



Labour



Five-Year Statutory Review of the *Wage Earner Protection Program Act* Helping Canadian Workers during Bankruptcy and Receivership

Report to Parliament

**Five-Year Statutory Review of
the *Wage Earner Protection Program Act*
Helping Canadian Workers during
Bankruptcy and Receivership**

Report to Parliament

Tabled by the Honourable Dr. K. Kellie Leitch, P.C., O.Ont., M.P.
Minister of Labour and Minister of Status of Women

Spring 2015

Five-Year Statutory Review of the *Wage Earner Protection Program Act*
Helping Canadian Workers during Bankruptcy and Receivership

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PDF

Cat. No.: Em8-11/2015E-PDF

ISBN/ISSN: 978-0-660-02313-7

ESDC

Cat. No. : LT-280-06-15

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Foreword

Message from the Minister of Labour



It is always unfortunate when businesses declare bankruptcy, leaving Canadian workers and their families facing uncertain financial circumstances. Protecting the rights of Canadian workers is especially important in these difficult times.

This is why the Government of Canada established the Wage Earner Protection Program (WEPP) in 2008.

WEPP ensures that workers are provided with wages and compensation owed to them when their employer experiences bankruptcy or receivership.

The Five-Year Statutory Review Report of the *Wage Earner Protection Program Act* demonstrates the program's success in helping workers when they need it most – between bankruptcy and finding a new job. This includes the expanded coverage over the years to a broader range of layoff situations and compensation, such as severance and termination pay.

Our efforts are making a difference. Since 2008, WEPP has assisted over 71,000 Canadians by recovering almost all of the wages, vacation pay, and disbursements owed to them. Processing times have also improved steadily so that earned wages are paid within six weeks. In fact, in 2013-14, almost 50 per cent of payments were made within two weeks and 87 per cent within 28 days.

Through measures such as cutting income tax rates and supporting entrepreneurs and innovation, our Government is taking action so businesses can thrive, innovate, and expand their markets. We are also committed to safeguarding the rights of Canadian workers and supporting them through the transition when a business declares bankruptcy.

Our Government will continue to ensure that the Wage Earner Protection Program responds to the needs of displaced workers. It is our duty to keep Canadian workplaces fair, safe and productive.

A handwritten signature in blue ink, appearing to be 'K. Leitch', written in a cursive style.

The Honourable Dr. K. Kellie Leitch,
P.C., O.Ont., M.P.
Minister of Labour and
Minister of Status of Women

Executive Summary

In 2008, the Wage Earner Protection Program (WEPP) came into effect to help protect the financial security of Canadian workers who lose their job and are owed wages, disbursements, vacation pay, termination pay and severance pay when their employer declares bankruptcy or becomes subject to a receivership. The Program was made possible through the *Wage Earner Protection Program Act* (WEPPA), an important piece of insolvency legislation in Canada which complements the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*.

The WEPPA requires the completion of a one-time, five-year review of the Act and the administration and operation of the Wage Earner Protection Program. The review is presented in four parts:

Part one covers the history of the legislation, including amendments made to the WEPPA since it entered into force to better protect workers affected by insolvencies. This section also explains how the WEPP functions, and the roles and responsibilities of the Labour Program and its partners in delivering the Program.

Part two summarizes an internal evaluation of the performance and relevance of the WEPP over its first three years in operation, and an analysis of service delivery data since the Program began in July 2008 and through its five full fiscal years of existence (2009-10 to 2013-14).

Part three explores aspects of the legislation and the Program which stakeholders have suggested could be amended to better protect vulnerable workers affected by insolvency. The activities considered by the Labour Program, as listed in part four, reflect how some of these stakeholder issues may be addressed.

Part four also presents the conclusion of the five-year review of the *Wage Earner Protection Program Act* and the Wage Earner Protection Program; namely, that the WEPP is well administered and operated, and that the Act is effectively meeting its authorized mandate. The review also concludes that there is an ongoing need for the type of benefits offered through the Program.

Overall, the review of the WEPPA demonstrates that putting workers first in insolvency proceedings and helping them get paid for their owed wages is an ongoing commitment for the Government of Canada.

Part one:

The *Wage Earner Protection Program Act*

The *Wage Earner Protection Program Act* (WEPPA) and its Regulations protect workers in Canada who lose their job and are owed earned wages when their employer goes bankrupt or becomes subject to a receivership under the *Bankruptcy and Insolvency Act*. The WEPPA came into effect on July 7, 2008.

The WEPPA created the Wage Earner Protection Program (WEPP), which advances to workers payment for “eligible wages”¹ before insolvency proceedings are completed. Once a worker is paid, the Government assumes the worker’s place as a creditor in the bankruptcy, as well as the risk of recovering the amounts paid.

Before the Program began, unpaid wage claims of workers ranked after secured creditors, which meant that many employees had to wait one to three years to get a small portion of earned wages. On average, this amount was 13 cents for every dollar earned, and only five per cent of workers were successful in recovering this money.

The maximum WEPP payment amount is set at four times the maximum weekly Employment Insurance earnings, and it is indexed yearly for inflation. The introduction of the WEPP has increased the amount of unpaid wages that a worker may recover in an insolvency, with the average payment of 64 cents for every dollar earned.

WEPPA Timeline

- 2005** Bill C-55 tabled to establish the *Wage Earner Protection Program Act* as part of a number of reforms to Canada’s insolvency legislation.
- 2007** Bill C-12 amended the Act before it entered into force to address technical issues.
- 2008** WEPPA entered into force
- 2009** The definition of “eligible wages” under WEPPA was expanded to include termination pay and severance pay.
- 2011** WEPPA was expanded to include workers who lose their jobs after their employer’s attempt to restructure takes longer than six months and subsequently fails.

The introduction of the WEPP has also significantly reduced the time it takes for workers to receive a payment for owed earned wages. Compared to the two to three year wait before the Program began, in 2013-14, 95 per cent of WEPP payments were made within the 42-day standard, 85 per cent within 28 days, 57 per cent within 21 days, and 47 per cent within 14 days.

¹ The term “eligible wages” is defined in the WEPPA and, at the inception of the Program, it covered any wages, vacation pay, and disbursements owed to an individual by their insolvent employer.

