# Background Papers for the BANKRUPTCY AND INSOLVENCY BILL (1978)

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Consumer and Corporate Affairs Canada
Consommation et Corporations Canada

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# TABLE OF CONTENTS

## *BACKGROUND PAPERS FOR THE BANKRUPTCY AND INSOLVENCY BILL*

### *INTRODUCTION*

The present Bankruptcy Act was enacted in 1949. Although substantially amended in 1966 to increase the Superintendent's investigatory powers, to make more strict the rules relating to fraudulent preferences and to add a new Part X concerning consumer arrangements by way of extension, the present Bankruptcy Act has become seriously outdated because of fundamental changes in the overall credit system.

In February 1966 the Government established a Study Committee to review the Bankruptcy Act and to recommend to the Government any changes required to improve both substantive standards and the administrative procedures of the Act. The Committee submitted a report to the Government in late 1970, which recommended that a new Bankruptcy Act be prepared to abrogate the present Bankruptcy Act and to integrate all federal bankruptcy laws into one comprehensive statute that can deal better with the problems that arise in the contemporary credit system. The Government published the report of the Study Committee on 18 December 1970, indicating that it was in general accord with the Committee's recommendations, that the views and suggestions of interested groups and individuals would be welcome, and that steps were being taken to prepare a Bill generally in accordance with the recommendations of the Report.

Concurrently with the preparation of a new Bill, to keep abreast of demands for services under the present Bankruptcy Act, the Bankruptcy Branch implemented a number of policy and administrative changes recommended in the Study Committee Report that could be effected under existing law. The Branch set up field offices across Canada in order to decentralize administration, completed its program to substitute full-time bankruptcy officials as official receivers in place of court officials, and introduced a new program to make it possible for consumer debtors having few assets to invoke the bankruptcy process as a solution to their debt problems.

Moreover, between 1966 and 1972 the Bankruptcy Branch acted to improve the quality of administration of the private sector trustees in bankruptcy, which was achieved through three techniques: (1) weeding out those trustees who were demonstrably incompetent; (2) setting up an objective examination procedure to qualify applicants for trustee licences; and (3) implementing audit procedures to maintain surveillance of private sector trustee operations.

The number of commercial bankruptcy cases has remained almost static over the past decade. But reflecting the increase in outstanding consumer credit from $835 million in 1947 to $8 billion in 1967 and to more than 29 billion in 1977, the number of cases concerning bankrupt consumer debtors has increased dramatically in recent years as shown in the following table.

| | 1973-74 | | 1974-75 | | 1975-76 | | 1976-77 | | Est. 1977-78 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | MY | $000 | MY | $000 | MY | $000 | MY | $000 | MY | $000 |
| | 194 | $2,724 | 201 | $3,594 | 226 | $3,791 | 234 | $4,601 | 240 | $4,904 |
| Business bankruptcies | 3,017 | | 3,035 | | 2,860 | | 3,517 | | 3,700 | |
| Individual bankruptcies (*private* sector trustees) | 3,195 | | 4,307 | | 5,427 | | 6,215 | | 6,630 | |
| Individual bankruptcies (*public* sector trustees) | 1,476 | | 2,014 | | 3,241 | | 4,027 | | 4,200 | |
| TOTAL | 7,688 | | 9,356 | | 11,528 | | 13,759 | | 14,530 | |

To resolve this problem the Study Committee recommended introduction of a comprehensive part dealing exclusively with consumer arrangements. They empowered a consumer debtor to opt for straight bankruptcy or, if he sought to avoid the stigma of bankruptcy, to make an arrangement to repay his debtors in part or in whole over an extended period of time.

Bill C-60, which was tabled in the House of Commons on 5 May 1975, set out most of the substantive recommendations of the Study Committee Report. The principle difference between the Committee Report and Bill C-60 related to the status of trustees in bankruptcy. The Committee Report had recommended that the private sector trustees in bankruptcy be replaced by public servant trustees, whereas Bill C-60 continued the policy of the present *Bankruptcy Act* of administering most bankruptcy estates through private sector trustees, who are required to qualify for a trustee licence under the *Bankruptcy Act* and to administer estates under the surveillance of the Superintendent of Bankruptcy.

Bill C-60 did not proceed beyond first reading in the House of Commons. Instead, at the request of the Minister of Consumer & Corporate Affairs, the Senate Committee on Banking, Trade & Commerce agreed to hold a number of hearings on the Bill during the fall of 1975. The Senate Committee received briefs from and heard witnesses representing a number of professional and business organizations. On 10 December 1975 the Senate approved publication of the Committee's Report on Bill C-60, which recommended a number of changes to the Bill. The Government agrees in principle with most of the major recommendations made by the Senate Committee and the persons who submitted briefs to that Committee. The revised Bill reflects these recommendations accordingly.

Nearly all of the recommended policy changes relate to the administration of the bankruptcy system, for example, the taxation of accounts, the delegation to provinces of power to administer consumer arrangements under Part III, greater creditor control over consumer arrangements, the elimination of unnecessary formalities relating to consumer bankruptcies, and the development of more efficient procedures.

The policies set out in the Bill are described and compared part by part with the present law in the following summary. Reference is made to the changes effected to Bill C-60 where these are substantial. A concordance table between the present Bill and Bill C-60 together with a summary of the changes made to Bill C-60 follows this text.

## PART I—INTERPRETATION AND APPLICATION
(Sections 2-10)

### *PRESENT LAW*

Because it touches on all aspects of the law, the bankruptcy law includes within its scope a great many concepts and necessarily employs an extensive, specialized vocabulary. Although the present Bankruptcy Act contains some twenty-five definitions and a number of rules concerning related persons, because of a lack of precision in the language used, many of its substantive provisions remain unclear.

### *PROPOSED LAW*

Part I of the Bill sets out roughly twice as many defined terms as the present Act with a view to reconciling a number of related civil law and common law concepts, clarifying a number of ambiguities that exist under present law, and condensing considerably the text of the Bill. The Bill also attempts to simplify and clarify the complicated rules defining related persons that are contained in the present Act.

Although a conscious effort was made not to embody substantive rules in defined terms, for the sake of drafting brevity—and to minimize ambiguity—it was found necessary to describe expressly in Part I a number of concepts. An important example is the refinement of the concepts "insolvent", and "ceased to pay his debts generally as they become due", which have been cast to make clear that it is a debtor's state of insolvency alone that makes the bankruptcy law applicable. Thus there will be no need, as under present law, to prove in addition to insolvency an "act of bankruptcy", an archaism in the law carried over from the time when application of the bankruptcy law connoted punishment for a specified breach of commercial morality. To underline both their complexity and their importance throughout the Bill these concepts are set out in distinct sections.

The Bill also includes a definition of the concept of "security interest", which in effect abrogates the title or lien theories that still exist in a number of Canadian jurisdictions, and substitutes instead a functional test, similar to that of the Ontario *Personal Property Security Act*, which, to determine a creditor's rights in property of a debtor, requires a court to scrutinize the real nature of the transaction between the debtor and secured creditor irrespective of any reservation of ownership in the creditor. The generic concept of a security interest will render it impossible for creditors to escape the application of the bankruptcy law simply by characterizing their transactions with the debtor as leases or conditional sales.

Compared to Bill C-60, the Bill includes a number of new definitions required by the introduction of concepts that were not envisaged by Bill C-60. For example, the words "consumer bankrupt" and "consumer debtor" are new defined words, required because the Bill includes a number of simplified rules applicable only in the case of consumers, such as consumer debtor arrangements (Part III) and consumer bankruptcies (Part V, section 163). Similarly, the word "registrar" is a new defined word; the registrar is, under the Bill, the taxation officer (instead of the administrator as under Bill C-60) in addition to being the court official responsible for many judicial or quasi-judicial matters in bankruptcy proceedings. Other definitions or concepts have been added to this Part of the Bill, such as the words "claim" and "receiver" and the concept of "amounts of debts of consumer debtor". Other definitions and concepts such as the definitions of "arrangement by way of composition", "arrangement by way of extension of time", "preventive arrangement", "proposal" and the declaration of what constitutes a "conflict of interest" have been deleted from the earlier version of the Bill.

The Bill also clarifies that an arrangement may not be made or a petition filed in respect of agents of governments, such as municipalities or Crown corporations. Finally, the Bill includes a statement to the effect that its provisions prevail over any other law but is not deemed to abrogate the substantive provisions of other laws relating to property and civil rights that are not in conflict with the Bill.

## PART II—ADMINISTRATION
(Sections 11-62)

### *General*

The specific objectives of the federal bankruptcy law are quite straightforward: to provide an effective means to collect and liquidate a debtor's assets; to ensure equitable distribution of the proceeds realized from those assets among the creditors of the debtor; and, where feasible, to rehabilitate the debtor as a useful member of the community. In short, the bankruptcy law aims to maintain a reasonable balance of interests among debtors, creditors and the public generally. But in order to achieve these objectives the bankruptcy law may affect legal institutions that exist in both the civil and common law systems and modify them to a certain extent.

The bankruptcy law is therefore inherently complicated. It sets out a large number of substantive rules concerning the respective property and contractual rights of creditors among themselves and in relation to the debtor. These rules are, however, only ancillary to the central purpose of the bankruptcy law, which is to set up a uniform, effective administrative system to deal with the affairs of insolvent debtors. It is for this reason that the administrative structure embodied in the bankruptcy law is correctly characterized as the foundation of the bankruptcy system.

The five principal elements of this administrative structure are the Superintendent of Bankruptcy, the official receiver (called the "Administrator" in the Bill), the courts, the trustees, and the creditors.

### *PRESENT LAW*

#### *Superintendent of Bankruptcy*

At the centre of the administrative structure is the Superintendent of Bankruptcy who is responsible to make recommendations with respect to the licensing of trustees, to direct audits and to evaluate the performance of trustees, to maintain surveillance over estates, to detect any improper or unlawful acts, to investigate suspected offences against the Bankruptcy Act or any other federal statute, and to administer the small debtor program that was begun in 1972. Since 1966 the Department of Consumer and Corporate Affairs has set up regional and local bankruptcy offices in major centres across Canada through which the Superintendent carries out most of his estate surveillance, detection, investigation and small debtor administration functions.

#### *Official Receiver*

Although an insolvent debtor may initially seek advice from a trustee or a lawyer, his first formal contact with the administrative process is with the official receiver. Official receivers are appointed by the Governor-in-Council for each bankruptcy division (province) and are officers of the court. The duties of the official receiver are to accept the debtor's assignment, to appoint the trustee in the estate and to set an estate bond to be filed by the trustee, to chair the first meeting of creditors in bankrupt estates and to examine the debtor in respect of his affairs.

#### *Courts*

In addition to the judicial function of resolving conflicts in adversary proceedings, the Act imposes responsibility on the Court to distinguish between the unfortunate debtor and the conniving one, and accordingly to exercise its power to release or discharge the debtor from his debts and from his status of bankrupt. The Court is also required to tax the accounts of trustees and solicitors acting for the estate and, upon application, to give directions with respect to estate administration.

Generally, the registrar of the Court conducts most of the non-contentious business.

*Trustee*

The Bankruptcy Act requires that the property of each bankrupt estate be vested in and administered by a licensed trustee, a legal structure that is analogous to the common law system for the administration of the estate of a deceased person. To qualify as a licensed trustee, a candidate must demonstrate a thorough knowledge of bankruptcy law and its application, have substantial business experience, and have satisfactory financial and other resources available to administer estates under the Bankruptcy Act.

The statutory responsibility of the trustee is to administer the affairs of the bankrupt estate. This administration includes the preparation of an inventory, gathering in and realizing assets, liquidating assets, distributing the proceeds in accordance with the Bankruptcy Act, and rendering a final account of the administration to the creditors and the court.

*Creditors*

Finally, the Act envisages an important role for creditors who, at the first meeting, normally nominate a board of inspectors. Like the directors of a corporation, these inspectors are required to maintain policy control over the administrative decisions of the trustee. With the exception of the larger estates, it generally is found that creditors tend to ignore the first meeting of creditors and so impose upon the trustee nominated by the official receiver the duty to administer the estate without the benefit of effective creditor direction.

## *PROPOSED LAW*

*General*

Part II introduces a number of policies that are reflected repeatedly throughout the Bill. It sets out an administrative structure that better reflects the real exercise of functions and permits greater administrative efficiciency, particularly by dealing with specific issues on an exceptions basis wherever possible; e.g., by requiring the bankrupt to apply formally for discharge only where a caveat is filed. Part II also facilitates a broad delegation of authority from the Superintendent to local Administrators to ensure closer contact with the interested parties and greater sensitivity to local conditions.

One of the important changes in the present Bill compared to *Bill C-60* is the possibility of delegation to a province of the administration of consumer debtor arrangements and bankruptcies. This change will permit better use of existing provincial personnel and facilities and should furnish better service at the local level.

Part II sets out rules concerning conflicts of interest and the bonding of trustees. The conflict rules in effect constitute a conflict of interest code to govern the qualification and conduct of trustees, inspectors, solicitors and others involved in the administration of an estate. Certain persons are rendered ineligible to be appointed or to act as trustees. Generally these persons include those who were closely related to the debtor during the two years immediately preceding the bankruptcy or arrangement, e.g., partners, officers, employers and employees of the debtor; those related to an officer of the debtor where the debtor is a corporation; auditors, accountants and solicitors of the debtor; and persons acting as trustees or related to a trustee acting under a trust indenture.

Under *Bill C-60* the court's permission was required to allow a trustee having a conflict of interest to act in the administration of an estate where it was in the best interest of creditors. This is changed under the Bill to require a trustee to make full disclosure to the creditors in any event of the potential conflict of interest. In addition, a trustee may act for a secured creditor while he is the trustee of an estate only if he meets two conditions: 1) he must obtain an opinion of a solicitor who does not act for the secured creditor as to the validity of the security interest as against the estate; and 2) he must make full disclosure of his involvement to the creditors or the inspectors.

At present a trustee is required to put up three kinds of security to ensure that he faithfully performs his duties as trustee. First, upon receiving a licence, a trustee is always required to deposit with the Superintendent of Bankruptcy a fidelity bond issued by an insurance company. In addition, the trustee is required to deposit with the Superintendent government or government guaranteed bonds in an amount that is fixed by policy and that varies according to the number and size of the estates the trustee administers.

Finally, the official receiver also requires a trustee to furnish a fidelity bond in respect of each estate he administers. This bonding system has proved to be expensive. Moreover, the Superintendent has experienced difficulties when attempting to recover under the fidelity bonds where a trustee is found to be in breach of his fiduciary duty.

To overcome these difficulties an Indemnity Account is proposed, which would be financed by fees paid by

trustees and moneys recovered in satisfaction of any claim paid out of the Indemnity Account. Any person who obtains a judgment against a trustee on grounds of a breach of fiduciary duty will be entitled to be indemnified out of the Account.

*Superintendent*

The present functions of the Superintendent continue substantially unchanged. He will, however, have more direct and broader responsibilities in a number of areas. Instead of making licensing recommendations to the Minister, the Superintendent is empowered to decide issues concerning the licensing of trustees, subject only to judicial review of that particular administrative action under the *Federal Court Act*. Consonant with the general policy of administration on an exceptions basis, under the *Bill* trustees will be issued permanent licences instead of annual licences, subject to the payment of an annual fee and to cancellation of licence for cause.

The Superintendent's powers of detection and investigation are expanded to encompass arrangements as well as bankruptcies and may be exercised as soon as a proceeding under the Bill has been filed.

*Bankruptcy Administrator (former Official Receiver)*

The local bankruptcy official is called the "Administrator" in the Bill, first because that name is more descriptive of his functions, and second because the phrase "official receiver" wrongly connoted that property vested in the bankruptcy official. In fact, the property of a bankrupt's estate vests only in a trustee.

The bankruptcy Administrator continues under the Bill to be responsible to carry out what were the functions of the official receiver, particularly those administrative functions such as accepting copies of and recording petitions, examining debtors, and chairing first meetings of creditors. In addition, under the Bill, the bankruptcy Administrator has a duty, where he is of the opinion that a debtor caused his bankruptcy by rash or hazardous speculation, reckless business conduct or other abuses of the credit system, to file a caveat within six months after the date of bankruptcy and so block the discharge of the debtor.

The bankruptcy Administrator will also be empowered to prepare and administer small debtor arrangements. Also, he will be required to administer consumer bankruptcies where no private trustee is willing to act and may administer a commercial bankruptcy where no private sector trustee will undertake administration of the particular estate and there are allegations of facts that may require further investigation.

*Courts*

The present Bill departs substantially from *Bill C-60* in formally reintroducing the position of registrar of the court. The main responsibilities of the registrar will be in the passing of estate accounts submitted by solicitors and accountants; he will continue, as under the present Act, to exercise important judicial or quasi-judicial functions under the authority of the court.

Consistent with the general administration policy of the Bill, a bankrupt will be automatically discharged six months after the date of bankruptcy except where a bankruptcy Administrator on his own or at the request of the trustee or a creditor files a caveat to block such discharge. The bankrupt may apply to court to have the caveat set aside or removed on the ground that he has rehabilitated himself. Thus the court considers discharges only in exceptional cases.

*Trustee*

Although the Bankruptcy Committee Report had recommended substituting public sector trustees for private trustees, after considering comments on the Report, the Government concluded that the Bill should continue to assign responsibility for the administration of commercial bankruptcies to private sector trustees because private sector trustees are better equipped to adjust to a variable work load and to react to emergency situations. There are a number of provisions in the *Bill* that are intended to clarify the rights, duties, liabilities and powers of trustees, but in general their functions and responsibilities under the *Bill* are the same as under the present law.

Also, continuing present policy, public sector trustees, i.e., "federal trustees" will be restricted to handling small debtor estates, consumer bankruptcies and if there are facts that may require investigation, commercial estates that no private sector trustee will undertake to administer.

*Creditors*

Because ordinary unsecured creditors actually realize, on average, only a small percentage of their claims against bankrupt estates, they are reluctant to commit further resources directly to administer those estates. As a result, the administration is left almost entirely to the trustee, subject only to the surveillance of the Superintendent. Although the *Bill* cuts down the number of claims of preferred creditors, ordinary unsecured creditors will continue to be reluctant to participate. Nevertheless by making the functions of creditors and inspectors clearer and by rendering administration more efficient, the *Bill* thus further attempts to induce the unsecured creditors to play a more active role.

## PART III—ARRANGEMENTS FOR THE CONSUMER DEBTOR

(Sections 63-97)

### *PRESENT LAW*

The commonplace use of revolving accounts, credit cards and institutional consumer lending services made available during the past twenty years has made virtually every Canadian a user of credit and, as a corollary, has led to an enormous growth in the aggregate amount of consumer debt outstanding, that is from about $0.8 billion in 1947 to $8 billion in 1967 and to more than $29 billion in 1977. Given the aggressive efforts of lenders to promote their credit services, it is not surprising that an increasingly large number of householders become seriously overburdened by debts they cannot repay, particularly where the household is affected by some unforeseen catastrophe.

Under the present *Bankruptcy Act* an insolvent consumer or wage earner debtor may resort to bankruptcy for relief from his debts, but until mid-1972, this remedy was often illusory, since in many cases he did not have sufficient funds (approximately $500) to secure the services of a licensed private trustee to administer the estate as required by the Bankruptcy Act. In 1972 the government, by a decision of Cabinet, introduced the Small Debtor Program to assist wage earner debtors with low income and little property who are unable to obtain the services of a private trustee. Under this program, a public servant administers the estate for a nominal fee or even, in specific cases of hardship, without receiving any fee.

