Court File No.CV-25-00739279-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1001270243 ONTARIO INC.

Applicant

BOOK OF AUTHORITIES OF THE ATTORNEY GENERAL OF CANADA

(motion returnable November 12, 2025)

October 29, 2025

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SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-066105-251

DATE: October 15, 2025

BY THE HONOURABLE LUC MORIN, S.C.J.

IN THE MATTER OF THE INTERIM RECEIVERSHIP OF:

FIERA PRIVATE DEBT FUND VI LP
-and-
FIERA PRIVATE DEBT FUND VII LP

Applicants

-and-

CANADOIL FORGE LTD

Debtor

-and-

FTI CONSULTING CANADA INC.

Proposed Receiver

JUDGMENT[1]

[1] *Fiera Private Debt Fund VI LP* and *Fiera Private Debt Fund VII LP* (collectively the "**Fiera Entities**") are seeking the appointment of *FTI Consulting Inc.* ("**FTI**") to act as receiver pursuant to section 243 of the *Bankruptcy and Insolvency Act*[2]. They are also seeking the approval of an Interim Financing of $650,000 and of an Administration Charge to cover for the fees of the Proposed Receiver and its counsel. The Application is supported by the *Royal Bank of Canada* (the "**Bank**").

[2] The Fiera Entities' first attempt to appoint a Receiver pursuant to Section 243 BIA was dismissed by the Court on September 26th, notably based on the fact that the Court saw no good reasons in swapping the Court officer from FTI to *Raymond Chabot Inc.* ("**RCI**") without there being unnecessary duplication of fees.

[3] In the context of this first attempt, the Court also dismissed the Fiera Entities' request to increase the existing interim financing and the administration charge.

[4] It is not necessary to cite at length the reasons justifying such refusal, they are clearly laid out in the September 26th decision.

[5] This led to a limited extension of the Interim Receivership Order until October 14, 2025. The objective was to provide the Fiera Entities with proper time to determine whether FTI should be appointed as Receiver and complete its burgeoning analysis as to whether a bankruptcy might impact the value of the Debtor's assets.

[6] In this current second attempt to appoint a Receiver, the Fiera Entities are seeking the appointment of FTI to act as Receiver while providing details on the upcoming Sale and Solicitation Process ("**SSP**"). A two-phase process aimed at facilitating a transaction before the end of December, clearly in time to avoid the increase of fees resulting from a forced winterization of the Debtor's plant.

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1 *Les juges de la Cour supérieure doivent soumettre leurs projets de jugement au Service de traduction, mais en raison de contraintes techniques et opérationnelles, une traduction du présent jugement ne peut être jointe immédiatement et sans délai conformément à l'article 10 de la Charte de la langue française. Après vérification auprès du Service de traduction, la traduction du présent jugement devrait être disponible sous peu, mais considérant les enjeux d'affaires importants propres à une affaire soulevant des enjeux d'insolvabilité et de l'impact qu'une incertitude sur la finalité puisse avoir sur le sort réservé au salaire impayé des quelques 100 employés, le Tribunal émettra le présent jugement en langue anglaise, la traduction sera produite au dossier de la Cour dans les meilleurs délais. En optant pour cette solution, le Tribunal tient à souligner que dans la présente affaire, les procédures et les documents contractuels liant les parties étaient rédigées en anglais.*

2 *Bankruptcy and Insolvency Act*, R.S.C. ch. B-3 ("**BIA**").

[7] This decision will address the four issues raised by the Fiera Entities' Application: (**i**) the appointment of FTI as Receiver pursuant to Section 243 BIA, (**ii**) the need for Interim Financing, (**iii**) the need for an Administration Charge and (**iv**) the outstanding wages and salaries owed to the employees.

a) The Appointment of FTI as Receiver is Just and Appropriate

[8] The Court is now satisfied that the appointment of FTI to act as Receiver is just and appropriate under the circumstances.

[9] In coming to this conclusion, the Court has considered a variety of criteria, and in accordance with case law[3] believes that the appointment of FTI (**i**) is necessary, (**ii**) will serve to protect and preserve the Debtor's assets, and (**iii**) given the imminence of the SSP, will likely facilitate a potential transaction in respect to the Debtor's assets.

[10] Also, the Court is now satisfied that the contemplated receivership should be relatively short-lived and that the choice of FTI rather than RCI will avoid duplication of fees.

[11] A brief word on the decision to initiate the SSP, despite the fact that the prior notice period issued by the Fiera Entities has not yet expired.

[12] The Court of Appeal in *Séquestre de Media5 Corporation*[4] reminds us that a secured creditor seeking to exercise its rights through a BIA receivership is still subject to the requirements set out in the *Civil Code of Québec*. The protections and prerequisites of the CCQ. continue to apply.

> [97] Pour résumer, un créancier hypothécaire peut obtenir la nomination d'un syndic de faillite comme séquestre en vertu du par. 243(1) *LFI* afin de vendre l'entreprise de son débiteur si les exigences préalables suivantes sont respectées :
>
> (1) le débiteur est insolvable;
>
> (2) la garantie hypothécaire porte sur la totalité ou la quasi-totalité du stock, des comptes recevables ou des autres biens acquis ou utilisés par le débiteur insolvable;
>
> (3) ces biens sont utilisés dans le cadre des affaires du débiteur insolvable;
>
> (4) **le préavis prévu par l'art. 244 a été donné et le délai prévu par le par. 243(1.1) *LFI* a été respecté**;

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[3] Textron Financial Canada Limited v. Chetwynd Motels Ltd., 2010 BCSC 477, par. 50. See also: *Maple Trade Financing Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527, par. 25.

[4] *Séquestre de Media5 Corporation*, 2020 QCCA 943. See also : *Saskatchewan (Procureur général) c. Lemare Lake Logging Ltd.*, 2015 CSC 53, [2015] 3 R.C.S. 419

> (5) les exigences de fond et de procédure préalables à l'exercice d'un recours hypothécaire prévues dans le *Code civil du Québec* ont été respectées, soit (i) **la publication d'un préavis d'exercice d'un droit hypothécaire** selon les formalités des articles 2757 et 2758 al. 1 *C.c.Q.*, et (ii) le respect des délais prévus par l'art. 2758 al. 2 *C.c.Q.*, **sous réserve de l'art. 2767 *C.c.Q.* si les circonstances s'y prêtent**.
>
> [98] Si ces exigences préalables sont satisfaites, le tribunal peut alors procéder à la nomination du séquestre **s'il est d'avis que cette nomination est juste et opportune, en tenant compte de l'ensemble des circonstances**, notamment celles identifiées aux paragraphes [93] à [96] ci-avant, soit :
>
> (6) le créancier hypothécaire qui demande la nomination du séquestre a agi de bonne foi et sans but détourné;
>
> (7) la nomination du séquestre et les pouvoirs qui lui sont conférés ne nuiront pas aux droits des autres créanciers de façon telle que leurs créances seraient plus en péril qu'en cas de faillite du débiteur;
>
> (8) la nomination du séquestre et les pouvoirs qui lui sont conférés ne sont pas susceptibles d'empêcher la mise en œuvre d'une proposition concordataire en vertu de la *LFI* ou d'un arrangement sous la *LACC*, dans la mesure où il est raisonnable de croire qu'une telle proposition ou qu'un tel arrangement pourrait recevoir les approbations requises; et si
>
> (9) ces mesures se justifient dans les circonstances particulières du dossier en tenant compte des objectifs plus larges de la *LFI* et du droit de l'insolvabilité, notamment qu'elles **contribueront utilement à éviter, dans la mesure du possible, les pertes sociales et économiques résultant de la liquidation d'une société commerciale insolvable, tout en favorisant le règlement juste et ordonné des dettes de la société visée**.
>
> [Emphasis added]

[13] That being said, to the extent that the conditions set forth at article 2767 CCQ. are met, the Court can authorize a secured creditor to exercise its secured rights *before* the expiry of the prior notice delays:

> **2767.** Surrender is also forced where the court, upon application by the creditor, orders surrender of the property before the period indicated in the prior notice expires, **where there is reason to fear that otherwise recovery of his claim may be endangered, or where the property may decline or depreciate rapidly. In the latter cases, the creditor is authorized to exercise his hypothecary rights immediately**.
>
> The application need not be served on the person against whom the hypothecary right is exercised, but the order shall be served on him. If the order is subsequently rescinded, the creditor is bound to return the property or pay back the price of alienation.
>
> [Emphasis added]

[14] In the Court's view, it is appropriate under the current circumstances to implement the SSP despite the prior notice delays having yet to expire.

[15] The directors and officers have effectively abandoned the company. Operations have ceased abruptly. With winter approaching, the significant costs and risks associated with a forced winterization of the plant cannot be ignored. Counsel for one of the directors — who is also a principal of the Debtor — has attended all hearings and does not oppose the implementation of the SSP.

[16] The Court therefore finds that the Fiera Entities' claim is at risk, and that the immovable properties securing their collateral are likely to deteriorate and lose value quickly. The SSP must be implemented without delay, particularly given the tight timeline for completing a potential transaction by the end of December — by which point, in any case, the prior notice period will have expired.

b) The Interim Financing is not Appropriate

[17] With respect to the Interim Financing request, the Court remains uneasy, as the evidence presented by the Fiera Entities suggesting that the assets subject to the security structure are unlikely to generate sufficient value to cover the secured indebtedness.

[18] This was corroborated by Mr. Franco's testimony.

[19] While the Court is mindful of the "*you never know*" argument advanced by Mr. Franco and counsel for the Fiera Entities, it must nonetheless assess the matter through the lens of likelihood and probability[5].

[20] Here, the evidence suggests that it is more probable that both the Bank and the Fiera Entities will suffer significant losses and that therefore, the purpose of the Interim Financing is to minimize such losses, not to create any value for other stakeholders. As the Court pointed out before, this is a non-operational enforcement process. Nothing more, nothing less.

[21] Attorneys for both the Fiera Entities and the Bank argued that the employees might ultimately benefit from a transaction that would seek to resume the Debtor's operations. This remote possibility fails to appreciate that a significant portion of the employees are likely to have found a new job if and when a transaction further to the SSP unfolds, allowing the plant to resume its operations.

[22] Moreover, they argued that the tax authorities might also potentially benefit from added value that "*you never know*" could be derived from the SSP.

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5 Article 2804 C.c.Q.

[23] But again, dealing with likelihood and probabilities, it is unlikely that employees and tax authorities will benefit from the SSP and any potential transaction that may be derived therefrom.

[24] For clarity, the Court is not suggesting that this decision should be read as a general precedent against interim financing in situations involving underwater loans. However, in the present circumstances, there appears to be little to indicate that the process serves any purpose beyond enforcement — with an emphasis on minimizing losses rather than generating value beyond the secured indebtedness.

[25] In such a context, the Court cannot disregard the statutory limitations provided at Article 2762 CCQ., which specifically precludes a secured creditor from seeking fees to "preserved the charged property".

[26] Adding secured debt over and above this overwhelming secured debt seems unproductive and hazardous at this stage.

[27] As mentioned before, there are many other stakeholders that may be affected by the Detor's insolvency, a handful of which are in the Courtroom today. Approximately **$3,4M** of deemed trust amounts remain unpaid by the Debtor, and there are also approximately **$865,000** of unpaid wages and salaries to the employees who were collectively laid off *à la dépêche*. Some of these amounts *may* rank ahead of the Bank and the Fiera Entities' secured rights.