Expanding the Protection of Workers

The WEPPA is about protecting the financial security of workers who are owed earned wages after their employer has filed for bankruptcy or is subject to a receivership. Over time, the Government has taken steps to improve the legislation in order to expand the protection of wage earners and increase the amount of money workers can receive through the Program.²

Budget 2009 expanded the definition of eligible wages to include termination pay and severance pay owed to workers whose jobs ended in the period beginning six months before the date of bankruptcy or receivership. The timeframe for trustees and receivers to provide information to the Minister and potential WEPP applicants was also increased from 35 to 45 days, or longer where justified.

Budget 2011 further expanded the WEPP to include workers who lose their jobs when their employer's attempt at restructuring takes longer than six months and is subsequently unsuccessful.³ This provided an additional \$4.5 million annually to the Program to support workers affected by insolvency.

The 2012 Economic Action Plan increased the WEPP's annual operating budget by \$1.4 million to ensure applicants received payments more quickly. As a result, more than 95 per cent of applications are now processed within the 42-day service standard.

² Appendix B details all of the amendments made to the WEPPA after the legislation came into force.

³ This amendment became effective on December 15, 2011 and was retroactive to bankruptcies and assignments into receiverships that occurred after June 5, 2011.

Increased WEPP Payments

Including termination pay and severance pay as eligible wages significantly increased the WEPP payment to workers affected by insolvent employers. Prior to the amendment, the average WEPP payment was \$1,192. Following the amendment, the average payment was almost twice that amount at \$2,318.

The Program

The Wage Earner Protection Program delivers several services.⁴ First and foremost, it provides timely payments to workers for unpaid eligible wages. Second, in certain circumstances, it pays trustees and receivers for their role in performing their WEPP related duties. Third, it offers a review process for applicants who are dissatisfied with their eligibility decision, as well as a process for those who wish to appeal the results of a review.

Eligibility

WEPP applies to all workers in Canada⁵ who meet these four criteria: their employment has ended; their former employer is bankrupt or subject to a receivership; they are owed eligible wages; and these wages were earned within six months preceding the bankruptcy or receivership.⁶

Directors, officers, certain managers, and individuals who have a controlling interest in the business of the former employer or who are not dealing at arm's length with any of these above-noted persons are not eligible for the WEPP.

⁴ Refer to Appendix D for the main WEPP service delivery processes.

⁵ With a social insurance number.

⁶ Unpaid eligible wages include those earned during the six months preceding a restructuring event.

Ghesquière: WEPP Service Delivery Excellence

Ghesquière Plant Farms Ltd. declared bankruptcy on November 30, 2010. Among the employees who had earned wages were 105 temporary foreign workers from Trinidad and Tobago, Jamaica, Barbados, and Mexico.

Foreign workers in Canada are eligible to apply to the WEPP if they have a valid Canadian 900-series social insurance number. This was the case for the foreign workers employed by Ghesquière.

The Labour Program worked closely with government liaison offices associated with the Ministries of Labour in Trinidad and Tobago, Jamaica, Barbados, and Mexico to ensure that every involved worker was informed about the WEPP. As a result, 102 of 105 received a WEPP payment.

Payment Formula

The maximum WEPP payment is capped at four weeks insurable earnings under the Employment Insurance Program, which changes annually to reflect inflation. In 2015, this amount is \$3,807.68. The WEPP Regulations also provide for a 6.82 per cent offset which is deducted from the payment amount to reflect deductions an employee would have if they received the payment from an employer.

Payment Recovery

Where possible, the Government recovers the WEPP payment advanced to workers from the employer's estate assets. An initial claim up to \$2,000 for wages and vacation pay, and \$1,000 for disbursements, are secured on the estate assets. The remaining amounts (for termination and severance pay) are unsecured and less likely to be recovered.

Program Budget

Initially, \$28.7 million for payments to workers and \$2.5 million for the fees of trustees and receivers were allocated from the Consolidated Revenue Fund for the WEPP. Budget 2009 increased the WEPP fund by \$25 million to cover the inclusion of termination pay and severance pay as "eligible wages." In 2013-14, the WEPP reserve was set to \$49.25 million based on the Program's demonstrated and anticipated requirements. Annual average payouts range between \$32 and \$35 million.

When the WEPP was first introduced, its operating budget was set at \$3.2 million. Budget 2012 increased this budget by \$1.4 million to improve the capacity of the Labour Program and Service Canada to deliver the WEPP and ensure applicants received payments more quickly. Today, the operational budget of the WEPP remains at \$4.6 million.

Program Roles and Responsibilities

The Minister of Labour is responsible for the Wage Earner Protection Program. Federal partners and external stakeholders also have key roles in administering and delivering the Program.

Administration

The Labour Program provides administrative guidance and oversight to the WEPP by developing policies on the application of the legislation and any regulatory or legislative changes, in consultation with Industry Canada and the Office of the Superintendent of Bankruptcy. The Labour Program is also responsible for administering and delivering the WEPP appeal process, monitoring and reporting on WEPP service delivery, and leading communications activities.

Operation

Service Canada delivers the WEPP on behalf of the Labour Program by processing applications to assess the eligibility of applicants, issuing payments, administering the review process when a worker disagrees with the decision, and identifying any overpayments. Service Canada delivers these services to clients in-person, by telephone, and online.

The Canada Revenue Agency recovers overpayments made to a recipient, trustee or receiver. The Agency also plays a role in the steps taken by the Government to recover WEPP payments from the bankrupt estate.

Insolvency Administrators

Trustees and receivers support the administration of the WEPP by submitting the information that is used by Service Canada to help determine the eligibility of applicants for the Program. Insolvency administrators are also required to inform workers about the WEPP and how they may apply for this benefit. In addition, trustees and receivers must inform the Minister when the trustee is discharged or the receiver completes their duties.

“The Wage Earner Protection Program is worthwhile and accomplishes much in protecting the rights of employees.”

Canadian Association of Insolvency and Restructuring Professionals' submission on the WEPPA Five-Year Review,
Jean-Daniel Breton, CPA, CA, FCIRP

Part two:

Track Record and Key Successes

The Minister of Labour launched a review of the *Wage Earner Protection Program Act*, and the administration and operation of the WEPP, in May 2013. An evaluation of the Program's performance in its first three years formed the basis of this review. Analysis of program delivery data since the WEPP began in 2008 and through its five full fiscal years of existence (2009-10 to 2013-14) also provided insight and conclusions about the Program's track record and successes.

