

DUTIES OF BANKRUPT

67. (1) Property of bankrupt-The property of a bankrupt divisible among his creditors shall not comprise

- (a) property held by the bankrupt in trust for any other person,**
- (b) any property, that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides;**
 - (b.1) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b);**
 - (b.2) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b); or**
 - (b.3) without restricting the generality of paragraph (b), property in a registered retirement savings plan or a registered retirement income fund, as those expressions are defined in the *Income Tax Act*, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy,**

But it shall comprise

- (c) all property wherever situated of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge, including any refund owing to the bankrupt under the *Income Tax Act* in respect of the calendar year – or the fiscal year of the bankrupt if it is different from the calendar year – in which the bankrupt became a bankrupt, except the portion that**
 - (i) is not subject to the operation of this Act, or**
 - (ii) in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on Her Majesty under the *Family Orders and Agreements Enforcement Assistance Act*, is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and**
- (d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.**

S. 158. A bankrupt shall

- (a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;**
 - (a.1) in such circumstances as are specified in directives of the Superintendent, deliver to the trustee, for cancellation, all credit cards issued to and in the possession or control of the bankrupt;**
- (b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;**
- (c) at such time and place as may be fixed by the official receiver, attend before the official receiver or before any other official receiver delegated by the official receiver for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;**
- (d) within five days following the bankruptcy, unless the time is extended by the official receiver, prepare and submit to the trustee in quadruplicate a statement of the bankrupt's affairs in the prescribed form verified by affidavit and showing the particulars of the bankrupt's assets and liabilities, the names and addresses of the bankrupt's creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a proper statement of affairs, the official receiver may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement;**
- (e) make or give all the assistance within his power to the trustee in making an inventory of his assets;**
- (f) make disclosure to the trustee of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event or beginning on such other antecedent date as the court may direct, and ending on the date of the bankruptcy, both dates included, and how and to whom and for what consideration any part thereof was disposed of except such part as has been disposed of in the ordinary manner or trade or used for reasonable personal expenses;**
- (g) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within the period beginning on the day that is five years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;**
- (h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereat to examination;**

- (i) when required, attend other meetings or his creditors or of the inspectors, or attend on the trustee;
- (j) submit to such other examination under oath with respect to his property or affairs as required;
- (k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;
- (l) execute any powers of attorney, transfers, deeds and instruments or acts that may be required;
- (m) examine the correctness of all proofs of claims filed, if required by the trustee;
- (n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;
- (n.1) inform the trustee of any material change in the bankrupt's financial situation;
- (o) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee, or may be prescribed by the General Rules, or may be directed by the court by any special order made with reference to any particular case or made on the occasion of any application by the trustee, or any creditor or person interested; and
- (p) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all times of his place of residence or address.

DUTIES OF BANKRUPT REGARDING COUNSELLING SESSIONS

S. 157.1 (1)- Counselling-The trustee

- (a) shall provide, or provide for, counselling for an individual bankrupt, and
- (b) may provide, or provide for, counselling for a person who, as specified in directives of the Superintendent, is financially associated with an individual bankrupt,

in accordance with directives issued by the Superintendent pursuant to paragraph 5(4)(b), and the estate of the bankrupt shall pay the costs of the counselling, as costs of administration of the estate, according to the prescribed tariff.

(2) Idem-Where counselling is provided by a trustee to a debtor who is not a bankrupt, that counselling must be provided in accordance with directives issued by the Superintendent pursuant to paragraph 5(4)(b).

(3) Effect on automatic discharge-Subsection 168.1(1) does not apply to an individual bankrupt who has refused or neglected to receive counselling provided pursuant to subsection (1).

159. Where bankrupt is a corporation-Where a bankrupt is a corporation, the officer executing the assignment, or such

- (a) officer of the corporation, or**
- (b) person who has, or has had, directly or indirectly, control in fact of the corporation**

as the official receiver may specify, shall attend before the official receiver for examination and shall perform all the duties imposed on a bankrupt by section 158, and, in case of failure to do so, the officer or person punishable as though that officer or person were the bankrupt.

178. (1) AN ORDER OF DISCHARGE DOES NOT RELEASE THE BANKRUPT FROM:

Debts not released by order of discharge-An order of discharge does not release the bankrupt from

- (a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence, or any debt arising out of a recognizance or bail;**
- (a.1) any award of damages by a court in civil proceedings in respect of**
 - (i) bodily harm intentionally inflicted, or sexual assault, or**
 - (ii) wrongful death resulting therefrom;**
- (b) any debt or liability for alimony or alimentary pension;**
- (c) any debt or liability arising under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse, former common-law partner or child living apart from the bankrupt;**
- (d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;**
- (e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim;**
- (f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;**

- (g) any debt or obligation in respect of a loan made under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy occurred
 - (i) before the date of which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or
 - (ii) within seven (7) years after the date on which the bankrupt ceased to be a full-or part-time student; or
- (h) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g).

BANKRUPTCY OFFENCES

S.198 (1) Bankruptcy offences - Any bankrupt who

- (a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event,
- (b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act,
- (c) makes a false entry or knowingly makes a material omission in a statement or accounting,
- (d) after or within one year immediately preceding the date of the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,
- (e) after or within one year immediately preceding the date of the initial bankruptcy event, obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge,
- (f) after or within one year immediately preceding the date of the initial bankruptcy event, fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from the bankrupt, or
- (g) after or within one year immediately preceding the date of the initial bankruptcy event, hypothecates, pawns, pledges or disposes of any property that the bankrupt has obtained on credit and has not paid for, unless in the case of a trader the hypothecation, pawning, pledging or disposing is in the ordinary way of trade and unless the bankrupt had no intent to defraud,

is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both, or on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

(2) Failure to comply with duties-A bankrupt who, without reasonable cause, fails to comply with an order of the court made under section 68 or to do any of the things required of the bankrupt under section 158 is guilty of an offence and is liable

- (a) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or**
- (b) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.**

199. Failure to disclose fact of being undischarged-An undischarged bankrupt who

- (a) engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt, or**
- (b) obtains credit to a total of one thousand dollars or more from any person or persons without informing them that the undischarged bankrupt is an undischarged bankrupt,**

is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

200 (1) Bankrupt failing to keep proper books of account - Any person becoming bankrupt or making a proposal, who has on any previous occasion been bankrupt or made a proposal to the person's creditors is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both, if

- (a) being engaged in any trade or business, at any time within the period beginning on the day that is two years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, that person has not kept and preserved proper books of account; or**
- (b) within the period mentioned in paragraph (a), that person conceals, destroys, mutilates, falsifies or disposes of, or is privy to the concealment, destruction, mutilation, falsification or disposition of, any book or document affecting or relating to the person's property or affairs, unless the person had no intent to conceal the state of the person's affairs.**

(2) Proper books of account defined - For the purpose of this section, a debtor shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual and other stock-takings.