



Canadian Association of Insolvency and Restructuring Professionals  
Association canadienne des professionnels de l'insolvabilité et de la  
réorganisation

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May 29, 2020

Elisabeth Lang  
Superintendent of Bankruptcy  
Office of the Superintendent of Bankruptcy (OSB)

**Re: CAIRP Response to Legislative Proposals Relating to the Draft *Time Limits and Other Periods Act (COVID-19)***

Dear Superintendent Lang,

The Canadian Association of Insolvency & Restructuring Professionals (**CAIRP**) is writing in response to the OSB's request for interested stakeholders to share their comments concerning the Legislative Proposals Relating to the Draft *Time Limits and Other Periods Act (COVID-19)*.

CAIRP represents over 980 insolvency professionals and over 500 articling, life and corporate associates. About 90% of Licensed Insolvency Trustees, licensed under Canada's Bankruptcy and Insolvency Act, are members of CAIRP.

Thank you for the opportunity to comment on the Legislative Proposals and please feel free to contact us if CAIRP can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Rosen".

Mark Rosen, LL.B., FCIRP  
Chair, CAIRP

A handwritten signature in blue ink, appearing to read "Anne Wettlaufer".

Anne Wettlaufer, FICB  
President & CEO, CAIRP

## CAIRP Submission re: Draft *Time Limits and Other Periods Act (COVID-19)*

### Summary

CAIRP proposes the following changes to the Draft *Time Limits and Other Periods Act (COVID-19)*:

- (a) S. 6 should be clarified, or amended, to exclude both the *Bankruptcy and Insolvency Act* (“BIA”) and the *Companies’ Creditors Arrangement Act* (“CCAA”) from its application.
- (b) The sections of the *BIA* and its Regulations, contained in the Schedules below, should be added to the *BIA* Schedule to s. 7(1) and (2).
- (c) The sections of the *CCAA* and its Regulations, contained in the Schedules below, should be added to the *CCAA* Schedule to s. 7(1) and (2).

The reasons underlying these recommendations are as follows:

### Section 6

1. Section 6 is an omnibus section applicable to all statutes that govern “proceedings before the court”. The applicability of this language to proceedings under the *BIA* is quite unclear. For the most part, the commencement of proceedings under the *BIA* is largely an administrative matter that does not require attendance at court even though – in some provinces – a court file is allocated. If these proceedings were considered “court proceedings” for purposes of section 6, any time limit pertaining to the administration of a bankruptcy, or a Proposal under the *BIA* (“Proposal”), would be suspended, thereby introducing unwarranted and undesirable uncertainty in commercial transactions. The same rationale exists in the context of proceedings under the *CCAA*: extended appeal periods, with or without retroactivity, would destroy the feasibility of most *CCAA* filings.

### “Real Time” proceedings

2) Unlike most other statutes, most of the time limits in the *BIA* are not directed to the commencement of a bankruptcy or Proposal, but rather to notices, and motions or appeals to court from administrative proceedings already underway or completed. Unlike most court proceedings governed by limitation periods, which involve litigation over past history, *BIA* proceedings occur in “real time”. Extending all time limits involving the *BIA*, at least once the matter is before the court, will prevent bankruptcies and Proposals from proceeding in real time. The finality that is so necessary to decisions affecting an ongoing estate will be lost. For example:

- (i) A Notice of Opposition to an individual bankrupt’s discharge must be served before the end of the bankrupt’s 9 month (or, in many cases, 21 month) automatic discharge period. By extending this limitation period, every individual bankrupt’s discharge would be deferred;
- (ii) A trustee who disallows a secured claim will not be able to sell the subject asset or property if the 30 day appeal period is automatically extended. This could result in uneconomic storage and

insurance costs as well as depreciation in value and stalled sale processes, with the burden of such costs and delays falling upon the creditors and other stakeholders;

- (iii) Creditor and court approval of a Proposal, which allows a floundering company to survive, would linger in limbo if there is no finality of the appeal period. Since the expiry of the appeal period is, in virtually all cases, the date on which the Proposal is put into effect, the automatic extension of the appeal period will stop all Proposals from proceeding, even if approved by creditors and the court. The uncertainty cost, and the actual delay, will result in many cases in the destruction of the business; and
- (iv) Approval of interim financing in a restructuring is critical to keeping the business alive and operating during the restructuring. The indefinite extension of the appeal period from such an order will in most cases dissuade an interim financier from providing the critical funding.