Program Evaluation

The evaluation of the Wage Earner Protection Program⁷ concluded that there is an ongoing need for the type of benefits offered under the WEPP and that the Program aligns with federal government priorities. The evaluation also had specific observations about the performance of the WEPP as follows:

Program Awareness, Communication and Access to Information

The target population of the WEPP is aware of the Program and participation by eligible workers is high. A large majority of applicants found it easy or very easy to obtain the information they needed from Service Canada, and almost all applicants indicated that the quality of the information was good or very good. Trustees and receivers were also generally satisfied with the quality of information provided to them, although some indicated the need for improvement.

For example, some indicated that the *Trustee/Receiver Information Form* could be improved because it was inefficient and challenging to complete.

Program Delivery and Outcomes

Nine out of ten applicants received a WEPP payment, averaging approximately 64 cents on the dollar of the amounts they had earned, during the period under evaluation. Where possible, the Program also recovered these amounts from the estate of the former employer. The majority of applicants did not attempt to recover money owed by their former employer and few (five per cent) were successful in recovering money using other methods. The evaluation thus concluded that without the WEPP, most workers would receive very little (if any) of their earned money.

Application processing time improved as the Program matured. As set out in the WEPP Regulations, the majority of trustees and receivers provided required information to Service Canada within two months of the bankruptcy or receivership and 91 per cent of applicants applied within 56 days. An initial decision on the majority of applications was reached within 30 days of receipt and the average time to process them was 36 days. The average date of payment was within 54 days of the application date. Requests for a review of an initial decision and requests for an appeal of a review decision took about 90 days to complete. Appeals were very uncommon, about 0.2 per cent of all cases.

⁷ Posted in August 2014 at <http://www.esdc.gc.ca/eng/publications/evaluations/labour/2013/august/wepp.shtml>.

An unintended outcome of the WEPP related to the costs incurred by trustees and receivers in administering the Program. Some stakeholders indicated that these costs caused some reluctance amongst insolvency professionals to take on no- or low-asset bankruptcies and receiverships. One in five of trustees and receivers interviewed also expressed concerns with the process for claiming their fees or the payment scheme in the Regulations.

Evaluation Recommendations

Based on its findings, the evaluation recommended that the Labour Program make five main improvements to the Program, each of which has since been addressed.

1. Find ways to streamline administration, including the *Trustee/Receiver Information Form*.

The process of submitting the *Trustee/Receiver Information Form* electronically was improved so that trustee and estate information only needs to be submitted once and specific information for each worker thereafter.

2. Address the information needs of trustees and receivers.

WEPP messaging on the Service Canada website was improved. The Labour Program and Service Canada are improving templates and tools for trustees and receivers; expanding the *Trustee/Receiver Information Form* to include all information required to submit a claim under the BIA; and streamlining the process to upload required information for many employees.

3. Examine Employment Insurance overpayments resulting from the WEPP.

A review of the data found that only 0.03 per cent of WEPP recipients are in an employment insurance overpayment situation.

4. Find ways to improve access to the WEPP in no- or low-asset estates.

The Labour Program and Service Canada have been working with insolvency experts to ensure the administrative duties of trustee and receivers in low-asset bankruptcies are appropriately remunerated in order to encourage insolvency professionals to take on more of these cases, which would provide more workers with access to the WEPP.

5. Continue monitoring application processing times and find ways to reduce the processing and completion of reviews and appeals.

In partnership with Service Canada, the Labour Program has monitored application processing timelines since the WEPP began in 2008. These timelines have improved to the point where currently more than 95 per cent of applications are processed within the 42-day service standard. Of these, 85 per cent are processed within 28 days, 67 per cent within 21 days, and 47 per cent (almost half of all applications received) within 14 days.

Data Analysis

From the date on which the Program began in July 2008 to the end of March 2014 (which covers five full fiscal years since WEPP's introduction),⁸ 71,483 workers or 87 per cent of applicants received a WEPP payment, while the remaining applicants did not meet the eligibility criteria. The recipients of a WEPP payment received nearly all of the wages, vacation pay, and disbursements owed to them by their insolvent employers. More than 50 per cent of WEPP recipients were also paid the full amount of owed termination pay and severance pay. In total, the WEPP payments amounted to \$165.7 million.

⁸ The data analyzed for this section are available in tables in Appendix E.

WEPP Statistics Snapshot: July 7, 2008 – March 31, 2014

Number of Estates Processed: 3,980

Number of Applicants: 82,126

Number of Payment Recipients: 71,483

Number of Recipients who received
the Maximum Payment: 35,116

Number of Recipients who received
Full Payment for Amounts Owed: 36,367

Average Payment: \$2,464⁹

Total Payments: \$165,719,213

For Wages: \$43,257,356

For Vacation: \$26,178,983

For Disbursements: \$201,017

For Termination: \$78,563,605

For Severance: \$17,518,252

Number of Reviews: 2,446 requested,
2,389 completed, 58% resulting in a payment

Number of Appeals: 144 requested,
120 completed, 20% resulting in a payment

Application and Payment Activity Year-Over-Year

WEPP application and payment activity are relatively consistent from year to year, with a lower than average uptake in 2012-13 due to lower numbers of insolvencies. The average payment has also remained largely consistent, while the number of review and appeal requests has fluctuated.

⁹ Prior to 2009, the average payment was \$1,192. In 2009, the definition of "eligible wages" was expanded to include termination pay and severance pay, following which the average payment significantly increased.

Payments by Province and Territory

WEPP payment distribution across the provinces and territories has remained fairly constant, with the majority of payments issued in Ontario and Quebec because most bankruptcies and receiverships occurred in these provinces. In all jurisdictions, severance amounts may be accumulated based on individual employment contracts or collective agreements. Only Ontario and the federal jurisdiction¹⁰ include severance pay under their employment standards legislation.

Payments to Trustees and Receivers

The WEPP process to pay the fees and expenses of trustees and receivers began in December 2010. Between that date and March 31, 2014, 56 applications for payment were received¹¹ and, of these, 27 were found eligible to receive a payment. The total amount of payments made was \$64,636 and the average payment was \$2,394.

