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# Priority claims

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## Priority claims

### The crown...

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## The crown...

### Garnishment

Def. Where the Crown has knowledge that a person is liable to make a payment to another person who is liable to make a payment, the Crown may in writing require the person to pay forthwith, where the moneys are immediately payable, and in any other case as and when the moneys become payable, the moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability.

Application :

against : DAS, sales tax, others

## The crown...

### Garnishment

#### The rules :

In the event of a bankruptcy:

DAS : could be used before or after

Sales tax : could be used before only

In the event of a NOI / Proposal :

If the garnishment was executed before , it is valid. (too late!!!) Otherwise it is stayed.

## The crown...

### **DAS – The deemed trust**

It will rank first... after the property claims filed under 81(1)

#### Bankruptcy -

Only the employee's portion will be considered

i.e. 227(4) ITA – No interest, No penalty

#### Proposal –

Full amount... and must be paid within 6 months

NB. Under receivership only : Deemed trust for sales tax

### The crown...

#### Statutory crown security

87 (1) A security provided for in federal or provincial legislation for the sole or principal purpose of securing a claim of Her Majesty in right of Canada or of a province or of a workers' compensation body is valid in relation to a bankruptcy or proposal only if the security is registered under a prescribed system of registration before the date of the initial bankruptcy event.

(2) In relation to a bankruptcy or proposal, a security referred to in subsection (1) that is registered in accordance with that subsection

(a) is subordinate to securities in respect of which all steps necessary to make them effective against other creditors were taken before that registration; and

(b) is valid only in respect of amounts owing to Her Majesty or a workers' compensation body at the time of that registration, plus any interest subsequently accruing on those amounts.

## Priority claims

### The crown...

### Others

S.86 they rank as unsecured claims



## Unpaid suppliers

### s. 81.1 – Suppliers

if a “supplier” has sold to another person goods for use in relation to the purchaser’s business and delivered the goods to the purchaser or to the purchaser’s agent or mandatary, and the purchaser has not fully paid for the goods, the supplier may have access to and repossess the goods at the supplier’s own expense, and the purchaser, trustee or receiver, or the purchaser’s agent or mandatary, as the case may be, shall release the goods [...]

81.1(6) Notwithstanding any other federal or provincial Act or law, a supplier’s right to repossess goods pursuant to this section ranks above every other claim or right against the purchaser in respect of those goods, other than the right of a bona fide subsequent purchaser of the goods for value without notice that the supplier had demanded repossession of the goods.

### Unpaid farmers

#### s. 81.2 – farmers

[...] the claim of the farmer, fisherman or aquaculturist for the unpaid amount in respect of the products is secured by security on all the inventory of or held by the purchaser as of the day referred to in subparagraph (b)(i) or (ii), and the security ranks above every other claim, right, charge or security against that inventory, regardless of when that other claim, right, charge or security arose, except a supplier's right, under section 81.1, to repossess goods, despite any other federal or provincial Act or law [...]

## Priority claims

### Employees

#### Security for unpaid wages, etc. — bankruptcy

81.3 (1) The claim of a clerk, servant, travelling salesperson, labourer or worker who is owed wages, salaries, commissions or compensation by a bankrupt for services rendered during the period beginning on the day that is six months before the date of the initial bankruptcy event and ending on the date of the bankruptcy is secured, as of the date of the bankruptcy, to the extent of \$2,000 — less any amount paid for those services by the trustee or by a receiver — by security on the bankrupt's current assets on the date of the bankruptcy.

#### The disbursements

(3) The claim of a travelling salesperson who is owed money by a bankrupt for disbursements properly incurred in and about the bankrupt's business during the period referred to in subsection (1) is secured, as of the date of the bankruptcy, to the extent of \$1,000 — less any amount paid for those disbursements by the trustee or by a receiver — by security on the bankrupt's current assets on that date.

**A security under this section ranks above every other claim, right, charge or security against the bankrupt's current assets — regardless of when that other claim, right, charge or security arose — except rights under sections 81.1 and 81.2 and amounts referred to in subsection 67(3) that have been deemed to be held in trust.**

### Unpaid amounts re prescribed pension plan

81.5 (1) If the bankrupt is an employer who participated or participates in a prescribed pension plan for the benefit of the bankrupt's employees, the following amounts that are unpaid on the date of bankruptcy to the fund established for the purpose of the pension plan are secured by security on all the assets of the bankrupt:

(a) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund;

[...]

#### Rank of security

(2) A security under this section ranks above every other claim, right, charge or security against the bankrupt's assets, regardless of when that other claim, right, charge or security arose, except

(a) rights under sections 81.1 and 81.2;

(b) amounts referred to in subsection 67(3) that have been deemed to be held in trust; and

(c) securities under sections 81.3 and 81.4.