[28] As confirmed by Mr. Franco, these claims have not been fully analyzed as of yet and therefore it is difficult to properly assess the extent of their quantum. Which is another reason to opt for a prudent approach and not dismiss or subordinate such potential claims at this stage.

[29] Understandably, the focus has been on the preservation of assets and the implementation of the SSP.

[30] While it is now well established that both the BIA and the CCAA can accommodate a wide range of restructuring outcomes — including asset liquidations aimed at facilitating a business transfer — Courts must remain attentive to where the proposed process falls along that broad spectrum. At one end lies a true business restructuring through a plan of arrangement; at the other, a straightforward liquidation of assets sold off in parts. The circumstances of this case fall much closer to the latter.

[31] The Fiera Entities and the Bank make no secret of the fact that the intended path forward is an aggressive, non-operational liquidation process, with the hope of concluding a transaction by the end of December. Both the Bank and the Fiera Entities are in realization mode — as is their right — driven by concerns that the proceeds may not fully cover their secured debts.

[32] In this context, the criteria typically applied to approve interim financing under the BIA proposal regime[6] or the CCAA[7] cannot be adopted uncritically by the Court, especially considering the fact that the Receivership section of the BIA contains no similar provisions.

[33] Suggesting that the Interim Financing would serve any purpose beyond mitigating the Bank and the Fiera Entities' expected losses, or that it would benefit other stakeholders, is difficult to support. And it makes little sense to add security over assets that are unlikely to generate sufficient return to cover the already secured indebtedness, be it conventionally or through statutory preferences.

[34] The Court will say it again: Interim financing is not intended to compensate for a deficient collateral structure, nor to shift the burden of a secured creditor's risk onto other stakeholders.

[35] The Fiera Entities had the burden of convincing the Court that the proposed Interim Financing was to cover necessary expenses aimed at preserving value for the benefit of all stakeholders and the Court is of the view that the they failed.

[36] The Court therefore finds the request to for Interim Financing unfounded and inappropriate under the circumstances.

c) The Receiver and his Attorneys should benefit from an Administration Charge

[37] The Receiver and its counsel (Norton Rose Fulbright) are seeking an Administration Charge, which the Court believes is appropriate under the circumstances.

[38] The directors and officers of the Debtor abandoned ship the day prior the Interim Receivership was issued, and it is well founded for the secured creditors to seek the appointment of a Court officer to take control of the assets and implement a process seeking to transfer the assets in a non-operational context.

[39] The Court will therefore grant an Administration Charge for an amount of **$300,000**, which represents approximately one month's worth of professional fees as per the cash flow filed in support of the Application.

[40] That being said, this Administration Charge shall rank *after* the priority in favour of the employees for outstanding wages and salaries in accordance with Section 81.4 of the BIA.

[41] More on that in the next section of this judgment.

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6 Section 50.6 (5) BIA.
7 Section 11.2 (4) CCAA.

[42] Meanwhile, as agreed with the parties during the hearing, the Administration Charge ordered on August 29th through the Interim Receivership Order will be terminated, considering the end of the Interim Receiver's mandate.

d) Outstanding Wages and Salaries must be Paid in Priority

[43] The Court made it clear throughout the process that it was concerned about the salaries and wages owed to the employees — particularly with respect to their final pay for work performed up to August 29th, the date the Interim Receivership Order was issued.

[44] Employees are at least one pay short and surely for some, this has caused undue stress on their livelihood.

[45] While the Bank and the Fiera Entities have been eager to persuade the Court of the need for an Administration Charge and additional Interim Financing, they have remained conspicuously silent regarding the **$865,000**[8] owed in outstanding wages and salaries.

[46] Until now.

[47] The plan is clear: the Fiera Entities and the Bank are suggesting a "*wait and see*" approach, proposing that we wait and see whether the assets will generate sufficient return to pay the employees through the SSP. And the hope that the employees will obtain some relief through the *Wage Earner Protection Program Act*[9] ("**WEPPA**") in the meantime.

[48] This is not a good plan.

[49] Aside from the absence of any moral grounds that would justify not paying employees for services rendered up until the day of the issuance of the Interim Receivership Order, the implications of section 81.4 of the BIA in this context are clear.

[50] Especially in a context where FTI – in its capacity of Interim Receiver – already collected $152,000 worth of receivables and chose to apply a portion of this amount in partial reduction of the professional fees incurred, rather than paying the employees. As confirmed by Mr. Franco during his testimony.

[51] The attorney for the Bank argued that this was done in strict compliance with the Interim Receivership Order implementing the Administration Charge.

[52] This is not only unconvincing — it is fundamentally incorrect. Unlike the professionals involved, who have had ample time to prepare and safeguard their own

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[8] This amount is taken from the testimony of Mr. Emmanuel Phaneuf in the context of the hearing on Receivership Application that took place on September 26th.

[9] *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1.

interests, employees were left completely in the dark. They remained uninformed and powerless until lunchtime on the very Friday their employer was in Court, facing proceedings brought by the Bank and the Fiera Entities.

[53] Leading to the 2009 amendments to the BIA and the CCAA, the report by the Standing Senate Committee on Banking, Trade and Commerce titled "*Debtors and Creditors: Sharing the Burden — A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act*[10]" provides valuable insight.

[54] A key takeaway from the report is that employees represent a particularly vulnerable group of stakeholders due to their economic dependence and lack of access to reliable financial information, which leaves them unable to properly assess the risks of continuing to provide services to their employers:

> Employees are not, however, like other creditors in every respect, and thus should perhaps be protected differently. For example, they probably have a situation of **economic dependence** not found with other creditors and are **not well placed to assess accurately the probability that their employer will become insolvent**.
>
> [...]
>
> The Bankruptcy and Insolvency Act [*should*] be amended to provide that unpaid claims for wages and vacation pay arising as a result of an employer's bankruptcy be payable to an amount not to exceed the lesser of $2,000 or one pay period per employee claim. The funding of these claims should be assured by creating a super priority over secured claims to inventory and accounts receivable. **The secured creditor or creditors should be able to assume the rights of the employees against the directors.**
>
> [Emphasis added]

[55] This led to the enactment of Section 84.1 of the BIA and WEPPA, designed to relieve employees from the constant uncertainty of whether they will be paid each week.

[56] Instead, the responsibility shifts to those with the knowledge and ability to manage the situation — the directors and officers, the lenders, and, to some extent, the insolvency professionals. These individuals have privileged access to financial information and can therefore better assess and tolerate the risks involved, unlike the employees who remain in the dark.

[57] As the Court has often emphasized, with greater power comes greater responsibility. Those who are *"in the know"* must take a proactive approach when addressing outstanding wages and salaries.

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10 Report by the Standing Senate Committee on Banking, Trade and Commerce titled *Debtors and Creditors: Sharing the Burden — A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act*, November 2003
Available at https://sencanada.ca/content/sen/committee/372/bank/rep/bankruptcy-e.pdf

[58] Showing up in Court without a clear plan to resolve these wage issues should be discouraged. Fortunately, such cases are rare.

[59] Sophisticated professionals, secured by a charge over all the Debtor's assets and enjoying privileged relationships with both the Fiera Entities and the Bank — parties who rely on their services to mitigate losses — are clearly in a better position than the employees.

[60] The suggestion that FTI's professional fees — initially retained by the Fiera Entities — and McCarthy Tétrault — retained by the Bank — are somehow at risk is, at best, sophistry.

[61] To advocate for a "*wait and see*" approach regarding the employees' unpaid wages, while at the same time insisting that professional fees be paid without delay, is simply unacceptable.

[62] To eliminate any uncertainty going forward, the Court will direct FTI, now acting as Receiver, to pay the outstanding wages and salaries from the receivables collected since August 29th — the date of the interim Receivership Order, up to $2,000 per employee, in accordance with Section 81.4 of the BIA.

[63] Mr. Franco testified that approximately $40,000 had been applied toward professional fees, leaving around $120,000 available. This remaining amount must be paid to the employees immediately, in payment of their outstanding salaries and wages in accordance and to the extent provided at section 81.4 of the BIA. The same approach shall apply to any realizations from short-term assets going forward, reminding the Receiver of subsection 81.4(5) of the BIA in this regard.

[64] A final word on WEPPA.

[65] This is a program forming part of the broader social safety net designed by the government to provide swift relief to employees who become collateral victims of their employer's insolvency. It is not intended to serve as a primary tool for financial institutions and lenders to mitigate their losses. Let alone as an add-on to their collateral structure.

[66] That is simply not its purpose.

FOR THESE REASONS, THE COURT:

[67] **GRANTS** in part the Applicants' *Application for the Appointment of a Receiver* (the "**Application**") pursuant to Section 243 of the *Bankruptcy and Insolvency Act.*

NOTIFICATION

[68] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today.

[69] **DECLARES** that sufficient prior notice of the presentation of the Application has been given by the Applicants to interested parties, including the secured creditors which are likely to be affected by the charges created herein.

[70] **PERMITS** the service of this order (the "**Order**") at any time and place and by any means whatsoever, including by email.

EFFECTIVE TIME

[71] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montréal time, province of Québec, October 14, 2025.

APPOINTMENT

[72] **APPOINTS** *FTI Consulting Canada Inc.* (Martin Franco, CPA, CIRP, LIT) to act as receiver (the "**Receiver**") to the Property (as hereinafter defined) of *Canadoil Forge Ltd.* (the "**Debtor**") until one of the following events comes to pass:

72.1. the sale of all the Property and the distribution of the proceeds; or

72.2. the issuance of any order by the Court terminating the mandate of the Receiver;

[73] **DECLARES** that this Order and its effects shall survive the filing by the Debtor of a notice of intention to make a proposal or of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of the Debtor pursuant to the terms of the *Companies' Creditors Arrangements Act* (the "**CCAA**") or the bankruptcy of the Debtor, unless the Court orders otherwise.

RECEIVER'S POWERS

[74] **AUTHORIZES** the Receiver to exercise the following powers:

Powers related to the possession of the Property

[75] **AUTHORIZES** the Receiver to take possession of the Debtor's Property described herein (the "**Property**") and to exercise the following powers listed hereinafter in the place and stead of the Debtor in respect of the Property:

75.1. An immovable facing Boulevard Bécancour, in Bécancour, Province of Québec, known and designated as lot THREE MILLION TWO HUNDRED

NINETY-FOUR THOUSAND SIXTY-FOUR (3 294 064) of the Cadastre of Québec, Registration Division of Nicolet (Nicolet 2) with the building erected on it, circumstances and dependencies, and in particular the building bearing number 5500, Bécancour Boulevard, Bécancour, Province of Quebec, G9H 3W3 (the "5500 Bécancour Boulevard Property");

75.2. An immovable known and designated as consisting of the following lots: lot number THREE MILLION TWO HUNDRED NINETY-FOUR THOUSAND NINETY-FIVE (3 294 095) of the Cadastre du Québec, registration division of Nicolet (Nicolet 2) and lot number THREE MILLION TWO HUNDRED NINETY-FOUR THOUSAND NINETY-NINE (3 294 099) of the Cadastre du Québec, registration division of Nicolet (Nicolet 2) with the building erected on it, circumstances and dependencies, and in particular the building bearing number 805, Alphonse-Deshaies Boulevard, Bécancour, Province of Quebec, G9H 2Y8 (the "805 Alphonse-Deshaies Boulevard Property", collectively with the 5500 Bécancour Boulevard Property, the "**Immovable Properties**");

75.3. All present and future rents deriving from the leasing of all or part of the Immovable Properties ("**Rents**"), as well as all insurance indemnities payable under insurance policies covering the Immovable Properties and expropriation indemnities relating to the Immovable Properties, (collectively with the Immovable Properties and the Rents, the "**Immovable Property**"); and

75.4. The universality of the Debtor's movable property, present and future, corporeal and incorporeal, of any nature and type whatsoever and wherever located (the "**Movable Property**").