Service Delivery

In 2013-14, more than 95 per cent of completed applications were processed within the 42-day service standard. This result greatly exceeded the service standard goal of processing 80 per cent of applications within this timeframe and marked the highest application processing standard achieved since the WEPP began. Similarly, in 2013-14, 95 per cent of review decisions were made within the newly established 35-day service standard, which represented a significant improvement compared to previous years. The target of processing 80 per cent of appeal requests within 180 days was also met in 2013-14.

¹⁰ Labour jurisdiction is divided between federal and provincial and territorial governments, depending on the industry in which the work is performed. Federal laws apply to interprovincial and international transportation, chartered banks, telecommunications, the grain industry, most Crown corporations and certain activities undertaken by First Nations. All other industrial activities, which represent over 90 per cent of the Canadian work force, fall under provincial or territorial jurisdiction.

¹¹ Monthly data unavailable prior to December 2012.

When a review overturns the original decision to reject an applicant, the applicant receives a WEPP payment. This typically occurs when new information (not included in the initial application for a WEPP claim) is provided by either the trustee, receiver, or directly from the applicant. The proportion of reviews that were decided in favour of making a payment to applicants has fluctuated over the life of the WEPP, averaging 58 per cent.

An accepted appeal may result when a question of eligibility, employment status, or conflict between the *Wage Earner Protection Program Act* and the *Bankruptcy and Insolvency Act* is resolved. While appeals of a review decision are less likely to lead to a WEPP payment (on average 20 per cent), the proportion of accepted appeals has increased in the last two fiscal years.

Recovery of Debts

Where possible, the Government attempts to recover from the employer's estate the amounts it advanced to workers through the WEPP. Up to \$2,000 per employee for wages and vacation pay, and up to \$1,000 for disbursements, are secured as a super-priority claim from the current assets of the insolvent estate. If additional funds are available, the Government may also be able to recover a portion, or all, of the remaining amounts (unsecured) that it paid out to employees. Since the Program began, almost 15 per cent of WEPP payments have been recovered from insolvent estates, totaling over \$24 million.

ITQ Solutions: WEPP Payments made possible with help from Province

In July 2011, more than 1,000 employees of ITQ Solutions found themselves out of a job without notice when the company suddenly shut down its three locations in Quebec and Ontario. While the Superior Court of Quebec declared ITQ Laval Ltée bankrupt, employees of ITQ in Trois-Rivières and Oshawa were employees of a different corporation, ITQ Ltée, and thus were ineligible for the WEPP.

ITQ Ltée was finally declared bankrupt following a petition filed by la *Commission des normes du travail* and *Revenu Québec*, and all remaining ITQ Solutions employees were then eligible for the WEPP. As a result, a total of \$2.87 million in WEPP payments were made to these employees for earned wages.

Part three:

Identifying and Resolving Issues

The Labour Program works collaboratively with federal partners and insolvency experts to identify and resolve concerns with the Wage Earner Protection Program. In preparation for this review, the Department analyzed the issues raised by stakeholders since the WEPP began, including those presented in research papers and those mentioned during workshops and recent consultations. As a result, the Labour Program has been considering potential solutions to these issues, which may lead to future amendments to the WEPP. Ongoing consultation and analysis of new and outstanding issues will continue to be undertaken by the Department.

Key Issues

Improving the Payments of Trustee and Receiver Fees and Expenses

Trustees and receivers are entitled to receive payment for the WEPP duties they undertake and the overall cost of administering the WEPP. However, when there are few or no assets left in the estate, trustees and receivers would like the process used to calculate their fees and expenses to be improved because they feel the payments do not cover their costs. Some have indicated that they are reluctant to take on bankruptcies or receiverships involving wage claims in low- or no-asset cases because they think the payment formula is insufficient.

The Labour Program is reviewing potential regulatory amendments to improve this payment scheme.

Addressing the Liability of Trustees and Receivers

While there have been no prosecutions against trustees and receivers related to their WEPP duties, stakeholders have expressed concern about the potential for liability when an insolvent business did not keep proper records on employees' earned wages. Receivers who have ended the employment of workers at the time of receivership and re-hired employees to help wind-down the business have also questioned whether this practice may leave them vulnerable to liability.

The Labour Program has discussed using various means to certify the amounts owed to eligible workers in the absence of payroll records as one option to reduce that liability risk. It is also considering the suggestion to develop standards outlining the efforts required of trustees and receivers to find books and records, and to ask employees for information, to help determine earned wages.

Administering the “Most Beneficial Payment”

The *Wage Earner Protection Program Act* requires that workers receive the “most beneficial payment” (greater amount) when their former employer is subject to both receivership and bankruptcy proceeding. To determine this payment, both the trustee and receiver must independently calculate wages owing and submit a *Trustee/Receiver Information Form*

for each employee. The trustee community considers this process as duplicative, time-consuming and burdensome. Trustees and receivers also believe that it may make it difficult to put the Crown's subrogate claim to the correct estate.

The Labour Program and Service Canada are working to improve the processing of the most beneficial payment requirement, including by: exploring ways to split the work between a trustee and receiver; developing uniform practices; or creating a time-saving version of the *Trustee/Receiver Information Form* filing system for these cases.

Clarifying the Crown's Subrogation Right

In exchange for receiving a timely payment from the WEPP, applicants assign their wage claim to the Government who then takes the place of the applicant when dividends from the estate are distributed. This is referred to as the Crown's subrogated right. There have been concerns raised by stakeholders over legal attempts to use the WEPP to absolve former directors of their liabilities. Specifically, a few directors have sought to have their liability reduced by the amount of WEPP payments that were given to former employees. This is not the intent of the Program. Some stakeholders have also expressed concern that the ordering of priorities under the WEPP Regulations eliminates the only way employees may recover other unpaid wages from directors, such as outstanding vacation pay. In particular, they claim that directors are able to argue that the wages have already been paid through the WEPP.

The Labour Program is exploring ways to improve the recovery of WEPP debt.

Other Issues

Stakeholders have also raised other issues that are beyond the scope of the five-year review. For example, there is support for the WEPP to be expanded to cover employees who lose their jobs during a restructuring which does not lead to a bankruptcy or when companies close down without filing an official bankruptcy (known as "walkaways"). Some stakeholders would like an increased WEPP payment cap or the same, lump-sum payment given to all impacted employees. Still others have recommended an extension of the WEPP coverage period or an expansion of the WEPP payment to cover benefits, such as pension payments or international insolvency events.

