







# Report on Business

 <b>S&amp;P/TSX</b> 13,675.57 -19.27	 <b>Dow</b> 13,359.61 -192.08	 <b>Nasdaq</b> 2,676.79 -47.62	 <b>Dollar</b> 101.77 -0.16	 <b>Gold</b> 831.80 +2.30	 <b>Oil</b> 96.62 +0.65
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## PROTECTION FROM CREDITORS

# Critics take aim at new bankruptcy law

Amendments lauded for their new worker wage protection plan, but some say even that part is too weak

BY RICHARD BLACKWELL

Canada's updated federal bankruptcy law, hastily passed by the Senate in mid-December without comprehensive hearings, has raised the ire of some lawyers in the field who say it has serious flaws.

The new law has been lauded by the Conservative government mainly for provisions that ensure workers who are caught in the crossfire of a bankruptcy can collect their final paycheques.

But other parts of the complex law have drawn criticism from those who will have to put it into practice once it

comes into force.

While there are clearly some major advances in the new law, "on balance I'm not happy with it," said Robert Klotz, a bankruptcy lawyer in Toronto.

Mr. Klotz has been on a legislative reform task force for three years, has helped draft reports on the reforms and has advised the government on the amendments package. But still, he said, "I have a negative attitude towards it."

One reform that just isn't as good as it could be, he said, is the change in the way registered retirement savings plans (RRSPs) and registered retirement income funds (RRIFs)

are handled in personal bankruptcy cases.

The new law says money individuals hold in any registered accounts are off limits to creditors if the account holder goes bankrupt. An exception is made if the money was put into the account less than a year before the bankruptcy.

This new measure will set a common standard across the country, where provincial bankruptcy rules regarding RRSPs now vary dramatically.

According to Mr. Klotz, there is a huge loophole, in that people in bankruptcy can withdraw all they want from their RRSPs as soon as their bank-

### Key changes

The creation of the Wage Earner Protection Program, a fund that will pay up to \$3,000 of wages when a worker's employer goes bankrupt.

Interim receivers will no longer be liable for pensions and other labour costs if they try to keep the company as a going concern.

Specific criteria have been established for "debtor in possession" financing, to encourage lending to companies that are being restructured.

All RRSPs will be off limits to creditors, as long as contributions were made a year or more before bankruptcy.

A bankrupt individual's student loans will not be forgiven unless he or she has been out of school for seven years or more.

Individuals cannot have their bankruptcy automatically discharged without a court hearing if they have tax liabilities above a certain threshold.

» Richard Blackwell

ruptcy is discharged. The law should have forced anyone in bankruptcy to keep the money in the registered plan until retirement, he said.

While many bankruptcy lawyers are more positive about the new law than Mr. Klotz, even those who support it acknowledge there are flaws. "There are a number of matters that need to be fixed," said Alan Spergel, chairman of the Canadian Association of Insolvency and Restructuring Professionals. "There's an awful lot that's good in the bill, [but] there are still some matters that need to be cleared up."

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# New student loan, RRSP rules criticized

Most of the glitches are technical, he said, although the association would like to see one particular provision changed: the section of the new law that says student loans will not be forgiven when an individual goes bankrupt, unless the person graduated more than seven years ago. That time frame should be cut to two years, Mr. Spergel said.

One key reason there are still problems with the bankruptcy legislation is that its progress through Parliament has taken a highly convoluted route.

Amendments to the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act were initially passed in 2005 by former prime minister Paul Martin's Liberals. But with an election pending, the government agreed not to proclaim the law until the Senate could study it.

When the Conservatives took power, they introduced a whole slew of amendments to the amendments, fixing many problems that had cropped up.