<u>Powers related to the preservation of the Property</u>

75.5. all the powers necessary for the preservation and for the protection of the Property;

75.6. all the powers necessary to control the Property, the place of business and the premises occupied by the Debtor;

75.7. all the powers necessary to grant the Receiver access, at all times, to the place of business and to the premises of the Debtor, to the Property, and to change the locks granting access to such premises and places of business of the Debtor;

75.8. all the powers necessary to grant the Receiver access to all the accounting records of the Debtor, as well as to any document, contract, register of any nature or kind whatsoever, wherever they may be situated and regardless of the medium on which they may be recorded (the "Records"), as well as the powers necessary to make copies of all the Records necessary or useful to the execution of the Receiver's functions;

75.9. all the powers necessary to undertake an analysis of the Debtor's Records;

Powers related to the Debtor's operations

75.10. manage, operate, and carry on, all or any part of the Debtor's operations, including the powers to enter into any agreements, incur any obligations in the ordinary course of the business carried on by the Debtor, cease to carry on all or any part of the business, or terminate any agreements of the Debtor;

75.11. all the powers necessary to control the Debtor's receipts and disbursements in any accounts at any financial institution;

75.12. all the powers necessary to collect all the accounts receivable and all the other claims of the Debtor and to transact in respect of same, as well as to sign any documents for this purpose;

75.13. all the powers necessary to open any required bank account, pursuant to the terms and conditions the Receiver may determine, with any chartered Canadian bank, or any other financial institution, the whole, in order to cash any item payable to the Debtor, and to issue any payment which, in the opinion of the Receiver, is necessary or useful to the Debtor's operations;

Powers related to the disposition or sale of the Property

75.14. all the powers necessary to carry out the sale or the disposition of the Property in the ordinary course of business of the Debtor, to transact in that regard, and to sign any document or any contract required or useful for these purposes or meant to give effect to any such sale or disposition;

75.15. all the powers necessary to interest or solicit one or several potential buyers of all or any part of the Property, including, without limitation, the right to carry out a public call for tenders or private solicitations in order to dispose of the Property;

75.16. all the powers necessary to engage or to continue the engagement (including on a temporary basis) of consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time, provided that in respect to existing engagements, the continuation of same shall be made on terms and conditions which provide monetary compensation that is no more favourable than the existing terms, to assist with the exercise of the Receiver's powers and duties relating to the disposition of the Property or otherwise, including, without limitation, those conferred by this Order;

75.17. to petition the Court for the issuance of a vesting order or other orders necessary to convey the Property free and clear of any liens or encumbrances affecting such Property;

75.18. to petition the Court for the issuance of an order authorizing the transfer of certain of the rights and interest of the Debtor in any of its agreements, as the case may be, in accordance with Sections 66 (1.1) and 84.1 of the BIA.

Powers related to the management of the Property

75.19. all the powers necessary to apply for any permits, licenses, approvals, or permissions that may be required by any governmental authority, as well as renewals thereof on behalf of the Debtor and, if the Receiver deems it appropriate, in the name of the Debtor;

75.20. if deemed appropriate, all the powers necessary to contest any proceedings seeking to cancel or modify, in any manner whatsoever, the permits, licenses, approvals, permissions, leases, contracts, renewal rights, agreements and other rights of the Debtor and to present a defense against such proceedings on behalf of the Debtor;

75.21. all the powers necessary to communicate with any authority and with any person to obtain information relating to the Property;

75.22. all the powers necessary, without having any obligation to do so, to: (i) perform all acts, sign all documents and take any action, including with the Superintendent of Bankruptcy, to assign or cause to be assigned the Debtor into bankruptcy and (ii) act as trustee to the bankruptcy of the Debtor.

[76] **ORDERS** the Receiver to petition the Court for authorization to sell all or any part of the Debtor's Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances.

[77] **GRANTS** the Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property.

[78] **AUTHORIZES** the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions.

[79] **DECLARES** that the Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to the Applicants' attorney. Where the Receiver has been

advised by the Applicants that information is confidential, proprietary or competitive, the Receiver shall not provide such information to any person without the consent of the Applicants unless otherwise directed by this Court. For greater certainty, the foregoing does not apply to information that the Receiver is required to provide in accordance with Sections 245 and 246 of the BIA.

[80] **PERMITS** the issuance by the Receiver and the lawyers of the Applicants or the lawyers of the Royal Bank of Canada ("**RBC**") of *subpoenas* calling as a witness Giacomo Sozzi, any other past or present director, officer or representative of the Debtor or CFC Canadoil, Inc. or any present or former consultant of the Debtor or CFC Canadoil, Inc., including Mallette S.E.N.C.R.L., as well as any other person having knowledge of the business, operations, assets and financial situation of the Debtor or CFC Canadoil, Inc. (i) to be examined by the Receiver, the Applicant, RBC, or any trustee in bankruptcy on the business, operations, assets and financial situation of the Debtor and/or CFC Canadoil, Inc. and any payments or advances made by the Debtor and/or (ii) to communicate and allow copies to be made of any written documents relating to the business, operations, assets and financial situation of the Debtor and/or CFC Canadoil, Inc. and any payments or advances made by the Debtor and/or CFC Canadoil, Inc.

[81] **AUTHORIZES** the service of any *subpoena* to Giacomo Sozzi, any other past or present director, officer or representative of the Debtor or CFC Canadoil, Inc. or any present or former consultant of the Debtor or CFC Canadoil, Inc., including Mallette S.E.N.C.R.L., as well as any other person having knowledge of the business, operations, assets and financial situation of the Debtor and/or CFC Canadoil, Inc. at any time and place and by any means whatsoever, including by email and ABRIDGES the delay for such persons to appear to six (6) business days or any shorter delay agreed to among lawyers.

[82] **ORDERS** Giacomo Sozzi, any other past or present director, officer or representative of the Debtor or CFC Canadoil, Inc. or any present or former consultant of the Debtor or CFC Canadoil, Inc., including Mallette S.E.N.C.R.L., as well as any other person having knowledge of the business, operations, assets and financial situation of the Debtor and/or CFC Canadoil, Inc., on service of a *subpoena* from the Receiver and/or the Applicants' lawyers and/or RBC's lawyers in accordance with the terms of this Order, to appear at the place indicated on the date and time provided for in the *subpoena*, provided that that where the Person being examined is not a resident of Québec, the examination shall take place remotely, via Microsoft Teams or other similar telecommunications platform. Such examinations are to last, in each case, for no more than one (1) business day, during regular business hours, the whole subject to the rules about pre-trial oral examinations as set out in the Code of Civil Procedure save and except to the extent that those rules are displaced by the terms hereof.

DEBTOR'S DUTIES

[83] **ORDERS** the Debtor, its present and former directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Property, to the places of business and to the premises of the Debtor, as well as to the Records.

[84] **ORDERS** the Debtor, its present and former directors, officers, employees, agents and representatives to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of the Order.

[85] **ORDERS** the Debtor not to dispose, alienate, encumber or otherwise transact in any manner whatsoever, with regard to the Property, other than with the authorization of the Receiver.

NON-INTERFERENCE WITH THE RECEIVER, THE DEBTOR AND THE PROPERTY

[86] **ORDERS** that subject to any other order rendered by the Court, which may only be rendered after a prior notice of at least 5 days has been duly sent to the Receiver and to the Applicants, no proceeding, seizure, revendication, or any other enforcement process shall be commenced or enforced against the Property.

[87] **ORDERS** that no proceedings or enforcement measures before any court or tribunal, including without limitation, any action, claim, arbitration proceedings, lawsuits, right of enforcement, right of extrajudicial termination, right of rescission, right of set-off between mutual claims arising before and after the date of this Order, right of seizure, right of enforcement before any court or tribunal (collectively, the "Proceedings") may be brought or continued against or in respect of the Debtor or in relation to the Property, except with the permission of the Court.

[88] **ORDERS** that all Proceedings already commenced against the Debtor or in relation to the Property or affecting the Property be stayed until such time as this Court authorizes their continuation, if any.

[89] **ORDERS** that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with the Debtor without the prior consent of the Receiver or without the authorization of the Court.

CONTINUATION OF SERVICES

[90] **ORDERS** that any person having an oral or written agreement with the Debtor, as well as any supplier of goods or services to the Debtor is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Receiver and that the Receiver shall be authorized to continue use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after

the date of this Order are paid by the Receiver, in accordance with the normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

EMPLOYEES

[91] **ORDERS** the Receiver to pay the employees' outstanding wages and salaries from the proceeds of the Debtor's current assets in its possession to the extent and in accordance with Section 84.1 of the BIA.

[92] **AUTHORIZES** the Receiver to continue to engage the services of the Debtor's employees until the Receiver, acting for and on behalf of the Debtor, terminates the employment of such employees. The Receiver shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in sections 14.06(1.2) of the *BIA* other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*.

PROTECTION OF PERSONAL INFORMATION

[93] **DECLARES** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Receiver.

LIMITATION OF LIABILITY

[94] **DECLARES** that subject to the powers granted to the Receiver pursuant hereto, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the *BIA*, including, in particular, section 14.06(2) of the *BIA*.

[95] **DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment.

[96] **DECLARES** that section 215 of the *BIA* applies *mutatis mutandis*, and hence that no action lies against the Receiver by reason of its appointment, or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the

Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph.

ADMINISTRATION CHARGE

[97] **DECLARES** that the Receiver and the Receiver's legal counsel (Norton Rose Fulbright), as security for their professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, be entitled to the benefit and are hereby granted a charge, security and hypothec over the Property, to the extent of the aggregate amount of $300,000 (the "**Administration Charge**).

[98] **DECLARES** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind, including claims of His Majesty in right of Canada and His Majesty in right of a Province subject to a deemed trust and including the Administration Charge created pursuant to the Interim Receivership Order (collectively, the "Encumbrances") affecting the Property whether or not charged by such Encumbrances, but excluding the priority set forth at Section 84.1 of the BIA in respect to outstanding wages and salaries, which shall rank in priority to the Administration Charge to the extent provided thereto.

[99] **ORDERS** that, except as otherwise expressly provided for herein, the Debtor shall not grant any Encumbrances in or against any Charged Property that rank in priority to, or *pari passu* with, the Administration Charge without the prior written consent of the Receiver and the beneficiaries of the Administration Charge, or the prior approval of the Court.