An insolvent consumer or wage earner debtor who wishes to avoid the social stigma of bankruptcy may choose to make a proposal to his creditors under Part III of the present Act in the same way as a commercial debtor. This remedy, again, is largely illusory because most consumers who are in financial difficulty cannot afford the services of a private trustee. Furthermore, the mandatory procedures of the present *Act*, which were designed for insolvent businesses, are too cumbersome to permit efficient administration of arrangements for consumer debtors.

A third remedy available to the insolvent consumer debtor is debt consolidation under Part X of the present Act. That Part was enacted in 1966 as a result of a decision of the Supreme Court of Canada that similar legislation enacted by Alberta in 1956 was not valid because it was primarily bankruptcy and insolvency legislation and therefore exclusively a federal matter. Part X provides for a simple and inexpensive procedure whereby specified insolvent debtors may apply to the clerk of the Court for a consolidation order. The debtor undertakes to pay fixed amounts to the Court for distribution among creditors until all his debts are paid in full. In sum, this Part legitimates only an extension of time to repay, not a composition that effects a rateable reduction of creditors' claims. Morever, Part X is only in force in those Provinces which request it. Only six Provinces, not including Ontario and Quebec, have implemented Part X. Thus a large number of Canadians are denied access even to this limited form of relief.

### *PROPOSED LAW*

#### *Arrangements*

Although the main objective of Part III remains unchanged by providing overburdened debtors with an alternative remedy to their financial difficulties, the present *Bill* differs substantially from *Bill C-60.*

#### *Scope of Part*

Only individuals, whether in business or not, whose liabilities do not exceed $20,000, or such greater amount as may be prescribed, may avail themselves of the arrangement provisions of Part III. In the computation of this amount no account is taken of debts secured by real property, where such property is the principal residence of the debtor. The maximum duration of a consumer arrangement remains 3 years, but in special circumstances the term may be extended by one year. No debtor can be compelled to choose an arrangement instead of seeking complete discharge through bankruptcy proceedings.

#### *Stay of proceedings*

Unlike *Bill C-60,* the filing by a debtor of a request to formulate a proposed arrangement does not bar any creditor, whether secured or unsecured, from exercising a remedy against the debtor or his property. The stay of proceedings begins only after a proposed arrangement has been formulated. If there are compelling reasons requiring a stay of proceedings prior to the formulation of the proposed arrangement, the debtor may, before filing a request, file a notice of intention stating his intention to file a request; the filing of such notice grants to the debtor a ten day stay of proceedings to allow him to formulate a feasible arrangement free from the pressure of proceedings taken against him. In order to prevent abuses, the stay of proceedings would not apply where a notice is filed within six months of the filing of any previous notice of intention.

*Administration*

In order to streamline the administrative process and to facilitate the administration of consumer debtor arrangements, the *Bill* no longer distinguishes between extension arrangements and composition arrangements. Whether the debtor proposes to pay his debts in full or in part during an extended period of time, the systems and procedures to be followed are identical. The proposed arrangement is sent to the creditors to be affected by the arrangement and unless 50% in value of those creditors request a meeting, no meeting will be held and the arrangement, as formulated, is deemed to be approved. If a meeting of creditors is requested, the administrator will call a meeting where the creditors may accept, reject or amend (with the concurrence of the debtor and administrator) the proposed arrangement. Unless rejected or amended by a majority of the creditors entitled to vote, whether or not they are present or represented at the meeting, the proposed arrangement is deemed to be approved as formulated. The same procedure would apply where variations to the arrangement are proposed during the term of the arrangement.

This streamlined and simplified procedure should facilitate the administration of consumer debtor arrangements by the administrator. A conscious effort was also made to integrate in Part III all sections required to administer consumer debtor arrangements; under *Bill C-60* this was done by reference to sections scattered thoughout the Bill, especially in Part VI. Now Part III is essentially a stand alone part. This integration is especially important since the Bill contemplated the delegation of the administration of these arrangements to provincial administrators who might not be involved in the administration of any other parts of the Bill.

Another feature of the *Bill* that should facilitate the administration of consumer arrangements is the introduction of what is commonly referred to as a "basket" proposed arrangement. Under this approach the debtor would offer to pay a stated amount of money out of his future income without specifying the portion of each debt that would be paid.

*Secured Creditors*

With the exception of creditors whose claims are secured by real property, all secured creditors are bound by a consumer arrangement. However, a creditor who has a security interest in personal property, if more than one-third of the original purchase price is outstanding, may elect within 20 days after a notice has been sent to him by the bankruptcy Administrator not to participate in the arrangement. If he does elect not to participate, his rights are confined to his security interest and his claim against the debtor or his estate for any deficiency balance is barred. It must also be noted that with respect to a collateral security interest in real property, a claim may be admissible and therefore subject to the arrangement if the value of the property subject to the security interest is less than the amount of the debt. In those circumstances the secured creditor may be required to assess the value of the real property subject to his security interest and to relinquish the amount of his security interest that exceeds the value of the pertinent property.

Finally, the *Bill* provides that the administrator may request from the secured creditor the filing of a proof of security interest; in addition, the court may postpone the right of a secured creditor to realize the property subject to his security interest if such postponement does not materially adversely affect the secured creditor.

*Rehabilitation of the debtor*

The *Bill*, by creating a strong incentive to enter into an arrangement instead of bankruptcy, emphasizes debtor rehabilitation through better financial planning. In any case, the *Bill* requires the Administrator to exercise such supervision and give such advice to the debtor as will assist him to rehabilitate himself financially and carry out his financial obligations. The Administrator may refer the debtor to guidance and counselling agencies in the community. As one of the rehabilitative measures, he may also permit the debtor, after an arrangement has been in effect for at least 6 months, to make payments directly to the creditors if the Administrator is satisfied that the debtor is able to manage his financial affairs.

*Consequences of Default*

Where a debtor fails to comply with the terms of an arrangement the Court may annul it. If he defaults in his payments in an amount equal to the total of three months payments, or if the debtor does not make his payment within ten days after a payment becomes payable where such payments are due on longer basis than a monthly basis, the arrangement is deemed to have been set aside and all the rights of creditors revive, including any right to repossess or seize in execution the assets of the debtor. There is no automatic bankruptcy, but of course a defaulting debtor may petition himself into bankruptcy. In addition, the Bill introduces a short form petition granting to any creditor or creditors having claims of $1,000 or more the right to file a petition in bankruptcy with the Administrator as an alternative to filing it with the court according to the usual procedure.

After a debtor defaults under an arrangement, he is not entitled, without leave of the Court, to make another proposal for an arrangement unless all debts which were part of the previous arrangement are paid.

If an arrangement is not a satisfactory solution, any debtor has a right to go into voluntary bankruptcy. The Administrator will continue to assist those debtors who elect bankruptcy but cannot afford the services of a private trustee.

## PART IV—COMMERCIAL ARRANGEMENTS (Sections 98-133)

### *PRESENT LAW*

Bankruptcy and insolvency laws have long recognized that a firm may get into short term financial difficulties because of a general economic crisis or a sudden change of market conditions that is clearly beyond the control of the firm. If a firm cannot survive the rigours of competition in the long run, then the bankruptcy law should make it possible to liquidate and dissolve that firm with a minimum of formality and cost, freeing its capital to be used by another enterprise. But where a firm is viable, if bankruptcy were the only solution to short term difficulties, then the bankruptcy law itself would tend to be forcing a less than optimal use of economic resources. The present federal laws therefore facilitate and even encourage proposals for commercial arrangements.

Proposals, more properly called proposals for an arrangement, may be made at present under one or more of several federal statutes. Most proposals relating to unregulated business corporations are made under Part III of the present *Bankruptcy Act*, but such corporations may also make a proposal under the *Winding-Up Act* or the *Companies Creditors' Arrangement Act*. The *Bankruptcy Act* does not apply to banks and other financial intermediaries, which can therefore make proposals only under the *Winding-Up Act* or the *Companies Creditors' Arrangement Act*. Railway companies may make an arrangement only under certain vestigial provisions of the *Exchequer Court Act*.

A proposal under the present *Bankruptcy Act* may be filed by a debtor before or after he is bankrupt. When a debtor files a proposal, no creditor affected by it may institute or continue any action or proceeding to enforce a claim. However, secured creditors are not affected by the proposal, and creditors whose debts are not dischargeable, such as suppliers of necessaries, are not bound by it. Furthermore, the proposal must provide for payment in full of the claims of creditors having a priority under the Act and for the payment of the trustee's fees and disbursements. In order to bind unsecured creditors, the proposal must be accepted by a majority of them representing three-fourths in value of claims and must also be approved by the Court. In sum, under the present *Act*, a proponent of a proposal must overcome a number of formidable obstacles.

One of the great merits of a proposal is that the debtor continues to manage his business unless the proposal states otherwise or the creditors, with the consent of the debtor, impose conditions. Unlike bankruptcy, the debtor's property does not automatically vest in the trustee.

If a proposal is rejected by the creditors or by the Court, or if after it has been accepted and approved it is annulled by the Court for default or for other reasons, the debtor is deemed to be bankrupt. To ensure that debtors do not abuse the privilege of making proposals and thus stall inevitable bankruptcy, the *Bankruptcy Act* was amended in 1966 to make the automatic bankruptcy retroactive to the date of filing a proposal (except where the proposal is annulled by the Court). The aim of this retroactive provision is to enable the trustee to recover fraudulent dispositions, including preferential transfers, made by the debtor within the prescribed delay periods which are calculated retrospectively from the filing date.

Proposals under the *Companies Creditors' Arrangement Act* are generally made with respect to creditors who hold debentures issued under a trust indenture. The now obsolete *Farmers Creditors' Arrangement Act* authorized the Court to formulate a proposal for a farmer. In contrast, under the *Bankruptcy Act* no person other than the debtor can make a proposal.

The *Bankruptcy Act* requires the trustee with whom the proposal is lodged to make an appraisal and investigation of the affairs and property of the debtor, in order to enable the trustee to estimate with reasonable accuracy the financial situation of the debtor and the cause of his financial difficulties or insolvency, and to report the result of his enquiry to the meeting of creditors. The debtor must also submit a copy of the trustee's report to the Court when he seeks the required court approval of the proposal. But the present *Act* does not require the debtor to disclose details of payments made or promised to be made by him to the trustee for future services or to other parties outside of the terms of the proposal itself.

### *PROPOSED LAW*

The primary object of Part IV of the *Bill* is to provide a new, integrated and flexible procedure to facilitate a wide variety of arrangements. However, banks and other financial intermediaries such as trust companies and

credit unions are not permitted to take advantage of this Part. This prohibition reflects the policy conclusion that if a financial intermediary is in such serious trouble that it must resort to an arrangement with creditors it should not, in the public interest, be permitted to continue in business. The *Bill* has been modified, however, to allow an insurance company to make an arrangement under Part IV, subject to the prior approval of the Superintendent of Insurance.

*Notice of Intention*

The *Bill* recognizes that it is in the interest of creditors that the debtor have reasonable time to prepare a carefully considered and workable proposal for an arrangement, free from pressure or harassment. It therefore allows the debtor to file a Notice of Intention with the Administrator stating that he proposes to file a proposed arrangement with a view to preventing bankruptcy. If the debtor files this Notice, all legal proceedings against him by creditors, including secured creditors, are automatically stayed for a period of 10 days or for such longer period as the court may determine. However, on the filing of a Notice, an interim receiver is automatically appointed in order to protect the interests of creditors.

To obtain further immunity from legal proceedings, the debtor must file a proposed arrangement within the stipulated time. If he fails to do so within ten days after the Notice is filed or within such longer period of time as the court may determine, the Notice is deemed withdrawn and the proceedings on any petition filed for a bankruptcy order may continue or a bankruptcy order is automatically made against the debtor, unless the court otherwise orders.

*Persons Entitled to Make a Proposed Arrangement*

In addition to the debtor himself, where a bankruptcy order has been made against a debtor or where a corporation is being dissolved, the *Bill* permits the bankruptcy trustee or the liquidator of the corporation, as the case may be, to make a proposed arrangement in respect of the debtor. Furthermore, any creditor, a trustee appointed under a trust indenture, or a receiver of a corporation is entitled to make a proposed arrangement for a debtor who is bankrupt.

*Required Provisions of a Proposed Arrangement*

The Bill makes it mandatory for the debtor to disclose all payments made or promised to be made by him to the trustee and others in connection with the proposed arrangement, including payments to be made outside of the proposed arrangement. The debtor must also clearly set out the amount and terms of payment, including the grant of any security interest to secure payment that he proposes to make. If the proposed arrangement is to be guaranteed, it must also set out the terms of the guarantee.

*Possible Additional Provisions of a Proposed Arrangement*

Any provision that is reasonable in the circumstances may be included in a proposed arrangement. The present *Bill* specifically provides that a proposed arrangement may alter the order of payment of claims and that the arrangement provisions supersede the order of priority determined under section 261 of the *Bill*; in addition, a debtor is granted the right to terminate partly performed contracts, subject to the control of the court to prevent abuses. The Bill also impliedly gives the proponent of an arrangement broad powers to define classes. And he may also apply to a court to determine if a creditor affected by the arrangement has been properly placed in a class of creditors. This application may be made even before the first meeting of creditors, enabling the proponent to minimize technical problems at the meeting of creditors, particularly by constraining the need for exercise of the chairman's discretion to designate classes, which is a decision that may be reviewed by a court and therefore may engender substantial delays.

*Duties of the Trustee*

The *Bill* places additional duties on a trustee who agrees to carry out a proposed arrangement. His investigation into the debtor's affairs must be adequate to enable him to arrive at an opinion and to report to the creditors that the debtor has dealt fairly with them and that the debtor has not entered into transactions or disposed of property in fraud of his creditors. In sum, the trustee must exercise the same vigilance in respect of preferential and reviewable transactions as he would if a bankruptcy order had been made against the debtor and bring any such facts to the notice of the creditors.

*Formulation of Arrangements by Court*

The *Bill* also permits Court formulated arrangement, adopting a feature of the *Farmers Creditors' Arrangement Act*. Recognizing that a firm may be the life blood of a community, the *Bill* empowers the Court to formulate a proposed arrangement in respect of a debtor whose debts exceed one million dollars, if the Court is of the opinion that in the public interest all efforts should be made to continue the firm in business rather than dissolve it through the bankruptcy process. The Court, may, however, decline to formulate an arrangement

where the proposed arrangement would not be just and equitable to the creditors.

## PART V—BANKRUPTCY
(Sections 134-234)

### *PRESENT LAW*

The law applicable to insolvent debtors is now set out in several federal statutes. The *Bankruptcy Act* applies to all individual and corporate debtors other than financial intermediaries and railway companies, which are subject to specific insolvency provisions set out in the respective regulatory acts that apply to them. The *Winding-Up Act* applies mainly to the liquidation and dissolution of solvent business corporations but can also apply to any insolvent corporation, whether incorporated federally or provincially. An insolvent corporation, however, can be compelled to be wound up under the *Bankruptcy Act*. These repetitive and frequently overlapping insolvency laws engender much uncertainty and confusion.

#### *Commencement of Bankruptcy Proceedings*

The present *Bankruptcy Act* does not give any practical relief to a small debtor whose total liabilities are relatively small. Nor does it permit anyone who is not a creditor to initiate any action when he becomes aware that a debtor is in financial difficulties. This exclusive reliance on creditors often defeats the purposes of bankruptcy law, especially where, on the one hand, creditors are unaware that the debtor is attempting to save himself from utter ruin or, on the other hand, to preserve for himself, at their expense, as many of the unencumbered assets as possible. As a result, it does not adequately protect the public interest.

#### *Stay of Proceedings*

To prevent a scramble among creditors, the *Bankruptcy Act*, upon the bankruptcy of a debtor, automatically stays any legal proceedings against a bankrupt except where a Court expressly permits such proceedings to be initiated or continued. But this automatic stay generally does not affect secured creditors whose rights may be postponed only by an order of the Court and then only for a period not exceeding six months. A secured creditor may often realize his security interest by prompt repossession and disposal of the debtor's property even before being restrained by Court order, thus leaving little or nothing for other creditors. In contrast, the *Winding-Up Act* stays all legal proceedings by creditors to enable the liquidator to obtain a complete overview of the debtor's affairs.

#### *Discharge of the Bankrupt*

The filing of an assignment by and the making of a receiving order against an individual automatically operates as an application for his discharge from his status as a bankrupt, but in order that debts and liabilities may be released, the Court must make a formal order of discharge. Upon hearing an application for discharge, a Court has power to suspend a discharge or to impose conditions on the bankrupt. The practice of granting discharges varies widely across the country. Debtors often fail to obtain an unqualified discharge, and as a result they continue to have the status of bankrupt and to be subject to a bankrupt's civil disabilities, particularly the bar against carrying on business on credit. Corporate bankrupts must apply formally for discharge which is granted only if creditors' claims are paid in full, a case that rarely occurs.

The status of bankrupt to which a corporation is subject, however, does not affect the human agents—the directors and officers—who control it; they are free to embark on new ventures almost unblemished by the status of the corporation they managed. The only exception is the report, introduced by the 1966 amendments, that is prepared by the trustee and filed with the Superintendent of Bankruptcy and with the official receiver, which may impute blame for the bankruptcy to named directors and officers.

Although the report is available to the public, it is seldom effective to restrain the activities of persons who were responsible for the bankruptcy of a corporation, and it is grossly inadequate to cope with the problem of "planned bankruptcies".

#### *Avoidance and Review of Transactions*

Both the *Bankruptcy Act* and the *Winding-Up Act* contain provisions designed to enable the Court to set aside gifts, settlements and fraudulent preferences occurring within certain time periods before a bankruptcy or corporate dissolution.

### *PROPOSED LAW*

The *Bill* sets out a comprehensive bankruptcy and insolvency system, integrating in one statute the usual insolvency provisions, which will now apply not only to ordinary business firms but also to insolvent financial intermediaries, stockbrokers, and railway companies, thus obviating the repetitive and overlapping provisions that now exist in the federal laws. In addition, the *Bill* introduces a number of important innovations relating to bankruptcies that are designed to render the proposed law clearer, fairer, and easier to administer.

*Commencement of Bankruptcy Proceedings*

Any person or corporation, without limitation as to the nature of his occupation or the amount of debt, may apply for a bankruptcy order in respect of himself. One or more unsecured creditors having aggregate claims in excess of $1,000 may also petition a debtor other than a farmer or fisherman into bankruptcy. A corporation found to be insolvent when it is being wound up under any other legislation, for example, a corporation law, must be brought within the framework of the bankruptcy statute. Specific rules apply to partnerships, stockbrokers and insurance companies.

Also, where a department or agency of the federal or a provincial government exercises regulatory or supervisory authority over the financial affairs of a debtor, it may initiate bankruptcy proceedings in respect of the debtor through the appropriate Attorney General where necessary for the protection of the public interest.

*Stay of Proceedings*

The present Bill modifies substantially the provisions regarding stay of proceedings. With respect to claims of unsecured creditors, the stay is absolutely binding on the creditor as of the date of filing of a petition for a bankruptcy order, unless the creditor is expressly excepted by Court order. With respect to a secured creditor's claim, many innovations are set out in the Bill to enable the trustee better to evaluate the overall condition of the debtor's affairs and to plan his administration accordingly without unduly interfering with the rights of a secured creditor. First, where a petition is filed, the stay does not apply against a secured creditor unless the court expressly states otherwise. Second, where a bankruptcy order is made, a secured creditor's rights to deal with property of the debtor are, subject to certain exceptions, stayed until ten days after the date of the first meeting of creditors or after the filing of a proof of security interest, whichever is the later. This limited stay should give the trustee time to elect whether he should redeem or require the property to be realized or surrender it to the creditor. Specific rules govern the conduct of the trustee, depending upon the election he makes. Where a trustee needs more time to determine the course of action he should take in the best interest of the estate, he may apply to a court for a further stay where this can be done without materially adversely affecting the secured creditor.