Industry Canada's Review of Canada's Insolvency Laws

The *Wage Earner Protection Program Act* complements other federal insolvency legislation; namely, the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*. In 2014, Industry Canada held consultations on these legislations. Stakeholders, including those interested in enhancing the protection of employees affected by insolvency, were invited to make submissions.

Thirteen of the 65 submissions included recommendations directly related to the WEPP. The views were diverse, ranging from those who would like the maximum payment increased and/or for employees to be compensated for all unpaid wages, to those who believe any further Program enhancement would be detrimental and further reduce credit availability for borrowers. These views are detailed in *Fresh Start: A Review of Canada's Insolvency Laws*.¹²

¹² Publicly available at www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/c100882.html

Part four:

Conclusion and The Path Forward

This review clearly demonstrates that the *Wage Earner Protection Program Act* and the administration and operation of the Wage Earner Protection Program are successful.

In particular, the Department's performance evaluation shows that the WEPPA is effectively meeting its mandate to help pay the wages earned by workers who lose their jobs after their employer filed for bankruptcy or became subject to a receivership. The target population is aware of the Program and participation by eligible workers is high. The evaluation also concludes that there is an ongoing need for the type of benefits offered by the WEPP because, without the Program, workers impacted by insolvency are not likely to recover monies for earned wages.

WEPP's track record reinforces the successful administration and operation of the Program. The WEPP has significantly improved the ability of employees to successfully recover amounts owed to them by their insolvent employers and has also ensured that these amounts are paid to them in timely fashion.

More than 71,000 Canadians received a payment between July 2008 and March 31, 2014 which covered nearly all of the wages, vacation pay, and disbursements they were owed totalling more than \$167 million. As well, more than 50 per cent of these recipients were paid in full for owed termination pay and severance pay. This is a significant improvement from the amounts many employees were able to recover prior to the introduction of the WEPP (13 cents on every dollar earned).

Service standards are also being met and, in recent years, significantly exceeded. For example, in 2013-14, more than 95 per cent of applications were processed within the 42-day service standard (of which 85 per cent were processed within 28 days, 67 per cent within 21 days, and 47 per cent within 14 days). In addition, in 2013-14, 95 per cent of reviews were determined within the 35-day service standard, and 80 per cent of appeals were processed within the 180-day service standard.

Next Steps

This review highlights areas where the WEPPA and its Program may be enhanced in the future to better protect vulnerable workers affected by insolvency. The Labour Program is considering the views of stakeholders and potential solutions to these issues to improve both service delivery and program operations. For example, to reduce a number of overpayments, the Labour Program and Service Canada will take steps to improve application processing where both a bankruptcy and a receivership occur. In addition, the Labour Program and Service Canada will work on modernizing and streamlining information and tools for trustees and receivers to assist them in performing their duties and providing information to potential WEPP applicants.

Conclusion

The Wage Earner Protection Program provides certain and timely payments to individuals who find themselves in a difficult financial situation following their employer's bankruptcy or receivership. The Program has proven to be an effective way to lessen the burden of bankruptcy and receivership on employees. Most importantly, it has been a key source of timely financial support to workers in Canada who have lost their job because of a bankruptcy or receivership.

Putting workers first in insolvency proceedings and paying them owed wages in a timely fashion remains an ongoing commitment for the Government of Canada. These workers deserve to receive equitable, fair, and timely payment for the wages that they have earned. The WEPP is meeting this objective.

Appendices

Appendix A:

Bill C-12 Amendments

Stakeholders Comments	Legislative Changes
<p>Clarify when a person is not eligible to make a claim for wages earned under the WEPP; especially, the meaning of “arm’s length”.</p>	<p>2007, c. 36, s. 83</p> <p>Paragraph 2(5)(a) defines when an individual is considered to deal at arm’s length with a related person.</p>
<p>Ensure that individuals who are employed for three months or less are eligible to receive a payment under the WEPP.</p>	<p>2007, c. 36, s. 85</p> <p>Removes the requirement for an applicant to have worked for their employer at least three months prior to the date of bankruptcy or receivership.</p>
<p>Revisit the payment amount for wages under the WEPP and for super-priority wages under the BIA to avoid unintended consequences.</p>	<p>2007, c. 36, s. 86</p> <p>Paragraph 7(2): If the former employer is both bankrupt and subject to a receivership, the amount that may be paid for wages owed to an applicant is the greater of the amount determined by the bankruptcy and the amount determined by the receivership.</p>
<p>Clarify all of the WEPP processes, including the process to review an application eligibility decision and the process to appeal the resulting review decision.</p>	<p>2007, c. 36, s. 87</p> <p>Paragraphs 8-10 inform the process in which a person must apply to receive a payment under the WEPP and how that person will be informed of their eligibility or ineligibility for the payment after the Minister has assessed the application.</p>
	<p>2007, c. 36, s. 87</p> <p>Paragraph 11 allows an applicant to request a review of their eligibility or ineligibility for payment under the WEPP. Paragraph 12 outlines the authority of the Minister to conduct such a review and Paragraph 13 reflects the finality of the Minister’s review decision (subject to the right of appeal).</p>
	<p>2007, c. 36, s. 87</p> <p>Paragraph 14 allows an applicant to appeal the eligibility decision made by the Minister on a question of law or jurisdiction.</p>