[100] **DECLARES** that the Administration Charge shall attach, as of the Effective Time, to all present and future Property of the Debtor, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

[101] **DECLARES** that the Administration Charge and the rights and remedies of the beneficiaries of the Administration Charge, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such application(s) or any assignment(s) in bankruptcy made or deemed to be made in respect of the Debtor; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Debtor (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

101.1. the creation of the Administration Charge shall not create nor be deemed to constitute a breach by the Debtor of any Third-Party Agreement to which the Debtor is a party; and

101.2. the beneficiaries of the Administration Charge shall not have any liability to the Debtor whatsoever as a result of any breach of any Third-Party Agreement caused by or resulting from the creation of the Administration Charge.

[102] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such application(s) or any assignment(s) in bankruptcy made or deemed to be made in respect of any of the Applicants; and (iii) the provisions of any federal or provincial statute, the payments or disposition of the Property made by the Debtor pursuant to this Order and the granting of the Administration Charge, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

[103] **DECLARES** that the Administration Charge shall be valid and enforceable as against all Property of the Debtor and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Debtor.

ALLOCATION OF REALIZATION, FEES AND DISBURSEMENTS

[104] **ORDERS** that the Receiver shall provide to the Applicants and RBC an allocation of the realization, fees and disbursements attributable to the Debtor's inventory and accounts receivables (collectively, the "**RBC Collateral**") and the other Property of the Debtor (the "**Fiera Collateral**").

[105] **ORDERS** the Receiver to petition the Court for any distribution to the Fiera Entities and RBC to seek prior approval.

GENERAL

[106] **DECLARES** that the interim receivership is no longer in effect and therefore terminated by this Order.

[107] **TERMINATES** the administration charge created pursuant to the interim receivership order rendered by this Court on August 29, 2025; any beneficiaries of that administration charge no longer having any rights in respect thereto.

[108] **DECLARES** that the Order, the Application and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtor under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement.

[109] **DECLARES** that the Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail.

[110] **DECLARES** that the Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.

[111] **DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to the Debtor's and the Receiver's counsel and to any other party who may request such delivery.

[112] **DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the BIA, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for the Debtor and the Receiver and has filed such notice with the Court.

[113] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Receiver, the Applicants and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

[114] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

[115] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

[116] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

[117] **THE WHOLE,** without costs.

LUC MORIN, S.C.J.

Mtre Gabriel Lavery-Lepage
Mtre Marc-André Otis
BLAKES CASSELS & GRAYDON LLP
Attorneys for the Fiera Entities

Mtre François Alexandre Toupin
Mtre Miguel Bourbonnais
McCARTHY TÉTREAULT LLP
Attorneys for the Royal Bank of Canada

Mtre Nicholas Scheib
Attorney for former director of the Debtor, Mr. Sozzi

Mtre Kim Sheppard
Mtre Mathieu Lamontagne
Ministère de la Justice du Canada
Attorney for Revenue Canada

Mtre Guillaume Pierre Michaud
NORTON ROSE FULBRIGHT LLP
Attorneys for the Receiver *FTI Consulting*

Hearing date: October 14, 2025.

[2] Bilingual, bijural meaning

The Construction of Statutes, 7th Ed.

Ruth Sullivan

CHAPTER 1 Reading Words in Their Entire Context: An Overview of Statutory Interpretation

§ 1.03 Initial Impressions of Meaning

[2] Bilingual, bijural meaning

Chapter 5 deals with establishing an initial understanding of meaning when the legislation is bilingual or both bilingual and bijural. In bilingual legislation, it is important to read both language versions to identify the shared meaning, which is presumed to be the intended meaning. However, when it comes to private law legal terminology in federal legislation, rather than seeking a shared meaning, it is important to respect the distinct meanings of such terminology in Quebec and in the common law provinces respectively.

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[5] Extrinsic aids

The Construction of Statutes, 7th Ed.

Ruth Sullivan

The Construction of Statutes, 7th Ed. (Sullivan) > CHAPTER 1 Reading Words in Their Entire Context: An Overview of Statutory Interpretation > § 1.05 What Counts as Context

CHAPTER 1 Reading Words in Their Entire Context: An Overview of Statutory Interpretation

§ 1.05 What Counts as Context

[5] Extrinsic aids

Extrinsic aids are things outside the legislative text, such as legislative evolution or legislative history, that provide direct or indirect evidence of legislative intent or offer authoritative opinion. Although few extrinsic aids were admissible when Driedger first formulated the modern principle, they are now generally considered part of the entire context of a legislative text. They are dealt with in Chapter 23.

[3] The ordinary meaning “rule”

The Construction of Statutes, 7th Ed.

Ruth Sullivan

CHAPTER 3 Ordinary Meaning

§ 3.01 Introduction

[3] The ordinary meaning “rule”[1]

In interpreting any text, the ordinary meaning as understood by the reader is assumed to correspond with the meaning intended by the writer. As Frederick Bowers writes, it is a fundamental principle of all public communication that words are assumed to bear their ordinary meaning unless and until this assumption becomes untenable:

> Our first assumption in reading the words of any text is that the author is using them in their ordinary sense, and only if, after reading some way into the text, we have a growing suspicion that he is using words in a different from ordinary sense, with each succeeding word systematically tending in the same direction, do we retrace our steps and start to interpret those words anew.[2]

This principle is the foundation for the ordinary meaning rule, which is the starting point of statutory interpretation.

As understood and applied by modern courts the ordinary meaning rule consists of the following propositions:

1. It is presumed that the ordinary meaning of a legislative text is the meaning intended by the legislature. In the absence of a reason to reject it, the ordinary meaning prevails.
2. Even if the ordinary meaning is plain, courts must take into account the full range of relevant contextual considerations including purpose, related provisions in the same and other Acts, legislative drafting conventions, presumptions of legislative intent, absurdities to be avoided and the like.
3. In light of these considerations, the court may adopt an interpretation that modifies or departs from the ordinary meaning, provided the interpretation adopted is plausible[3] and the reasons for adopting it are sufficient to justify the departure from ordinary meaning.[4]

This formulation of the ordinary meaning rule is closely related to the modern principle. It emphasizes that interpretation properly begins with ordinary meaning — with reading words in their grammatical and ordinary sense — but does not stop there. Interpreters are obliged to consider the total context of the words to be interpreted in every case, no matter how plain those words may seem upon initial reading.

This last point was emphasized by the Supreme Court of Canada in *Chieu v. Canada (Minister* *of Citizenship and Immigration)*,[5] a case that concerned appeals from removal orders under s. 70(1)(b) of the *Immigration Act*. The section allowed an appeal "on the ground that, having regard to all the circumstances of the case, the person should not be removed from Canada." The issue was whether the Immigration Appeal Division (I.A.D.) could refuse to consider evidence that the removed person would suffer hardship in the country to which they would be deported. Iacobucci J. began by establishing the ordinary meaning of the phrase "all the circumstances of the case", with emphasis on the word "all". He concluded:

> ... [W]hen the words of s. 70(1)(b) are read in their grammatical and ordinary sense, potential foreign hardship appears to be a relevant factor for the I.A.D. to consider. To conclude otherwise would be akin to reading this provision as entitling the I.A.D. to have regard to only some of the circumstances of the case.[6]

He then turned to the broader context:

> The grammatical and ordinary sense of the words employed in s. 70(1)(b) is not determinative, however, as this court has long rejected a literal approach to statutory interpretation. Instead, s. 70(1)(b) must be read in its entire context. This inquiry involves examining the history of the provision at issue, its place in the overall scheme of the Act, the object of the Act itself, and Parliament's intent both in enacting the Act as a whole, and in enacting the particular provision at issue.[7]

Using this approach, the Court concluded that the Appeal Division was bound to consider every relevant circumstance. There was nothing in the broader context to suggest that the ordinary meaning of "all the circumstances of the case" was not intended.

Footnote(s)

1 Although referred to as a "rule", like virtually all statutory interpretation rules, it operates as a presumption.

2 Frederick Bowers, *Linguistic Aspects of Legislative Expression* (Vancouver: U.B.C. Press, 1989), at 116. In *Ordinary Meaning: A Theory of the Most Fundamental Principle of Legal Interpretation* (Chicago: University of Chicago Press, 2015), at 78, Brian Slocum points out that "because access to the actual communications of the author are unavailable, interpretation must rely on generalized assumptions about intent, such as the assumption that authors of legal texts intend for their words to have their ordinary meaning".

3 For discussion of the plausible meaning rule, see Chapter 7.

4 See *Belwood Lake Cottagers Assn. v. Ontario (Environment and Climate Change)*, [2019] O.J. No. 485, 2019 ONCA 70 at paras. 40-42 (Ont. C.A.); *Hess v. Thomas Estate*, [2019] S.J. No. 99, 2019 SKCA 26 at paras. 50-51 (Sask. C.A.); *Ballantyne v. Saskatchewan Government Insurance*, [2015] S.J. No. 188, 2015 SKCA 38 at para. 20 (Sask. C.A.); *R. v. Appleby*, [2009] N. J. No. 28, 2009 NLCA 6 at para. 22 (N.L.C.A.).

5 [2002] S.C.J. No. 1, [2002] 1 S.C.R. 84 (S.C.C.).

6 *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 1, [2002] 1 S.C.R. 84 at para. 33 (S.C.C.).

7 *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 1, [2002] 1 S.C.R. 84 at para. 34 (S.C.C.). In *ATCO Gas & Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, [2006] S.C.J. No. 4, [2006] 1 S.C.R. 140 at para. 48 (S.C.C.), Bastarache J. wrote:

> This Court has stated on numerous occasions that the grammatical and ordinary sense of a section is not determinative and does not constitute the end of the inquiry. The Court is obliged to consider the total context of the provisions to be interpreted, no matter how plain the disposition may seem upon initial reading.... I will therefore proceed to examine the purpose and scheme of the legislation, the legislative intent and the relevant legal norms.

See also *R. v. Alex*, [2017] S.C.J. No. 37, 2017 SCC 37 at paras. 31-33 (S.C.C.); *Bristol Myers Squibb Co. v. Canada (Attorney General)*, [2005] S.C.J. No. 26, [2005] 1 S.C.R. 533 at para. 43 (S.C.C.); *Montréal (City) v. 2952-1366 Québec Inc.*, [2005] S.C.J. No. 63, [2005] 3 S.C.R. 141 at para. 9*ff.* (S.C.C.); *Geophysical Service Inc. v. EnCana Corp.*, [2017] A.J. No. 419, 2017 ABCA 125 at paras. 78-79 (Alta. C.A.) leave to appeal refused [2019] S.C.C.A. No. 32

(S.C.C.); *Rooney v. Arcelor Mittal S.A.*, [2016] O.J. No. 4347, 2016 ONCA 630 at paras. 10-21 (Ont. C.A.); *Canada v. Barrett*, [2012] F.C.J. No. 130, 2012 FCA 33 at para. 31 (F.C.A.); *Toussaint v. Canada (Citizenship and Immigration)*, [2011] F.C.J. No. 636, 2011 FCA 146 (F.C.A.).

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[1] Failure to rebut

The Construction of Statutes, 7th Ed.