Whenever a stay applies with respect to a secured creditor, the Bill provides that he may nevertheless exercise a number of remedies of a protective nature, such as disposing of property that is perishable or likely to depreciate rapidly in value. On the other hand, the Bill imposes certain duties on the secured creditor where he realizes property subject to a security interest; the secured creditor must act honestly and in good faith, realize property in a timely and commercially reasonable manner, and make full disclosure to the trustee of any action taken in respect of the property.

Government creditors, whether the Crown in right of Canada or a province or a subordinate agency, are in nearly all circumstances treated like all other creditors. If a government creditor makes a claim as a secured creditor it must file a proof of security interest showing that it has perfected its security interest in the same manner—by registration or otherwise—as any other secured creditor is required to perfect his security interest.

*Exempt Property*

Continuing the policy of the present Act, property held in trust, property that is exempt from seizure under a provincial law, disablement benefits, and amounts payable under a retirement savings plan registered under the *Income Tax Act* do not vest in the trustee. Also, as a general rule, wages and property acquired by a bankrupt before he is discharged do not automatically vest in the trustee; but where the bankrupt earns an income in excess of $500 per month or acquires by gift or otherwise property in excess of his reasonable requirements the trustee may apply to the Court for an order vesting the excess in him for distribution among the creditors.

*Consumer Bankruptcies*

Another feature of the Bill is to provide simplified procedures in the case of consumer bankruptcies. For the purpose of the Bill, a consumer is defined to include any individual whose debts do not exceed twenty thousand dollars, excluding debts secured by the principal residence of the debtor. Some of the simplified procedures include the following: income tax refunds resulting from the over-deduction of taxes at source do not vest in the trustee; no meeting of creditors will be held unless the majority of creditors request one, and a proof of claim need not be filed where no dividend is expected to be paid. These simplified procedures should accelerate the proceedings and cut down on costs without depriving the creditors of their right to control the administration of these estates.

*Discharge of the Bankrupt*

When a bankruptcy order is made in respect of a debtor, the debtor is released from all his debts except a fine, an obligation in respect of a bail bond or recogni-

zance, an obligation to pay family maintenance, or any debt arising out of fraud where the debtor has been convicted of such fraud under the *Criminal Code*. Also, he is not released from a debt he failed to disclose to the trustee, but his continuing liability is limited to the amount the creditor would have received had the trustee known about the claim.

Consonant with the administration by exception policy of the Bill, a debtor is not required to apply to a Court for a discharge. A corporate bankrupt can be discharged only if it pays all its debts in full. An individual bankrupt is automatically discharged six months after the date of the bankruptcy order affecting him unless an Administrator files, within that six-month period, a caveat stating he has reason to believe that the bankrupt substantially aggravated his insolvency by reckless business conduct, gross incompetence, carelessness or similar means, or that he has committed specified bankruptcy offences. The trustee of the estate as well as any creditor of the bankrupt may apply to the Court for an order directing the Administrator to file a caveat. The Court may also set aside a caveat that has been filed. If not set aside the caveat has effect for 5 years or such shorter period of time as may be ordered by the Court, thus hindering the bankrupt from obtaining credit to carry on business and continuing his liability to the estate for wages or after-acquired property in excess of his reasonable needs.

The procedure described above also applies to an "agent" or "former agent" of a bankrupt. A caveat may be filed within one year of the bankruptcy of a corporation against an agent or former agent by the Administrator or on an application to a court by the trustee of the estate or a creditor of the bankrupt. With a view to promoting the integrity of the credit system, the Bill empowers the Court to revive all debts from which a bankrupt has been released within 5 years of his current bankruptcy, if the Court is of the opinion that the bankrupt has abused the bankruptcy process to the detriment of his creditors.

*Directors and Officers of Corporations—Liability and Discharge*

The Bill introduces several new provisions concerning the status and personal liability of directors and officers of corporations. First, the Bill prohibits a bankrupt from continuing to act or from being elected or appointed as a director of a corporation. Second, the Bill imposes personal liability on directors and officers and former directors and officers (within 2 years before the bankruptcy) for debts of the corporation that remain outstanding as claims against the estate, where the director or officer has in his own interest—and hence in breach of his fiduciary duty to the corporation—continued to carry on a business that was not in the interest of the corporation, continued to carry on business by resorting to sales below cost or similar improper means, conducted business with a view to delaying or defrauding creditors, or committed specified bankruptcy offences. Third, a director or officer is also personally liable for outstanding corporate debts if he fails to keep accounts that enable the trustee to distinguish between the corporation's property and the property of the director or officer. Finally, where a bankruptcy order is made in respect of a corporation, the directors and former directors of the corporation are jointly and severally liable to employees of the corporation for unpaid wages not exceeding $2,500 for each employee.

*Avoidance and Review of Transactions*

The Bill sets out a comprehensive code in respect of fraudulent transfers and preferential payments in respect of both arm's length and non-arm's length transactions. The purpose of the code is to include, as far as possible, those transactions that have the effect of defeating the legitimate expectations of honest creditors. It attempts to achieve this purpose by extending the provisions in the present Bankruptcy Act and by bringing the law more into conformity with prevailing business practices.

The proposed Bill includes a specific section designed to render inoperative provincial laws on fraudulent preferences and conveyances in the case of insolvency because of the decision of the Supreme Court of Canada in the case of *Robinson* v. *Countrywide Factors Ltd* [1977] 23 C.B.R. (n.s.) 97. In that case the Supreme Court, by a majority decision, decided that the Saskatchewan *Fraudulent Preferences Act* is not ultra vires and that sections 3 and 4 of that *Act* are not specifically in conflict with the fraudulent preference provisions of the *Bankruptcy Act*. As implied by the Chief Justice, who wrote the minority judgment, there is in fact an overall conflict between the two systems: the bias of the *Act* is to encourage creditors to keep a debtor alive, for example, by supplying inventory without great risk until bankruptcy is imminent; the bias of some provincial laws is to favour the mass of the creditors at the expense of the creditor who took the risk of continuing to supply inventory while the debtor was in financial trouble. Because there is a clear and sharp conflict between policy objectives, the *Bill* expressly provides for federal occupation of the preferences field where a bankruptcy order is made.

With respect to gifts, a court may set aside any transfer of a gratuitous nature or with a merely nominal consideration where the interest of the donor does not

pass irrevocably at least six months before the filing of a bankruptcy petition; this time period is extended to one year where the gift is made between related persons. In addition, the court may set aside a gift where, at the time the interest of the donor passes irrevocably, the donor is insolvent or unable to pay his debts without the aid of the property comprised in the gift. These rules are based on the basic principle that before being generous with his property a debtor must provide for the payment of his debts.

With respect to transfers that have the effect of giving a preference to a creditor, the Bill distinguishes between a transfer made by persons who deal with each other in an accepted business manner and a transfer made by persons who do not so deal with each other. In the first case, which is known as a preference at arm's length, the court may set aside the transfer only if the trustee can prove that it was made less than six months before the filing of the petition and with the intent of the insolvent debtor to give a preference. In the case of a non-arm's length preference, the burden of proof that the transfer was not a preference is normally on the creditor. The Bill deals specifically with preferences granted by a debtor to a person who had previously guaranteed his debts.

The proposed Bill reintroduces the common law intent to prefer test. However, it clarifies that proof of the intent of a debtor to give a preference is normally sufficient and declares that evidence that a transfer was made under pressure is not receivable to substantiate such transfer.

In addition to the above provisions, the Bill deals specifically with the problems created when a debtor makes a lump sum payment of premium on an insurance policy, assigns accounts receivable due to him, or substitutes other property previously released or returned by a creditor. It also sets out the powers of the Court where a transfer is set aside and deals specifically with the recovering of property or its value where such property has been reconveyed to another person.

As a general defence, the Bill provides that a Court may not set aside a transfer if the creditor proves that at any time after the transfer was made the debtor was solvent. In any case, proceedings to avoid transfers caught by the code must be brought by the trustee within 3 years of the date of bankruptcy.

*Leases of Real Property*

To deal with a frequent and particularly intractable problem the Bill sets a number of provisions to specify the respective rights, duties and powers of a lessor, lessee and the trustee where a lessee becomes bankrupt. In particular, the Bill makes clear the trustee's right to occupy the leased property and to retain or disclaim the lease and also the lessor's right to receive rent. In addition, the Bill contains provisions to clarify the rights of a sub-lessee and of a mortgagee of the leasehold.

## PART VI—ARRANGEMENTS AND BANKRUPTCY
(Sections 235-313)

*PRESENT LAW*

Part V of the present *Bankruptcy Act* sets out the substantive rules that govern the most important aspects of estate administration, including rules relating to filing proofs of claim, staying of creditor proceedings, priorities among creditors and the resulting scheme of distribution, creditors and inspectors meetings, and the powers of boards of inspectors. These rules also apply, in most circumstances, to a proposal made by a debtor under Part III.

*Claims Against an Estate*

Any creditor, whether secured or unsecured, may file a claim with the trustee if his claim arose before the date of bankruptcy. Where a claim is merely contingent or is for an unliquidated amount, the trustee has to apply to the Court for directions. The Court may value the claim or, where damages have to be assessed, direct that the issue be tried.

The *Act* empowers the trustee to reject or reduce any claim that a creditor cannot prove, but he cannot reject or reduce it on the ground that the underlying transaction was harsh or unconscionable or that the cost of borrowing was excessive. In Provinces having legislation against unconscionable transactions, the trustee must apply to a Court to rule on the validity of the claim under the applicable law.

*Release of Debts*

When a bankrupt obtains his discharge from the Court, he is released from all debts and liabilities except those within a small category, such as a fine or penalty, debts incurred fraudulently, family maintenance, and debts for necessaries. Despite this release from his debts, it is possible for a creditor to take advantage of the discharged debtor's financial plight and induce him to pay the released debt. Whether a subsequent promise to pay a released debt is valid is not clear under existing law, but if a creditor gives further credit to the debtor on condition that the debtor also repays the released debt,

it appears that the obligation in effect revives, unless it can be repudiated as an unlawful penalty or unconscionable under provincial law.

*Scheme of Distribution*

Although not immediately clear from the text of the present Act, the law in fact divides creditors into four classes: secured, preferred, ordinary unsecured, and deferred creditors. Except as mentioned above, the secured creditor remains essentially outside of the statutory scheme of distribution, free to exercise his rights against the debtor's property unless the trustee intervenes. And even then the secured creditor has absolute priority to the extent of his security interest. Preferred creditors are creditors to whom parliament has given special priority to ensure the administration of the estate or to achieve greater equity among claimants. These preferred claims include funeral expenses, costs of administration, the Superintendent's levy, arrears of wages, arrears of municipal taxes, three months rent arrears, U.I.C. and Workmen's Compensation withholdings and so on. After these preferred claims are paid in full, the ordinary unsecured creditors share any balance rateably. If, after unsecured creditors are paid, a further balance remains it is paid rateably to the deferred creditors. Any remaining surplus is paid to the debtor. All creditors in a specific category are paid rateably. But the order of priority is strict: no payment is made to a lower priority creditor until all higher priority creditors are paid in full.

*Meetings of Creditors*

The present Act requires the trustee to call the first meeting of creditors of an estate within 5 days of his appointment and hold it within 15 days after the notices have been mailed. It sets out the procedure at meetings, including quorum, voting and proxies. The purpose of the meeting is to inform the creditors of the financial affairs of the bankrupt, to appoint inspectors, to affirm the trustee's appointment or to substitute another trustee, and to obtain directions from the creditors. Because under the present *Act* the secured and preferred creditors claims rarely leave any residue to satisfy the claims of ordinary unsecured creditors, a recurring problem in recent years has been the difficulty of obtaining a quorum at the first meeting of creditors in almost all but large estates. This is especially true of summary administration cases (individual bankrupt having less than $500.00 assets after deducting secured creditors claims). As a result, the administration of an estate during the first, and often critical, weeks is delayed and the checks on the powers of the trustee that the meeting is designed to provide are generally ineffective.

*PROPOSED LAW*

Part VI of the Bill introduces a number of significant changes to the present law. It applies to commercial arrangements under Part IV and to all bankruptcies including consumer bankruptcies unless expressly stated otherwise.

*Claims Against the Estate*

The Bill empowers the trustee summarily to set aside or reduce any claim, priority or security interest on property. His decision may be appealed to the Court. The Bill also requires the trustee to value contingent and unliquidated claims filed with him. Again, his valuation may be appealed to the Court.

*Release of Debts*

A bankruptcy order has the effect of releasing the debtor from all debts and liabilities except (a) a fine or penalty imposed by a Court, (b) a debt arising out of a recognizance or bail bond, (c) a liability to maintain a spouse or child for a period subsequent to an arrangement or bankruptcy and (d) a debt arising out of fraud where the debtor has been convicted of such fraud under the *Criminal Code*. A debt thus released cannot be revived by agreement even if the creditor furnishes new consideration.

*Scheme of Distribution*

The Bill sets out an order of priority that reduces considerably the classes of preferred creditors (certain administrative costs, wage arrears, lessor's claim for three months arrears of rent, and Crown claims for moneys deemed held in trust up to a maximum of the cash on hand or on deposit), clarifies the position of ordinary unsecured creditors, and particularizes the rights of deferred creditors. Although long, the order of priorities provisions of the Bill, which are necessarily the nucleus of a bankruptcy law, attempt to clear up what is an unnecessarily arcane and complicated area of the law.

*Meetings of Creditors*

Although it varies time periods slightly, the Bill essentially continues the basic policies of the present law: the trustee is required to call the first meeting of creditors, which must be held within 30 days of the date of the bankruptcy order; and the trustee may call any subsequent meeting of creditors and is required to do so when directed by the Court, the board of inspectors, or a specified number of creditors.

One of the policies of the Bill is to encourage creditors to participate more actively in estate administration, therefore the Bill sets out a fairly detailed code of procedures to govern meetings of creditors, the election of inspectors, and the rights and duties of inspectors. To make possible improved representation for minority creditors the *Bill* permits a creditor to cumulate his votes and cast all of them for one inspector.

Because creditors have little interest in estates with few assets, they frequently neglect to attend meetings, even to elect a board of inspectors. The Bill therefore empowers the Superintendent to appoint inspectors where the creditors fail to do so and to appoint an inspector where the Crown is a creditor.

*International Insolvencies*

The Bill sets out flexible international insolvency provisions that will give a court broad discretion to permit coordination of insolvency proceedings in Canada with concurrent bankruptcy proceedings in another jurisdiction.

## PART VII—SECURITIES FIRMS
(Sections 314-326)

*PRESENT LAW*

The present Bankruptcy Act contains no special provisions concerning the bankruptcy of securities firms, notwithstanding that such bankruptcies have proved to be especially complicated and problematical.

These bankruptcies are inherently complicated because a securities firm's business is complicated. It trades securities in large volume on volatile markets on its own behalf and for customers. It pledges its own or customers' securities with banks to secure operating loans and purchase money loans for its customers. It holds securities in various ways for customers. Many are in the name of the securities firm or another securities firm, endorsed, and bear a bank guarantee of signature ("street form"). Some are in the customer's name but endorsed so that the securities firm may trade at its discretion or for the custumer's convenience. Some are in the customer's name and endorsed, but segregated and identified as belonging to the named customer. Some are in the customer's name and both unendorsed and segregated. Complicating matters further, the securities firm frequently holds free cash balances for customers that arise from securities sales and dividend receipts.

Frequently, when a securities firm gets into serious financial difficulty it fails to comply with either the securities act or regulations, stock exchange or IDA rules, or even the customer's instructions, and as a result the rights of creditors and customers to specific securities and to free cash balances become completely confused. Under the present law, when a bankruptcy occurs, the trustee is required to unravel what is usually a tangled mess in order to identify and distinguish between ownership rights in specific property and mere creditors' claims. To do this he must apply complicated common law rules concerning the identity of the owner of a security and even more complicated equitable tracing rules based on the idea that a broker holds securities, if fully paid, as constructive trustee for his customer, entitling a customer to recover that quantity of securities from the assets of the estate, in effect with priority over other creditors, even where he cannot be specifically identified as owner of the securities. As a result, a particular customer's priority usually is determined as a matter of pure chance, depending on the degree of the security firm's misconduct, the form of the security, its status on the corporate securities register, the manner in which the securities firm segregated or identified it, or the way the securities firm dealt with it (e.g., permitting recovery of a gift or a preference).

*PROPOSED LAW*

In its Report, the Bankruptcy Study Committee recommended that the proposed bankruptcy law contain a separate part dealing with the bankruptcy of securities firms, following generally the model set out in the current United States *Bankruptcy Act* §60e.

Further study by the policy analysts revealed that although the U.S. statutory model is more refined than the present Canadian common law, it is not clear that it is either fairer or more efficient. In order to establish priority among claimants, the U.S. statute continues to distinguish among the nature of a customer's claim against the broker (dividends received for the customer, cash received in connection with securities trades, securities held for a customer), the manner in which a broker keeps his customer accounts (cash or securities clearly allocated to a customer, securities kept in segregated bulk, securities clearly earmarked as a customer's property, etc.), and the form of the securities certificate (in a broker's name—"street form", in a customer's name and not endorsed, etc.). While clearer than the common law, this particular statutory model leads to a myriad of legal complications and, consequently, to great administrative delays and demonstrable inequities among customers and other creditors of a stockbroker.

The analysts, therefore, considered a wide range of possible alternative models.

(1) Ordinary commercial bankruptcy, subject to identification and tracing rules, that is, the present common law.

(2) Customer preference over trade creditors but no limit on the securities identification and tracing rules.

(3) Customer's preference over trade creditors with constraints on the identification and tracing rules, limiting those remedies to the recovery of money or securities a claimant can "... specifically identify as allocated to a customer", which is in essence the U.S. model as set out in the *Chandler Act* of 1938 (now §60e of the U.S. *Bankruptcy Act*).

(4) Customer preference over trade creditors to the extent of cash and securities held by the stockbroker, and customers and trade creditors sharing the other assets rateably.

(5) No customer preference and, instead, all assets placed in a common fund that customers and trade creditors share rateably.

From an administrative point of view, the fifth model is the most attractive alternative because it is unambiguous, efficient and arbitrary. But like most arbitrary systems it would sacrifice fairness to efficiency, for when a bankrupt securities firm has substantial trade creditors it could be grossly unfair to customers, who perceive themselves more as passive depositors of a financial intermediary rather than as ordinary creditors.

In response to this perception, the draftsmen of the preceding Bankruptcy Bill (Bill C-60, which died on the Order Paper at the end of the 1st Session of the 30th Parliament), recommended model (4) above, which was designed to give customers a substantial priority over other creditors but, at the same time, to bar customers from claiming so-called, "specifically identifiable" money or securities. Generally, the proposed system worked as follows: (1) all monies and securities of customers are placed in one asset pool and all other assets are placed in a second asset pool; (2) customers claim rateably against the first asset pool; (3) customers having unsatisfied claims claim rateably with ordinary unsecured creditors against the second asset pool; and (4), any remaining assets are distributed to deferred creditors and then deferred customers. Although a reasonably efficient system, it too was widely criticized as being excessively arbitrary, in particular because it would force a customer, who had carefully instructed a securities firm to keep his money and securities segregated to place his assets in the common customer asset pool and to make a rateable claim against that pool. More specifically, securities firms argued cogently that a customer would be most reluctant to leave money or securities in the possession or under the control of a securities firm if he was aware he would not be entitled to claim his specifically identifiable property in the event the firm became bankrupt.

