



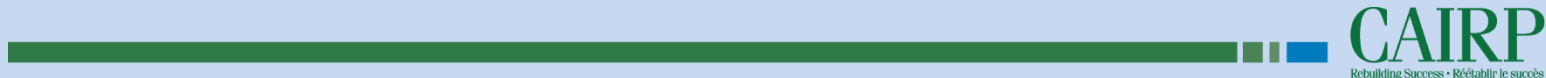
KNOWLEDGE  
SKILL  
COMPETENCY

CHARTERED INSOLVENCY AND RESTRUCTURING PROFESSIONAL  
QUALIFICATION PROGRAM

## CNIE Tutorial 2018

# **Bankruptcy Assignments and Receiving Orders BIA REVIEW**

Tim Carson CIRP (ret), LIT



Canadian Association Of Insolvency And Restructuring Professionals



# **TIM CARSON CIRP (ret), LIT**

## **Professional Credentials:**

- Yada, yada, yada;
- Blah, blah, blah;
- Etc., etc.

**What you really want to know is:**

# Tim Carson CIRP (ret), LIT

## Has served as:

- ✓ Exam marker/assessor for 22 years +/- ;
- ✓ Exam question author for 201, 301,401; CKE and CNIE;
- ✓ “Table Lead” at Assessment Centres (reconciliation/resolution);
- ✓ Member of CKE (Core Knowledge Exam) Committee;
- ✓ Member of EOC (Exam Oversight) Committee;
- ✓ Member of CNIE (Canadian National Insolvency Exam) Committee;
- ✓ Oral Board Examiner for OSB (twice);
- ✓ PCC (Professional Conduct Committee) Investigator;
- ✓ Sponsor (and coach) several candidates, including the 2010 Gold Medalist;
- ✓ CAIRP Webinar presenter (Cash Flow Statements);
- ✓ **Current Chair of “CIRP Qualification Committee” (CQP).**



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# Plan for the Day

- **Plan for the Day**

- ☐ “Special Topics”
- ☐ Some General Comments about the BIA
- ☐ Structural Discussion (General)
- ☐ Structural Discussion (More Specific)
- ☐ Special Sections



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# Some Special Topics

- Getting paid \$\$;
- Proposal by a Bankrupt;
- CRA Administrative Agreements;
- Managing Expectations;
- Other issues/topics ?????

# LIT's Compared to Other Professions

- 49,048 members of the Law Society of Upper Canada (Ontario) [ 24,417 in private practice];
- Approx 87,000 members of CPA Ontario + 19,000 students];
- 1,049 Licensed Insolvency Trustees in Canada

# ABOUT LEGISLATION & GOVERNANCE

- POLICY
- IMPLEMENTATION
- ENFORCEMENT



# PURPOSE OF BIA

- Provide for Financial Rehabilitation of the insolvent persons;
- Provide for orderly and fair distribution of the property of the bankrupt;
- Allows an investigation to be made of the affairs of the bankrupt;
- Permits the setting aside of settlements, preferences and fraudulent transactions so that all ordinary creditors may share equally in the value realized;
- Provides a regime whereby creditors pursue their claims by collective action through the Trustee so that assets of a bankrupt can be realized and distributed on an equitable basis subject to priorities of preferred creditors and rights of secured creditors;



# Statutory Authority - BIA

- The Act is passed/amended by an Act of Parliament;
- The Rules & Regulations are passed/amended by an Order in Council/Governor in Council (Cabinet) (S. 209(1) BIA);
- The Directives are issued and enforced by the Superintendent of Bankruptcy (S. 5(4) BIA).

# REGULATORS

- **OSB (Regulator)**
  - Directives
  - Licensing & Disciplinary Actions;
- **OFFICIAL RECEIVERS (Administrative Official)**
  - Documentary Compliance (Forms & Notices)
  - Debtor Compliance
  - Banking Reviews
  - Practice Reviews (Detail, detail, detail)

# REGULATORS (Continued)

- **CPA** (Professional Standards)



- **CAIRP**
  - Rules of Practice
  - Professional Standards
  - Disciplinary Action



# COURT AUTHORITY



- **THE COURTS** (attachment)
  - Bankruptcy Court (Not in ALL Jurisdictions)
  - Provincial Courts
  - Superior Courts
  - Courts of Appeal
  - Supreme Court of Canada

