many insolvency professionals, however, expressed concern that for some bankrupt individuals the certificate of good conduct provided moral support in a difficult time. It is recognized that this represents a sufficient reason to maintain the section.

#### **Present Law**

**As enacted by Chapter 47, Clause 106:**

Section 175 of the Act is repealed.

---

## **Bill Clause No. 103**

### **Section No. BIA s.244(4)**

### **Topic: Enforcing a Security**

#### **Proposed Wording**

Section 116 of the Act is repealed.

#### **Rationale**

Clause 116 of Chapter 47 was redundant. A section 244 notice is only required in respect of insolvent persons. The definition of insolvent person explicitly excludes bankrupts. As such, there is no need to include a "bankrupt" in subsection (4).

#### **Present Law**

**As enacted by Chapter 47, Clause 116:**

**244.(4)** This section does not apply with respect to the inventory, accounts receivable or other property of an insolvent person or of a bankrupt if there is a receiver.

---

**Bill Clause No. 104**  
**Section No. BIA s.262(3)**  
**Topic: Distribution of Kind**

**Proposed Wording**

Section 120(2) of the Act is repealed.

**Rationale**

The amendment in Chapter 47 was part of a version of the bill that was rejected during the drafting process. This subsection was inadvertently left in the final bill when all other sections related to it were removed.

**Present Law**

**As enacted by Chapter 47, Clause 120(2):**

**262.(3)(a)** to creditors in the order set out in subsection 136(1);

---

**Bill Clause No. 105**  
**Section No. CCAA s.2**  
**Topic: Definitions**

**Proposed Wording**

"equity claim" means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,