Persuaded by this argument and two other factors—first, the existence of the security industry's contingency fund (an analogue of a deposit insurance fund to protect customers), and second, the closer surveillance of securities firms by the securities commissions and self-regulatory organizations, which largely preclude a firm from losing control over its records—the Government decided to abandon in part the Bill C-60 model and to set out in Part VII, instead, a variation on model (3) above. This is, in essence, an adaptation of the U.S. *Bankruptcy Act* §60e, modified to tighten the definitions of "specifically identifiable property" with a view to minimizing the interpretation problems that have rendered §60e largely ineffective.

But the proposed Part VII does not abandon completely the Bill C-60 model. The major difference is that where the claims of customers of a bankrupt securities firm are not paid in full by the estate or an "insurer", customers are entitled to recover their specifically identifiable property. But where the customers' claims are paid in full, the Bill C-60 model obtains, creating separate pools of customer assets and creditor assets, distinguishing among arm's length customers, non-arm's length customers ("related customers"), and persons who caused or contributed materially to the bankruptcy of the securities firm ("deferred customers"), and relegating the related customers to a second priority and the deferred customers to a last priority.

In brief summary, the proposed model operates as follows. A "self-regulatory organization" or a creditor may initiate bankruptcy proceedings in respect of a securities firm. In any event, a petitioner must give pre-notice of the proceedings to each relevant securities commission. The general rules concerning the vesting of the bankrupt's property in the trustee (which exclude a customer's specifically identifiable property), the broad powers of the trustee to continue the bankrupt firm's business, and the fraudulent transfer and fraudulent preference rules apply to the bankruptcy of a securities firm.

More specifically, the trustee is empowered to elect, within 30 days of the date of bankruptcy, to satisfy all or part of any claim of a customer against the estate by delivering to the customer securities of the same class to

which he was entitled on the date of bankruptcy, irrespective of any change in value of the securities after that date. In other words, the trustee has discretion to keep the customer at risk during that 30-day period. If during that 30-day period the trustee is able to pay all customers' claims, either because the bankrupt firm owns sufficient money and securities or because an "insurer" undertakes to furnish sufficient money or securities to the estate, the issue of identifying or tracing a customer's "specifically identifiable property" becomes completely irrelevant. And because an insurer is not specifically subrogated to the rights of the customers, the insurer is not entitled to claim specifically identifiable property in order to establish its priority over related customers, secured creditors, ordinary unsecured creditors, deferred creditors and deferred customers. The insurer only acquires the priority rank of customers when claiming the aggregate amount it paid to the estate. This model therefore continues some of the undesirable characteristics of the U.S. *Chandler Act* of 1938, but nevertheless, where an insurer steps in, it resolves the central problem: it obviates customer reliance on the identification and tracing concepts and thus reduces the customers' recovery costs and, even more important, eliminates recovery on the basis of chance.

Where, however, an insurer does not step in to cover customer losses, each customer is entitled to claim his specifically identifiable property, compelling the trustee to scrutinize with great care each bank account, each cheque, and each security certificate, and relegating the customer to a claim that is based more on luck than on prudence or law.

In either case, after returning any specifically identifiable property or delivering any securities to a customer in payment of the customer's claim, the trustee is required to divide the remaining assets of the broker into two funds: (1) a "general fund" made up of all property of the securities firm as of the date of bankruptcy; and (2) a "customers' fund" made up of all money and securities held for customers other than any customer's specifically identifiable property. In the course of processing proofs of claim against an estate, in addition to distinguishing among secured creditors, preferred creditors, ordinary unsecured creditors and deferred creditors, the trustee must also distinguish among arm's length customers, "related customers" who are associates or affiliates of the bankrupt firm, and "deferred customers" who caused or materially contributed to the bankruptcy of the firm.

Generally, out of the customers' fund the trustee pays the claims of arm's length customers (or of an insurer) and related customers. And out of the general fund the trustee pays the costs of administration, the claims of preferred customers, any remaining claims of arm's length customers (or of an insurer) rateably with the claims of ordinary unsecured creditors, any claims of related customers, the claims of deferred creditors and, finally, the claims of deferred customers.

Although not mentioned, the Bill presumes that the appropriate securities commission and self-regulatory organizations ("SRO") will cooperate fully with the trustee in bankruptcy to enable him to administer the estate of a securities firm with the least possible amount of regulatory delay. Indeed, in the typical case of a security firm insolvency, it is probably that an SRO will initiate the bankruptcy proceeding, the contingency fund ("insurer") will act at once to satisfy the claims of arm's length customers, and then the contingency fund will press the trustee for recovery from the estate, thus ensuring expert intervention to press customer claims and to maintain oversight of the trustee's administration of the estate. In such a case the contingency fund is declared to be a creditor of the estate to the extent it furnished money or securities to satisfy customer's claims and entitled to vote accordingly. Thus it is only where an insurer does not intervene to pay customers' claims in full that customers have claims as creditors. Where an insurer does intervene, the customers are treated essentially as passive depositors, much like depositors of a bank who are protected by deposit insurance.

## PART VIII—INSURANCE COMPANIES
(Sections 327-349)

### *PRESENT LAW*

The present *Bankruptcy Act* does not apply to insurance companies. An insolvent insurance company may be wound-up only under the *Winding-Up Act*, which applies to insurance companies that are incorporated or carry on business in Canada.

The common insolvency tests—excess of liabilities over assets or inability to pay debts as they become due—do not apply to determine whether an insurance company is insolvent. Instead, specific rules set out in the *Winding-Up Act* deem an insurance company to be insolvent if it fails to pay a claim for which it is clearly liable within 90 days, if the Superintendent of Insurance refuses to renew its registration because the company is not in a position to meet its liabilities, or if its registration is withdrawn under an Act that deems such withdrawal to constitute insolvency.

Where an insurance company is insolvent, the company itself, a creditor, or the Attorney General of Canada upon the request of the Minister of Finance

may apply to a Court for an order to liquidate the company.

Upon making the liquidation order the Court may appoint one or more liquidators—who may be but are not required to be licensed trustees in bankruptcy—to administer the liquidation. Under the general scheme of the *Winding-Up Act*, however, the liquidator's functions are largely formal since the Court is required to approve in advance almost every administrative act. The creditors have no role in the liquidation other than to express their views when so requested by the Court. The inspectors, too, are appointed by the Court; their function is to advise the liquidator rather than to represent the creditors' interests. The Superintendent of Insurance, although he may initiate the winding-up by refusing the renew registration of an insurance company, has little or no power to control the liquidation.

Reflecting the special character of the insurance business, the *Winding-Up Act* empowers the liquidator to reinsure policies issued by the company instead of returning unearned premiums to the policy holders, in effect transferring the insurance coverage to another insurer. Otherwise the liquidation of an insurer is presumed to be comparable to that of any business corporation. The liquidator gathers in and liquidates the assets, identifies the claimants and qualifies their claims, and distributes the assets to the claimants in accordance with the following order of priority set out in the *Winding-Up Act:* (1) liquidation costs; (2) wage earner claims for 3 months arrears of wages; (3) claims under policies and unearned premiums; and (4) claims of other creditors.

The present law applicable to the winding-up of insurance companies is defective in several respects. Administration is excessively legalistic, resulting in unnecessary costs and delays. The administrative system largely ignores the strategic role of the appropriate superintendent of insurance as regulator of the insurance industry. And finally, the substantive rules relating to what constitutes insolvency, the distinctions between different kinds of insurance, and the treatment of person holding life policies as distinct from health and accident, liability, and property policies, are demonstrably inadequate.

## *PROPOSED LAW*

The principal policy goals of the Bill are to bring insurance company bankruptcies as far as possible into the mainstream of bankruptcy law, to involve the appropriate superintendent of insurance directly in the insolvency process, to streamline administrative procedures, and to clarify a number of substantive issues that are ambiguous in or absent from the present law.

Under the Bill, much as under the present law, the Attorney General of Canada or of a province on his own initiative or upon the request of the Minister responsible for the law applicable to insurance companies, the company itself, or a creditor may initiate bankruptcy proceedings. In addition to the general insolvency tests of the Bill—excess of liabilities over assets or cessation to pay debts generally as they become due—there are a number of specific tests that apply to insurance companies, relating generally to the non-renewal or cancellation of the insurer's licence and, in the case of a foreign company, failure to maintain sufficient assets in Canada.

The major changes effected by the Bill concern administration. As in any other bankruptcy, the trustee is required to be a licensed trustee (each superintendent of insurance is deemed to be a licensed trustee) and the creditors maintain policy control over the liquidation through inspectors they appoint. In addition, however, specific rules empower the appropriate superintendent of insurance to attempt a rescue operation. A petition for a bankruptcy order affecting an insurer must be served on the superintendent before being filed in Court. The bankruptcy proceedings are automatically suspended for 60 days (unless the superintendent consents to a shorter delay) to give the superintendent time to determine whether the company has enough assets to enable it to reinsure its outstanding policies with other insurers or, alternatively, whether some other company will amalgamate with or buy the business of the insolvent company. Reinforcing this policy, the Bill provides that policies issued by the insolvent company subsist 45 days after the date of the bankruptcy or for such longer period as may be agreed on between the trustee and the insurer in order to give each insured adequate time to seek coverage elsewhere. Moreover, during this period of time reinsurance policies issued in favour of the insolvent company are deemed to subsist. For any premium deficiency the reinsurer ranks as an ordinary creditor. In sum, great emphasis is placed on protecting the insured, part of the cost of which is borne by the insurance industry as a whole.

In order to promote maximum rescue attempts of an insolvent insurance company, the proposed Bill allows a proposed arrangement to be filed in respect of such company under Part IV where the filing is authorized by a superintendent of insurance. If all rescue attempts prove unsuccessful, the bankruptcy order is made as in any other case. Unless he declines appointment, the appropriate superintendent of insurance automatically becomes trustee. If he declines, a licensed trustee is appointed and confirmed by the creditors, and the superintendent of insurance maintains surveillance by becoming automatically a member of the board of inspectors.

The general administration rules of the Bill apply to insurance company bankruptcies. Special substantive rules are added, however, to distinguish betweeen holders of life policies and holders of non-life policies, particularly to make possible special orders of priority relating to life insurance (or life and other classes of insurance) on the one hand and other classes of insurance business on the other and to integrate these with the general priority rules of the Act. More specifically, the Bill provides for distribution in accordance with the following orders of priority:

(1) Life insurance (or mixed life and other insurance) companies.

  (a) Costs of administration.

  (b) Payable rateably, the net amount payable to beneficiaries because of the death of the insured, the value of the policy where no claim has been made, and the proceeds of agreements to settle claims deposited with the company.

  (c) Claims of other creditors in accordance with the usual bankruptcy rules.

(2) Non-life insurance companies.

  (a) Costs of administration.

  (b) Claims under non-life policies.

  (c) Claims for the value of subsisting policies.

  (d) Claims of other creditors in accordance with the usual bankruptcy rules.

  (e) Expenses of the federal Superintendent of Insurance.

Although more detailed and seemingly more complicated than the rules that apply to insolvent insurance companies under existing law, Part VIII, recognizing the special nature of the insurance business, sets out a system that is fairer to third party claimants and policy holders, better integrated with the regulatory scheme, and certainly easier to administer.

## PART IX—RECEIVERSHIPS
(Sections 350-355)

*PRESENT LAW*

The appointment of a sequestrator or receiver is an ancient legal institution designed to empower a creditor, acting through the receiver as an independent third party, to take possession of the debtor's property in which the creditor has a security interest with a view to preserving the property, collecting rents, or even liquidating the property to realize his claim. In all jurisdictions in Canada other than Quebec a receiver may be appointed either by the court, in which case he is an officer of the court, or by the creditor in accordance with the express terms of a mortgage or trust indenture, in which case he is usually characterized as an agent of the debtor and not of the creditor. In Quebec the same ends may be achieved by the judicial appointment of a sequestrator to manage property pending resolution of a dispute or the extra-judicial appointment of an agent for a creditor in possession pursuant to the terms of a trust indenture. For convenience the *Bill* subsumes both a receiver and an agent of a creditor in the definition "receiver".

A receiver may be appointed by a court or extra-judicially by a creditor because the debtor is in default in respect of one of a great many possible conditions stipulated in the agreement creating the security interest; for example, failure to insure, failure to pay property taxes, improper sale of inventory covered by a floating charge, improper assignment of accounts receivable, improper conversion of the proceeds arising from the sale of secured assets, and so on. More frequently however, a receiver is appointed because the debtor is insolvent or becomes bankrupt.

Under the present *Bankruptcy Act,* because the bankruptcy administration is generally subject to the prior rights of secured creditors, a receiver may be appointed before or after the date of bankruptcy to take possession of all the assets of the estate, leaving few if any assets to be administered by a trustee in bankruptcy. This is particularly true where the creditor has a very comprehensive security interest under a trust indenture. Such a security interest can include a specific charge on identifiable assets, and also a floating charge on present and future-acquired revolving assets, such as inventories and accounts receivable, which floating charge crystallizes as a fixed charge at the moment of bankruptcy or even before bankruptcy upon the appointment of a receiver.

That is not to say, however, that a trustee in bankruptcy should always be involved in the administration of assets of a debtor subject to a secured creditor's security interest, for frequently the assets can be real-

ized more effectively by a receiver. Under present law, however, there is no mechanism to permit either the unsecured creditors or the Superintendent of Bankruptcy to maintain any surveillance over the receiver's conduct to ensure that the receiver acts fairly, keeping in mind the residual claims of all subordinate creditors.

*PROPOSED LAW*

Recognizing that the appointment of a receiver is an effective remedy to protect legitimate creditor interests, the *Bill* does not attempt to displace receivers in all cases where a bankruptcy occurs. But a court may, upon the application of an interested person, impose additional duties upon a receiver, terminate the appointment of a receiver and appoint another person in his place or make some ancillary order, where it appears that there might be a surplus left after the secured creditor realizes his security, unless the receiver proves to the satisfaction of the court that a court order would materially adversely affect the creditor or that any surplus is improbable.

Thus instead of setting out rules to govern the conduct of a receiver in case of insolvency, the *Bill* empowers a court, where it decides to intervene, to give directions to the receiver or his successor with respect to all dealings with the debtor's property. And in any case the receiver is required, upon demand, to furnish specified information about the receivership to a bankruptcy administrator or a trustee in bankruptcy. In sum, these procedures ensure, on an exceptions basis, that the interested parties will have the right to know by what authority a receiver acts and what he is doing and also to apply to have a court intervene where it appears there might be a surplus available for distribution among the subordinate secured creditors, the persons having claims against the debtor's estate, and the debtor, particularly where there are grounds for believing a receiver is not acting honestly or in good faith or is not dealing with the property of the debtor under his control in a commercially reasonable manner.

The *Bill* largely continues the substance of Part IX of the predecessor bill (C-60). The one major exception is the addition of express, statutory standards relating to a receiver's duty to act in good faith and duty of care. Although probably only declaratory of present law, the good faith standard serves as a constant reminder to a receiver that he is, like a corporate director or officer, a fiduciary and therefore must not only act honestly but must also avoid any material conflict of interest or duty that might prejudice the debtor. The standard of care, which requires that a receiver deal with a debtor's property in a commercially reasonable manner, is probably also largely declaratory of existing law, but it makes clear that a receiver, when realizing property of a debtor, has a statutory duty to use reasonable care or, in other words, a duty not to sacrifice negligently the interests of the debtor to the interests of the creditor for whom the receiver acts. Like the corporation law provisions relating to the fiduciary duty and duty of care of directors and officers, these duty provisions do not attempt to establish any static rules or even specific standards of conduct, reflecting the reality that both the fiduciary duty and duty of care concepts are relativistic by nature and therefore depend largely on the circumstances or factors of each case. Nevertheless, this statutory provision should dispel any doubts about a receiver's duty in relation to an insolvent debtor, irrespective of whether the receiver is appointed by a court or under a contract or whether he is characterized as an agent of the debtor or of the secured creditor.

## PART X—OFFENCES
(Sections 356-380)

*PRESENT LAW*

The principal purposes of the penal provisions set out in the present Bankruptcy Act are to promote commercial honesty and to ensure that the estate of a bankrupt is lawfully administered. These offences complement the offences set out in the *Criminal Code* and can be invoked as a basis for prosecution only after a bankruptcy actually occurs. Some provisions, however, reach back to cover offences—e.g., fraudulent transfer or receiving of property—that occurred before the date of bankruptcy.

In general, these penal provisions promote commercial morality by making it an offence for a debtor alone or acting in concert with one or more of his creditors to conceal or misappropriate property that should have fallen into the debtor's estate. And these penal provisions ensure honest administration by making it an offence for any unqualified person to act as trustee, for a creditor to make a false claim, for an inspector to accept an unlawful fee, or for a trustee to commit a breach of specified statutory duties.

The various offences set out in the present *Act*, depending upon their relative seriousness, are punishable on indictment or on summary conviction. Prosecution of an indictable offence must be commenced within 5 years and prosecution of a summary conviction offence must be commenced within 3 years of the commission of the offence. In most case the applicable penalty is mandatory imprisonment.

The 1966 amendments to the present Act increased considerably the Superintendent's powers to undertake

or to direct the detection and investigation of suspected bankruptcy offences, enabling him to initiate investigations instead of simply urging the appropriate provincial Attorney General to act. Also in 1966 the Superintendent established detection and investigation divisions in regional offices across Canada, staffed by auditors and trained investigators who are better able to detect and investigate local cases. Contemporaneously, the R.C.M.P. established special bankruptcy squads in major centres to assist the Superintendent in his investigations.

In sum, therefore, a person suspected of a bankruptcy offence may be investigated and charged under the *Bankruptcy Act*, and, if the misconduct is also a general crime, may also be investigated and charged under the *Criminal Code*.

*PROPOSED LAW*

The proposed law essentially continues the substantive offences and the investigative procedures of the present *Act*. The Bill does, however, add several modifications: its scope is extended to include arrangements as well as bankruptcies; it authorizes an investigation to begin at once upon the commencement of insolvency proceedings; it removes the time limit on prosecuting indictable offences and reduces the time limit on summary conviction offences to 2 years; it extends the bribery rules to include all persons involved in a bankruptcy administration—a bankruptcy administrator, trustee, inspector, solicitor or auctioneer; and it adds a new offence concerning the failure of a director of a corporation who becomes bankrupt to resign as director. The Bill also introduces new sentencing provisions, giving the Court greater discretion to impose a fine instead of imprisonment or to impose fine and imprisonment, rather than impose mandatory imprisonment, which is now the general rule.

## PART XI—COURTS AND EVIDENCE
(Sections 381-407)

*PRESENT LAW*

The present *Bankruptcy Act*, in contrast to the pre-1949 statute, does not create a separate bankruptcy court. Instead, in line with the general policy of Parliament not to establish a duality of Courts, it vests original jurisdiction with respect to bankruptcy matters in the Superior Court of each province. Generally, however, the Chief Justice of the province specifically assigns one or more judges to exercise judicial powers conferred by the *Act* and appoints or designates the registrar, clerks and other officers to transact the business of the court. Proceedings before the court are instituted and conducted in accordance with the *General Rules* enacted pursuant to the *Act*, or, in cases where the *Act* or the *Rules* make no provision, in accordance with the ordinary rules of procedure of the Court that apply to civil matters. In addition, in respect of bankruptcy matters, the *Act* requires the court to have a seal, makes each court auxiliary to each other court, and makes an order of one court enforceable by another court anywhere in Canada.