# BIA Table of Contents

- **THE TABLE OF CONTENTS – THE ACT** (attachment)
  - Take it down to basics
  - What does the book say ?
  - Is that word a defined term ?
  - Is there a rule on that?
  - Is there a prescribed form for that?
- **THE TABLE OF CONTENTS – THE RULES** (attachment)
  - Continuity
  - Concordance
- **THE TABLE OF CASES**
  - Allows study of sections
  - Allows study of insolvency philosophy
- **THE INDEX**

# General Comments about the BIA

## THE SWORD AND THE SHIELD

### • THE SWORD

- Application for Bankruptcy Order
- Defeating Proposals
- Interim Receivers
- Attacking Transactions
- S. 37 – For the benefit of the creditor
- S. 38 – For the benefit of the creditor
- Opposing Bankrupt's Discharge
- Opposing Trustee's Discharge
- Appointment of Receivers

# General Comments (con't)

## THE SWORD AND THE SHIELD

- **THE SHIELD**

- S. 68 – Surplus Income
- Mediation (Rule 105)
- S. 37 – For the benefit of the Trustee
- S. 38 – For the benefit of the Trustee
- Stay sections
- Lifting the stay
  - Determination of awards
  - 178 debts
  - Stay against administrative matters

# Trustee's Role

- ✓ Administer Assignments under the BIA
- ✓ Administer Proposals under the BIA
- ✓ Act as an Interim Receiver
- ✓ Comply with Rules & Directives
- ✓ Administer Court Orders (Receiverships)
- ✓ Administer CCAA



# The Process

|                            |
|----------------------------|
| Preliminary Considerations |
|                            |

|                           |
|---------------------------|
| Appointment Documentation |
|                           |

|                        |
|------------------------|
| Notice to Stakeholders |
|                        |

|  |
|--|
| Admin Matters/Asset Identification &<br>Possession Taking & Evaluation |
|  |

|                   |
|-------------------|
| Interim Reporting |
|                   |

|                                    |
|------------------------------------|
| Obtaining Authorization/Directions |
|                                    |

|  |
|--|
| Administer Operation/Realization Process |
|  |

|                             |
|-----------------------------|
| Administer Competing Claims |
|                             |

|                                |
|--------------------------------|
| Finalize the Asset Disposition |
|                                |

|  |
|--|
| Finalize the Reporting to Stakeholders |
|  |

|                  |
|------------------|
| Obtain Discharge |
|                  |

# The Process(es)

| <u>CAIRP 2018 Tutorial Worksheet</u>                                      |  | Ordinary<br>Administration | Summary<br>Administration | Div I Proposal | Div II Proposal | Interim Receiver | Court Appt's<br>Receiver | CCAA Monitor |
|---|--|----------------------------|---------------------------|----------------|-----------------|------------------|--------------------------|--------------|
| Preliminary Considerations  |  |                            |                           |                |                 |                  |                          |              |
| Appointment<br>Documentation  |  |                            |                           |                |                 |                  |                          |              |
| Notice to Stakeholders  |  |                            |                           |                |                 |                  |                          |              |
| Admin Matters/Asset<br>Identification & Possession<br>Taking & Evaluation |  |                            |                           |                |                 |                  |                          |              |
| Interim Reporting   |  |                            |                           |                |                 |                  |                          |              |
| Obtaining<br>Authorization/Directions                                     |  |                            |                           |                |                 |                  |                          |              |
| Administer<br>Operation/Realization<br>Process                            |  |                            |                           |                |                 |                  |                          |              |
| Administer Competing<br>Claims  |  |                            |                           |                |                 |                  |                          |              |
| Finalize the Asset<br>Disposition   |  |                            |                           |                |                 |                  |                          |              |
| Finalize the Reporting to<br>Stakeholders                                 |  |                            |                           |                |                 |                  |                          |              |
| Obtain Discharge  |  |                            |                           |                |                 |                  |                          |              |
|   |  |                            |                           |                |                 |                  |                          |              |

# Consumer vs Corporate Bankruptcy

- The only use of the word “consumer” in the BIA is within the Division II Proposal sections, wherein there is a specific definition of a “consumer debtor” and a “consumer proposal”.
- Otherwise, the distinction is between “ordinary administration” and “summary administration”.