Ruth Sullivan

CHAPTER 3 Ordinary Meaning

§ 3.04 Rebuttal

[1] Failure to rebut

The presumption in favour of ordinary meaning stands if there is nothing in the "entire context" to indicate that some other meaning was intended or is more appropriate in the circumstances. This is illustrated in the majority judgment of the Supreme Court of Canada in *Thomson v. Canada (Minister of Agriculture)*,[1] where the Court was concerned with the meaning of the word "recommendations" in s. 52 of the *Canadian Security Intelligence Service Act*. It provided:

> 52(2) On completion of an investigation in relation to a complaint ... the Review Committee shall provide the Minister ... with a report containing any recommendations that the Committee considers appropriate....

The issue was whether the Committee's recommendations made pursuant to this section were binding on the Deputy Minister. A majority of the Court said no. Cory J. wrote:

> The simple term "recommendations" should be given its ordinary meaning. "Recommendations" ordinarily means the offering of advice and should not be taken to mean a binding decision. I agree with the conclusion of Dubé J. of the Trial Division who noted ... that:
>
> > The grammatical, natural and ordinary meaning of the word "recommendation" is not synonymous with "decision". The verb "to recommend" is defined in the *Oxford English Dictionary* as "to communicate or report, to inform". In *Webster's Third New International Dictionary* it is defined as "to mention or introduce as being worthy of acceptance, use or trial ...".
>
> *There is nothing in either the section or the Act as a whole which indicates that the word "recommendations" should have anything other than its usual meaning*. The Committee's recommendation ... serves to ensure the accuracy of the information on which the Deputy Minister makes the decision, and it gives the Deputy Minister a second opinion to consider. It is no more than that. The wording of this section would be strained by giving the statute any wider scope. It should never be forgotten that it is the Deputy Minister who is responsible ... for the ongoing security in his department.... Accordingly, it is reasonable and appropriate that the final decision as to security clearance is left to the Deputy Minister, notwithstanding the recommendations of the Committee.[2]

[Author's emphasis]

The reasoning of Cory J. in this passage is exemplary. He is bound by the ordinary meaning because he finds no basis for rejecting it. However, this conclusion is reached only after due consideration of the possible grounds for rejecting it. With respect to purpose, Cory J. points out that the section has a sensible function to perform, even if the recommendations are not binding. It ensures that the Deputy Minister is well-informed. With respect to consequences, Cory J. points out that in light of the Deputy Minister's duties, it is reasonable and appropriate that he or she should take responsibility for the final decision.[3]

Footnote(s)

1 [1992] S.C.J. No. 13 (S.C.C.).

2 *Thomson v. Canada (Minister of Agriculture)*, [1992] S.C.J. No. 13, [1992] 1 S.C.R. 121 at paras. 24-25 (S.C.C.).

3 For more recent examples of such reasoning, see *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*,[2016] S.C.J. No. 47, 2016 SCC 47 at paras. 45*ff.* (S.C.C.); *Hociung v. Canada (Public Safety and Emergency Preparedness)*, [2019] F.C.J. No. 929, 2019 FCA 214 at paras. 31*ff* (F.C.A.); *Oakville (Town) v. Clublink Corporation ULC*, [2019] O.J. No. 5371, 2019 ONCA 826 at paras. 3, 43-45 (Ont. C.A.).

End of Document

[1] Same words, same meaning

The Construction of Statutes, 7th Ed.

Ruth Sullivan

CHAPTER 8 Textual Analysis

PART 1 PRESUMPTIONS ABOUT HOW LEGISLATION IS DRAFTED

§ 8.04 The Presumption of Consistent Expression

[1] Same words, same meaning

In *R. v. Zeolkowski*, Sopinka J. wrote: "Giving the same words the same meaning throughout a statute is a basic principle of statutory interpretation."[1] Reliance on this principle is illustrated in the majority judgment of the Supreme Court of Canada in *Thomson v. Canada (Deputy Minister of Agriculture)*.[2] The issue there was whether a Deputy Minister of the federal government could deny security clearance to a person, contrary to the recommendation made by the Security Intelligence Review Committee after reviewing the person's file. The governing provision was s. 52(2) of the *Canadian Security Intelligence Act* which provided that on completion of its investigation, the Review Committee shall provide the Minister "with a report containing any recommendations that the Committee considers appropriate". The majority held that the ordinary meaning of the word "recommendations" is advice or counsel and that mere advice or counsel is not binding on the Minister. However, Cory J. added:

> There is another basis for concluding that "recommendations" should be given its usual meaning in s. 52(2).
>
> The word is used in other provisions of the Act. Unless the contrary is clearly indicated by the context, a word should be given the same interpretation or meaning whenever it appears in an Act. Section 52(1) directs the Committee to provide the Minister and Director of CSIS with a report ... and any "recommendations" that the Committee considers appropriate....
>
> It would be obviously inappropriate to interpret "recommendations" in s. 52(1) as a binding decision. This is so, since it would result in the Committee encroaching on the management powers of CSIS. Clearly, in s. 52(1) "recommendations" has its ordinary and plain meaning of advising or counselling. Parliament could not have intended the word "recommendations" in the subsequent subsection of the same section to receive a different interpretation. The word must have the same meaning in both subsections.[3]

The reasoning of Cory J. is exemplary. He first notes that elsewhere in the legislation the word or expression to be interpreted has a single clear meaning; he then invokes the presumption of consistent expression to justify his conclusion that this meaning must prevail throughout. Finally, he points out that the presumption applies with particular force where the provisions in which the repeated words appear are close together or otherwise related. This way of resolving interpretation problems is often relied on in the cases.[4]

Footnote(s)

1 [1989] S.C.J. No. 50, [1989] 1 S.C.R. 1378 at 1387 (S.C.C.).

2 [1992] S.C.J. No. 13, [1992] 1 S.C.R. 385 (S.C.C.).

3 *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] S.C.J. No. 13, [1992] 1 S.C.R. 385 at paras. 26-28 (S.C.C.).

4 See, for example, *Orphan Well Assn. v. Grant Thornton Ltd*., [2019] S.C.J. No. 5, 2019 SCC 5 at paras. 82-84 (S.C.C.); *Amaratunga v. Northwest Atlantic Fisheries Organization*, [2013] S.C.J. No. 66, 2013 SCC 66 at paras. 41-42 (S.C.C.); *R. v. Knoblauch*, [2000] S.C.J. No. 59, [2000] 2 S.C.R. 780 at para. 85 (S.C.C.); *Canada v. Schwartz*, [1996] S.C.J. No. 15, [1996] 1 S.C.R. 254 (S.C.C.); *Mitchell v. Peguis Indian Band*, [1990] S.C.J. No. 63, [1990] 2 S.C.R. 85 at 123-124 (S.C.C.); *R. v. Hutchinson*, [2013] N.S.J. No. 1, 2013 NSCA 1 at paras. 124-126 (N.S.C.A.), affd [2014] S.C.J. No. 19 (S.C.C.); *Toronto-Dominion Bank v. Canada*, [2011] F.C.J. No. 1029, 2011 FCA 221 at paras. 37-38 (F.C.A.); *Swales v. I.C.B.C.*, [2011] B.C.J. No. 319, 2011 BCCA 95 at para. 16 (B.C.C.A.); *Sero v. Canada*, [2004] F.C.J. No. 71 at paras. 35-36 (F.C.A.); *Wishing Star Fishing Co. v. "B.C. Baron" (The)*, [1987] F.C.J. No. 1149, 81 N.R. 309 at 313 (F.C.A.); *R. v. Budget Car Rentals (Toronto) Ltd.*, [1981] O.J. No. 2888, 20 C.R. (3d) 66 at 82 (Ont. C.A.).

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[5] Strength of the presumption

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CHAPTER 8 Textual Analysis

PART 1 PRESUMPTIONS ABOUT HOW LEGISLATION IS DRAFTED

§ 8.04 The Presumption of Consistent Expression

[5] Strength of the presumption

The presumption of consistent expression varies in strength depending on a range of factors. An important consideration is the proximity of the words to one another. As Rothstein J.A. wrote in *Barrie Public Utilities v. Canadian Cable Television Assn.*, words in a statute may have different meanings depending on the context in which they are used, but “it seems unlikely that Parliament intended that a term in a single subsection should have different meanings depending upon different factual circumstances.”[1] Other considerations include how often the language in question is repeated in the legislation, the similarity of the contexts in which it is repeated, the extent to which it constitutes a distinctive pattern of expression, the range of matters dealt with in the legislation and how often it has been amended.

In *Mattabi Mines Ltd. v. Ontario (Minister of Revenue)*,[2] the Supreme Court of Canada insisted that the word “income” must have the same meaning throughout Part II of the *Income Tax Act* because formulating an exact definition of “income” and then indicating how it is to be taxed was the central concern of that Part. Wilson J. wrote:

> ... a taxing statute is a highly technical piece of legislation which requires an interpretation that will ensure certainty for the taxpayer. Many of the words used carry a very specific and technical meaning because they identify the fundamental concepts underpinning the legislation. “Income” is one of those fundamental concepts.[3]

As Wilson J. suggests, technical terms and terms that play a key role in a legislative scheme are more strongly presumed to have the same meaning throughout.

One problem with the presumption of consistent expression is that it does not necessarily reflect the realities of legislative drafting. Much legislation is lengthy and complicated and subject to frequent amendments. In recent years, federal Budget Bills have introduced massive changes to the statute book affecting legislation administered by many departments and agencies. The time lines for these Bills do not permit drafters to conduct a proper review of the proposed changes to ensure consistency or coherence. In addition, amendments that are proposed by legislative committees during the legislative process are often drafted with little regard for their relation to the Act as a whole or the statute book. Some statutes, like Insurance Acts or the *Criminal Code*, are frequently amended year after year. It is not surprising, then, that inadvertent variations occur within a single Act.[4] This problem has become more acute since the practice of general statute revision has been replaced by continuous electronic consolidation in most Canadian jurisdictions. A general revision affords the government an opportunity to simultaneously review the entire statute book and ensure that consistent drafting standards are applied throughout. Continuous consolidation does not.

A second problem with the presumption, as pointed out by Côté, is that it conflicts to some extent with the contextual principle in interpretation, which emphasizes that meaning is dependent on context.[5] Identical words may not have identical meanings once they are placed in different contexts and used for different purposes.[6] This is particularly true of general or abstract words. These factors tend to weaken the force of the presumption so that in a given context the courts may assign it little weight.[7]

Finally, like all the presumptions of interpretation, the presumption of consistent expression must be weighed against relevant competing considerations. A good example is found in the dissenting judgment of Dickson C.J. in *Mitchell v. Peguis Indian Band*.[8] One of the issues in the case was whether the expression "Her Majesty" in s. 90(1)(b) of the *Indian Act* referred solely to the federal Crown or included provincial Crowns as well. Dickson C.J. conceded that in s. 90(1)(a) the words "Her Majesty" were clearly limited to the Crown in right of Canada and that this usage was found in many places in the Act. He also conceded that elsewhere in the Act other expressions were used when referring to the Crown in right of the provinces. All this amounted to a strong case for applying the presumption of consistent expression. Yet Dickson C.J. refused to be bound. In his view, the arguments based on the meaning of "Her Majesty" elsewhere in the text were not conclusive.[9] He preferred to give more weight to the presumption in favour of Indigenous peoples than to the presumption of consistent expression.[10] The latter is merely a drafting convention, whereas the former embodies an important constitutional policy.