*PROPOSED LAW*

Part XI of the Bill proposes to continue the basic structure and authority of the court; but in addition it provides for the transfer to the court of any proceedings taken in any court if they affect the rights and interests of a bankrupt or his estate with a view to eliminating jurisdictional conflicts.

Under the Bill, estate accounts would continue to be passed by the registrar, subject to appeal to the court. A court still hears applications for discharge from bankruptcy, but in contrast to the present *Act*, instead of discharge of a bankrupt by court order in all cases, the bankrupt is automatically discharged 6 months after the date of the bankruptcy order unless a caveat is filed within that period to block the discharge, shifting the onus to the debtor to apply to the court to have the caveat removed. Thus the court hears discharge applications only in exceptional cases.

Two other important innovations are included in this Part of the Bill. First, wherever the words "upon application" are used throughout the Bill, these words mean, under subsection 385(1), that any interested person has the right to apply to a court, unless the Bill otherwise states expressly who may apply. Second, a court is granted the power to shorten or extend the period of time during which a proceeding must be taken or an act or thing done under Bill, either before or after the expiration of the prescribed time.

Part XI of the Bill also deals with rules of evidence in bankruptcy proceedings. It includes provisions clarifying in what circumstances and under what conditions a document made in the course of a proceeding or the evidence of any person examined pursuant to the Act is admissible. The Bill also simplifies the rules that apply where property of a debtor is seized and held as evidence of an offence under the *Bankruptcy Act* or the *Criminal Code* by providing that a sample or proper description of the seized property is receivable as evidence in the prosecution of the offence without the necessity of retaining under seizure or producing at the trial the seized property in its entirety, as is presently the case.

## PART XII—GENERAL AND TRANSITIONAL (Sections 408-418)

*PRESENT LAW*

The four statutes proposed to be repealed or in effect abrogated by the Bill—the *Bankruptcy Act*, the *Winding-Up Act*, the *Companies' Creditors Arrangement Act*, and the *Farmers' Creditors Arrangement Act*—contain a number of miscellaneous provisions of general application and also relatively broad rule making powers to prescribe regulations governing administration, court practice and procedure, and tariffs of fees.

*PROPOSED LAW*

The Bill, in Part XII, attempts to consolidate these general rules in one Part. These general rules are designed to resolve on a Canada-wide basis specific problems that recur frequently: e.g., rules concerning the estate of a deceased bankrupt, the continuance of a statutory limitation or prescription period while a proceeding is stayed under the Bill, and the status of a married woman.

This Part also consolidates all the pertinent regulation making powers which under the present *Winding-Up Act* are vested in the courts and under the *Bankruptcy Act* are vested in the Governor-in-Council but supplemented by rules of court. Under the Bill all regulation making powers vest in the Governor-in-Council. These include power to make regulations authorized or required to be "prescribed", to determine the form and time of notice, to establish fees for specific services, and to establish the amount the Superintendent may levy against each estate to recover his administrative costs.

Consistent with the overall concern of the Bill to adhere to exacting administrative law standards—for example, administration by exception to minimize unnecessary paper work, express licensing criteria to guide judicial review of licensing decisions, express right of appeal to a court in respect of the taxation of accounts, and judicial control over many investigative powers—the Bill subjects the regulation making powers exercised under it to close public scrutiny, particularly by requiring pre-publication of proposed rules and forms.

The Bill sets out a number of transitional provisions to make clear that existing proceedings will continue under the former law, and also to ensure that a cross reference in the statutes or corporate constitutions to a predecessor Act such as the *Winding-Up Act* is deemed to be reference to the new act. Finally the Bill provides that, unless the court has issued a conditional discharge, each individual who became bankrupt under the present *Act* is automatically released from his debts within five years from the date of his bankruptcy, a transition policy that is consonant with the automatic discharge provisions of the proposed law.

## SUMMARY

### *CONCORDANCE OF BILL C-60 AND BILL S-*

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | **PART I—INTERPRETATION AND APPLICATION** | |
| 1 | 1 | Short title | No change, except the date. |
| 2 | 2 | Definitions | "administrator": modified to include a provincial official where a province has entered into an agreement with the Minister to administer consumer proceedings.<br><br>"agent": paragraph (a) clarified in order to cover a person that has "de facto" control of a corporation.<br><br>"arrangement": no change.<br><br>"arrangement by way of composition": deleted because only one procedural model is used in the Bill with respect to consumer arrangements, whether by way of composition or by way of extension of time.<br><br>"arrangement by way of extension of time": deleted.<br><br>"bank": no change.<br><br>"bankrupt": no change.<br><br>"bankruptcy district": no change.<br><br>"bankruptcy order": no change.<br><br>"bankruptcy Trust Account": no change.<br><br>"claim": this is a new definition.<br><br>"claimant": delete. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | "consumer bankrupt": this is a new definition required to limit the application of the simplified procedures to the administration of estates of consumers.<br><br>"consumer debtor": this is a new definition that limits the application of the provisions respecting consumers to individuals having debts of less than twenty thousand dollars or such greater amount as may be prescribed.<br><br>"corporation": clarified to cover every body corporate that carries on business or a charitable or membership activity at the date of the proceeding.<br><br>"court": no change.<br><br>"creditor": modified to take into account the new definition of "claim".<br><br>"date of bankruptcy": no change.<br><br>"debt": modified to take into account the new definition of "claim".<br><br>"debt obligation": no change.<br><br>"debtor": no change.<br><br>"estate": paragraph (c) is added to cover the situation where an interim receiver has power or control over property.<br><br>"estate in bankruptcy": no change.<br><br>"exempt property": no change.<br><br>"final judgment": no change.<br><br>"former agent": no change.<br><br>"former director": no change.<br><br>"former officer": no change. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|

"gift": simplified because the Act no longer deals specifically with gift by contract of marriage.

"guarantor": no change.

"indemnity account": no change.

"individual": no change.

"inspector": no change.

"judge": no change.

"judgment": no change.

"licence": no change.

"locality of the debtor": modified to give jurisdiction to a court in the judicial district where a debt is payable if the debtor did not carry on business or reside in Canada.

"minister": no change.

"officer": no change.

"person": no change.

"petition": no change.

"postal and telegraph services": replaced by the definition of "postal services".

"preference": recast to clarify that a preference exists where a creditor receives a greater percentage of his debt that some other creditor of the same or higher class.

"prescribed": no change.

"preventive arrangement": delete definition and references throughout the Bill because this definition does not serve any essential purpose.

"property": no substantial change.