# Comparison of Summary vs Ordinary Administration

| Comparison Summary and Ordinary Administration              |                                |                   |  |
|---|--------------------------------|-------------------|--|
|   | <u>Ordinary Administration</u> |                   | <u>Summary Administration</u>              |
|   | <i>Corporation</i>             | <i>Individual</i> | <i>Individual</i>                          |
| Perform Assessment of Individual Debtor                     | ✓                              | ✓                 | ✓  |
| Identify & Value Assets                                     | ✓                              | ✓                 | ✓  |
| Identify all creditors                                      | ✓                              | ✓                 | ✓  |
| Determine any security interests                            | ✓                              | ✓                 | ✓  |
| Determine any exemptions                                    | No exemptions                  | ✓                 | ✓  |
| Obtain Directors' Resolution (only if Corporation)          | ✓                              |                   |  |
| Prepare documents (SOA, Assignment, Form 65)                | ✓                              | ✓                 | ✓  |
| File "Joint Estate" if appropriate                          |                                |                   | Joint filing allowed S. 155 (f)            |
| File documents with O.R.                                    | ✓                              | ✓                 | ✓  |
| Receive and file Certificate of Appointment                 | ✓                              | ✓                 | ✓  |
| Prepare/Send Notice to Creditors of Bankruptcy              | ✓                              | ✓                 | Single notice - S. 155 (h)                 |
| Prepare send notice of creditors meeting                    | ✓                              | ✓                 | No meeting unless requested - S. 155(d.1)  |
| Publish Notice to Creditors in Newspaper                    | ✓                              | ✓                 | No publication - S. 155 (c)                |
| Review PoC's; disallow if/as necessary                      | ✓                              | ✓                 |  |
| Attend/Chair Meeting of Creditors                           | ✓                              | ✓                 | No meeting unless requested - S. 155(d.1)  |
| Attend to Appointment of Inspectors                         | ✓                              | ✓                 | No Inspectors unless requested - S. 155(e) |
| Meet with Inspectors to obtain action authorization         | ✓                              | ✓                 | Only if Inspectors appointed - S. 155(e)   |
| Deal with settlements, preferences, fraudulent transactions | ✓                              | ✓                 | ✓  |
| Attend to realization of assets                             | ✓                              | ✓                 | ✓  |
| Obtain Court authorization to sell to related parties       | ✓                              | ✓                 | Only if required by creditors - S. 155(k)  |
| Attend to estate trust banking                              | ✓                              | ✓                 | See Consolidated account - S. 155(g)       |
| Attend to Consolidated Account banking                      |                                |                   | ✓  |
| Attend to tax returns prep and filing                       | ✓                              | ✓                 | ✓  |
| Attend to receive and review monthly Income and expense     |                                | ✓                 | ✓  |
| Finalize and disputed/disallowed claims                     | ✓                              | ✓                 | ✓  |
| Apply for Directions as necessary                           | ✓                              | ✓                 | ✓  |
| Utilize S. 37/ S. 38 as necessary                           | ✓                              | ✓                 | ✓  |
| Attend to Bankrupt's Automatic discharge as appropriate     |                                | ✓                 | ✓  |
| Finalize asset realizations/Banking                         | ✓                              | ✓                 | ✓  |
| Prepare R&D   | ✓                              | ✓                 | ✓  |
| R&D approved by Inspectors                                  | ✓                              | ✓                 | No Inspectors unless requested - S. 155(e) |
| Send Notice of Taxation                                     | ✓                              | ✓                 | S. 155(i); Rules 62-66                     |
| R&D Taxed by Court  | ✓                              | ✓                 | S. 155(i); Rules 62-67                     |
| Distribute dividends  | ✓                              | ✓                 | ✓  |
| Apply for Trustee Discharge                                 | ✓                              | ✓                 | S. 155(j); Rule 67                         |
| Send appropriate notice of Discharge                        | ✓                              | ✓                 | S. 155(j); Rule 68                         |
|   |                                |                   |  |

*DISCLAIMER: This is not an exhaustive list relating to the administration of estates but rather is prepared to demonstrate that the administration of bankrupt estates, whether Summary or Ordinary, are very similar, with exceptions set out in s. 155. of the BIA.*

# Closure Sections

- **S. 34(1)** – Trustee may apply ....
- **S. 37** – Where the bankrupt or any creditor or any other person is aggrieved ....
- **S. 38** - Where a creditor requests the trustee to take an action and the trustee refuses or neglects ...
- **S. 40** –Property incapable of realization must be returned to the bankrupt ....
- **S. 69.3(1.1)** Bankruptcy stays cease to apply on the day on which a Trustee is discharged
- **S. 69.4** – Any creditor affected .... may apply ....
- **Section 135** – The trustee shall examine every proof of claim
  - Value contingent claims (subject to appeal)
  - Disallow claims (subject to appeal)
- **S. 149** – 30 Day Notice to Prove a Claim
- **S. 169(2)** – (Where 168 doesn't apply) - The Trustee, not before 3 months and not later than 12 months ....
- **Rule 105** - Mediation