	<p>2007, c. 36, s. 88</p> <p>Paragraph 16 explains that an appeal to an adjudicator will be on the record and that no new evidence is admissible. Paragraph 17 outlines the authority of the adjudicator and the resulting outcome of their ruling.</p>
	<p>2007, c. 36, s. 89</p> <p>Paragraphs 19 and 20 stipulate that an appeal by an adjudicator is final and may not be reviewed or questioned in any way.</p>
	<p>2007, c. 36, s. 91</p> <p>Paragraphs 32 and 33 inform the process for the Minister of Labour to determine whether an overpayment was made under the WEPPA and the process for the Minister of National Revenue to collect it.</p>
<p>Ensure that the trustee or receiver is entitled to claim reasonable costs from the federal government for helping to administer the WEPP and bankruptcy. This includes the costs to determine the amount of wages owing to each individual when the debtor's books and records are either non-existent or out-of-date.</p>	<p>2007, c. 36, s. 89</p> <p>Paragraph 21(4) outlines the duties of a person who is dealing at arm's length with, and providing payroll services to, a bankrupt or insolvent person, such as the cost of providing information to which they have access.</p>
	<p>2007, c. 36, s. 89</p> <p>Paragraph 22 obliges the Minister to pay the fees and expenses incurred by trustees or receivers as prescribed by WEPPA Regulations.</p>
<p>Provide assurance of the protection of personal information, such as a social insurance number.</p>	<p>2007, c. 36, s. 90</p> <p>Paragraph 29 assures an applicant that their social insurance number shall not be used in any way other than the administration of the WEPPA or the <i>Income Tax Act</i>.</p>
<p>Amend the anti-abuse measures for various offences related to the work of trustees and receivers, which seem unduly harsh.</p>	<p>Paragraphs 38(4) and 39(2) provide that a person may not be convicted of an offence if the person establishes that they exercised due diligence to prevent the commission of the offence. These provisions also reduce to two years (from six) the time limit for instituting a prosecution for an offence.</p>

Appendices

Appendix B:

Bill C-10 Amendments

Stakeholders Comments	Legislative Changes
<p>Define the types of wages which are eligible for a WEPP payment and clarify the meaning of termination of employment.</p>	<p>2009, c. 2, s. 342</p> <p>Paragraph 2(1) defines “eligible wages” as (a) wages other than severance pay and termination pay that were earned during the six-month period ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer; and (b) severance pay and termination pay that relate to employment that ended during the period referred to in paragraph (a).</p> <p>A marginal note was also added to clarify that “eligible wages” include salaries, commissions, compensation for services rendered, vacation pay, severance pay, termination pay, and any other amounts prescribed by regulation.</p>
	<p>2009, c. 2, s. 343</p> <p>Paragraph 5(a) clarified that an individual was eligible for a WEPP payment if their employment had ended for a reason prescribed by regulation. The prescribed reasons include resignation or retirement, termination of the individual’s employment, and expiration of an individual’s term of employment</p>
	<p>2009, c. 2, s. 347</p> <p>Paragraph 41 (b) clarifies that the Governor in Council may make regulations prescribing reasons for the purposes of paragraph 5(a).</p>

Revisit date for calculating the six-month period to determine the extent of unpaid wages by including the phrase "date of initial bankruptcy event."	2009, c. 2, s. 342 Paragraph 2(1) makes clear that eligible wages (including severance and termination pay) must be earned during the six-month period ending on the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer.
	2009, c. 2, s. 343, s. 345 and s. 346 Paragraph 5(d) was repealed because it was redundant to paragraph 2(1). Similarly, Paragraphs 7(1-2) and 21(1)(a) were revised to remove the redundant six-month period information.

Appendices

Appendix C:

Glossary of Terms¹³

Arm's length: Describes dealings between two parties who are free and independent of each other and who do not share a special relationship, such as being related or where one party has control over the other. An "arm's length" relationship is required between an applicant and an officer, director, person with a controlling interest, or manager in order to be eligible to receive a WEPP payment.

Bankruptcy: A legal process governed by the *Bankruptcy and Insolvency Act* for a person who can no longer pay their debts as they become due. The person who owes the debt assigns all assets (with some exceptions) to a trustee in bankruptcy who sells or uses the assets to help pay the debt to the creditors.

Creditor: A person who is owed money, goods or services. An unsecured creditor does not have any security for the debt owed them. A preferred creditor is an unsecured creditor who has a first claim to any funds that are available. A secured creditor is one who takes collateral for the extension of credit, such as when a car or house is purchased.

Insolvency: The inability of a debtor to pay off debt as it becomes due.

Priority: The order in which creditors are ranked for payment of claims provable under the *Bankruptcy and Insolvency Act*. Following payment of a WEPP claim, the Crown assumes the position of the applicant as a creditor to the extent of the payment.

Receiver: A person appointed by a creditor or by the Court to take possession or control of the assets of a debtor within the meaning of subsection 243(2) of the *Bankruptcy and Insolvency Act*.

Receivership: A proceeding in which a debtor's assets are in the possession or control of a receiver within the meaning of the *Bankruptcy and Insolvency Act*.

Super-priority: In 2008, the *Bankruptcy and Insolvency Act* created a limited super-priority in a bankruptcy or a receivership in favour of employees for unpaid wage claims. The priority is limited because the charge applies only to current assets up to \$2,000. While this does not impact the amount paid by the WEPP, it is relevant for the amount the Crown may recover from the estate in the place of the wage earner.

Trustee in bankruptcy: A person licensed by the Office of the Superintendent of Bankruptcy to administer bankruptcies and proposals.

¹³ Adapted, in part, using the definitions on the Office of the Superintendent of Bankruptcy Canada website at www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/br01467.html.

WEPP eligibility period: This begins six months before a restructuring event and ends on the date of bankruptcy or receivership.

WEPP eligible wages: These include: 1) salaries, commissions, compensation for services rendered, vacation pay, gratuities accounted for by the former employer, disbursements of a travelling salesperson properly incurred in and about the business of the former employer, production bonuses, and shift premiums earned during the eligibility period; and 2) termination pay and severance pay for employment that ended during the eligibility period.

Appendices

Appendix D:

Program Process

Delivery Process

1. The trustee and/or the receiver identifies each worker that is owed wages by an employer who has declared bankruptcy or is subject to receivership.
2. The trustee and/or the receiver determines the amount of eligible earned wages which are owed to each worker.
3. The trustee or the receiver provides Service Canada with the information required on each worker using the *Trustee/Receiver Information Form*. The form is submitted:
 - 45 days from the date of bankruptcy or from the first day on which there was a receiver in relation to the former employer OR
 - 15 days after the trustee or receiver has been given the information from another person, such as a person providing payroll services to a bankrupt or insolvent person.¹⁴
4. The trustee or the receiver informs each worker about the Wage Earner Protection Program and the conditions under which payments may be made under the WEPPA. The trustee or receiver also provides each worker with the following information within 45 days of the date of bankruptcy or receivership:
 - the date of bankruptcy or receivership;
 - the date the employment ended;
 - the requirement of individuals to submit a proof of claim for eligible wages owing;
 - a copy of the *Trustee/Receiver Information Form* submitted to Service Canada; and
 - either the WEPP application form or directions on where an individual may obtain this form.
5. Each worker may submit a WEPP application form to Service Canada within 56 days of the bankruptcy or receivership. If there is a delay in submitting the form, a reason for the delay must also be provided.

