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Archived — Bill C-55: clause by clause analysis

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An Act to establish the *Wage Earner Protection Program Act*, to amend the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* and to make consequential amendments to other Acts

Wage Earner Protection Program Act (WEPP)

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WEPP: Title and Definition

Clause by Clause Briefing Book

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts

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- [Bill Clause No. 1 - WEPP Section 1](#)
 - [Bill Clause No. 1 - WEPP Section 2\(1\)](#)
 - [Bill Clause No. 1 - WEPP Section 2\(2\) and 2\(3\)](#)
 - [Bill Clause No. 1 - WEPP Section 3](#)
 - [Bill Clause No. 1 - WEPP Section 4](#)

[Bill Clause No. 1](#)

Section No. 1

Topic: Short Title

Proposed Wording

1. This Act may be cited as the *Wage Earner Protection Program Act*.

Rationale

40 (1) Any property of a bankrupt that is listed in the statement of affairs referred to in paragraph 158(d) or otherwise disclosed to the trustee before the bankrupt's discharge and that is found incapable of realization must be returned to the bankrupt before the trustee's application for discharge, but if inspectors have been appointed, the trustee may do so only with their permission.

Rationale

The amendment of subsection (1) will provide a fair mechanism for the treatment of the bankrupt's unrealizable assets and will enhance the transparency of the administration of those assets.

Present Law

40 (1) With the permission of the inspectors, any property of a bankrupt found incapable of realization shall be returned to the bankrupt prior to the trustee's application for discharge.

Senate Recommendation

None.

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BIA: Interim receivers

Clause by Clause Briefing Book

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts

- [Bill Clause No. 30 - BIA Section 47\(1\) and \(2\)](#)
- [Bill Clause No. 31 - BIA Section 47.1\(1\), \(1.1\) and \(2\)\(d\)](#)
- [Bill Clause No. 32 - BIA Section 47.2\(3\)\(a\)](#)
- [Bill Clause No. 33 - BIA Section 49\(2\)](#)

Bill Clause No. 30

Section No. 47(1) and (2)

Topic: Interim receivers

Proposed Wording

47 (1) If the court is satisfied that a notice is about to be sent or has been sent under subsection 244(1), it may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor's property that is subject to the security to which the notice relates until the earliest of

(a) the appointment of a receiver within the meaning of subsection 243(2) in respect of any of the debtor's property,

(b) the filing of or making of an assignment by or in respect of the debtor,

(c) the granting of a bankruptcy order against the debtor,

(d) the filing of or making of a proposal by or in respect of the debtor,

(e) the filing of a notice of intention by the debtor, and

(f) the expiry of 60 days after the appointment, or any period specified by the court.

(2) The court may direct an interim receiver appointed under subsection (1) to do any or all of the following:

(a) take possession of all or part of the debtor's property mentioned in the appointment; and

(b) exercise such control over that property, and over the debtor's business, as the court considers advisable.

Rationale

Interim receivers were created to protect the interests of secured creditors during the brief period between the time when a secured creditor delivers a notice that they intend to exercise their rights under a security agreement and the time when they can exercise that right (usually 10 days). This is the section 244 notice. After that period, it was intended that a receiver would be appointed. That original intention was defeated, however, as the reform to create interim receivers did not specifically limit their existence to a set period. As such, in some jurisdictions, courts have granted interim receivers wide ranging powers for interminable periods. In other jurisdictions, however, the courts have recognized the potential abuse in appointing interim receivers for extended periods with extensive powers. The difficulty that arises is that interim receivers were not made subject to the provisions in the Act regulating the conduct of receivers.

The intention of the reforms is to limit the period of an interim receiver appointment and to limit the powers that may be granted to the interim receiver.

The amendment to subsection (1) sets forth specific limits to the appointment period. The triggers that will end an appointment are the appointment of a true receiver, an event that leads to a bankruptcy, and hence the appointment of a trustee in bankruptcy who will be charged with protecting the estate, or 60 days after the appointment to force the secured creditor to either appoint a receiver or explain to the court why a new interim receiver period should be commenced. The reason 60 days was chosen rather than the 10 days of the section 244 notice was due to concerns about rules in Quebec that

may require up to 60 days notice before security may be exercised.

Subsection (2)(c) was repealed to limit the powers that the Court may grant to an interim receiver.

Present Law

47 (1) Where the court is satisfied that a notice is about to be sent or has been sent under subsection 244(1), the court may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor's property that is subject to the security to which the notice relates, for such term as the court may determine.