# Some of My Favourite Sections

- Attached



# Application for a Bankruptcy Order

- Application by a creditor (for a proper purpose);
- Served in the locality of the debtor;
- Creditor must allege a debt of at least \$1,000, unsecured;
- Application supported by affidavit alleging an Act of Bankruptcy (42(1));
  - Consent of LIT
- Court must be satisfied as to the facts;
  - Can make order, and
  - Appoint Trustee, having regard to the wishes of the creditors, or
  - Order a trial of an issue. or
  - Dismiss the application.
- Application to be accompanied by the consent of a Trustee to act as Trustee in the estate;
- Can be disputed:
  - Trial of an issue;
  - Security for costs;
- Cannot be withdrawn without leave of the Court (improper purpose)
- Ordinary Administration

# Where does the LIT Stand?

*Balancing interests .....*



- **Debtors/Insolvent Persons**

- Spouses
- Household Income
  - ❑ Manipulation of income
- Related Parties
- Unrelated parties
- Discharge Matters



# Where does the LIT stand?

- **Creditors**
  - Property Claimants
  - Secured creditors
  - Unsecured creditors
    - Preferred
    - Ordinary unsecured
    - Deferred
  - Contingent/Unliquidated claims

# Where does the LIT stand ?

- **The Estate:**
  - Discovery & preservation of property
  - Disposition of assets
  - Reporting and distribution
  - Obtaining the Trustee's discharge
- **The Courts**

# A Word About Practice Protection

- ❑ Practice Economics;
- ❑ Ethics and Integrity;
- ❑ Continuity and Consistency of Estate Administration;
- ❑ Practice Succession.

# Now, About that Exam

- **Comments about:**
  1. Authorship
  2. Assessment Guide(s)
  3. Assessment Process
  4. D2L – keyboarding
- **Exam Structure**

# Exam Thinking

- You're **NOT** an Estate/File/Counselling Manager any more!!!
- **Think** as though you are an **LIT**;
- **Answer** like an **LIT**;
- Academic exam (not local practice);
- **THE BIG VIEW.**

# Exam Thinking

- If necessary, think in terms of **giving instructions** to other professionals;
- Imagine that you are **COMMUNICATING with senior practitioners, legal counsel, other professionals – KEEP YOUR ANSWERS PROFESSIONAL!**



# Competency/Role Chart

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## CAIRP 2018 Tutorial Competency Worksheet

|  | Ordinary<br>Administration | Summary<br>Administration | Div I<br>Proposal | Div II<br>Proposal | Interim<br>Receiver | Court Appt'd<br>Receiver | CCAA<br>Monitor | Consultant |
|--|----------------------------|---------------------------|-------------------|--------------------|---------------------|--------------------------|-----------------|------------|
| <b>A. Ethical Behaviour &amp; Professionalism</b><br>10% - 12% | ✓                          | ✓                         | ✓                 | ✓                  | ✓                   | ✓                        | ✓               | ✓          |
| <b>D. Insolvency Philosophy &amp; Practice</b><br>2% - 4%      | ✓                          | ✓                         | ✓                 | ✓                  |                     | ✓                        |                 | ✓          |
| <b>E. Insolvency Law &amp; Practice</b><br>41% - 47%           | ✓                          | ✓                         | ✓                 | ✓                  | ✓                   | ✓                        | ✓               |            |
| <b>F. Taxation</b><br>7% - 9%                                  | ✓                          | ✓                         | ✓                 | ✓                  |                     | ✓                        |                 | ✓          |
| <b>G. General Business Law</b><br>7% - 11%                     | ✓                          |                           | ✓                 |                    | ✓                   |                          |                 |            |
| <b>H. Financing</b><br>7% - 9%                                 |                            |                           | ✓                 |                    |                     | ✓                        |                 | ✓          |
| <b>I. Managing Business Operations</b><br>7% - 11%             | ✓                          |                           |                   |                    | ✓                   | ✓                        |                 | ✓          |
| <b>J. Financial Analysis &amp; Reporting</b><br>7% - 9%        | ✓                          | ✓                         | ✓                 |                    | ✓                   | ✓                        | ✓               | ✓          |

Disclaimer: This is a study guide only!