¹⁴ The WEPPA provides a longer period of time if circumstances beyond the control of the trustee or receiver necessitates it.

6. Upon submission of their application, the applicant agrees to allow the Government of Canada to take their place as a creditor in bankruptcy or receivership.
7. Service Canada assesses the eligibility of each applicant to receive a WEPP payment based on the information contained in the *Trustee/Receiver Information Form* and on the worker's application. This includes:
 - whether the employment has ended;
 - whether the former employer is bankrupt or subject to a receivership; and
 - whether the applicant is owed eligible wages (as defined in the WEPPA) by the former employer.
8. Service Canada makes an initial decision and gives notice of this decision to eligible and non-eligible applicants. If the applicant is eligible, Service Canada also notifies the trustee or receiver of the amount that the applicant will receive.
9. The Government may then pursue the recovery of the amount of the WEPP payment (up to \$2,000 on a super-priority basis and the remainder on a regular-priority basis).

Review Process

1. An applicant may request a review by the Minister of their eligibility.
2. A request for review must be made in writing within 30 days of being notified of the eligibility decision, unless circumstances beyond the control of the applicant necessitate a longer period. The applicant may provide information to support the request for review.
3. Service Canada, on behalf of the Minister, conducts the review and may also contact the trustee or receiver for original documentation, information or clarification.
4. The result of the review may vary, confirm or rescind the original decision and Service Canada notifies the applicant of the review decision in writing. Also, the trustee is notified if the original decision is changed and the applicant is found eligible for the WEPP, or if the payment amount is changed.

Appeal Process

1. If the applicant is not satisfied with the outcome of the review, they may appeal the decision, but only on a question of law or jurisdiction.
2. An appeal may be filed within 60 days of being notified of the review decision. The applicant may not add any new facts or evidence to the file because the appeal is "on the record" only.

3. To file an appeal, an applicant must provide a written submission containing their social insurance number, current address and telephone number, and detailed grounds for the appeal. This information may be provided through the Notice of Appeal to Adjudicator form, which is available on the Labour Program website.
4. The Labour Program will assess the appeal request and may recommend that the Minister appoint an adjudicator to hear the appeal. If an adjudicator is appointed, the applicant will be notified in writing.
5. As outlined in section 17 of the *Wage Earner Protection Program Act*, the adjudicator may confirm, vary or rescind the review decision, which will be provided to the applicant in writing, including the reasons for the decision. The adjudicator's decision is final.

Overpayment Process

1. If Service Canada or the Labour Program determines that an applicant received a WEPP payment greater than the amount which the applicant was eligible to receive, the applicant will receive a notice in writing explaining the determination and specifying the amount that they were not eligible to receive.
2. The applicant will have 30 days from the receipt of the notification in which to pay the overpaid amount.
3. If the overpayment has not been repaid within 30 days, interest begins to accrue.

Appendices

Appendix E: Data Tables

Application and Payment Activity Year-Over-Year

WEPP Administrative and Operational Activities by Fiscal Year							
Activity Type	FY08/09 ¹⁵	FY09/10	FY10/11	FY11/12	FY12/13	FY13/14	Totals
Estates Processed	450	810	684	688	674	674	3,980
Applicants	5,751	17,957	14,974	17,132	11,072	15,240	82,126
Payment Recipients	2,733	16,264	14,305	13,848	11,064	13,269	71,483
Recipients of Maximum Payment	145	8,390	6,611	7,984	5,189	6,250	34,569
Recipients Paid in Full	2,588	7,874	7,694	5,864	5,875	7,019	36,914
Reviews							
Requested	183	243	550	541	423	506	2,446
Completed	107	250	508	438	546	540	2,389
Appeals							
Requested	5	37	34	35	20	13	144
Completed	1	13	30	42	16	18	120

¹⁵ July 8, 2008 to March 31, 2009.

WEPP Payments by Fiscal Year and By Type (\$)							
	FY08/09	FY09/10	FY10/11	FY11/12	FY12/13	FY13/14	Program Totals
Wages	2,150,302	8,576,850	7,793,607	7,415,057	5,324,286	11,997,543	43,257,645
Vacation	1,469,793	5,693,500	5,089,594	4,532,059	4,726,195	4,666,940	26,178,081
Termination	n/a	16,407,579	16,203,289	18,242,857	14,310,273	13,398,700	78,562,698
Severance	n/a	5,221,918	4,412,075	3,264,538	2,051,721	2,568,000	17,518,252
Disbursements	13,680	41,844	25,498	24,220	31,267	64,508	201,017
Total	3,633,769	35,941,690	33,524,062	33,478,731	26,443,742	32,695,691	165,717,685
Average Payment	1,323	2,210	2,344	2,418	2,390	2,464	n/a

Payments by Province and Territory

WEPP Payments by Province and Territory and by Type in Fiscal Year 2013-14 (\$)						
	Wages	Disbursements	Vacation	Termination	Severance	Total Payments
Quebec	4,583,519.90	24,722.11	2,497,161.70	4,555,360.03	1,018,572.74	12,679,336.47
Ontario	3,464,503.60	27,207.05	1,203,795.23	6,920,087.29	536,598.27	12,152,191.44
British Columbia	1,504,085.20	4,107.13	480,138.85	466,230.19	587,637.24	3,042,198.61
Alberta	1,673,302.93	5,657.23	275,167.39	726,371.94	41,343.88	2,721,843.37
Manitoba	468,671.31	0.00	50,145.02	103,045.98	309,806.57	931,668.88
Nova Scotia	41,746.91	2,448.49	60,323.98	352,602.17	15,826.28	472,947.83
New Brunswick	102,264.41	0.00	52,366.27	221,799.82	17,572.53	394,003.03
Saskatchewan	52,132.27	366.35	19,078.25	32,142.47	12,165.24	115,884.58
Newfoundland and Labrador	39,816.16	0.00	6,970.67	6,168.35	17,939.29	70,894.47
Other ¹⁶	10,255.41	0.00	13,152.78	11,617.22	3,794.98	38,820.39
Prince Edward Island	31,745.07	0.00	1,789.30	3,113.43	255.97	36,903.77

¹⁶ "Other" comprises unreported province of residence or jurisdiction of residence outside of Canada.

