



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

Memo

To: IIC Members

From: Bob Sanderson, President, Insolvency Institute of Canada

Date: December 1, 2005

Re: The Decision to Delay Implementation of Changes to Insolvency Legislation (Bill C-55) Until June 30, 2006

1. As you know the IIC has played a very active role in dealing with Industry Canada officials, political advisors, Members of Parliament, and Senators to ensure that they understood our concerns about the proposed changes to federal insolvency legislation. From the outset we adopted an evenhanded approach based on the considered views of you the IIC members and with the objective of ensuring the legislation achieved the Government's policy. We were however forceful in asserting that the legislation as draft needed significant changes.
2. In the House of Commons there was all-party support for provisions to better protect wage earners. The IIC was one of the few witnesses who appeared before the House of Commons Industry Committee. As it became clear that an election was approaching all four political parties agreed to fast track Bill C-55, although they all recognized that the legislation needed improvement. In short, the politics surrounding the need to better protect wage earners superseded the desire to improve the legislation.

39 River Street, Toronto Ontario M5A 3P1

Tel: (416) 646-1600 ♦ Fax: (416) 646-9460 ♦
Email: iicinfo@associationsfirst.com ♦ www.insolvency.ca

3. Initially MPs were going to approve the legislation. It was expected that the Senate Banking Committee would hear witnesses and propose amendments. However, it became clear that the Government was going to fast track the legislation through the Senate to ensure its passage before the election.
4. Concerned about these developments, the IIC contacted the Senate Banking Committee and provided Senators with both our detailed and summary submissions outlining our concerns. Under the leadership of Senator Grafstein and with the co-operation of Opposition Senators the Senate crafted a very unusual solution that met the political interests of all political parties, the desire to better protect wage earners as soon as possible, and the need to improve the legislation. While the solution is unusual it is not without precedent.
5. **The solution:** The Senate agreed to pass Bill C-55 on the understanding that the Bill will not be proclaimed into force until, at the earliest, June 30, 2006. The purpose of this delay is to give the Senate time to hold hearings to determine whether amendments are needed to either the legislation or the related regulations. To ensure there was no misunderstanding, the Senate required the Minister of Industry to provide a written undertaking to this effect on behalf of the Crown. Because there was all party support for this procedure the undertaking binds whichever party is in power.
6. As part of the process the Senate Banking Committee issued a Report that was critical of the Government's approach and specifically identified those areas of greatest concern. The areas they identified reflected the concerns highlighted in our submission. In addition, the Senate issued a Press Release on the matter and Senator Grafstein delivered a speech which is on record in Hansard. The Senate Banking Committee Report, the Senate Press Release, and Senator Grafstein's remarks are all available on the IIC web site.
7. Over the coming months the IIC will be working with Industry Canada departmental officials and the Senate to help develop amendments that can clean up the existing problems and help ensure that the policy objectives of the Members of Parliament are in fact reflected in the legislative provisions. Clearly there is much work that lies ahead and, as is always the case in dealing with government, the ultimate results remain uncertain.

However, we are encouraged by the public statements of the Senate.

8. On behalf of the IIC I would like to thank all of our members who have worked so hard to help ensure that the changes to our insolvency legislation make sense. We could not have achieved this result without all of the work undertaken to produce the Joint Task Force reports, the LRTF report and our position paper including the translation in French. I would also like to acknowledge the invaluable contribution of our advisors Campbell Strategies.