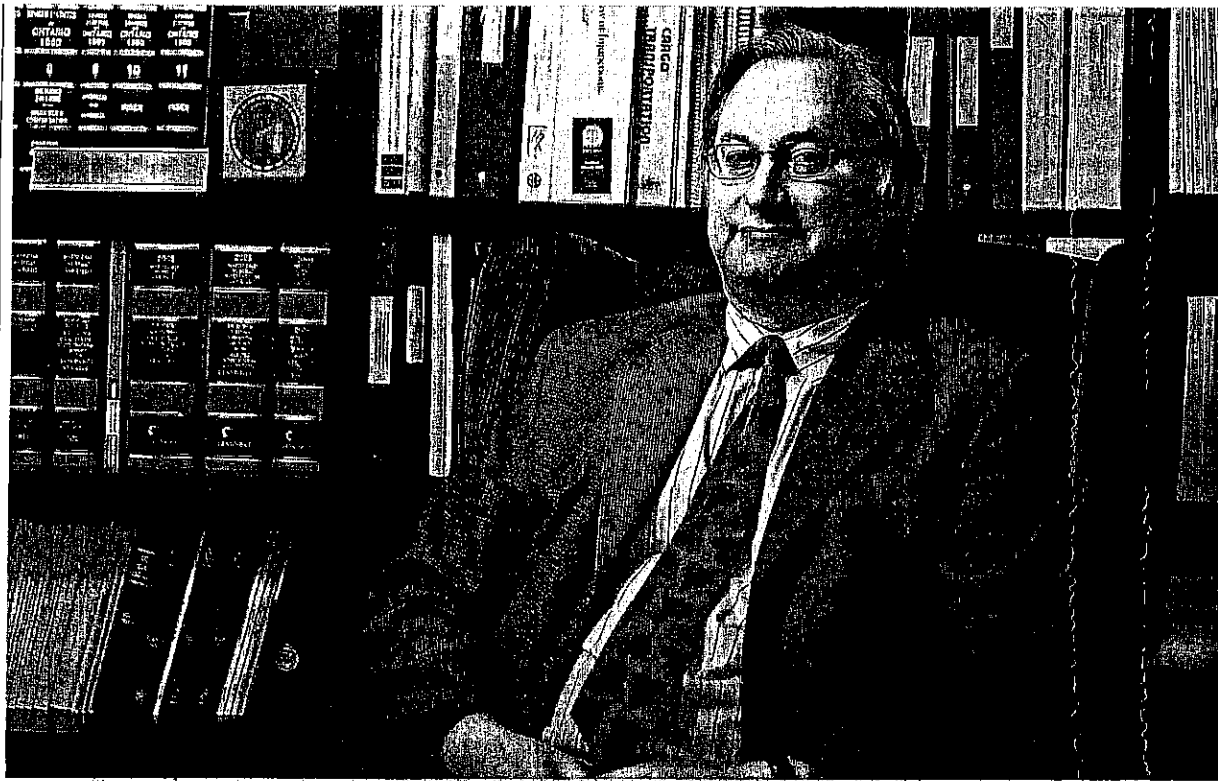
Now, with an election pending again, the Senate has agreed to forgo hearings for now and let the amendments be proclaimed, in order to ensure the law really gets implemented this time. Hearings and possible further amendments will happen next year. It's not clear yet when the new law will come into effect.

No one wants the bill to die on the order paper, mainly because of the highly popular changes that will help workers whose employers go bankrupt.

This Wage Earner Protection Program (WEPP) sets up a fund that will replenish up to \$3,000 of wages and vacation pay that are in limbo after a bankruptcy.

All parties have supported WEPP as a needed reform, as has the labour movement.

Still, even it draws some criticism. Janis Sarra, a law professor at the University of British Columbia, says WEPP is "a very limited reform measure,"



Robert Klotz, a Toronto bankruptcy lawyer, says the new bankruptcy rules are too lax about RRSPs. CHARLA JONES/THE GLOBE AND MAIL

mainly because of the \$3,000 maximum payment. Many other countries allow larger payouts, she says, including the U.S. where the maximum is \$10,000 (U.S.) per employee. "We come near the bottom globally," Prof. Sarra said.

On balance, the changes to the act are important and valuable, and "the fundamentals have already been fixed," said Senator Yoine Goldstein, a bankruptcy lawyer and a member of the Senate committee that examined the bill.

Getting it passed outweighed any technical concerns, which can be dealt with later after the Senate hearings are completed, he said. "We've got the best of both worlds. We've got a statute in place ... and we've got the hearings that [many people] wanted."

## Bankruptcies across the country

The total number of insolvencies in Canada was up slightly in the first three quarters of 2007, mainly because of a worsening situation among individuals in Ontario and Quebec.

The statistics, which include both bankruptcies and proposals for reorganizing debts, show consumer and business insolvencies hitting 82,072 across the country in the nine months to Sept. 30, up 2 per cent from the same period in the previous year.

Business insolvencies are actually down almost 7 per cent across the country, while consumer insolvencies are up 2.7 per cent.

In Quebec, both consumer and business insolvencies were up year over year. In Ontario, only consumer insolvencies rose, but

### Insolvencies in the first nine months of 2007

Canada	Number	Change from 2006
Consumer	76,278	+ 2.7%
Business	5,794	- 6.6%
Total	82,072	+ 2%

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by a substantial 9.1 per cent.

In every other region of the country, both consumer and business insolvencies fell.

Toronto bankruptcy lawyer Robert Klotz said things have been fairly quiet recently on the corporate front, but on the consumer side "we're gritting our teeth and watching the interest rate closely."

Because so many people have overindulged on readily available credit — particularly on credit

cards — if rates go up there could be a spate of bankruptcies, he said.

"Everyone is overextended and it won't take that much of an increase in the interest rate to put a whole lot of people, and therefore a whole lot of businesses, in trouble."

» Richard Blackwell