Northwest Territories	17,912.72	0.00	267.66	0.00	4,661.03	22,841.41
Yukon	7,586.98	0.00	6,582.60	161.56	372.49	14,703.63
Nunavut	0.00	0.00	0.00	0.00	1,453.61	1,453.61
Total	11,997,542.86	64,508.36	4,666,939.69	13,398,700.45	2,568,000.12	32,695,691.48

WEPP Payment Recipients by Province and Territory in Fiscal Year 2013-14	
Quebec	5,286
Ontario	4,595
British Columbia	1,288
Alberta	1,192
Manitoba	400
Nova Scotia	211
New Brunswick	157
Saskatchewan	62
Newfoundland and Labrador	34
Other ¹⁷	18
Prince Edward Island	12
Northwest Territories	7
Yukon	5
Nunavut	2
Total	13,269

Payments to Trustees and Receivers

WEPP Payments by Fiscal Year to Trustees and Receivers for Fees and Expenses (\$)					
Type	FY11/12	FY12/13	FY13/14	Average per FY	Program Totals
Applications	24	17	15	n/a	56
Payments	12	7	8	9	27
Total Paid	12,065.00	14,420.00	38,150.63	21,205	64,636

Recovery of Debts

Recovery of Subrogated Debt and Overpayments (\$) by Fiscal Year						
Fiscal Year	Class 1 - Labour Program				Class 2 - Canada Revenue Agency	
	Super priority		Unsecured		Overpayments	
	Established	Recovered	Established	Recovered	Established	Recovered
2008-09	2,907,808.43	-2,000.00	708,248.26	0.00	9,630.35	0.00
2009-10	11,483,285.62	-2,869,620.14	24,492,213.69	-932,610.88	56,450.65	-33,273.46
2010-11	10,173,359.57	-3,502,018.14	21,540,285.96	-270,143.59	261,791.69	-161,445.62
2011-12	10,212,960.71	-5,067,099.37	24,172,797.58	-1,080,977.61	387,741.52	-227,743.61
2012-13	7,594,069.76	-5,612,507.80	18,908,827.06	-517,794.97	45,572.19	-92,199.20
2013-14	13,432,491.39	-3,710,364.85	20,358,231.71	-702,132.29	59,026.83	-68,426.55
Total	55,803,975.48	-20,763,610.30	110,180,604.26	-3,503,659.34	820,213.23	-583,088.44

Service Delivery

WEPP Client Contact with Service Canada by Fiscal Year								
Type	FY08/09	FY09/10	FY10/11	FY11/12	FY12/13	FY13/14	Average per FY	Program Totals
Calls	12,049	31,527	30,319	34,089	29,717	26,480	27,364	164,181
In-person Visits	6,803	12,126	10,661	9,075	5,943	5,751	8,393	50,359
Website Hits	97,884	173,752	140,095	136,879	112,098	102,038	127,124	762,746
Total Contact	116,736	217,405	181,075	180,043	147,758	134,269	162,881	977,286

WEPP Service Delivery Standards (# and %) by Fiscal Year

	Service Delivery	FY10/11 ¹⁸		FY11/12		FY12/13		FY13/14	
		Applications	Per cent	Applications	Per cent	Applications	Per cent	Applications	Per cent
Initial decision Service Standard: 80% within 42 days	Days								
	0 - 7	1,481	13%	558	4%	922	9%	2,251	20%
	8 - 14	2,749	25%	904	7%	1,543	15%	3,071	27%
	15 - 21	2,264	21%	1,908	14%	694	7%	2,289	20%
	22 - 28	1,816	16%	2,169	16%	475	5%	1,985	18%
	29 - 35	1,548	14%	2,688	20%	483	5%	1,084	10%
	35 - 42	592	5%	2,495	19%	828	8%	267	2%
	43+	588	5%	2,472	19%	5,397	52%	250	2%
	On Target	10,450	95%	10,722	81%	4,945	48%	10,947	98%
	Total	11,038	99%	13,194	99%	10,342	101%	11,197	99%
Reviews Service Standard: 90% within 35 days	0 - 7	12	2%	3	1%	65	15%	278	55%
	8 - 14	2	0%	7	1%	58	14%	136	27%
	15 - 21	6	1%	10	2%	51	12%	36	7%
	22 - 28	2	0%	10	2%	48	11%	22	4%
	29 - 35	8	1%	17	3%	23	5%	11	2%
	36+	518	95%	495	91%	180	42%	23	5%
	On Target	30	5%	47	9%	245	58%	483	95%
	Total	548	99%	542	100%	425	99%	506	100%
Appeals Service Standard: 80% within 180 days	0 - 60	16	46%	23	66%	0	0%	2	33%
	61 - 120	14	40%	7	20%	3	16%	2	33%
	121 - 180	3	9%	4	11%	7	37%	1	17%
	181+	2	6%	1	3%	9	47%	1	17%
	On Target	33	94%	34	97%	10	53%	5	83% ¹⁹
	Total	35	101%	35	100%	19	100%	6	100%

¹⁸ The 42-day service standard was established for fiscal year 2010-11. For fiscal year 2009-10, 58 per cent of applications were processed within a 28-day service standard, which was applicable at the time.

¹⁹ This result is not final as more than 50 per cent of the appeals have yet to be completed.

WEPP Reviews and Appeals Service Delivery Standards (# and %)

	FY08/09		FY09/10		FY10/11		FY11/12		FY12/13		FY13/14		Average
	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Number	Per cent	Per cent
Reviews Accepted	80	44	150	60	305	56	203	37	319	74	386	76	58
Reviews Rejected	102	56	102	40	243	44	343	63	111	26	122	24	42
Appeals Accepted	0	0	19	50	1	3	2	6	5	26	2	33	20
Appeals Rejected	5	100	19	50	34	97	34	94	14	74	4	67	80