## Others

### Environmental matters

Priority of claims:

Any claim by Her Majesty in right of Canada or a province against the debtor in a bankruptcy, proposal or receivership for costs of remedying any environmental condition or environmental damage affecting real property or an immovable of the debtor is secured by security on the real property or immovable affected by the environmental condition or environmental damage and on any other real property or immovable of the debtor that is contiguous with that real property or immovable and that is related to the activity that caused the environmental condition or environmental damage, and the security

(a) is enforceable in accordance with the law of the jurisdiction in which the real property or immovable is located, in the same way as a mortgage, hypothec or other security on real property or immovables; and  
(b) ranks above any other claim, right, charge or security against the property, despite any other provision of this Act or anything in any other federal or provincial law.

## Others

### Construction lien

### Municipal tax

!!!! Secured claim (provincial legislation) vs preferred claim 136(e)

### Protected transaction

Law of set-off or compensation

(3) The law of set-off or compensation applies to all claims made against the estate of the bankrupt and also to all actions instituted by the trustee for the recovery of debts due to the bankrupt in the same manner and to the same extent as if the bankrupt were plaintiff or defendant, as the case may be, except in so far as any claim for set-off or compensation is affected by the provisions of this Act respecting frauds or fraudulent preferences.

## Others

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### Withholding right

# Restructuring

## Scheme of distribution

### Who ranks first : A summary of the scheme of distribution

Receivership	Bankruptcy	NOI / Proposal (Div I) PROPOSAL SHOULD BE MADE IN ACCORDANCE WITH THE FOLLOWING SCHEME	Plan of arrangement (CAA) PLAN SHOULD BE MADE IN ACCORDANCE WITH THE FOLLOWING SCHEME
<u>On the Short term assets</u> <ol style="list-style-type: none"> <li>1 Proof of claim property (81)</li> <li>2 Deemed trust - employee's part only</li> <li>2 Deemed trust - employer, interests , penalty</li> <li>3 Deemed trust - Sales tax</li> <li>4 Unpaid suppliers (81.1)</li> <li>5 Unpaid farmers (81.2)</li> <li>6 unpaid wages (81.4)</li> <li>7 unpaid amounts re pensions plan (81.6)</li> <li>8 Secured claims (according to the date of registration)</li> </ol>	<u>On the Short term assets</u> <ol style="list-style-type: none"> <li>1 Proof of claim property (81)</li> <li>2 Deemed trust - employee's part only</li> <li>3 Unpaid suppliers (81.1)</li> <li>4 Unpaid farmers (81.2)</li> <li>5 unpaid wages (81.3)</li> <li>6 unpaid amounts re pensions plan (81.5)</li> <li>7 Secured claims (according to the date of registration)</li> <li>8 Preferred claims (136 BIA)</li> </ol>	<ol style="list-style-type: none"> <li>1 Proof of claim property (81)</li> <li>2 Deemed trust - employee's part only</li> <li>2 Deemed trust - employer, interests , penalty</li> </ol> <p>Unpaid suppliers (81.1) - <b>STAYED</b> Unpaid farmers (81.2) - <b>STAYED</b></p> <ol style="list-style-type: none"> <li>3 unpaid wages (81.3)</li> <li>4 unpaid amounts re pensions plan (81.5)</li> <li>5 Claim by Her majesty for environmental damages</li> <li>6 Secured claims (according to the date of registration)</li> <li>7 Preferred claims (136 BIA)</li> </ol>	<ol style="list-style-type: none"> <li>1 Proof of claim property (third party's goods)</li> <li>2 Deemed trust - employee's part only</li> <li>3 Deemed trust - employer, interests , penalty</li> <li>4 unpaid wages</li> <li>5 unpaid amounts re pensions plan</li> <li>6 Secured claims (according to the date of registration)</li> </ol>
<u>On the long term assets</u> <ol style="list-style-type: none"> <li>1 Proof of claim property (81)</li> <li>2 Deemed trust - employee's part only</li> <li>2 Deemed trust - employer, interests , penalty</li> <li>4 Deemed trust - Sales tax</li> <li>5 unpaid amounts re pensions plan (81.6)</li> <li>6 Secured claims (according to the date of registration)</li> </ol>	<u>On the long term assets</u> <ol style="list-style-type: none"> <li>1 Proof of claim property (81)</li> <li>2 Deemed trust - employee's part only</li> <li>3 unpaid amounts re pensions plan (81.5)</li> <li>4 Secured claims (according to the date of registration)</li> </ol>		
<u>On a building</u> <ol style="list-style-type: none"> <li>1 Proof of claim property (81)</li> <li>Deemed trust - employee's part only <u>(only if the claim existed before)</u></li> <li>2 <u>existed before</u></li> <li>Deemed trust - employer, interests , penalty <u>(only if the claim existed before)</u></li> <li>3 Deemed trust - Sales tax</li> <li>4 Claim by Her majesty for environmental damages</li> <li>5 unpaid amounts re pensions plan (81.6)</li> <li>6 Secured claims (according to the date of registration)</li> </ol>	<u>On a building</u> <ol style="list-style-type: none"> <li>1 Proof of claim property (81)</li> <li>Deemed trust - employee's part only <u>(only if the claim existed before)</u></li> <li>2 <u>existed before</u></li> <li>3 Claim by Her majesty for environmental damages</li> <li>4 unpaid amounts re pensions plan (81.5)</li> <li>5 Secured claims (according to the date of registration)</li> </ol>		



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