(2) The court may direct an interim receiver appointed under subsection (1) to do any or all of the following:

- (a) take possession of all or part of the debtor's property mentioned in the appointment;
- (b) exercise such control over that property, and over the debtor's business, as the court considers advisable; and
- (c) take such other action as the court considers advisable.

Senate Recommendation

The reforms accomplish the object of the Senate recommendation, which was stated to be:

The *Bankruptcy and Insolvency Act* be amended to clarify the role of the interim receiver, and the duration and meaning of the term "interim".

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Bill Clause No. 31

Section No. 47.1(1), (1.1) and (2)(d)

Topic: Interim receiver

Proposed Wording

47.1 (1) If a notice of intention has been filed under section 50.4 or a proposal has been filed under subsection 62(1), the court may at any time after the filing, subject to subsection (3), appoint as interim receiver of all or any part of the debtor's property,

(1.1) The appointment expires on the earliest of

- (a) the appointment of a receiver within the meaning of subsection 243(2) in respect of any of the debtor's property,
- (b) the filing of or making of an assignment by or in respect of the debtor,
- (c) the event that causes an assignment by the debtor to be deemed,
- (d) the granting of a bankruptcy order against the debtor, and

(1.1) At any time after ten years after a bankrupt who has a debt referred to in paragraph (1)(g) ceases to be a full- or part-time student, as the case may be, under the applicable Act or enactment, the court may, on application, order that subsection (1) does not apply to the debt if the court is satisfied that

(a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the loan; and

(b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the liabilities under the loan.

Senate Recommendation

The Senate recommended that the BIA be amended to require that fraud be proven in order for debt to survive discharge from bankruptcy and that the provisions apply to both property and services fraudulently obtained. The first part of the recommendation was not followed because it would put the onus on the legitimate creditor to expend further resources to collect the debt. The current regime is sufficient because it allows the debtor to seek clarification from the court that the debt is discharged without requiring a creditor to pay more. The second part was followed as it is a good clarification of the policy intention.

The Senate recommended that the BIA be amended to reduce, to five years following the conclusion of full- or part-time studies, the waiting period for the discharge of student debt. Changes to the Canada Student Loan Program, however, were made after the Senate Report. Under the new rules, students in financial difficulty can benefit from various relief measures for seven years.

The Senate recommended that the Act allow the Court the discretion to confirm the discharge of all or a portion of student loan debt in a period of time shorter than five years where the debtor can establish that the burden of maintaining the liability for some or all of the student debt creates undue hardship. Changes to the Canada Student Loan Program, however, were made following the Senate Report. Under the new rules, students in financial difficulties are eligible for interest relief for 5 years, which allows them to make no payments (principal or interest) for five years.

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BIA: Appointment of receivers

Clause by Clause Briefing Book

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the

Companies' Creditors Arrangement Act and to make consequential amendments to other Acts

- [Bill Clause No. 115 - BIA Section 243](#)
- [Bill Clause No. 116 - BIA Section 244\(4\)](#)
- [Bill Clause No. 117 - BIA Section 253](#)
- [Bill Clause No. 118 - BIA Section 256\(1\)\(d\)](#)
- [Bill Clause No. 119 - BIA Section 261](#)
- [Bill Clause No. 120 - BIA Section 262\(2\) and \(3\)](#)
- [Bill Clause No. 121 - BIA Section 263\(3\)](#)

Bill Clause No. 115

Section No. 243

Topic: Secured Creditors and Receivers

Proposed Wording

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.

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

Rationale

The proposed reform will allow the bankruptcy court to appoint a receiver with the power to act nationally. Subsection (1) refers to the "court," which is defined in a proposed amendment to section 2 of the Act. In the proposed section 2, the amendment broadens the definition of "court" to include a judge exercising jurisdiction under the Bankruptcy and Insolvency Act. The expanded definition will provide the court with the authority to appoint a receiver who has the power to act nationally, thereby eliminating the need to apply to the courts in multiple jurisdictions for the appointment of a receiver.

Subsection (2) is amended to modernize the language.

Subsection (4) is added to specify that a receiver appointed either by the court or under the terms of a security agreement to take control of all or substantially all of the inventory, accounts receivable, or other property must be a licenced trustee. It is important to note, however, that this requirement that the receiver be a licenced trustee does not apply when a secured creditor is acting as its own receiver.

Present Law

243. (1) In paragraphs (2)(b) and 250(2)(a) and (b), "court" means

(a) any court other than a court as defined in section 2; and

(b) a court as defined in section 2 when not exercising jurisdiction in bankruptcy.

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

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

(b) an order of a court made under any law 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.

Senate Recommendation

None.

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