

Hot Topics

Navigating Current Insolvency Trends

Tanya Reynolds, CIRP, LIT
Senior Vice President
MNP Ltd.

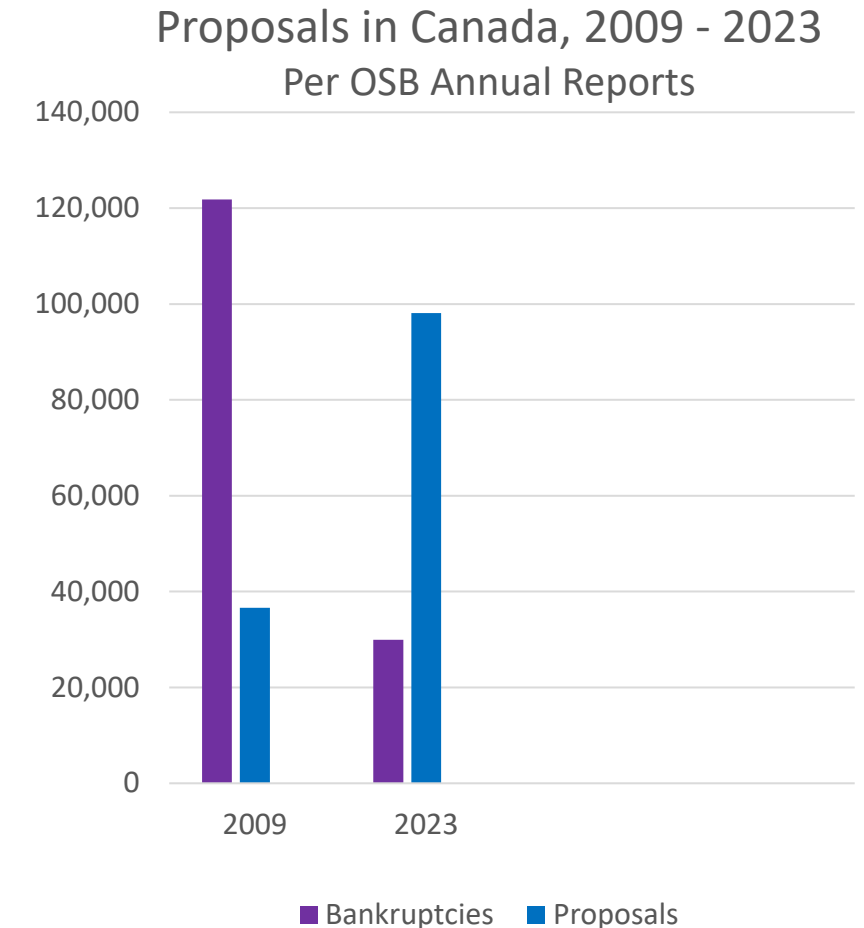
Brad Milne, CIRP, LIT
Senior Vice President
MNP Ltd.

Agenda

- Insolvency Filing Trends
- Cascading Proposals
- Creditor Voting Trends
- CRA Clauses
- Discharge Trends
 - Gambling
 - Undischarged bankrupts

Insolvency Filing Trends

- 2009: Proposals 23% of all filings
- 2023: Proposals 77% of all filings, 79% of consumer
- 2025: Proposals 78% of all filings, 80% of consumer (Jan/Feb)



Cascading Proposals

Let's poll the audience:

“Who is familiar with cascading proposals and use them as part of their practice?”

- I've filed a cascading proposal
- I'm familiar but have never filed one
- What is a cascading proposal?

What is a Cascading Proposal?

- A cascading proposal (“Proposal 2”) is a consumer proposal filed after a previous consumer proposal (“Proposal 1”) is filed and accepted by creditors and the Court.
- Proposal 1 must be in good standing, meaning it has not been annulled.
- Proposal 2 must include the debts of Proposal 1 and the debts incurred since the filing of that proposal.
- If Proposal 2 is accepted by creditors and the Court, the debtor would be obligated to only abide by the terms of this proposal. Therefore, ultimately the terms of Proposal 1 would not be met and later annulled, leaving the debtor with only Proposal 2 to contend with.