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | "proposal": delete and use the words "proposed arrangement". |
| 342 | 2 | | "receiver": this is a new definition restricted to cases where a receiver takes possession or control of all or sustantially all of a debtor's property, inventory or accounts receivable, thus excluding the case of repossession of a specific asset subject to a conditional sale, chattel mortgage, commercial pledge etc..<br><br>The phrase "or of a creditor" has been added to include an agent of a creditor who, like a receiver, takes possession of all or most of a debtor's property subject to a security interest to realize on behalf of the secured creditor.<br><br>"records": no change.<br><br>"registrar": this is a new definition.<br><br>"resolution": no change.<br><br>"secured creditor": modified in order that the provisions of the Bill dealing with secured creditors apply also to receivers of any property of the debtor.<br><br>"security": no change. |
| 342 | 2 | | "security agreement": this is a definition transferred from Part IX of C-60.<br><br>"security interest": recast without referring to specific examples of security interests.<br><br>"send": no change.<br><br>"sheriff": no change.<br><br>"solicitor": no change.<br><br>"superintendent": no change.<br><br>"transfer": add the words "under pressure" to block the defence a person may make on such grounds. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | "trustee": no change.<br><br>"trust indenture": no change.<br><br>"wages": the words "severance pay" are deleted. |
| 63(2) | 2(2) | Amount of debt of consumer debtor | This is a new subsection to determine the calculation of the amounts of debts of a consumer debtor. |
| 3 | 3 | Security interest in substance | Add the words "or is intended as" after "creates". Clarify that the section does not apply to a lease of real property. |
| 4 | | | Delete section 4 of Bill C-60 dealing with a definition of conflict of interest in order that the rules of conflict of interest of the respective professional bodies apply. |
| 5 | 4 | Insolvent defined | Recast to cover the concept of ceasing to pay debts generally as they become due. Throughout the Bill delete the words "unable to pay his debts" where they are added to the word "insolvent", except in section 166 which deals with certain gifts that may be set aside. |
| 6 | 5 | Presumption of cessation of payment | Clarify that the presumption applies only in respect of the "certain and liquidated" debts of the debtor. |
| 7 | 6 | Presumption of knowledge of insolvency | Delete subsections (1) and (2) and in subsection (3) delete the words "or unable to pay his debts". |
| 8 | 7 | Individuals at arm's length | No change. |
| 9 | 8 | Corporations at arm's length | No change. |
| 10 | 9 | Application of Act | Add subsection (2) to clarify that an arrangement may not be made or a petition filed in respect of agents of governments, such as municipalities or Crown corporations. |
| | 10 | Act to prevail and application of other substantive law | This is a new section dealing with the inapplicability of other substantive law that is in conflict with the Act, and the applicability of other substantive law that is not in conflict with the Act. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | **PART II—ADMINISTRATION** | |
| 11 | 11 | Appointment of Superintendent | No change. |
| 12 | 12 | Powers of Superintendent | No substantive change. |
| 13 | 13 | Duties of Superintendent | Delete paragraph (i) since the responsibility for the taxation of accounts now vests in the courts. |
| 14 | 14 | Minister to report | Change reference from paragraph (j) to (i). |
| 15 | 15 | Bankruptcy districts | No change. |
| | 16 | Agreement with government of province | This section deals with the delegation to a province of the administration of consumer bankruptcies and arrangements. |
| 16&17 | 17 | Powers of substitutes where administrator unable to act | No change. |
| 18 | 18 | Licensing of trustee | Amend subsection (2) to include "receiver". Delete subsection (4) because application for renewals is replaced by annual fees. Paragraph (5) becomes paragraph (4). In subsection (4) delete the words "applying for a renewal of a licence" and add after "trustee" the words "continues to meet". |
| 19 | 19 | Form of licence and fees | In subsection (1) delete the words "and a renewal of licence"; delete paragraphs (a), (c) and (d); recast to describe to substantial content of a licence.<br><br>In subsection (2) delete reference to renewals and add the obligation to pay annual fees. |
| 20 | 20 | Decision affecting licence | Recast to delete references to renewals; delete paragraph (c). |
| 21 | 21 | Notice of proposed decision to trustee | Recast subsection (1) to delete references to renewals; delete paragraph (c) of subsection (1) and add subsection (5) to provide for an appeal to the Federal Court of the Superintendent's decision. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 22 | 22 | Conservatory measures | Recast subsection (1) to parallel changes made in sections 20 and 21. |
| 23 | 23 | Restriction on license | No change. |
| 24 | 24 | Duty of trustee on cancellation | Recast to parallel changes in sections 20 and 21 and add in paragraph (c) the duty to send a copy of the statement of accounts to all interested parties. |
| 25 | 25 | Where administrator is trustee | Recast paragraph (1)(a) to parallel changes made in sections 20 and 21; redraft paragraph (1)(b) to set out standards where administrator is entitled to act; delete paragraph (1)(d) and replace by subsection 28(3) where trustee remains responsible for the complete administration of an estate.<br><br>In subsection (2) renumber the references and delete "with the approval of the Superintendent". |
| | 26 | Removal of trustee by court | This is a new section providing that the Court may remove a trustee for cause. |
| 26 | 27 | Vesting of property in successor to administrator | In paragraph (3)(b), replace "superintendent" by "registrar". |
| 27 | 28 | No trustee is bound to act | Add subsection (3) to impose on the trustee the duty to complete the administration of an estate after his discharge. |
| 28 | 29 | Persons disqualified to act as trustee | Divide in two subsections: no change up to subparagraph (b)(iii), which becomes subsection (2), requiring that disclosure of potential conflict of interest must be made at the time of the appointment and at the first meeting of creditors. |
| 29 | | | Delete section 29 of Bill C-60 dealing with the duty to seek advice because already adequately covered by section 47, which is of general application. |
| 30 | 30 | Conditions under which a trustee may act for secured creditor | Recast to set out the standards under which a trustee may act for a secured creditor. |
| 31 | 31 | Retainer of solicitor or accountant | In subsection (2), add the words "subject to subsection (3)". |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | Add subsection (3) to set out standards under which a trustee may retain a solicitor or accountant. |
| 32 | 32 | Commingling of property prohibited | No substantial change. |
| 33 | 33 | Trust account | Recast to require that all moneys which are surplus to the immediate requirements of an estate be deposited in an interest bearing trust account. |
| 34 | 34 | Liability for breach of duty | No change. |
| 35 | 35 | No liability where duties carried out diligently | Recast to include "omissions" and to impose higher standard of care upon interim receivers and trustees. |
| 36 | 36 | Persons incapable of acquiring property of estate | In subsection (3), add the words "notwithstanding section 35". |
| 37 | 37 | No payment before taxation | In subsection (1) delete the words "is submitted in prescribed form and" because already covered by sections 127, 197 and 276.<br><br>In subsections (2) and (3) replace "administrator" by "registrar" wherever the word "administrator" is used. |
| 38 | 38 | Basis for remuneration | In subsections (1) and (2) replace "administrator" by "registrar" wherever the word "administrator" is used. |
| 39 | 39 | Apportionment of remuneration | Replace the word "administrator" by "registrar". |
| 40 | 40 | Reduction where misconduct | No substantial change. |
| 41 | | | Delete section 41 of Bill C-60 dealing with the notice of decision on taxing because the taxation of accounts is now the responsibility of the registrar. This section was required only because under Bill C-60 the administrator had the responsibility of taxing accounts. |
| 42(1) | 41 | Passing accounts of estate | Recast so that filing of accounts is made with the "registrar" rather than with "administrator" and to |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | specify the sections where a statement of account is required to be filed under the Bill. |
| 42(2) to (7) | 42 | Notice of objection to account | Replace "administrator" by "registrar" and add "or a summary thereof" after "accounts" in subsection (1).<br><br>Recast subsection (2) to indicate that the registrar must set a date for a hearing and notify the applicant accordingly.<br><br>Recast subsection (3) to indicate that a copy of the notice of objection must be sent at least 10 days prior to the date of hearing.<br><br>Change the reference in subsection (4).<br><br>Change the reference in subsection (5) and replace "administrator" by "registrar" in the preamble as well as in paragraph (b) and subparagraph (b)(ii).<br><br>Recast subsection (6) to require that the administrator file a statement of account with the registrar when the interim receiver or trustee refuses to file such statement after notice.<br><br>Subsection (7) is a new subsection requiring the sending to every interested person of a copy of the statement prepared under subsection 42(6). |
| 43 | 43 | Bill for costs | No change. |
| 44 | 44 | Remuneration of administrator | No change in subsection (1). In subsection (2) replace "superintendent" by "registrar". |
| 45 | 45 | Right to appeal | In subsection (1) replace the words "an administrator or the Superintendent" by "a registrar". No change in subsections (2) and (3). |
| 46 | 46 | Discharge of interim receiver and trustee | Make subsection (1) subject to section 280. No change in subsection (2). In subsection (3), add the words "on application". Recast subsections (4) and (5) and combine into one subsection so that a notice of discharge is sent to the administrator. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 47 | 47 | Application for directions | No change. |
| 48 | 48 | Power of court to order compliance with direction | No change. |
| 49 | 49 | Duty to keep record | No change. |
| 50 | 50 | Inspection of records | No change. |
| 51 | 51 | Duties of trustee with respect to records | No change. |
| 52 | 52 | Report of offence to Superintendent | No change. |
| 53 | 53 | Inquiry or investigation by Superintendent | Add subsection (8) to clarify that where records are stored in a computer data base, copies of such records may serve as evidence. |
| 54 | 54 | Reporting offence to Deputy Attorney General of Canada | After the words "under this Act" add the words "or any other Act of Parliament". |
| 55 | 55 | Inquiry or investigation by administrator | No substantial change. |
| 56 | 56 | Bankruptcy Trust Account | No change. |
| 57 | 57 | Bankruptcy Indemnity Account | No substantial change. |
| 58 | 58 | Recourse to Account | No change. |
| 59 | 59 | Superintendent may requisition payment | No change. |
| 60 | 60 | Where no payment from Account | No change. |
| 61 | 61 | Assignment of judgment to Superintendent | No change. |
| 62 | 62 | Repayment of dividend deposited to Trust Account | No change. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | **PART III—ARRANGEMENTS FOR THE CONSUMER DEBTOR** | |
| 63 | 63 | Definitions | The defined words "date of the proposal" are replaced by "date of the proposed arrangement". "Debtor" means a "consumer debtor", a defined term in section (2) that includes only individuals, whether in business or not, whose total liabilities do not exceed $20,000 or such greater amount as may be prescribed.<br><br>Delete the definition of "proposal". Subsection 63(2) is modified and becomes subsection 2(2). |
| 64 | 64 | Who may file a proposed arrangement | Replace the term "proposal" by "proposed arrangement". In subsection (2), add the words "A debtor who is" before "a bankrupt". |
| 64(3) | 65 | Proceedings for a proposed arrangement | No change. |
| | 66 | Notice of intention | This is a new section providing for the filing of a notice of intention prior to the filing of the request for an arrangement. The effect of the filing of a notice of intention is to grant a 10 day stay of proceedings to the debtor to allow him to formulate a feasible arrangement. In order to prevent abuse, the stay of proceedings does not apply where a notice is filed within six months of the filing of any preceding notice of intention. |
| | 67 | Duties of debtor | This is a new section that details the duties of a debtor. |
| 65 | 68 | Administrator to prepare proposed arrangement | The term "proposal" is replaced by "proposed arrangement".<br><br>In subsection (1) the word "receive" is added to "earn" to include property a debtor may receive by way of inheritance or otherwise in addition to his earnings.<br><br>Recast subsection (2) to require that the administrator give notice to the creditors of the non-compliance by the debtor with the requirement of the Act or the non-feasibility of the proposed arrangement. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 66 | 69 | Proposed arrangement | The term "proposal" is replaced by "proposed arrangement".<br><br>In paragraph (b) expected future property has been added. |
| 67 | 70 | Contents of proposed arrangement | The term "proposal" is replaced by "proposed arrangement".<br><br>Paragraph (a) sets out in more detail the content of a proposed arrangement.<br><br>Paragraph (b) is recast to permit what is commonly referred to as a "basket" arrangement whereby the debtor offers to pay a total amount irrespective of the amount of claims filed. |
| 68 | 71 | Stay of proceedings | Recast so that all proceedings against a debtor are stayed, subject to certain exceptions, as of the date of the proposed arrangement. Add subsection (2) to authorize a secured creditor to take certain action. Add subsection (3) to provide certain safeguards where a secured creditor disposes of property subject to a security interest.<br><br>Add subsection (4) which sets out certain responsibilities of a secured creditor.<br><br>Add subsection (5) to prevent a debtor from abusively requesting successive arrangements and withdrawing them for the sole purpose of obtaining a stay of proceedings.<br><br>Add subsection (6) to prevent acceleration by reason only of the insolvency of a debtor. |
| 69 | 72 | Documents to be sent to creditor | Delete the title.<br><br>Recast to require in all types of arrangement that a notice be sent to the creditors indicating that no meeting of creditors will be called unless more than 50% in value of the creditors having an admissible claim request the aministrator to call a meeting. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | 73 | Calling of meeting | Where more than 50% in value of the creditors request a meeting to be held, such meeting shall be held no later than forty-five days from the date of the proposed arrangement. |
| 70 | | | Delete section 70 of Bill C-60 because no unsecured creditor has any priority in a consumer arrangement under the proposed Bill. |
| 71 | | | Delete section 71 of Bill C-60 dealing with no voting rights because every creditor having an admissible claim, whether or not he is entitled to be paid in full, has a right to vote under the proposed Bill. |
| | 74 | Chairman at meeting | This is a new section that deals with the chairmanship of the meeting of creditors and the voting procedures at such meetings. |
| | 75 | Form of instrument | This is a new section that deals with the form of instrument that entitles creditors to vote at meetings. |
| 73 | | | Delete section 73 of Bill C-60 dealing with the sending of the proposal because covered by section 72 of proposed Bill. |
| 74 | | | Delete section 74 of Bill C-60 dealing with creditors' objections to proposal by way of extension because, whether an arrangement is by way of extension or composition, creditors have similar rights as determined under sections 73 and 74 of proposed Bill. |
| 75 | | | Delete section 75 of Bill C-60 dealing with hearing for similar reasons as above for section 74 of Bill C-60. |
| 76 | | | Delete section 76 of Bill C-60 dealing with the ratification of proposal for similar reasons as above for section 74 of Bill C-60. |
| 77 | 76 | Admissible claims | Change the cross-reference and replace the term "proposal" by "proposed arrangement". |
| 78(1) | 77 | Secured debts on real property | Recast so that the treatment of secured creditors be the same whether the arrangement is by way of extension or composition. A claim secured by real property is admissible and therefore subject to the arrangement where the value of the property subject |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | to the security interest is less than the amount of the debt. In those circumstances the secured creditor may be required to assess the value of the immovable subject to his security interest. |
| 78(2) to (5) | 78 | Secured debts on personal property | No substantial change. |
| | 79 | No claim for or release of certain debts | This is a new section that provides that certain debts are not released, paralleling the policy that applies in the cases of bankruptcies and commercial arrangements. |
| | 80 | Secured creditor to file proof of security interest | This is a new section that grants to an administrator the power to require that secured creditor file a proof of his security interest. The court may also postpone the right of a secured creditor to realize the property if such postponement does not materially adversely affect the secured creditor. |
| | 81 | Claim in more than one arrangement | This is a new section dealing with the filing of a proof of claim where a creditor has a claim in more than one arrangement. |
| | 82 | Claims for contingent and unliquidated claims. | This is a new section granting power to the administrator to value any admissible claim that is contingent or unliquidated. Such valuation is subject to appeal to a court pursuant to subsection 84(5). |
| | 83 | Proof of claim | This is a new section that deals with the filing of a proof of claim and proof of security interest in the case of an arrangement. |
| | 84 | Examination of proofs | This new section deals with the powers of an administrator to disallow a proof of claim. The disallowance is subject to appeal to a court pursuant to subsection (5). |
| 72 | 85 | Release of debtor | This section deals with the release of debts of the debtor in the case of a consumer arrangement. |
| 79 | 86 | Effect of arrangement | No substantial changes. |
| 80 | 87 | Measures to rehabilitate debtor | No substantial changes. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 81 | 88 | Duties of debtor during arrangement | Modify paragraph (a) to require the debtor to disclose to the administrator, during the term of the arrangement, any material change in his debts and assets. |
| 82 | 89 | Rights of creditor to information | Modified to delete the requirement to pay fees where a creditor requests information in addition to the periodic statements that he receives pursuant to paragraph 92(1)(b). |
| 83 | 90 | Assignment of future receivables of no effect | This section has been modified to clarify the effective date of the avoidance of an assignment of wages or of amounts receivable. The change also provides for the cessation of the avoidance where the proposed arrangement is rejected or deemed to be rejected by the creditors. |
| 84 | 91 | Arrangement operates as judgment | No substantial change. |
| 85 | 92 | Distribution of dividends | This section has been modified to require the sending of a statement with the dividend cheque indicating the manner in which the debtor is performing his obligations under the arrangement. The section deals also with the question of levy where a province has agreed to administer the provisions of this Part. It also clarifies rights to dividends where the validity of a claim has not been determined or where a creditor had no knowledge of an arrangement. |
| 86 | 93 | In case of subsequent arrangement | No change in the first three subsections. Subsection (4) deals with unclaimed dividends and undistributed monies, which must be forwarded to the Superintendent for deposit. |
| | 94 | Partner and others not released | This is a new section that deals with the effect of a release under this Part in respect of a debt that was guaranteed. It specifically prohibits the contracting out and the set-off of debts that have been released. And it protects a debtor from layoff by an employer or discrimination by a public utility solely on the grounds that an arrangement has been made under this Part. |
| 87 | 95 | Term of arrangement | Recast to empower an administrator to propose variations of an arrangement where a debtor cannot |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | fulfill his obligations under it. It also confers on creditors the right to require that a meeting of creditors be held to consider the proposed variations. |
| 88 | 96 | Annulment of arrangement | Recast susection (3) to clarify where a debtor is presumed to be in default under the terms of the arrangement. |
| 89 | | | Delete section 89 of Bill C-60 dealing with Part VI to apply in part because Part III repeats and adapts the sections that were included only by reference in Bill C-60. |
| | 97 | Creditor may file petition with adminisrator in certain circumstances | This is a new section granting to any creditor or creditors having claims of $1,000 or more the right to file a petition in bankruptcy with the administrator where the debtor is in default pursuant to subsections 96(2) and (3) or where the proposed arrangement is rejected or deemed to be rejected pursuant to sections 73 and 95. |
| | | PART IV—COMMERCIAL ARRANGEMENTS | |
| 90 | | | Delete the definition of "proposal" in section 90 of Bill C-60 because the word "proposal" has been replaced by the undefined phrase "proposed arrangement". |
| | 98 | Notice of intention defined | Definition of notice of intention. |
| 91 | 99 | Where claim of creditor affected | Recast in order to clarify when a claim of a creditor is affected by an arrangement. Grant court power to determine where a claim of a creditor is affected. Grant court power to determine classes of creditors before or after meeting of creditors. |
| 92 | | | Delete section 92 of Bill C-60 providing that the Part prevails over other laws because covered by subsection 10(1) of proposed Bill. |
| 93 | 100 | Application | Replace "proposal" by "proposed arrangement". Modify paragraph (1) (c) to allow an insurance company to make a proposed arrangement with the prior approval of the Superintendent of Insurance. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | In subsection (3), replace "proposal" by "proposed arrangement"; in paragraph (e) allow a receiver or a trustee under a trust indenture to file a proposed arrangement with respect to a bankrupt corporation and, with the permission of the court, with respect to an insolvent corporation.<br><br>Add subsection (4) to deem the trustee named in the arrangement to hold, to the extent and for the purposes of the arrangement, a proxy to vote all the issued voting shares of a corporation at any meeting of shareholders.<br><br>Add subsection (5) to provide that where a proposed arrangement is filed by a corporation in respect of itself, the trustee does not hold a proxy to vote all the issued shares of the corporation, unless the terms of the arrangement otherwise provide. |
| 94 | 101 | Notice of intention | In subsections (1) and (2) replace "proposal" by "proposed arrangement".<br><br>In subsection (2), a stay of proceedings is granted for ten days or such longer period of time as a court may determine.<br><br>Add subsections (3) and (4) to protect third parties who acquire property in the exercise of a remedy where the third party acts in good faith and without knowledge of the filing of the notice of intention.<br><br>Change subsection (5) to deem the debtor to have filed a bankruptcy petition against himself if a notice of intention is not followed by the filing of a proposed arrangement.<br><br>Add subsection (6) to grant to the administrator power to make a bankruptcy order where a debtor is deemed, pursuant to subsection (5), to have filed a petition. |
| 95 | 102 | Proceedings for an arrangement | Subsections (3) to (6) concern the withdrawal of proceedings for an arrangement and the effects of such withdrawal. Subsection (7) provides for a stay of proceeding. It is subject to a new subsection (8) |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | which provides that, unless a court otherwise orders, no stay of proceedings applies with respect to secured creditors in certain specified circumstances or with respect to any acts required by law to perfect a security interest.<br><br>Subsection (9) contrains the effect of an acceleration clause by reason only of the filing of a proceeding under this Part. |
| | 103 | Partly performed contracts | This new section deals with the procedures to be followed to extinguish partly performed contracts. |
| | 104 | Limitation of lessors right | This new section deals with the procedures to be followed to extinguish partly performed leases, paralleling the provisions that apply in case of bankruptcy under section 198. |
| 96 | 105 | Required provisions of a proposed arrangement | Recast to clarify the contents of a proposed arrangement, the disclosure provisions, and the provisions to pay the costs of administering the arrangement. |
| 97 | 106 | Additional provisions | Recast to deal with additional provisions that may be included in an arrangement and to permit the level of priority of claims to be altered by the arrangement. |
| 98 | 107 | Effect of arrangement by railway corporation | No substantial change. |
| 99 | | | Delete section 99 of Bill C-60 dealing with the duties of debtor in preventive arrangement because rendered redundant by section 101 of proposed Bill. |
| 100 | 108 | Duties of trustee | The "reasonable accuracy" standard of the trustee's investigation is deleted. |
| 101 | 109 | First meeting of creditors | Replace "proposal" by "proposed arrangement" throughout.<br><br>Recast so that the setting of a date, time and place for the meeting of creditors be made after consultation with the administrator; allow the sending of the amended proposed arrangement where the amendments are made after the original filing. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | Require the trustee to send a copy of his investigation report to all creditors affected by the arrangement.<br><br>Add subsection (4) to provide for application to court for directions where shareholders may be affected. |
| 102 | 110 | Purpose of first meeting of creditors | Add paragraph (1)(b) to permit amendments to the proposed arrangement where such amendments provide for equal or better benefits for the creditors affected by the proposed arrangement. Add a new paragraph (2) to permit adjournment of meeting where amendments proposed during the meeting vary substantially the terms of the original arrangement. |
| 103 | 111 | Admissible claims | Recast to clarify that only claims affected by an arrangement constitute admissible claims. |
| 104 | 112 | Power of chairman to determine classes of creditors | Recast so that each class of creditors must approve the proposed arrangement by a two third majority of the votes cast by the creditors whose claims are affected.<br><br>Provide for an appeal of the chairman's decision on the question of classes of creditors. |
| 105 | 113 | Voting by related creditors | No change. |
| 106 | 114 | When a proposed arrangement is not accepted | Delete the word "preventive" in subsections (1), (2) and (4).<br><br>Replace the word "proposal" by "proposed arrangement" throughout.<br><br>Add the word "forthwith" in subsections (3) and (4) between the word "shall" and "make a bankruptcy order". |
| 107 | 115 | Deemed date of filing petition | Replace "proposal" by "proposed arrangement" throughout. |
| 108 | 116 | Application to court for approval | Replace the word "ratification" by the word "approval" in paragraphs (a) and (b). |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | Replace the word "proposal" by "proposed arrangement" throughout. |
| 109 | 117 | Court to consider report of trustee | Grant court power to amend an arrangement and to order resubmission to the creditors. |
| 110 | 118 | Court may make other orders | Replace "ratifying" by "approving" and "proposal" by "proposed arrangement". |
| 111 | 119 | When a proposed arrangement is not approved | Recast the opening sentence of subsection (1) to read: "Where the court refuses to approve a proposed arrangement"... |
| | | | Replace "proposal" by "proposed arrangement" throughout and "ratify" by "approve". |
| | | | Delete the words "for a preventive arrangement" in subsections (2) and (3). |
| 112 | 120 | Formulation of proposed arrangement by court | Change the title to "Court Formulated Arrangements". |
| | | | Expand on the standards that the court should consider in formulating an arrangement. |
| | | | Replace "proposal" by "proposed arrangement" in subsections (1), (2) and (3). |
| | | | In subsection (1) replace "ratify" by "approve". |
| 113 | 121 | Appointment of trustee | Replace "proposal" by "proposed arrangement". |
| 114 | 122 | Duties of trustee | Replace "proposal" by "proposed arrangement". |
| 115 | 123 | Stay of proceedings | Recast so that the stay of proceedings may begin on the filing of the application. Grant the court the power to stay proceedings under any Act. |
| 116 | 124 | Meeting of creditors | Replace "proposal" by "proposed arrangement", "ratified" by "approved" and "ratify" by "approve". |
| 117 | 125 | Court may fix time to surrender securities | Delete paragraph (1)(b) and make concordant changes. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | Replace "proposal" by "proposed arrangement" and "ratifies" by "approves". |
| 118 | 126 | Time for the determination of claims | Replace "proposal" by "proposed arrangement". |
| | | | Delete subsection (3) and transfer to 127(3). |
| 119 | 127 | Arrangement conditional on purchase of new securities | Replace "proposal" by "proposed arrangement" and "ratification" by "approval". |
| 120 | 128 | Payment to trustee | No change. |
| 121 | 129 | Meaning of full performance | Add subsection (3) which was formally covered in subsection 118(3) of C-60. |
| 122 | 130 | Default under arrangement | No substantial change. |
| 123 | 131 | Court may vary or annul arrangement | Replace "proposal" by "proposed arrangement" and "ratification" by "approval". |
| 124 | 132 | Bankruptcy order on annulment | Add subsection (2) so that a bankruptcy order is not automatic on annulment where the arrangement is with respect to secured creditors only. |
| | | | Add subsection (3) to date back the date of filing a petition to the date of filing of a notice of intention or a proposed arrangement for the purpose of avoiding preferences and conveyances pursuant to sections 166 to 183. |
| 125 | 133 | Passing of accounts | Replace "administrator" by "registrar" throughout. |
| | | | In subsection (3) recast so that a copy of the statement of account is sent to the administrator. |
| | | PART V—BANKRUPTCY | |
| 126 | 134 | Form and content of petition | Recast subsection (2) so that the petition is sent to the administrator after it is filed with the court. |
| 127 | 135 | Petition by debtor | Delete the words "or unable to pay his debts". |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 128 | 136 | Petition by unsecured creditor | In (a) delete the words "or unable to pay his debts". |
| 129 | 137 | Petition by secured creditor | No substantial change. |
| 130 | 138 | Petition by Attorney General | Delete the words"or unable to pay his debts". |
| | 139 | Exception | This is a new section that prevents creditor's petitions against individual farmers and fishermen. |
| 131 | 140 | Petition where corporation being liquidated | No substantial change. |
| 132 | 141 | Petition in respect of a bank | Delete the words "or unable to pay its debts". |
| 133 | 142 | Petition in respect of railway corporation | No change. |
| 134 | 143 | Petition in respect of trust and loans companies | No change. |
| 135 | 144 | Petition in respect of other depositories | No substantial change. |
| 136 | 145 | Early hearing of petition | No change. |
| 137 | 146 | Dispute of petition by debtor | Extend the delay to 10 days. |
| 138 | 147 | Stay of other proceedings where petition filed | Recast so that the stay of proceedings applies only in respect of unsecured creditors. |
| | 148 | Postponement of right of secured creditor | Replaces section 240 of Bill C-60 and deals with the stay of proceedings in respect of secured creditors.<br><br>Subsection (1) applies in the case where a petition is filed against the debtor; the court may, on application, stay the proceedings.<br><br>Subsection (2) deals with the postponement of rights of secured creditor where a bankruptcy order is made. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | Subsection (3) provides exceptions to the postponement dealt with in subsection (2).<br><br>Subsection (4) requires the trustee to give access to the records and give possession of the property subject to a security interest to the secured creditor where the creditor is entitled to realize the property.<br><br>Subsection (5) imposes certain duties on the secured creditor who realizes property and subsection (6) deals with the responsibilities and liabilities of the secured creditor who deals with property subject to a security interest.<br><br>Subsections (7) to (10) deal with the sale by the trustee of property subject to a security interest. |
| | 149 | Powers of trustee in respect of security interest | Replaces section 241 of Bill C-60.<br><br>Under subsection (1) the trustee has the right to redeem the property subject to the security interest or require it to be realized until the secured creditor exercises any right he may have against the property.<br><br>Subsection (2) provides that the secured creditor may require the trustee to elect to redeem or realize the property subject to a security interest.<br><br>Subsections (3) to (8) determine the respective rights and responsibilities of a trustee and a secured creditor regarding the redemption or realization of property subject to a security interest. |
| | 150 | Exercise of right postponed | Replaces section 242 of Bill C-60.<br><br>Grants to a court the power to postpone any right a secured creditor may have if such postponement does not materially adversely affect the secured creditor. |
| | 151 | Intervention of court | This is a new section.<br><br>The court may review and fix the fees and disbursement incurred in dealing with the property subject |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | to a security interest, give directions as to the time afforded to the trustee to inspect the property and as to the method of dealing with the property. |
| 139 | 152 | Stay of bankruptcy proceedings | Add paragraph (1)(c) in order to include the right to examine the petitioning creditor on discovery. |
| 140 | 153 | Substitution for petitioning creditor | Recast so that a court may, for any sufficient cause, dismiss a petition. |
| 141 | 154 | Bankruptcy order | In subsection (1) add the words "or sending" between "service" and "of the petition" because the petition is "sent" to and not "served" on the administrator.<br><br>Clarify subsection (2) so that a bankruptcy order in respect of a partnership has no effect on a member of such partnership. |
| 142 | 155 | Effect of bankruptcy order | In subsection (1) add a reference to subsection 236(1), section 242 and to subsection (2). Subsection (2) is new and clarifies the duty that an individual bankrupt has to pay his debts in certain circumstances, notwithstanding his release. |
| 143 | 156 | Trustee to be named | Recast so that the administrator, in voluntary bankruptcies, and the court, in involuntary bankruptcies, may appoint a trustee having regard to the wishes of the most interested creditors, if ascertainable at that time. |
| 144 | 157 | Admissible claims | No change. |
| 145 | 158 | Property vesting in trustee | Limit the exemptions to individual bankrupts.<br><br>In paragraph (1)(c), in subsections (2) and (3) replace the term "policy" by the term "contract".<br><br>Add paragraph (1)(e) to exempt amounts payable pursuant to a retirement saving plan registered under the *Income Tax Act*.<br><br>Add subsection (4) to entitle the trustee to require payment of the loan value of the contract instead of the cash surrender value in order to keep the insurance contract in force. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | Add subsection (5) to define "insurance contract". |
| 146 | 159 | Property held in trust by bankrupt | No substantial change. |
| 147 | 160 | After acquired wealth or income | Add a new (2)(d) making provincial exemption statutes applicable. Recast subsection (3) to refer to taxable income for a taxation year under the *Income Tax Act*. |
| 148 | 161 | Insurance against hazards | No change. |
| 149 | 162 | Payments in good faith protected | No change. |
| 150 | 163 | Consumer bankruptcies | Delete section 150 of Bill C-60 that provided for the non-release of debts where a bankrupt retained exempt property in excess of three thousand dollars and replace by a new section that provides simplified procedures for the administration of consumer bankruptcies. |
| 151 | 164 | Deficiency in partnership property | Grant court power to stay proceedings against partners in paragraph 1(c) and to consolidate proceedings taken against the partnership and the partners.<br><br>Delete subsection (3) because redundant in view of revised section 29. |
| 152 | 165 | Partners and separate properties | No change. |
| 153 | 166 | Proceedings by trustee and debtor's partners | Recast subsection (3) to replace the term "co-creditors" by "persons who are jointly and severally liable". |
| | 167 | Exclusion of provincial laws on preferences and conveyances | This is a new section designed to render inoperative provincial laws on fraudulent preferences and coveyances in the case of bankruptcy following the decision of the Supreme Court of Canada in *Robinson V. Countrywide Factors Ltd.* [1977] 23 C.B.R. (n.s.) 97. |
| 154 | 168 | Certain gifts may be set aside | Recast to grant a court power to set aside a gift. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 155 | 169 | Transfer entered into at arm's length | In paragraph (1)(b) extend the delay from one year to six years.<br><br>Delete the words "any other person privy to the transfer or all such persons" in paragraph (4)(a).<br><br>In subsection (5) replace the word "void" by "may set aside". |
| 156 | 170 | Recovery of dividends etc. | Recast subsection (1) to clarify that the payment of dividends etc. was made at a time when the corporation was insolvent or rendered the corporation insolvent. Recast subsection (2) to exculpate from liability a director who relies, in good faith, on financial statements or report of a professional. |
| 157 | 171 | Transfers of property for the general benefit of creditors | Recast to avoid using the word unenforceable and to use instead the words "set aside". |
| 158 | 172 | Preference at arm's length | Recast subsection (1) to grant the court the power to set aside a preference at arm's length under certain circumstances. Reintroduce the intent of the *debtor* to prefer test.<br><br>Delete subsection (2) which created a presumption and replace by a defence in favour of a creditor who may prove that the transfer was made in the normal course of affairs of the debtor in relation to the creditor who received the preference. |
| 159 | 173 | Preference otherwise than at arm's length | Recast to grant to the court the power to set aside a preference in favour of a creditor with whom the debtor was not at arm's length and reintroduce the intent of the *debtor* to prefer test. Subsection (2) and (3) create a presumption of intent to prefer and state the standards a creditor must prove to rebut the presumption. |
| 160 | 174 | Preference in favour of guarantor | In subsection (1), replace the words "if the preference is one that is unenforceable against the trustee under this Part" by "if the preference is one that may be set aside by the court under this Part" and the words "is enforceable against the trustee" by "may be set aside by the court under this Part". |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 161 | 175 | Powers of court | Delete and replace by new section setting out the standards that a court may follow where a transfer is set aside pursuant to this Part. |
| 162 | 176 | Advances | No change. |
| 163 | 177 | Substitution of property | In subsection (1), replace the words "to that person" by "by the debtor" and the words "that is enforceable against the trustee" by "that is not a preference". |
| 164 | 178 | Acceleration of premiums | Recast to conform with the proposed new wording, "set aside" replacing "unenforceable".<br><br>Recast subsection (2) to require deduction from the amount of repayment by the insurer the amount of any claim paid under the insurance contract and any part of the premium repaid by the insurer. |