Review the Competency Profiles with this guide and consider the appointed capacity in which you might encounter any of the competencies described in the Competency Profile.



# Office of the Superintendent of Bankruptcy

<https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/home>

## Orals Outline

- Attached



# Surplus Income – Directive 11R

## Directive 11R

|                           |  |                      |      |
|---------------------------|--|----------------------|------|
| Paragraph 5 (1)           | Bankrupt completes a Form 65 monthly   |                      |      |
| (4)                       | Trustee verifies accuracy information:   |                      |      |
|                           | (4)(a) obtain proof of income  |                      |      |
|                           | (4)(b) proof of payments referred to in 5(2) and 5(3)                          |                      |      |
| (2)                       | Start with Bankrupt's Gross Income   |                      |      |
| (2)(a)                    | deduct statutory deductions MADE (_____)                                       |                      |      |
| (2)(b)                    | deduct business expenses and taxes relative to self employment<br>PAID (_____) |                      |      |
|                           | Bankrupt's Net Income  | <input type="text"/> | B %  |
| (2)                       | Other Household Member's Net Income  |                      |      |
| (2)(a)                    | Statutory deductions MADE (_____)  |                      |      |
| (2)(b)                    | Business expenses and taxes PAID (_____)                                       |                      |      |
|                           | Other Household Member Net Income  | <input type="text"/> | F %  |
|                           | Total Household Income   | <input type="text"/> | 100% |
| Nondiscretionary expenses |  |                      |      |
| (3)(a)                    | child support payments   | (_____)              |      |
| (3)(b)                    | spousal support payments   | (_____)              |      |
| (3)(c)                    | child care expenses  | (_____)              |      |
| (3)(d)                    | expenses associated with a medical condition                                   | (_____)              |      |
| (3)(e)                    | court imposed fines that are being PAID  | (_____)              |      |
| (3)(f)                    | expenses incurred as a condition of employment                                 | (_____)              |      |
| (3)(g)                    | any other debt where a stay has been lifted and recourse authorized            | (_____)              |      |
| (3)(h)                    | interest paid on debts that are not dischargeable under 178(1)(g)              | (_____)              |      |
|                           | Total non-discretionary expenses   | <input type="text"/> |      |
| (5)                       | Family income subject to surplus   |                      |      |
|                           | Superintendent standard - family of ____                                       | (_____)              |      |
|                           | Surplus  | <input type="text"/> |      |
| (6)                       | If 'surplus is less than \$200, then "\$0.00"                                  |                      |      |
| (7)                       | If surplus is greater than \$200, surplus x B%                                 | <input type="text"/> |      |

# Partnerships

|  |  |  |  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|--|--|--|
| <u>Partnerships</u>  |  |  |  |  |  |  |  |  |  |
| Partnership of A and B and C   |  |  |  |  |  |  |  |  |  |
| Assets of Partnership \$ _____   |  |  |  |  |  |  |  |  |  |
| First pays liabilities of partnership (\$_____)  |  |  |  |  |  |  |  |  |  |
| Surplus (shortfall) \$   |  |  |  |  |  |  |  |  |  |
| IF "Surplus", surplus is distributed in accordance with proportional right and interest in partnership       |  |  |  |  |  |  |  |  |  |
| IF "shortfall", and surplus of the estates of the individual partners is applied.                            |  |  |  |  |  |  |  |  |  |
| <u>Partner A</u>   |  |  | <u>Partner B</u>   |  |  | <u>Partner C</u>   |  |  |  |
| Assets of Partner A \$ _____   |  |  | Assets of Partner B \$ _____   |  |  | Assets of Partner C \$ _____   |  |  |  |
| First pays liabilities of Partner A (\$_____)  |  |  | First pays liabilities of Partner B (\$_____)  |  |  | First pays liabilities of Partner C (\$_____)  |  |  |  |
| Surplus (shortfall)  |  |  | Surplus (shortfall)  |  |  | Surplus (shortfall)  |  |  |  |
| If "Surplus", surplus flows, firstly to partnership shortfall (joint and several liability), secondly S. 144 |  |  | If "Surplus", surplus flows, firstly to partnership shortfall (joint and several liability), secondly S. 144 |  |  | If "Surplus", surplus flows, firstly to partnership shortfall (joint and several liability), secondly S. 144 |  |  |  |



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# Exam Question Review

- 2016 Exam Questions/Assessment Guide



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# Other Matters?



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