Consequently, extending all limitation periods in judicial proceedings under the *BIA* would undermine, or destroy, the utility of bankruptcies and Proposals. Simply put, the *BIA* does not fit within the omnibus approach applicable to “proceedings before the court”, nor to any omnibus approach at all.

#### **CCAA**

3) The *CCAA* is primarily a court-driven restructuring proceeding for large corporate debtors that are continuing in operation through the restructuring process. Decisions need to be made with limited time periods for appeal so that the restructuring can progress in a timely manner with certainty of decisions. Like Proposals under the *BIA*, *CCAA* restructurings are done in “real time”. The interim financing example for the *BIA* is equally, if not more, applicable in a *CCAA* proceeding. Another example would be the restructuring of a large multi-location retail operation. Such restructurings often include the disclaimer of a number of the retailer’s commercial leases. The absence or significant extension of the appeal period for disclaimers, could effectively thwart the entire reorganization. For this reason, the *CCAA* must also be excluded from s. 6.

#### **Solutions - *BIA* and *CCAA***

4) In CAIRP’s view, for the purposes of this Bill, the most responsive way to address issues arising in the insolvency system would be through extending the directive authority of the Superintendent of Bankruptcy. In view of the proposed legislation, this can effectively be accomplished by: (i) excluding both the *BIA* and *CCAA* from the automatic extension in section 6: and (ii) identifying the specific provisions whose time limits can be extended without destroying the utility of the provision. There are certain principles that guide this selection:

- (i) The problem of job loss, unemployment, and closure of workplaces requires that administrative time limits be appropriately extended so as not to unfairly penalize debtors for their covid-induced lack of funds.
- (ii) Creditors, debtors, trustees and monitors may need more time to make decisions during the shutdown, as a result of social isolation. Meetings may be more difficult to set up, and not all

creditors and debtors have sufficient familiarity with the technological alternatives to physical meetings.

- (iii) The fact that the time limits may be extended by court order, must not result in the 'judicialization' of what are designed to be administrative proceedings. This simply runs up the cost of bankruptcy and Proposal proceedings, that cannot be recouped. For instance, under the *BIA*, the administrator of a consumer proposal cannot recoup the cost of hiring a lawyer to obtain such extensions, or indeed for any other purpose. For this reason, and as noted in the opening paragraph, the most responsive way to address issues arising in the insolvency system would be through extending the directive authority of the Superintendent of Bankruptcy.
- (iv) Some proceedings under the *BIA* require short time periods, while others can be extended without damaging the utility of the *BIA*.
- (v) The Superintendent of Bankruptcy or, if necessary, the Minister, with input from key stakeholders, must have sufficient leeway to address unforeseen issues that may arise.
- (vi) Administrative time limits ought in most cases to be extended for specified periods, adapted for the specific provision in question. The necessary judgment and consideration needed for this purpose, must be preserved for the Superintendent of Bankruptcy or, if necessary, the Minister. Accordingly, when in doubt, *BIA* and *CCAA* provisions should be added to the Schedule.

#### **Schedules**

5) The above considerations have guided the addition of the provisions contained in the Schedules attached hereto.