| 165 | 179 | Defence | Recast to state that proof that a debtor was not insolvent at any time after the transfer is a defence to an application to set aside or review a transfer under this Part. |
| 166 | | | Delete section 166 of Bill C-60 dealing with the transfer of book debts in order that provincial laws apply in those circumstances. |
| 167 | 180 | Where donee has admissible claims | Recast to conform with the new wording, "set aside" replacing "unenforceable". |
| 168 | 181 | Period between petition and bankruptcy order | In subsection (1), replace the words "is unenforceable against the trustee or reviewable" by "may be set aside or reviewed". |
| | 182 | Transfer under pressure | This is a new section required because the proof of "intent" was reintroduced. The debtor may not avail himself of evidence that a transfer was made under pressure to justify such transfer. |
| 169 | 183 | Deemed time of transfer | Recast to refer only to registration, for example, to perfect a security interest. |
| 170 | 184 | Period to institute proceedings | Shorten the delay to institute a proceeding to three years from the date of bankruptcy. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 171 | 185 | In case of arrangement | Recast to conform to new wording. |
| 172 | 186 | Property in possession of third parties | No change. |
| 173 | 187 | Duties of trustee where advised of property in possession of third parties | No change. |
| 174 | 188 | Security for the payment of taxes | Delete subsection (3), thus excluding municipal and other similar public bodies from the application of this section. Deemed trust provisions established in numerous taxing statutes are set aside in the context of proceedings covered by the Bill. |
| 175 | 189 | Liability of directors for wages | Increase directors' liability by $500 per employee in respect of amounts for which the corporation is liable for pension and other health and welfare plan contributions in order to parallel the priority granted to employees pursuant to section 261.<br><br>In subsection (3), replace the word "preference', by the word "priority" and delete the words "except a preference under section 238".<br><br>Add subsection (5) to limit the application of this section to corporations incorporated to carry on business; directors and officers of non-profit corporations would thus be excepted from such liability. |
| 176 | 190 | Liability of agents | In subsection (1) the words "pecuniary" and "at the time", are added to clarify the aims of the section.<br><br>In subsection (3), the defence of reliance in good faith on financial statements is added. |
| 177 | 191 | Mingling of assets by agents | In the marginal note, delete the words "disposition and". |
| 178 | 192 | Limitation of liability | No substantial change. |
| 179 | 193 | Application for patent, copyright or trade mark | In subsections (1) and (2) replace the words "bankrupt" by the word "applicant". Recast subsection (3) to clarify. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 180 | 194 | Copyright in unpublished work | In paragraph (1)(c), in fine, replace the words "terminates and is void" by "terminates". |
| 181 | 195 | Disclaimer of copyright | Delete "with the permission of the board of inspectors, if any,". |
| 182 | 196 | Copyright in published work | No change. |
| | 197 | Sale of patented articles | Add a new section to deal with the sale of patented articles. |
| 183 | 198 | Disclaimer of leases of real property | Recast to give a trustee power to assign a lease with the consent of the lessor or the court in addition to the powers to enter into possession of the lease for the purpose of administering the estate for three months and to retain the lease prior to the disclaimer.<br><br>Set out in detail the conditions under which a court may approve the assignment of the lease where the lessor does not give his consent.<br><br>Clarify that a trustee may, under certain conditions, assign the lease after having elected to retain the lease.<br><br>Provide clearly for the responsibility of the estate and the trustee with respect to occupation rent.<br><br>Determine precisely the effect date of the disclaimer of the lease where a sub-lease of or security interest in the lease property has been granted by the lessee prior to bankruptcy.<br><br>Set out in detail the extent of the claim of the lessor for damages arising out of a disclaimer.<br><br>Define the words "lessor" and "lessee" to include a "landlord" and "tenant". |
| 184 | 199 | Trustee to ascertain liabilities and creditors | No change. |
| 185 | 200 | Trustee to take possession of property | No change. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 186 | 201 | Inventory | Add the words "upon request" before the words "to the administrator" in subsection (4). |
| 187 | 202 | Powers of trustee prior to first meeting | Recast paragraph (1)(a) to require that a trustee acts in a commercially reasonable manner. In subsection (2), in addition to Her Majesty in right of Canada, exempt Her Majesty in right of a province from liability for the repayment of money borrowed by an administrator where he acts as trustee. |
| 188 | 203 | Time of first meeting | In subsection (1) change from "twenty" to "thirty" days. In subsection (2) add the word "known" between "each" and "creditor".<br><br>In paragraph 2(b) delete the words "or a statement that the trustee has admitted the claim and no further proof is required". Such deletion to be made throughout the Bill where these words appear. |
| 189 | 204 | Powers of trustee after first meeting | In subsection (3), in addition to Her Majesty in right of Canada, exempt Her Majesty in right of a province from liability for the repayment of money borrowed by an administrator where he acts as trustee. |
| 190 | 205 | Discharge of obligations | No substantial change. |
| 191 | 206 | Sale by tender | No substantial change. |
| 192 | 207 | Trustee not obliged to carry on business | No substantial change. |
| 193 | 208 | Duties regarding returns | No substantial change. |
| 194 | 209 | Proceeding by creditor | Recast subparagraph (1)(a)(i) to read: "(i) in his own name". In subparagraph (1)(a)(iii) delete the words "and administrator". In paragraph (1)(b) delete the words "and the administrator jointly". In paragraph (3)(c) delete the words "to the administrator or, where the administrator so directs", and recast as follows: "(c) and any surplus belongs to the estate and is payable to the trustee or, where the court so directs, to the debtor". |
| 195 | 210 | Passing of accounts | In subsections (1), (2), (3) and (4) replace the word "administrator" by "registrar". In subsection (4) |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | delete the words "or who received a statement under section 243 admitting his claim, and". In subsection (4) before "every inspector" add the words "the admininistrator". |
| 196 | 211 | Expenses of bankrupt | No change. |
| 197 | 212 | Redirection of mail | Recast subsection (1) to empower a trustee to redirect mail of a bankrupt.<br><br>In the case of an individual bankrupt the redirection is binding for only ninety days, unless extended by a court.<br><br>Delete subsection (3) and replace by a subsection excluding a consumer bankrupt from the application of this section. |
| 198 | 213 | Right and duty of trustee | Modify to conform to changes made in section 212. |
| 199 | 214 | Inquiry by administrator | No substantial change. |
| 200 | 215 | Circumstances relevant to the inquiry | Delete "and" between (h) and (i).<br><br>Add paragraph (j) to empower an administrator to enquire as to whether a bankrupt is likely in the future to acquire property or earn income in excess of that necessary to maintain a reasonable standard of living. |
| 201 | 216 | Examination of witnesses | Modify subsection (2) to empower a trustee to request that an administrator file a caveat against the bankrupt or an agent or former agent of the bankrupt.<br><br>Add subsection (3) to grant to any creditor of the estate the power to transmit to the administrator any matter set out in sections 212 and 215 and to request that the administrator file a caveat. |
| 202 | 217 | Caveat with respect to individuals | This section deals with the filing of a caveat against an individual bankrupt. The delay for filing a caveat has been extended from ninety days to six months. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | 218 | Caveat with respect to agent and former agent | This section deals with the filing of a caveat by the administrator in respect of agent or former agent of a bankrupt. The delay for filing a caveat is one year from the date of the bankruptcy of the bankrupt. |
| | 219 | Application to court by trustee or creditor | This is a new section describing the procedure to be followed by a creditor or a trustee to obtain an order directing an administrator to file a caveat where the administrator refuses or neglects to do so after request. |
| 203 | 220 | Issue of certificate by administrator | Modify the title from "Certificates of Non-Responsibility" to "Certificates of Discharge".<br><br>Recast to extend the delay to six months, to refer to an application to court pursuant to subsection 219(8), and to replace "certificate of non-responsibility" by "certificate of discharge". |
| 204 | 221 | Who may apply for certificate | In subsections (1) and (5) replace "certificate of non-responsibility" by "certificate of discharge". |
| 205 | 222 | Court may order issue of certificate | Replace "certificate of non-responsibility" by "certificate of discharge"; delete the standard "if the court is of the opinion that the public interest does not require the bankrupt to be further dissuaded from entering into credit transaction".<br><br>Distinguish between a bankrupt and an agent or former agent of a bankrupt. |
| 206 | 223 | Content of certificate | Replace "certificate of non-responsibility" by "certificate of discharge". |
| 207 | 224 | Disqualification of agent or former agent | Replace the title "Where Agents Deemed Bankrupt" by "Disqualification of Agents or Former Agents".<br><br>Recast to describe the disqualifications imposed on an agent or former agent where a caveat is filed. |
| 208 | | | Delete section 208 of Bill C-60 because the application to court for an order to issue a caveat against an agent or former agent has been deleted and replaced by a procedure that parallels the issuance of a caveat in the case of a bankrupt. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 209 | | Order deeming agent bankrupt | Delete section 209 of Bill C-60 as a consequence of the deletion of section 208. |
| 210 | 225 | Bankrupt cannot enforce contract for credit | Modify the title to read "Limitation on Extension of Credit by Bankrupts". In subsection (2) replace the word "is in good faith" by "does not know that the transferor is bankrupt". Make the section apply to agents or former agents against whom a caveat has been filed. |
| 211 | | | Delete section 211 of Bill C-60 dealing with the extention of credit to a bankrupt. |
| 212 | | | Delete section 212 of Bill C-60 as a consequence of the deletion of section 211. |
| 213 | | | Delete section 213 of Bill C-60 as a consequence of the deletion of section 211. |
| 214 | | | Delete section 214 of Bill C-60 as a consequence of the deletion of section 211. |
| 215 | 226 | Foreign bankrupt | Modify the cross references. |
| 216 | 227 | Bankrupt not qualified to be a director | Modify to state that a bankrupt is disqualified to act as a director of a corporation. |
| 217 | | | Delete section 217 of Bill C-60 that provided that a bankrupt was not to be director because adequately covered by new section 227. |
| 218 | 228 | Surplus returned to bankrupt | No change. |
| 219 | 229 | Effect of annulment of a bankruptcy order | No change. |
| 220 | 230 | Abuse of the bankruptcy process | No change. |
| 221 | 231 | End of status of bankrupt | In paragraph (1)(a) replace "ninety days" by "six months". Delete paragraph (1)(b). Recast paragraph (1)(e) and delete reference to the withdrawal of a caveat in paragraph (3)(c). |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 222 | 232 | Certificate of full payment | No change. |
| 223 | 233 | Statutory disqualification removed | No change. |
| | 234 | Lifting of executions or seizures | This is a new section that provides for the lifting of executions or seizures where a certificate of discharge is filed. |
| | | PART VI—ARRANGEMENTS AND BANKRUPTCY | |
| 224 | 235 | Application of Part | No change. |
| 225 | 236 | "Proposed arrangement" defined | Replace "proposal" by "proposed arrangement". |
| 226 | 237 | Right of secured creditors preserved | No change except the cross-reference. |
| 227 | 238 | Debtor liable for dividend | In subsection (2) delete the words "or an order of the court under section 209". |
| 228 | 239 | Partner, guarantor or joint debtor not released | No change. |
| 229 | 240 | No contracting out of debts released | In paragraph (1)(a) delete the words "after he is released from the debt". In paragraph (1)(b) delete the words "subsequent to the release". |
| 230 | 241 | Duties of debtor | In paragraph (1)(f) add "reasonably" before "require". In subsection (2) replace "the administrator" by "the court". Throughout, replace "proposal" by "proposed arrangement". |
| 231 | 242 | Duties of agents | No change except to cross-references. |
| 232 | 243 | Performance of duties by imprisoned persons | No change. |
| 233 | 244 | No claim for or release of certain debts | In paragraph (c) replace "proposal" by "proposed arrangement". Add subsection (2) to deal with debts arising out of fraud where the debtor has been convicted of such fraud under the Criminal Code. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 234 | 245 | Assignment of wages void | In subsection (1) replace "proposal" by "proposed arrangement". |
| 235 | 246 | Set-off | In subsection (1), replace the word "amount" by "debt". Recast subsection (2) to grant to a court power to set aside a set-off in certain circumstances. Add a subsection (3) to clarify that no set-off is possible in respect of wage claims. Add a subsection (4) setting out guidelines to determine the amount of set-off. |
| 236 | 247 | Distinct claims | No change. |
| 237 | 248 | Claims for contingent and unliquidated claims | No change. |
| 238 | | | Delete section 238 of Bill C-60 that deemed a wage claim to be a secured debt. |
| 239 | 249 | Claims for secured debts | In subparagraph (b)(i) replace "proposal" by "proposed arrangement" and delete the words "as determined pursuant to this Act". |
| 240 | | | The substance of section 240 of Bill C-60 dealing with the rights of secured creditors has been transferred to section 148 of the proposed Bill. |
| 241 | | | The substance of section 241 of Bill C-60 requiring the trustee to make an election has been transferred to section 149 of the proposed Bill. |
| 242 | | | The substance of section 242 of Bill C-60 postponing the exercise of the rights of secured creditors has been transferred to section 150 of the proposed Bill. |
| 243 | 250 | Proof of claim | In subsection (1) delete the words "or the trustee admits the claim and advises the creditor in a written statement that he has admitted the claim and that no further proof is required".<br><br>In subsection (5), replace "proposal" by "proposed arrangement". |
| 244 | 251 | Proof may be requested | In subsection (1), replace the words "by giving the prescribed notice" by the words "by serving the prescribed notice". |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | In subsection (3), replace "gives" by "serves". Recast subsection (3) to extend the time period during which the taxing authority may file a proof of claim to six months from the service of the notice and the filing of the required return of information. |
| 245 | 252 | Content of proof of claim | This section has been expanded to include a list of the particular information required in a proof of claim or in a proof of security interest. |
| 246 | 253 | Amendment of proof | Delete subsection (2). Subsection (3) becomes subsection (2). |
| 247 | 254 | Proof of ownership | In subsection (1) delete the words "or any right or interest in". |
| | | | In subsection (9), delete the words "any right or interest". |
| 248 | 255 | Examination of proofs | Delete the words "statement under section 243 admitting a claim". |
| 249 | 256 | Disallowance by trustee | Delete subsection (2). Subsection (3) becomes subsection (2). |
| 250 | 257 | Creditor may apply to court for disallowance | No change. |
| 251 | 258 | Review by court | Modify subsection (1) to detail the powers of the court on review. |
| 252 | 259 | Amount of claim admitted | No change. |
| 253 | 260 | Penalties | Recast paragraph (a) to read "has knowingly failed to comply in a material way with the provision of this Part". |
| 254 to 257 | 261 | Categories of creditors | Recast to clarify the different categories of claims. Subsections (1), (2) and (3) are new. Subsection (4) replaces paragraphs (1)(a) to (g). Add in paragraph (4)(e) a $500 priority for pension and other wealth and welfare contributions. In paragraph (4)(f) grant a priority to a lessor for damages arising out of a disclaimer to the extent provided in subsection 198(18). Subsection (5) replaces paragraph (1)(h). |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | Paragraph (6) replaces paragraph (1)(i): delete paragraphs (1)(i)(ii), (1)(i)(vi), (1)(i)(vii) to (1)(i)(xii). Subsection (7) replaces subsection (2). Subsections (8) to (11) are new. Subsection (12) replaces section 256, modified. Subsection (13) replaces section 257, modified. Subsection (14) replaces section 255. |
| 258 | 262 | Trustee to pay dividends as required | Recast subsection (2) to require that the fund retained not be greater than the amount of dividend payable on the claim where the claim is admitted.<br><br>Add subsection (4) dealing with dividends of less than $1.00. |
| 259 | 263 | Right of creditor who does not prove claim for dividend declared | No change. |
| 260 | | | Section 260 of Bill C-60 dealing with the hotchpot rule is transferred to section 313 of proposed Bill. |
| 261 | 264 | Unclaimed dividend | No change. |
| 262 | 265 | Insurance against liabilities to third parties | No change. |
| 263 | 266 | Bankruptcy order to take precedence over attachments | No change. |
| 264 | 267 | Property under seizure or distress | In subsection (1) replace the last word, "arrangement", by "in the case of an arrangement, to the debtor forthwith on receipt of a copy of the arrangement". |
| 265 | 268 | Effect of transfers by trustee | No change. |
| 266 | 269 | Registration of orders and notices | In paragraph (g) add a reference to "paragraph 274(2)(e)". In paragraph (j), after "aircraft" add "railway rolling stock". |
| 267 | 270 | Effect of registration under a land titles Act | No change. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 268 | 271 | Purchase in good faith for value protected | No change. |
| 269 | 272 | Interim receiver in proposed arrangement | Recast subsection (1) to provide that the trustee is an interim receiver upon the filing of a notice of intention or a proposed arrangement under Part IV. |
| 270 | 273 | Security for costs and damages | No substantial change. |
| 271 | 274 | Duty of interim receiver | Recast to set out the general powers and duties of an interim receiver. |
| 272 | 275 | Powers of interim receiver | Recast to set out the powers that a court may grant to an interim receiver. |
| 273 | 276 | Discharge of obligations and repayment of debts | No change. |
| 274 | 277 | Termination of appointment | Add paragraph (f) to deal with the case where the court discharges the interim receiver for cause. |
| 275 | 278 | Final statement of accounts | Replace the word "prepare" by "file with the registrar". In paragraph (e) replace the word "administrator" by "registrar". |
| 276 | 279 | Remuneration of interim receiver | No substantial change. |
| 277 | 280 | Claims for damages against interim receiver | No change. |
| 278 | 281 | Examinations | Replace "proposal" by "proposed arrangement" and allow creditors, on court approval, to examine. |
| 279 | 282 | Chairman at meeting | In paragraph (3)(a), delete the words "at least one clear day before the date fixed for the meeting or the trustee has admitted the claim and advised the creditor that the claim has been admitted and no further proof is required" and replace by the words "prior to the time fixed for the meeting".<br><br>In paragraph (3)(b) add the words "has been valued pursuant to section 248". |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 280 | 283 | Meeting of creditors | No substantial change. |
| 281 | | | Delete section 281 of Bill C-60 dealing with the voting at subsequent meetings because there is no longer any procedural distinctions for voting purposes between the first meeting of creditors and any subsequent meeting. |
| 282 | 284 | Voting at adjourned meeting | Modify to entitle any creditor to vote at an adjourned meeting if claim is filed prior to the adjourned meeting. |
| 283 | 285 | Place of meeting and quorum | No change. |
| 284 | 286 | Class vote | Recast to deal with class votes. Clarify the definition of classes of secured and unsecured creditors. Permit voting by way of mail ballot. |
| 285 | 287 | Scale of votes | Recast subsection (1) to grant one vote for each dollar of claim. Delete subsection (2). |
| 286 | 288 | Manner of voting | In subsection (1) replace "person" by "creditor" and add the words "mail ballot or pursuant to a representation order made under section 304".<br><br>Add subsection (6) to require attendance at a meeting of a proxyholder or alternate proxyholder and compliance with the direction of a creditor where a proxy has been solicited. |
| 287 | 289 | Right to vote restricted | Expand to restrict the right to vote of persons who are related to a party to a proceeding to which the trustee is an adverse party. |
| 288 | 290 | Powers of creditors | No change. |
| 289 | 291 | Removal and substitution of trustee | Add the words "Unless the court, on application, otherwise orders" at the beginning of subsection (2). |
| 290 | 292 | Vesting of property in new trustee | No change. |
| 291 | 293 | Termination of office of trustee | In paragraph (c), delete the words "non renewal". |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
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| 292 | 294 | Appointment of inspectors by creditors | Replace the word "person" by the word "individual" to exclude corporations from a board of inspectors.<br><br>Add the words "prior to the first meeting of creditors" between "may" and "appoint" in subsections (8) and (9).<br><br>Add the words "unless the court, on application, otherwise orders" in subsection (11). |
| 293 | 295 | Purposes of a board of inspectors | Clarify that in the case of an arrangement the powers of inspectors may be restricted or extended by the arrangement. |
| 294 | 296 | Calling of meetings | Modify subsection (4) to declare that the trustee is chairman of the meeting of inspectors, and add a new subsection (5) to empower the board to appoint the chairman where the trustee is not present or the meeting is called by an inspector pursuant to subsection (2).<br><br>Add a new subsection (8) to determine how the resolutions of the board are carried at a meeting. |
| 295 | 297 | Vacating office | Replace the word "person" by the word "individual".<br><br>Add a new subsection (2) to permit the filing of vacancies on a board by the remaining inspectors. |
| 296 | 298 | Expenses to be paid | In subsection (1), replace the word "administrator" by "registrar".<br><br>In subsection (2), add the words "subject to subsection (3)".<br><br>Add a new subsection (3) to provide for remuneration for special services rendered by an inspector. |
| 297 | 299 | Duties of chairman and minutes of meeting | No change. |
| 298 | 300 | Where trustee may act without permission of inspectors | No change. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 299 | | | Delete section 299 of Bill C-60 dealing with the power of the Superintendent to appoint a supervisor of estate. |
| 300 | 301 | Directions to trustee | No change. |
| 301 | 302 | Notices to creditors | In paragraph (a) delete the words "or whose claims have been admitted by the trustee". |
| 302 | 303 | Reports by trustee | In paragraph (1)(a) delete the words "a supervisor appointed under section 299".<br><br>Add a subsection (3) to require the trustee to prepare a yearly financial report to be distributed to all creditors of the estate. |
| 303 | 304 | Leave not to send material | Replace the word "serve" by "send". |
| 304 | 305 | Representation orders | In subsection (1) add the words "on application," between "the court" and "may" and give the court wider discretion in respect of the issue of a representation order. |
| 305 | 306 | Inquiry as to administration of estate | No change. |
| 306 | 307 | No dismissal of employee | Add the words "or otherwise discipline" after "lay-off" and replace "proposal" by "proposed arrangement".<br><br>Add subsections (2) and (3) to prevent discrimination by public utilities with respect to insolvent debtors. |
| 307 | 308 | Court may disregard agreements appointing representatives of creditor | No change. |
| | 309 | Court may appoint trustee as liquidator of foreign property | This is a new section designed to give a court the power to appoint a trustee as liquidator of a corporation with respect to property situated outside Canada in order to facilitate the recognition by foreign courts of the representative of the corporation and thus expedite the administration and liquidation of such property. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
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| | 310 | Keeping moneys outside Canada | This is a new section authorizing a canadian trustee or interim receiver to keep moneys in a foreign bank notwithstanding the general provision of the Bill requiring the deposit of all moneys of an estate in a Canadian financial institution. This provision gives a trustee wider discretion to comply with local law and to deal with foreign property. Note that an interim receiver requires approval of a court, and that a trustee must receive approval of a board of inspectors (or of a court in the absence of a board) to keep moneys in a foreign bank. |
| 384(4) | 311 | Jurisdiction when foreign court seeks aid | No change from Bill C-60. |
| | 312 | Powers of foreign representative | This is a new section giving a court power to recognize a foreign representative for the purpose of facilitating the administration of a foreign estate where property is situated in Canada. A number of standards are set out in the section to guide the court in granting recognition to a foreign representative. |
| 260 | 313 | Hotchpot rule | No material change from Bill C-60. |
| | | PART VII—SECURITIES FIRMS | |
| 308 | 314 | Application of Part | Delete subsection (2). |
| 309 | 315 | Definitions | Substantially modified.<br><br>Add or recast definitions of "beneficial ownership", "deferred customer", "free credit balance", "related customer", "secured lender", "self-regulatory organization", "specifically identifiable property".<br><br>Expand on the definitions of "customer" and "security".<br><br>Replace the definition of "stockbroker" by a definition of "securities firm". |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | Add subsection (2) to deal with the case where a person has accounts with a securities firm in more than one capacity.<br><br>Add subsections (3) to (7) to deal with specifically identifiable property and the circumstances under which a customer is entitled to his securities. |
| 310 | 316 | Customer deemed to be a creditor | Replace the words "For the purposes of this Part" by the words "For the purposes of sections 168 to 185".<br><br>Add subsection (2) to describe the circumstances under which a court may set aside a transfer that is a preference and the defence available to a customer. |
| 311 | 317 | Petition by self-regulatory organization | Add subsection (2) to allow a self-regulatory organization to intervene at the hearing of petition. |
| 312 | 318 | Petition to be served on regulatory organization | Recast to require that a petition be served on regulatory agencies, whether the petition is filed by or against a securities firm. |
| | 319 | Trustee to send notice | This is a new section dealing with the sending of proofs of claim. |
| 314 | 320 | Filing proof of claim | Recast to deal with the claims for specifically identifiable property. |
| 315 | 321 | Powers of trustee | Recast to give a trustee power, without the permission of a board of inspectors, to complete open contractual commitments and to deliver to customers securities to which they are entitled in satisfaction of their claim. |
| | 322 | Powers of court | This section deals with the powers of court to determine the nature of the property that vests in a trustee. |
| 313 and 316 | 323 | Property that vests in the trustee | Recast to clarify the vesting in the trustee of property and the constitution of a "general fund" and "customers' fund". The section deals also with the apportionment between the "general fund" and the "customers' fund" of payments made to discharge a security interest. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 318 | 324 | Cash customers' right to claim | This is a new section that specifies the right of a cash customer to claim specifically identifiable property and the conditions under which a customer may claim partly paid securities. |
| 317 | 325 | Intervention by insurer | This is a new section which establishes special provisions for the administration and liquidation of an estate where an insurer undertakes to indemnify the customers of a securities firm against losses caused by the bankruptcy. |
| 316 | 326 | Order of priority | This section determines the order of priority of payments in the administration of the estate of a securities firm both where an insurer intervenes and where it does not. |
| | | PART VIII—INSURANCE COMPANIES | |
| 319 | 327 | Application of Part | No change. |
| 320 | 328 | Definitions | No change. |
| 321 | 329 | Superintendent deemed to be trustee | No change. |
| 322 | 330 | Actions by superintendent of insurance before bankruptcy | No change. |
| 323 | 331 | Where insurance company deemed to have ceased to pay debts | In paragraphs (1)(c) and (2)(c), delete the word "other" between "any" and "Act". |
| 324 | 332 | Petition for a bankruptcy order | No change. |
| 325 | 333 | Superintendent of insurance may be trustee | No change. |
| 326 | 334 | Costs of administration | No change. |
| 327 | 335 | Superintendent of insurance ex officio inspector | No change. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 328 | 336 | Scales of votes | No change. |
| 329 | 337 | Termination of policies | No change. |
| 330 | 338 | Trustee to prepare a statement | No change. |
| 331 | 339 | Notice of filing and first meeting of creditors | No change. |
| 332 | 340 | Vesting of deposits in trustee | In the opening part of subsection (1), delete the words "except where he reinsures in full all the subsisting policies issued by the company for which such assets were held".<br><br>In paragraph (1)(a) add the words "or for the benefit of" after "among" and before "the holders of policies". After "the holders of policies" add the words "and other persons". Similar changes made in paragraph (1)(c).<br><br>In the opening part of subsection (3), add the words "and other persons" after the words "the policyholders of the company".<br><br>In paragraph (3)(a) replace the words "reinsurance arranged by the trustee" by "any benefit under any agreement entered into by the trustee pursuant to section 344".<br><br>In paragraph (3)(b) replace the words "whether reinsurance has been arranged or not" by "whether or not the trustee has entered into an agreement pursuant to section 344".<br><br>In subsection (4) replace "a policyholder" by "any person", add the words "or other benefit under a policy" and replace the words "the policyholder" by "that person". |
| 333 | 341 | Liquidation of deposits | In the opening part of subsection (1), delete the words "except where he reinsures in full all the subsisting policies issued by the company for which the fund, assets or deposits were maintained". |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | Recast paragraphs (1)(a), (b) and (c) to grant a priority to the persons for whom the fund was created.<br><br>Delete subsection (2) and replace it by a subsection dealing with the surplus remaining after the distribution of the fund. |
| 334 | 342 | Transfer of assets to foreign liquidator | No change. |
| 335 | 343 | Continuation of contract of reinsurance | Recast to permit negotiation between the trustee and the reinsurer of a longer period of continuation of the contract of reinsurance. |
| 336 | 344 | Transfer of subsisting policies | Replace the word "reinsure" by "enter into an agreement to transfer to another reinsurer the obligations of the company". |
| 337 | 345 | Use of assets to pay for transfer | In paragraph (1)(b), delete the words "any claim for wages under section 238" and in paragraph (1)(c) add a reference to the paragraph that deals with the priority for wages.<br><br>In paragraph (1)(e) replace the word "reinsurance" by making a reference to section 344.<br><br>Make subsection (1) subject to section 340 and 341.<br><br>In subsection (3), replace "reinsures" by "effects the transfer of a policy of a policyholder to another insurer". |
| 338 | 346 | Rank of insurer for outstanding premium | No change. |
| 339 | 347 | Computation of value of claim of holder of unmatured policy | In subsection (1), replace "reinsure" by "effect a transfer of a policy of the company to another insurer, pursuant to section 344". |
| 340 | 348 | Order of priority regarding life insurance companies | No change. |
| 341 | 349 | Order of priority regarding companies other than life insurance | In subsection (1), combine paragraphs (c) and (d) to read "(c) the claims that arose under a policy prior to the termination date of the policy". |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | PART IX—RECEIVERSHIP | |
| 342 | 350 | Definitions | "debtor": no change.<br><br>The definition of "receiver" has been transferred to section (2).<br><br>The definition of "security agreement" has been transferred to section (2). |
| | 351 | General duty of receiver | Add an express fiduciary duty standard to make clear that a receiver must not act in an unlawful manner or place himself in a position where he has a conflict of interest or duty that precludes objective realization, and add a duty of care standard to make clear that a receiver must deal with a debtor's property in a commercially reasonable manner. |
| 343, 344 and 383 | 352 | Standing to apply | Amend to declare who has standing to apply to a court.<br><br>Add the fiduciary duty standard "honestly and in good faith" to the preamble.<br><br>Amend paragraph (k) to empower a court to deal with the disbursements and costs of a receiver whose appointment is terminated under paragraph 352(2)(b) or of a successor receiver.<br><br>Add the "materially affect" standard to subsection (4), but make conditional on receivers acting honestly and in good faith.<br><br>Make clear in subsection (4) that a court has power to deal with the threshold issues referred to in paragraphs (3)(a) to (e).<br><br>Amend subsection (5) to limit the court's power to amend the contract creating a security interest "to the extent required to give effect to its order". |
| 345 | 353 | Duties of receiver | No material change. |
| | 354 | Duties with respect to records | This is a new section with respect to the duties of a receiver regarding records. This section would allow |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | | the Superintendent to gather appropriate data for statistical purposes, particularly to determine the extent of unpaid wages in the context of insolvency. |
| 346 | 355 | Order of priority of payments | No material change. |
| | | PART X—OFFENCES | |
| 347 | 356 | Failure of debtor to fulfil duties | No change except for the cross-references. |
| 348 | 357 | Failure of agent to comply | No change. |
| 349 | 358 | Trustee acting while licence subject to limitations | In subsection (2) add the words "administrator" after "a trustee". |
| 350 | 359 | Failure of trustee to comply with Act | No change. |
| 351 | 360 | Soliciting petition | Replace "proposal" by "proposed arrangement". |
| 352 | | | Delete section 352 of Bill C-60 with respect to the failure of an inspector to comply with Act. |
| 353 | 361 | False statement in writing | No change. |
| 354 | 362 | False claim | No change. |
| 355 | 363 | Disposal of property to defraud creditors | No change. |
| 356 | 364 | Falsification of record | Replace the word "proposal" by the word "arrangement". |
| 357 | 365 | Falsification of books to defraud creditors | In subsection (3), replace "proposal" by "proposed arrangement". |
| 358 | 366 | Secret transactions to influence arrangement | In subsection (1), replace "proposal" by "proposed arrangement". |
| 359 | 367 | Failure to disclose bankruptcy | No change. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 360 | | | Delete section 360 of Bill C-60 dealing with the offence of a bankrupt obtaining credit by false representation because adequately covered by section 320 of the *Criminal Code*. |
| | 368 | Failure of agent to comply with prohibition | This is a new section providing for a penalty where an agent or former agent fails to comply with the section that prohibits an agent or former agent against whom a caveat has been filed from acting as a director or officer of a corporation and engaging in any trade or business without disclosing the existence of the caveat. |
| 361 | 369 | Where bankrupt acts as director of a corporation | No change. |
| 362 | 370 | Failure to keep accounts | After the word "kept" add the words "and preserved". Add "at any time prior to the making of a bankruptcy order or arrangement" after the word "business". Delete reference to present Act. |
| 363 | 371 | Offence by director or officer of a corporation | No change. |
| 364 | 372 | Impersonation of trustee or inspector | No change. |
| 365 | 373 | Purchasing assets of an estate | No change. |
| 366 | 374 | Fraudulent neglect of duty by trustee or inspector | No change. |
| 367 | 375 | Bribery of administrator | No change. |
| 368 | 376 | Bribery of solicitor | No change. |
| 369 | 377 | Use of false statement | No change. |
| 370 | 378 | Other offences | No change. |
| 371 | 379 | Punishment for summary conviction | No change. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 372 | 380 | Limitation respecting summary convictions | No change. |
| | | PART XI—THE COURTS AND EVIDENCE | |
| 373 | 381 | Courts vested with jurisdiction | Add subsection (3) to empower a lieutenant governor in council to appoint registrars and other officers of the court.<br><br>Add subsections (4) and (5) to permit the assignment of bankruptcy work to specific judges by the chief justice of a province. |
| 374 | 382 | Exercise of power by judges of other courts | No change. |
| 375 | 383 | Practice and procedure | No change. |
| 376 | 384 | Power of judge in chambers | No change. |
| 377 | 385 | Application for an order | In subsection (1), after "any interested person" add "including the administrator". |
| 378 | 386 | Transfer of proceedings to another district | No change. |
| 379 | 387 | Consolidation of petition | No change. |
| 380 | 388 | Formal defect not to invalidate proceedings | No change. |
| 381 | 389 | Time may be extended or shortened | Clarify that the validity of transactions is not affected where the court modifies a time period. |
| 382 | 390 | Orders may be reviewed | No change. |
| 383 | 391 | Aggrieved person may apply | Add the words "the administrator" after the words "decision of". |
| 384 | 392 | Enforcement | In subsection (2), add the words "and all administrators" after the words "the officers of all courts". Delete subsection (4) and transfer to section 311. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| 385 | 393 | Enforcement of warrants | No change. |
| 386 | 394 | Arrest of debtors under certain circumstances | No change. |
| 387 | 395 | Failure to attend examination | No change. |
| | 396 | Powers of registrar | Add a new section to describe the powers of the registrar. |
| 388 | 397 | Appeal from judgment of officer of court | Add the word "registrar" after the words "by a judgment of". |
| 389 | 398 | Court of appeal | Expand person's appeal as of right to a court of appeal. |
| 390 | 399 | Supreme Court of Canada | Add the words "of Canada" at the end of the section for abundance of clarity. |
| 391 | 400 | Stay of proceedings | No change. |
| 392 | 401 | Costs | In paragraph (5)(c) replace "proposal" by "proposed arrangement" and delete subsection (4). |
| 393 | | | Delete section 393 of Bill C-60 dealing with the tariff of costs because section becomes redundant in view of section 401. |
| 394 | 402 | Canada Gazette | No change. |
| 395 | 403 | Notice of interest in seized property | No change. |
| 396 | 404 | Evidence of proceedings in bankruptcy | No change. |
| 397 | 405 | Admissibility of proof | No change. |
| 398 | 406 | Admissibility of examination | No change. |
| 399 | 407 | Duties of person examined | No change. |