Footnote(s)

1 [2001] F.C.J. No. 1150, [2001] 4 F.C. 237 at para. 23 (F.C.A.), affd [2003] S.C.J. No. 27, [2003] 1 S.C.R. 476 (S.C.C.). See also *LeBlanc v. Boisvert*, [2005] N.B.J. No. 561 at para. 51 (N.B.C.A.), where Drapeau, C.J.N.B. wrote: "Because sections 265.1 and 232(1) are so closely related, it makes eminent good sense to attribute the same meaning to the phrase 'arising out of the use or operation' found in s. 265(1) and the phrase 'arising from the [...] use or operation' in s. 232(1)." [Brackets and ellipsis in original]. See also *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] S.C.J. No. 13, [1992] 1 S.C.R. 385 at 400-401 (S.C.C.).

2 [1988] S.C.J. No. 72, [1988] 2 S.C.R. 175 (S.C.C.).

3 *Mattabi Mines Ltd. v. Ontario (Minister of Revenue)*, [1988] S.C.J. No. 72, [1988] 2 S.C.R. 175 at para. 20 (S.C.C.). See also *Barejo Holdings ULC v. Canada*, [2020] F.C.J. No. 232, 2020 FCA 47 at paras. 52-53 (F.C.A.).

4 See, for example, *I.R.C. v. Hinchy*, [1960] A.C. 748 at 766 (H.L.), where Lord Reid refused to infer that different words in the *Income Tax Act* implied a different meaning given that in fiscal legislation "quite incongruous provisions are lumped together and it is impossible to suppose that anyone, draftsman or Parliament, ever considered one of these sections in light of another ...". See also *Tran v. Canada (Public Safety and Emergency Preparedness)*, [2017] S.C.J. No. 50, 2017 SCC 50 at para. 29 (S.C.C.); *R. v. Steele*, [2014] S.C.J. No. 61, [2014] 3 S.C.R. 138 at para. 65 (S.C.C.); *Newfoundland and Labrador Regional Council of Carpenters, Millwrights and Allied Workers, Local 579 v. Construction*

General Labourers, Rock and Tunnel Workers, Local 1208, [2003] N.J. No. 127, 2003 NLCA 24 at paras. 8-9 (N.L.C.A.).

5 See P.-A. Côté, in collaboration with Stéphane Beaulac & Mathieu Devinat, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Carswell, 2010) at 355.

6 See *R. v. Middleton*, [2009] S.C.J. No. 21, 2009 SCC 21 at paras. 14-16 (S.C.C.); *Jevco Insurance Co. v. Pilot Insurance Co.*, [2000] O.J. No. 2259, 49 O.R. (3d) 760 at 763 (Ont. S.C.J.); *Bapoo v. Co-operators General Insurance Co.*, [1997] O.J. No. 5055, 36 O.R. (3d) 616 at para. 28 (Ont. C.A.); *Coca Cola Ltd. v. Deputy Minister of National Revenue Customs and Excise*, [1983] A.C.F. no 143, [1984] 1 F.C. 447 at 454-456 (F.C.A.).

7 See *Marche v. Halifax Insurance Co.*, [2005] S.C.J. No. 7, [2005] 1 S.C.R. 47 at para. 18 (S.C.C.); *R. v. Sommers*, [1959] S.C.J. No. 49, [1959] S.C.R. 678 at 685 (S.C.C.).

8 [1990] S.C.J. No. 63, [1990] 2 S.C.R. 85 (S.C.C.). See also the strong dissenting judgment in *Canada (Attorney General) v. Savard*, [1996] Y.J. No. 4 (Y.T.C.A.), where Wood J.A. appreciated the consistent pattern found in the legislation but concluded, at para. 47*ff*, that the presumption of consistency must give way to the clear purpose of the legislature: “Where, as here, the application of the presumption of consistent expression would give rise to a result quite inconsistent with the apparent purpose or intention of Parliament, it ought to yield, as would a good servant, rather dominate as a master” (para. 60).

9 *Mitchell v. Peguis Indian Band*, [1990] S.C.J. No. 63, [1990] 2 S.C.R. 85 at 105-106 (S.C.C.).

10 *Mitchell v. Peguis Indian Band*, [1990] S.C.J. No. 63, [1990] 2 S.C.R. 85 at 107 (S.C.C.). For other examples where a word was given different meanings in the same section, see *Canadian Pacific Railway Co. v. Lac Pelletier (Rural Municipality)*, [1944] S.J. No. 66, [1944] 3 W.W.R. 637 (Sask. C.A.), and *Board v. Board*, [1919] A.C. 956 (P.C.).

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[1] Propositions underlying purposive analysis

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CHAPTER 9 Purposive Analysis

§ 9.01 Introduction

[1] Propositions underlying purposive analysis

A purposive analysis of legislative texts is based on the following propositions:

(1) All legislation is presumed to have a purpose. It is possible for courts to discover or adequately reconstruct this purpose through interpretation.

(2) Legislative purpose must be taken into account in every case and at every stage of interpretation, including initial determination of a text's meaning.

(3) In so far as the language of the text permits, interpretations that are consistent with or promote legislative purpose should be adopted, while interpretations that defeat or undermine legislative purpose should be avoided.

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[6] Program legislation

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CHAPTER 9 Purposive Analysis

§ 9.01 Introduction

[6] Program legislation

Program legislation is the type of legislation on which the modern administrative state is founded. It addresses social or economic problems by establishing programs of regulation or benefit distribution and creating departments or other agencies to administer them. In program legislation the starting point is not existing law, but an area of human activity to be regulated or a social problem to be tackled. First, the problem is defined; then long-range goals are formulated and the resources available for pursuit of those goals are assessed; finally a program is devised. At this point legislation is required to establish a legal basis for the program.

Most program legislation takes the form of a more or less self-contained statute setting out the goals of the program and establishing a legal framework within which delegated powers are exercised and reviewed. The statute may create new bodies or offices or confer new powers on existing ones. The powers may be legislative, administrative or judicial.

The delegation of power to the executive branch is the most striking feature of program legislation. In many programs, the executive is given a broad range of powers and becomes the primary interpreter of its own legislation. However, its exercise of power is subject to supervision by the courts. Rule-making is supervised through judicial review of the validity of delegated legislation while rule-application is supervised through judicial review of the decisions of officials and administrative tribunals.[1] In carrying out these supervisory functions, the courts must often interpret both the statute and delegated legislation made pursuant to the statute. However, even though courts have the final say, in program legislation they generally are not the primary interpreters and their role is often limited to reviewing the interpretations of others.

These distinctive features of program legislation have affected its interpretation in a number of ways:

- by drawing the focus away from the meaning of rules and their relation to the common law;
- by emphasizing the function of rules in relation to the scheme set out in the legislation and its ultimate goals;
- by enlarging the concept of purpose from the cure of specific defects in the common law to include broad social and economic policies and long-range goals; and
- by fostering the development of principles for judicial review, such as fairness and natural justice and more recently by adopting a presumption of reasonableness for determining the standard of review of administrative decision making.

As McIntyre J. wrote in *Maple Lodge Farms Ltd. v. Canada*,

> In construing statutes such as those under consideration in this appeal, which provide for far-reaching and frequently complicated administrative schemes, the judicial approach should be to endeavour within the scope of the legislation to

> give effect to its provisions so that the administrative agencies created may function effectively, as the legislature intended.... [T]he courts should wherever possible, avoid a narrow technical construction and endeavour to make effective the legislative intent as applied to the administrative scheme involved.[2]

More recently, in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, a majority of the Supreme Court of Canada wrote:

> Where a legislature has not explicitly prescribed that a court is to have a role in reviewing the decisions of that decision maker, it can safely be assumed that the legislature intended the administrative decision maker to function with a minimum of judicial interference.
>
> ... [W]henever a court reviews an administrative decision, it should start with the presumption that the applicable standard of review for all aspects of that decision will be reasonableness. While this presumption applies to the administrative decision maker's interpretation of its enabling statute, the presumption also applies more broadly to other aspects of its decision.[3]

Footnote(s)

1 For further discussion of the significance and distinctive features of program legislation, see F.P. Grad, "The Ascendancy of Legislation: Legal Problem Solving in Our Time" (1985) 9 Dalhousie L.J. 228; Edward Rubin, "Law and Legislation in the Administrative State" (1989) 89 Colum. L. Rev. 369. For a treatise on the appropriate approach to judicial review in the evolving administrative state, see Edward Rubin, *Beyond Camelot: Rethinking Politics and Law for the Modern State* (Princeton: Princeton University Press, 2005).

2 [1982] S.C.J. No. 57, [1982] 2 S.C.R. 2 at 7 (S.C.C.).

3 [2019] S.C.J. No. 65, 2019 SCC 65 at paras. 24-25 (S.C.C.).

[1] Governing principle

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CHAPTER 11 Coherence, Overlap and Conflict Resolution

§ 11.01 The Presumption of Coherence

[1] Governing principle

It is presumed that the provisions of legislation are meant to work together, both logically and teleologically, as parts of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal.[1]

The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by a legislature does not contain contradictions or inconsistencies, that each provision is capable of operating without coming into conflict with any other. As La Forest J. wrote in *Friends of Oldman River Society v. Canada (Minister of Transport)*:

> ... there is a presumption that the legislature did not intend to make or empower the making of contradictory enactments.[2]

In *Willick v. Willick*, Sopinka J. wrote:

> With respect to the application of the contextual approach, ... the objective is to interpret statutory provisions to harmonize the components of legislation inasmuch as is possible, in order to minimize internal inconsistency....[3]

Footnote(s)

1 *R. v. Jarvis*, [2019] S.C.J. No. 10, 2019 SCC 10 at para. 119 (S.C.C.); *Canadian Imperial Bank of Commerce v. Green*, [2015] S.C.J. No. 60, 2015 SCC 60 at para. 186 (S.C.C.); *R. v. L.T.H.*, [2008] S.C.J. No. 50, 2008 SCC 49 at para. 47 (S.C.C.); *Lorencz v. Talukdar*, [2020] S.J. No. 86, 2020 SKCA 28 at para. 54 (Sask. C.A.); *Canada v. Canada North Group Inc.*, 2019 ABCA 314 at paras. 27-28 (Alta. C.A.); *Onyskiw v. CJM Property Management Ltd.*, [2016] O.J. No. 3817, 2016 ONCA 477 at paras. 41-43, 51, 56 (Ont. C.A.).

2 [1992] S.C.J. No. 1, [1992] 1 S.C.R. 3 at 38 (S.C.C.). See also *Thibodeau v. Air Canada*, [2014] S.C.J. No. 67, 2014 SCC 67 at para. 89 (S.C.C.); *Murphy v. Welsh*, [1993] S.C.J. No. 83, [1993] 2 S.C.R. 1069 at 1079 (S.C.C.); *Diamond Estate v. Robbins*, [2006] N.J. No. 3 at paras. 49-50 (N.L.C.A.).

3 [1994] S.C.J. No. 94, [1994] 3 S.C.R. 670 at 689 (S.C.C.). See also *Tracy v. Iran (Information and Security)*, [2017] O.J. No. 3480, 2017 ONCA 549 at para. 34 (Ont. C.A.).

