



The Insolvency Institute of Canada
L'Institut d'insolvabilité du Canada

News Release

Contact: Jan Fralick
Insolvency Institute of Canada
Tel: (416) 646-1600, ext 27
jfralick@associationsfirst.com

Insolvency Experts Say Proposed Legislation is Flawed

The Insolvency Institute of Canada Expects Legislative Reform to Fail to Meet its Objectives if Changes Not Made

TORONTO, November 17, 2005 – The Insolvency Institute of Canada (IIC), a non-profit organization whose 125 members are leaders in the insolvency field, supports efforts to improve wage protection for employees in insolvencies but says because insolvency legislation establishes the priority of creditor claims, it has a huge impact on the risks associated with borrowing money or buying goods, particularly for small and medium sized businesses. It is incumbent on the government to ensure that competing claims are handled fairly and in a way that promotes Canada's larger economic well-being. Today the IIC is appearing before the Industry Committee reviewing Bill C-55 to raise their concerns.

“The IIC welcomes many of the proposals in Bill C-55 because the current regime is outdated,” said Bob Sanderson, President, Insolvency Institute of Canada. “However, the legislative reform will fail to achieve the stated objectives unless some provisions are revised. There could be a significant negative impact on Canadian productivity and employment since businesses, particularly small and medium sized, will have a tougher time getting financing and their costs will rise dramatically”.

The IIC submission highlights a number of specific concerns with Bill C-55 and has suggested ways to improve the draft legislation. All of the IIC recommendations are consistent with providing better protection for employees and will facilitate efforts to save insolvent businesses and preserve jobs. The IIC recommendations will avoid the unintended consequences of the draft legislation and particularly those measures that could raise the cost of capital for small and medium sized businesses in Canada.

“There are two major flaws with Bill C-55,” said Andrew Kent, Director, Insolvency Institute of Canada. “A number of important checks and balances between competing claims have been overlooked and, in key areas, the proposed mechanics to implement certain provisions will be either ineffective or will have consequences that will be adverse to the national interest. The commercial provisions of Bill C-55 are so limited in scope, the Bill should be amended to broaden the reforms or, at a minimum the 5 year review date should be reduced to 3 years so that other areas of needed reform can be addressed in a timely manner.”

Highlights of the IIC submission are:

- The new wage earner protection fund should be structured to allow a receiver or trustee to pay employees in the normal course of operating the insolvent company so that employees are paid on a timely basis.
- The IIC supports a process that promotes a renegotiation, where necessary, of any collective bargaining agreement through conventional collective bargaining processes but, if there is an impasse in an insolvency restructuring, there must be a provision to deal with collective agreements to ensure this issue is resolved quickly and fairly through a recognized arbitration process. The absence of such a provision hurts all employees when a unionized company becomes insolvent.
- Clarification is necessary as to what assets are attached by the new statutory charge for wages and pensions. Failure to do so will raise the cost of capital for all small and medium sized businesses.
- The proposed governance reforms should be changed so the trustee or receiver and board members have sufficient scope to act to save an insolvent business by ensuring there are appropriate governance mechanisms in place during a restructuring.

Additional information can be found at www.insolvency.ca.

About the Insolvency Institute of Canada (IIC)

The Insolvency Institute of Canada (IIC) is a non-profit organization whose 125 members are leaders in the insolvency field. They are lawyers, trustees and financial advisors whose goal is to promote an efficient insolvency regime that promotes successful restructurings resulting in viable businesses. IIC members understand the real world impact of changes in the current legislation.

The IIC submission is available on the IIC web site at www.insolvency.ca and a summary version is available on request. IIC members are appearing before the House of Commons Standing Committee on Industry, Natural Resources, Science and Technology.