**SCHEDULE - BIA  
(Subsections 7(1) and (2))**

**BANKRUPTCY AND INSOLVENCY ACT**

Subsections identified in the draft legislative proposal are:

<b>Subsection</b>	<b>Summary of Subsection</b>
50.4(2)	Time limit for filing cash flow projection and related reports
50.4(6)	Time limit for notifying creditors of the filing of a Notice of Intention to Make a Proposal
50.4(8)	Deemed assignment on failure to file cash flow projections and/or reports or failure to file proposal
50.4(9)	Time limits for applying to court for an extension of time and limitations of time that the court may grant each extension (max 45-days) and total (max 6 months)
66.31(1)	Deemed annulment of consumer proposal on failure to make payments on time

Proposed additional sections and subsections to be added to final legislation are:

<b>Subsection</b>	<b>Summary of Subsection</b>
14.06(4)(a)	Time limit for monitor to comply with environmental order or to release interest in property
14.06(4)(b)	Time limit for application to court to contest an environmental order or assessing economic viability of compliance
51	Time limit for calling a meeting of creditors
58(1)	Time limit for application to court for hearing to approve proposal
65.11(3)	Time limit to appeal to court the debtor's disclaimer or resiliation of an agreement
65.12(1)	Time limit for giving notice of application to bargaining agent
65.2(2)	Time limit to appeal to court the debtor's disclaimer or resiliation of a commercial lease

66.12(5)	Limitation of term of a consumer proposal
66.15	Time limit for calling a meeting of creditors
81(2)	Time limits for admission of property claim and for appeal of dispute to court
81.1(5)	Time limit to demand repossession of unpaid goods
81.2(1)(d)	Time limit for filing a proof of claim by a farmer, fisherman or aquaculturist
102	Time limit for calling a meeting of creditors
109(6)	Time limit for court application to determine outcome of meeting
135(4)	Time limit to appeal to court a determination or disallowance of claim
168.2(2)	Time limit for application to court for hearing of opposed discharge
170.1(3)	Time limit for application to court for hearing regarding failed mediation
243(1.1)	Time limit of notice after which the court may appoint a receiver
244(2)	Time limit of notice after which a receiver may be appointed by a secured creditor
245(1)	Time limit for notice to creditors by a receiver

**BANKRUPTCY AND INSOLVENCY – GENERAL RULES**

The following are proposed by CAIRP to be considered for suspension by Ministerial Order:

<b>Subsection</b>	<b>Summary of Subsection</b>
6(2)(b)	General time limit for sending notices by mail or courier
30(2)	Time limit for appeals from decisions of the Registrar
31(1)	Time limit for appeals to the Court of Appeal
66(1)	Time limit for setting hearing date after comment letter requesting taxation
105(4)	Time limit for completion of mediation
105(10)	Time limit setting mediation after rescheduling or adjournment

**SCHEDULE - CCAA**  
**(Subsections 7(1) and (2))**

**COMPANIES' CREDITORS ARRANGEMENT ACT**

Subsections identified in the existing draft legislative proposal are:

<b>Subsection</b>	<b>Summary of Subsection</b>
11.001	General test limiting relief to what is reasonably necessary for continued operations
11.02(1)	Time limit imposed on court for term of the initial order
11.2(5)	General test limiting interim financing loan terms to what is reasonably necessary for continued operations

Proposed additional sections and subsections to be added to final legislation are:

<b>Subsection</b>	<b>Summary of Subsection</b>
11.8(5)(a)	Time limit for monitor to comply with environmental order or to release interest in property
11.8(5)(b)	Time limit for court application to contest an environmental order or assessing economic viability of compliance
14	Time limit for appeals to the Court of Appeal
23(1)(a)(ii)	Time limit for publication of notice of order, notice to creditors and list of creditors
32(2)	Time limit to appeal to court the debtor's disclaimer or resiliation of an agreement
33(2)	Time limit for giving notice of application to bargaining agent



**COMPANIES' CREDITORS ARRANGEMENT – REGULATIONS**

There were no regulations identified in the draft legislation. Proposed regulations to be added to final legislation are:

<b>Subsection</b>	<b>Summary of Subsection</b>
10(3)	Time limit for posting documents