[1] Governing principle

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CHAPTER 13 The Act as a Whole, the Statute Book as a Whole and Related Legislation

§ 13.02 The Act as a Whole

[1] Governing principle

In *A.G. v. Prince Ernest Augustus of Hanover*, Viscount Simonds wrote:

> ... the elementary rule must be observed that no one should profess to understand any part of a statute or of any other document before he has read the whole of it. Until he has done so he is not entitled to say that it or any part of it is clear and unambiguous.[1]

In *Canada (Attorney General) v. Xuan*, Robertson J.A. wrote:

> ... a statutory word or expression can be fully grasped only in relation to the whole of which it is a constituent part.[2]

In *Greenshield v. The Queen*, Locke J. wrote:

> The broad general rule for the construction of statutes is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest.[3]

In *Burchill v. Canada*, speaking of the federal *Income Tax Act*, Stratas J.A. wrote:

> Subsection 56(1)(a)(i) does not stand in splendid isolation in the Act; rather, it is part of an interconnected, harmonious web of provisions.[4]

When words are read in their immediate context, the reader forms an initial impression of their meaning which is more, or less, clear and precise. The modern principle requires this initial impression to be tested against the inferences that may be drawn from considering other provisions of the Act, its components[5] and its overall scheme.

Footnote(s)

1 [1957] A.C. 436 at 463 (H.L.).

2 [1994] F.C.J. No. 76, [1994] 2 F.C. 348 at para. 13 (F.C.A.).

3 [1958] S.C.J. No. 12, [1958] S.C.R. 216 at 225 (S.C.C.). See also *Holt v. Saskatchewan Government Insurance*, [2018] S.J. No. 23, 2018 SKCA 7 at para. 53 (Sask. C.A.); *Hampson v. Department of Education and Science*, [1991] 1 A.C. 171 at 181 (H.L.).

4 [2010] F.C.J. No. 726, 2010 FCA 145 at para. 11 (F.C.A.).

5 Reliance on the components of an enactment is examined in Chapter 14.

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[4] The legislative scheme

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CHAPTER 13 The Act as a Whole, the Statute Book as a Whole and Related Legislation

§ 13.02 The Act as a Whole

[4] The legislative scheme

When analyzing the scheme of an Act, the court tries to discover how the provisions or parts of the Act work together to give effect to a plausible and coherent plan. It then considers how the provision to be interpreted can be understood in terms of that plan. The court's reasoning is described by Greschuk J. in *Melnychuk v. Heard*:

> The court must not only consider one section but all sections of an Act including the relation of one section to the other sections, the relation of a section to the general object intended to be secured by the Act, the importance of the section, the whole scope of the Act and the real intention of the enacting body.[1]

The fundamental presumption in scheme analysis is that most modern legislation is not just a series of rules. It typically includes a mix of interpretation provisions, application provisions, office- and institution-establishing provisions, power conferring provisions, dispute resolution provisions and transitional provisions as well as traditional prohibitions and entitlements, all of which are meant to operate together in a particular institutional setting.[2] The fundamental skill in scheme analysis is being able to grasp and explain the basic structure on which the Act is built and how the various parts and provisions were meant to function within this structure to achieve the desired goal, or more often, the desired mix of goals. Much modern regulatory legislation is lengthy and complex, and the schemes can be difficult to master. However, once mastered such schemes often point quite clearly to the interpretation that gives effect to the legislature's intentions.

In *Canadian Imperial Bank of Commerce v. 64576 Manitoba Ltd.*,[3] one of the issues was whether a landlord's right of distress was subject to Manitoba's *Personal Property Security Act* and therefore subject to the registration and perfection requirements imposed by the Act. Section 2 provided:

> 2. ... this Act applies
>
> (a) to every transaction ... that in substance creates a security interest.

Despite this broad wording, the Court found that the Act applied only to consensual security interests and since a landlord's right of distress is non-consensual, it did not have to be registered under the Act. The Court's reasoning included an analysis of the legislative scheme:

> ... one might question whether the legislature — irrespective of the precise wording used — really could have generally intended that non-consensual transactions be covered by the Act. The requirement of registering or perfecting such transactions does not seem to sit well with the scheme envisaged by the legislation: a lender contemplates making an advance; he checks the registry to see if there are any prior secured interests; he makes the advance and, at once, before

> other interests can intervene, he perfects his security; he has complete control over the situation and can protect himself. Non-consensual transactions ... may not arise until the happening of some event, the timing and the occurrence of which is not within the creditor's control. Of course, the right of distress is a good example because the landlord cannot perfect his security interest until the time of distress when it is likely that most other security interests would already have been in place and perfected....
>
> In my view, construing the Act as a whole, the better position is that it applies essentially to consensual transactions.[4]

The Court here set out in summary form the basic plan the Act was designed to implement and showed that the plan made little sense when applied to non-consensual transactions.

In *Knight v. Indian Head School Division No. 19*,[5] the Supreme Court of Canada had to determine whether, under *The Education Act* of Saskatchewan, a director of education could be dismissed without cause. The governing provision stated that a director's contract could be terminated by giving 30 days' notice. The Court of Appeal held that the positions of directors and teachers were of equal importance under the Act and since teachers could not be dismissed without cause, directors should be subject to the same policy. The Supreme Court of Canada took a different view. It found that under the scheme of the Act the positions of directors and teachers were meant to be different. Teachers were hired pursuant to a collective agreement and their dismissal was elaborately regulated under the Act. Directors, on the other hand, had individual contracts with the board of education and were free to negotiate their own terms. The Court concluded:

> This difference in statutory treatment between teachers and administrative personnel seems to indicate that the termination of employment of those two categories of employees was to be dealt with differently. Otherwise, why would the provisions relating to the termination of the employment of teachers not also include the administrative personnel?[6]

The conclusion of the Court is based on the presumption that the legislature creates general schemes that are rational, coherent and economical. If comparable matters are meant to receive the same treatment, they will be dealt with in identical or parallel fashion within the legislative scheme.

In *R. v. Finta*,[7] the Court was concerned with s. 7(3.71) of the *Criminal Code*, which provided that

> ... every person who ... commits an act or omission outside Canada that constitutes a war crime or a crime against humanity and that, if committed in Canada, would constitute an offence against the laws of Canada in force at the time of the act or omission shall be deemed to commit that act or omission in Canada at that time if [certain additional conditions are met].

One of the issues was whether this provision created new offences, one of war crimes and another of crimes against humanity, or simply extended the territorial jurisdiction of Canadian courts. La Forest J. held that the provision did not create new offences. In reaching this conclusion he relied on many factors, including the following scheme analysis:

> Found in Part I, the "General" section of the *Criminal Code*, s. 7 stands as an exception to the general rule regarding the territorial ambit of criminal law, which appears in the immediately preceding section. Section 6(2) of the Code reads:
>
> > ... no person shall be convicted ... of an offence committed outside Canada.
>
> ... The enactment of s. 7(3.71) was necessary because Parliament's plan derogated from the general principle of s. 6(2)....
>
> Similarly structured deeming provisions that also embrace extraterritorial acts are found among the other subsections of s. 7; see s. 7(3) in relation to offences committed against internationally protected persons or their property, s. 7(3.1) in relation to hostage-taking and s. 7(4) in relation to public service employee offenders. Similarly worded provisions are found in other parts of the Code, as well. Section 477.1 deems to be committed in Canada acts occurring in, above or beyond the continental shelf. A close parallel can be drawn with the conspiracy provision set forth in s. 465(3) of the Code....

[4] The legislative scheme

...

Parliament's intention to confine itself to a rule governing the application of offences is also evident from the position of s. 7(3.71) in the Code. It appears, I repeat, in Part I of the Code, which is appropriately titled "General". No offence is created in that Part. It deals, as its name implies, with interpretive matters, application, enforcement, defences and other general provisions. Offences are dealt with in other parts of the Code, and are usually entitled as such, among others "Part II. Offences Against Public Order", "Part VIII. Offences Against the Person and Reputation", "Part IX. Offences Against Rights of Property", and so on. One should assume some minimal level of ordering in an Act of Parliament. Had Parliament wished specifically to make war crimes and crimes against humanity domestic offences, it would have been much easier to do so directly, and I cannot imagine why it would have done so in the General Part of the Code.[8]

Although La Forest J. wrote a dissenting judgment, the reasoning in this passage is persuasive and illustrates the power of a well done scheme analysis.

Footnote(s)

1 [1963] A.J. No. 72, 45 W.W.R. 257 at 263 (Alta. S.C.). See also *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, [2021] F.C.J. No. 322, 2021 FCA 72 at paras. 46, 55 (F.C.A.). Note that in *Canada (Attorney General) v. JTI-Macdonald Corp*., [2007] S.C.J. No. 30, [2007] 2 S.C.R. 610 at para. 107 (S.C.C.), McLachlin C.J. made the point that a single (multi-provision) section can contain a scheme.

2 This description applies to program legislation and some — though not all — reform legislation. For the distinction between program and reform legislation, see Chapter 9, at §9.01[5]-9.01[6]. In *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, [2021] F.C.J. No. 322, 2021 FCA 72 (F.C.A.), the Court emphasized that the legislative scheme consisted not only of the provisions of the Act, but also the regulations made under the Act and administrative policies guiding the administration of the Act and regulations. See paras. 23*ff*.

3 [1990] M.J. No. 248, [1990] 5 W.W.R. 419 (Man. Q.B.), affd [1991] M.J. No. 32, [1991] 2 W.W.R. 323 (Man. C.A.).

4 *Canadian Imperial Bank of Commerce v. 64576 Manitoba Ltd.*, [1990] M.J. No. 248, [1990] 5 W.W.R. 419 at 430-431 (Man. Q.B.), affd [1991] M.J. No. 32, [1991] 2 W.W.R. 323 (Man. C.A.). See also *MiningWatch Canada v. Canada (Fisheries and Oceans)*, [2010] S.C.J. No. 2, 2010 SCC 2 at paras. 30-41 (S.C.C.); *Martin v. Vancouver (City)*, [2008] B.C.J. No. 823, 2008 BCCA 197 at paras. 57-61 (B.C.C.A.); *Gill v. Canada (Attorney General)*, [2010] F.C.J. No. 896, 2010 FCA 182 (F.C.A.).

5 [1990] S.C.J. No. 26, [1990] 1 S.C.R. 653 (S.C.C.).

6 *Knight v. Indian Head School Division No. 19*, [1990] S.C.J. No. 26, [1990] 1 S.C.R. 653 at 665. See also the dissenting judgment of Deschamps J. in *Société de l'assurance automobile du Québec v. Cyr*, [2008] S.C.J. No. 13, [2008] 1 S.C.R. 338 at para. 57*ff* (S.C.C.); *M. (M.) v. B. (T.)*, [2017] B.C.J. No. 1556, 2017 BCCA 296 at paras. 62*ff* (B.C.C.A.); *Aviva Insurance Company of Canada v. McKeown*, [2017] O.J. No. 3482, 2017 ONCA 563 at paras. 45*ff* (Ont. C.A.).

7 [1994] S.C.J. No. 26, [1994] 1 S.C.R. 701 (S.C.C.).