| 1st Session 30th Parliament Bill C-60 | 3rd Session 30th Parliament Bill S- | Topic | Comment |
|---|---|---|---|
| | | PART XII—GENERAL, TRANSITIONAL, REPEAL, REPLACEMENT AND COMMENCEMENT | |
| 400 | 408 | Where debtor incapacitated | In subsection (3), replace "proposal" by "proposed arrangement". |
| 401 | 409 | Her Majesty is bound | No change. |
| 402 | 410 | Extension of statutes of limitation | No change. |
| 403 | 411 | Non-application of provincial law | No change. |
| 404 | | | Delete section 404 of Bill C-60 dealing with married woman. |
| 405 | 412 | Regulations | Add the power to prescribe the procedures at meeting of creditors and inspectors.<br><br>In subsection (2), add after the words "Canada Gazette" the words "and in the periodical referred to in paragraph 13(f)".<br><br>In subsection (4), add, at the end, the words "to the extent that such arrangement provides for the payment to creditors by way of debt obligations". |
| 406 | 413 | Transitional | No change. |
| 407 | 414 | Reference to *Winding-up Act* in other instruments | No change. |
| 408 | 415 | Amendments to other Acts | No change. |
| 409 | 416 | Acts repealed | No change. |
| 410 | 417 | Coming into force | No change. |