

## RESTRUCTURING BULLETIN

November 2005

### FLAWED CANADIAN INSOLVENCY LAW REFORM ENACTED?

On November 25, 2005, the Canadian Parliament enacted new legislation that will materially reform Canada's principal business insolvency statutes. As a result of the stated disappointment of the Senate committee charged with reviewing the reform package, the legislation will not be proclaimed into force before June 30, 2006.

The legislation was fast-tracked through Parliament with the approval of Canada's four major federal political parties and was made possible by the broad support for certain wage earner protection provisions in the legislation. Those protections include the establishment of a publicly funded wage earner protection fund from which employees of insolvent companies may recover a portion of their unpaid wages and expenses.

However, in addition to employee protections, the legislation, among other things, proposes changes to the *Bankruptcy and Insolvency Act* and *Companies' Creditors Arrangement Act* relating to the governance of business debtors, priorities, restructuring proceedings (including asset sales, debtor-in-possession financing and renegotiation of collective bargaining agreements), trustee and receiver liability, income trusts and other business vehicles, reviewable transactions, and cross-border insolvencies. It is clear that those portions of the legislation have serious flaws.

In a somewhat unusual approach, the Senate agreed to approve the Bill without amendment and without having had an opportunity to conduct a comprehensive study and review. The Senate did so partially on the basis that it had received the unqualified assurance from cabinet that the legislation would not be proclaimed into force before June 30, 2006. The Senate expressed the expectation that, prior to proclamation, it would receive an opportunity to undertake a thorough review of the legislation and indicated that it looked forward to receiving further input from Industry Canada with respect to changes to improve the enacted provisions and Canada's insolvency regime more generally.

McMillan Binch Mendelsohn lawyers have been actively involved in the legislative reform process and will be advocating amendments to the legislation. Unless amended, the legislation could have negative implications for Canadian employment and business.

*Written by Andrew J.F. Kent and Adam C. Maerov*

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*The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.*

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*For further information, please contact one of the McMillan Binch Mendelsohn restructuring lawyers listed below:*

Patrice Beaudin	514.987.5006	patrice.beaudin@mcmbm.com
Lisa Brost	416.865.7186	lisa.brost@mcmbm.com
Hilary E. Clarke	416.865.7286	hilary.clarke@mcmbm.com
Jeffrey B. Gollob	416.865.7206	jeff.gollob@mcmbm.com
Andrew J.F. Kent	416.865.7160	andrew.kent@mcmbm.com
Lisa H. Kerbel Caplan	416.865.7803	lisa.kerbel.caplan@mcmbm.com
Daniel V. MacDonald	416.865.7169	dan.macdonald@mcmbm.com
Paul G. Macdonald	416.865.7167	paul.macdonald@mcmbm.com
Adam Maerov	416.865.7285	adam.maerov@mcmbm.com
Alex L. MacFarlane	416.865.7879	alex.macfarlane@mcmbm.com
Kathy Martin	416.865.7889	kathy.martin@mcmbm.com
Max Mendelsohn	514.987.5042	max.mendelsohn@mcmbm.com
Marc-André Morin	514.987.5082	marc-andre.morin@mcmbm.com
Julie Normand	514.987.5012	julie.normand@mcmbm.com
Wael Rostom	416.865.7790	wael.rostom@mcmbm.com
Nicholas Scheib	514.987.5091	nicholas.scheib@mcmbm.com
Martin Scheim	514.987.5039	martin.scheim@mcmbm.com
Éric Vallières	514.987.5068	eric.vallieres@mcmbm.com
Tushara Weerasooriya	416.865.7262	tushara.weerasooriya@mcmbm.com

## McMILLAN BINCH MENDELSON

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TORONTO | TEL: 416.865.7000 | FAX: 416.865.7048

MONTRÉAL | TEL: 514.987.5000 | FAX: 514.987.1213

[www.mcmbm.com](http://www.mcmbm.com)