Surplus Income in Practice: Navigating Complex Scenarios

How to understand the trends for a better decision-making process

Background

Why do we need to discuss Surplus Income?

- Basis for comparison bankruptcy vs proposal
- Equity for both creditors and the debtor
- Difficulties establishing income
- Directive 11R2 is under review

Legislative & Regulatory Framework for Surplus Income

Section 68 of the *Bankruptcy and Insolvency Act* (BIA)

- The Superintendent establishes, by directive, the standards for determining the surplus income and the calculation of the amount payable

Directive No. 11R2, *Surplus Income*

The surplus income calculation:

- Average monthly income of the family unit less the monthly non-discretionary payments.
- Derived from the **Low Income Cut-Off** (LICO) and updated every year.
- Individual bankrupt has surplus income when monthly income is equal to or greater than $200.
- Individual bankrupts with surplus income are **required to contribute 50%** of the amount above the standard.

Legislative & Regulatory Framework for Surplus Income – continued

The LIT must :

- determine the surplus income with Superintendent's standards and personal and family situation of the bankrupt
- take reasonable measure to ensure the bankrupt complies
  - redetermination required when LIT is aware of material change or whenever the LIT is required to prepare a subsection 170(1) report
- apply Directive 11R2 in accordance with section 68.
  - uses Form 65 and related guidance document to calculate the surplus income obligation during the assessment and any redetermination and to communicate it to the OSB and creditors.

Scenario

Your bankrupt informs you that one of his adult children is a full-time student and does not live at home but has a small part-time job. The bankrupt also informs you that he pays for most of the child's expenses, including tuition and apartment related costs. The income his adult child earns is for their own daily expenses.

Scenario

A bankrupt informs you that he has custody of one child for one out of two weekends a month. What are some things to consider?

Scenario

A debtor informs you that his girlfriend is pregnant and they have lived together for 2 years but have never declared that they were common-law on their individual income tax returns. The debtor will be filing an insolvency procedure. What is the number of persons in the family unit?

Scenario

An emergency room doctor, files an assignment in bankruptcy. She is recently divorced, has 3 children and has 75% custody of the children. She has surplus income and it is now time to calculate the average monthly income.