Cascading Proposals

OSB Position Paper, September 20, 2024

- Multiple proposals cannot co-exist simultaneously for the same consumer debtor.
- Canadian insolvency law operates under a single proceeding model, one collective proceeding (bankruptcy or proposal) provides a global solution.
- Only one active proposal at a time, the OSB is therefore requesting the Court annul the first proposal upon approval of the second.
- Role of LIT
 - Ensure no existing proposal before filing new one.
 - If a new proposal is necessary, court approval is mandatory under ss. 66.22(1) of the BIA.
 - If a second LIT is involved, notify the original LIT to ensure transparency and avoid system abuse.
- Practical Consequences
 - If court approval is denied, the original proposal remains in effect.
 - Creating multiple classes of creditors by filing sequential proposals risks violating the requirement to treat all creditors equally.

Cascading Proposals

Re Froh (2025 SKKB 33)

- A cascading proposal was filed and accepted by the majority of creditors.
- The matter was brought before the Court for approval as per the OSB's position paper.
- The MNR took the position that it was unfair to MNR and violated the BIA.
- The OSB intervened to outline its position on the matter of cascading proposals but did not oppose the approval of Froh filing one.

Cascading Proposals

Re Froh (2025 SKKB 33)

The Registrar determined that the issues before the Court were:

- Does the cascading proposal generally warrant approval?
- Do the terms or procedure of the cascading proposal create a statutory conflict?
- Can the Court address any statutory conflict or are the proceedings in respect of the cascading proposal a nullity?

Cascading Proposals

Re Froh (2025 SKKB 33)

Decision:

*Pursuant to ss. 66.24(4) of the BIA, the 2024 consumer proposal filed by Mr. Froh was approved. The Court also ordered that pursuant to ss. 66.32(1) of the BIA, Mr. Froh was entitled to the protection of the BIA *nunc pro tunc* as of the time the 2022 consumer proposal was annulled.

(*The decision is currently under appeal)

Creditor Voting Trends

- Block voting by creditors

Let's poll the audience:

“Is it fair and reasonable for creditors, who are unrelated, to coordinate a single voting position in an effort to control the outcome of a proposal?”

- Yes that's fair
- It's unfair but not against the rules
- It's unfair and possible violation of legislation such as Competition Act

Creditor Voting Trends

- Exchanging counter offers
 - Delays, meeting adjournments
- Amended voting letters

Creditor Voting Trends

Let's poll the audience:

“The debtor and a majority creditor have exchanged counter offers and agreed upon specific amended terms. The creditor confirmed agreement by email and the LIT provided the creditor with an amended Form 47 (Consumer Proposal) on the same day. Despite follow up by the LIT, two weeks have passed and at the time of the meeting the creditor has not provided their amended voting letter. Creditors are not actively participating in the meeting in person or by video conference. What should the LIT do?”

- Adjourn meeting to get amended voting letter
- Use the email as confirmation of terms
- Call vote based on existing letters, proposal fails

CRA Compliance Clauses

Let's poll the audience:

“Should CRA require compliance clauses in every case, or should it be case-by-case?”

- Every case
- Case by case
- Never

Discharge Trends: Gambling



Gambling

When is gambling a form of entertainment vs. a cause of insolvency?

- Candy Crush
- Casinos and online gambling
- Bingo with Grandma

Gambling

Let's poll the audience:

“Does the LIT have an obligation to object to a bankrupt’s discharge, pursuant to s. 173 of the BIA, if gambling was a cause of insolvency regardless of whether there has been a rehabilitation process?”

- Yes, every time
- No, case by case
- I would never object

Gambling

Facts for which discharge **may** be refused, suspended or granted conditionally

- **173 (1)(e)** the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt's business affairs

Undischarged Bankrupts: Old Estates, Trustee Discharged

Things to consider:

- Who is the original LIT?
- How old is the file? Assisting one who filed in 2019 is different than one who filed in 1990
- Other options available
 - Suggest they make their own application using the handbook available on the provincial court website.
 - Refer to legal counsel with insolvency knowledge/experience
 - File a consumer proposal, annulling the bankruptcy and obtain a certificate of full performance.

Questions?