8 *R. v. Finta*, [1994] S.C.J. No. 26, [1994] 1 S.C.R. 701 at paras. 32-35 (S.C.C.). For other examples of interpretation based in whole or in part on scheme analysis, see *Delta Air Lines Inc. v. Lukács*, [2018] S.C.J. No. 2, 2018 SCC 2, [2018] 1 S.C.R. 6 at paras. 19-20 (S.C.C.); *R. v. Craig*, [2009] S.C.J .No. 23, 2009 SCC 23 at paras. 43-45 (S.C.C.); *Société de l'assurance automobile du Québec v. Cyr*, [2008] S.C.J. No. 13, [2008] 1 S.C.R. 338 at para. 56*ff* (S.C.C.); *Charlebois v. Saint John (City)*, [2005] S.C.J. No. 77, [2005] 3 S.C.R. 563 at para. 16*ff* (S.C.C.); *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, [2004] S.C.J. No. 51, [2004] 3 S.C.R. 152 at para. 27*ff* (S.C.C.); *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] S.C.J. No. 1, [2002] 1 S.C.R. 84 at para. 60*ff* (S.C.C.); *Opetchesaht Indian Band v. Canada*, [1997] S.C.J. No. 50, [1997] 2 S.C.R. 119 (S.C.C.); *R. v. Hydro-Québec*, [1997] S.C.J. No. 76, [1997] 3 S.C.R. 213 at paras. 134-146, 149, 156 (S.C.C.); *R. v. Bernshaw*, [1994] S.C.J. No. 87, [1995] 1 S.C.R. 254 at 271-272 (S.C.C.); *R. v. Chartrand*, [1994] S.C.J. No. 67, [1994] 2 S.C.R. 864 at para. 31 (S.C.C.); *R. v. Deruelle*, [1992] S.C.J. No. 69, [1992] 2 S.C.R. 663 (S.C.C.); *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] S.C.J. No. 13, [1992] 1 S.C.R. 385 (S.C.C.); *R. v. Thompson*, [1990] S.C.J. No. 104, [1990] 2

S.C.R. 1111 at 609, 611-612 (S.C.C.), *per* La Forest dissenting; *Waldick v. Malcolm*, [1991] S.C.J. No. 55, [1991] 2 S.C.R. 456 (S.C.C.); *Mitchell v. Peguis Indian Band*, [1990] S.C.J. No. 63, [1990] 2 S.C.R. 85 at 130-134 (S.C.C.).

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[2] Governing principle

The Construction of Statutes, 7th Ed.

Ruth Sullivan

CHAPTER 13 The Act as a Whole, the Statute Book as a Whole and Related Legislation

§ 13.04 Related Legislation

[2] Governing principle

Statutes enacted by a legislature that deal with the same subject are presumed to be drafted with one another in mind, so as to offer a coherent and consistent treatment of the subject. The governing principle was stated by Lord Mansfield in *R. v. Loxdale*:

> Where there are different statutes *in pari materia* though made at different times, or even expired, and not referring to each other, they shall be taken and construed together, as one system, and as explanatory of each other.[1]

In *Point-Claire (City) v. Quebec (Labour Court)*, Lamer C.J. wrote:

> There is no doubt that the principle that statutes dealing with similar subjects must be presumed to be coherent means that interpretations favouring harmony among statutes should prevail over discordant ones....[2]

In *Euro-Excellence Inc. v. Kraft Canada Inc.*, after referring to "the principle of statutory interpretation that requires coherent interpretation of statutes *in pari materia*," Bastarache J. wrote:

> According to this principle, the *Copyright Act* ought not only to be interpreted with an eye to the internal coherence of its own scheme; it must also not be interpreted in a fashion which is inconsistent with the *Trade-marks Act*....[3]

The provisions of related legislation are read in the context of the others and the presumptions of coherence and consistent expression apply as if the provisions of these statutes were part of a single Act. Definitions in one statute are taken to apply in the others and any purpose statements in the statutes are read together.[4]

In referring to two or more statutes on the same subject the courts rarely inquire which statute was enacted first. When the issue does arise, however, it sometimes causes confusion. The correct view is that previously enacted legislation may be considered and relied on in the same manner and to the same degree as subsequently enacted legislation — and vice versa.[5]

Footnote(s)

1 (1758), 1 Burr. 445 at 447, 97 E.R. 394. See also *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd*., [2011] S.C.J. No. 23, 2011 SCC 23 at para. 117 (S.C.C.).

2 [1997] S.C.J. No. 41, [1997] 1 S.C.R. 1015 (S.C.C.).

3 [2007] S.C.J. No. 37, 2007 SCC 37 at para. 83 (S.C.C.). See also *Reference re Broadcasting Regulatory Policy CRTC 2010 167 and Broadcasting Order CRTC 2010 168*, [2012] S.C.J. No. 68, 2012 SCC 68 at para. 34-39 (S.C.C.);

Sharbern Holding Inc. v. Vancouver Airport Centre Ltd., [2011] S.C.J. No. 23, 2011 SCC 23 at para. 117 (S.C.C.); *R. v. Ulybel Enterprises Ltd.*, [2001] S.C.J. No. 55, 2001 SCC 56 at paras. 50-51 (S.C.C.); *Nova, an Alberta Corp. v. Amoco Canada Petroleum Co.*, [1981] S.C.J. No. 92, [1981] 2 S.C.R. 437 at 448-449 (S.C.C.); *Schmidt v. Canada (Attorney General)*, [2018] F.C.J. No. 315, 2018 FCA 55 at paras. 16, 74 (F.C.A.), leave to appeal refused [2018] S.C.C.A. 253 (S.C.C.); *Keewatin v. Ontario (Minister of Natural Resources)*, [2013] O.J. No. 1138, 2013 ONCA 158 at para. 194 (Ont. C.A.); *Thunderbird Holdings Ltd. v. Manitoba*, [2013] M.J. No. 292, 2013 MBCA 78 at para. 91 (Man. C.A.); *Fishing Lake Metis Settlement v. Metis Settlements Appeal Tribunal Land Access Panel*, [2003] A.J. No. 563, 15 Alta. L.R. (4th) 8 at 36 (Alta. C.A.); *Armbrust v. Ferguson*, [2001] S.J. No. 703, 2001 SKCA 122 at para. 39*ff* (Sask. C.A.); *Giant Grosmont Petroleums Ltd. v. Gulf Canada Resources Ltd*., [2001] A.J. No. 864, 2001 ABCA 174 at paras. 21-22 (Alta. C.A.).

4 *Highlands District Community Assn. v. British Columbia (Attorney General)*, [2021] B.C.J. No. 1284, 2021 BCCA 232 at paras. 42-43 (B.C.C.A.).

5 *Township of Goulbourn v. Ottawa-Carleton (Regional Municipality)*, [1979] S.C.J. No. 118, [1980] 1 S.C.R. 496, 101 D.L.R. (3d) 1 at 15-16 (S.C.C.); *Hayes v. Mayhood*, [1959] S.C.J. No. 36, [1959] S.C.R. 568,18 D.L.R. (2d) 497 at 504 (S.C.C.). But see *Society of Notaries Public of British Columbia v. Law Society of British Columbia*, [2017] B.C.J. No. 2617, 2017 BCCA 448 (B.C.C.A.), where the Court focused on related statutes in existence at the time the *Notaries Act* was enacted and (at para. 32) considered the legislation that subsequently replaced those statutes to be “not directly relevant”.

End of Document

[5] Coherence of related statutes

The Construction of Statutes, 7th Ed.

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The Construction of Statutes, 7th Ed. (Sullivan) > CHAPTER 13 The Act as a Whole, the Statute Book as a Whole and Related Legislation > § 13.04 Related Legislation

CHAPTER 13 The Act as a Whole, the Statute Book as a Whole and Related Legislation

§ 13.04 Related Legislation

[5] Coherence of related statutes

In the context of related statutes, the presumption of coherence is relied on not only to ensure consistency, but also as a basis for drawing inferences about legislative intent. In *Maurice v. Priel*,[1] for example, the Supreme Court of Canada relied on selected provisions from the *Judges Act*, the *Legal Profession Act* and the Rules of the Law Society of Saskatchewan to conclude that judges are not members of the provincial Law Society. Although the matter was nowhere dealt with expressly, it was clear that these various provisions were all drafted on the assumption that judges could not be members.[2] An assumption that might have been tenuous in the context of the *Legal Profession Act* alone was strengthened by its presence in the *Judges Act* and to a lesser extent by its presence in the Rules.

Footnote(s)

1 [1989] S.C.J. No. 37, [1989] 1 S.C.R. 1023 (S.C.C.).

2 See *Maurice v. Priel*, [1989] S.C.J. No. 37, [1989] 1 S.C.R. 1023 at paras. 11-13 (S.C.C.). See also *R. v. Ulybel Enterprises Ltd.*, [2001] S.C.J. No. 55, 2001 SCC 56 at paras. 50-53 (S.C.C.); *R. v. Knoblauch*, [2000] S.C.J. No. 59, [2000] 2 S.C.R. 780 at paras. 37-39, 109 (S.C.C.); *Cowichan Valley (Regional District) v. Cobble Hill Holdings Ltd.*, [2016] B.C.J. No. 2269, 2016 BCCA 432 at para. 67 (B.C.C.A.); *Gander (Town Council) v. Gander Aerospace Manufacturing Inc.*, [2015] N.J. No. 352, 2015 NLCA 50 at paras. 12-18 (N.L.C.A.); *Elgie v. Alberta (Workers' Compensation, Appeals Commission)*, [2009] A.J. No. 899, 2009 ABCA 277 at paras. 44-45 (Alta. C.A.); *Macdonald Estate v. British Columbia (Public Guardian and Trustee)*, [2003] B.C.J. No. 1908, 2003 BCCA 428 at paras. 47*ff* (B.C.C.A.).

[1] Introduction

The Construction of Statutes, 7th Ed.

Ruth Sullivan

CHAPTER 13 The Act as a Whole, the Statute Book as a Whole and Related Legislation

§ 13.05 The Statute Book as a Whole

[1] Introduction

The presumptions on which statutory interpretation is based apply not only to single Acts and related Acts but also, with lesser force in most cases, to the "statute book as a whole". This refers to the entire body of legislation on the books of a jurisdiction at a given time. It includes law that has been enacted, but not yet come into force; it does not include repealed law. The legislature is presumed to know its own statute book and to draft each new provision with regard to the structures, conventions and habits of expression as well as the substantive law embodied in existing legislation.[1]

Similarities or differences in the way different statutes are drafted can thus affect the way they are interpreted, whether or not they deal with the same subject. This approach has been justified in Canada by the practice of undertaking regular general statute revisions, which afford an opportunity to standardize legislative conventions and style and to ensure a consistent approach to recurring matters.[2] The greater the period since the last statute revision, the less reliable are the inferences that can be drawn from similarities and differences in drafting.

Footnote(s)

1 *R. v. Ulybel Enterprises Ltd.*, [2001] S.C.J. No. 55, 2001 SCC 56 at paras. 30, 50-51 (S.C.C.); *65302 British Columbia Ltd. v. Canada*, [1999] S.C.J. No. 69, [1999] 3 S.C.R. 804 at paras. 7-8 (S.C.C.).

2 Statute revisions are driven by the need for both consolidation and standardization. As jurisdictions move away from the practice of publishing annual volumes supplemented by periodic general revisions to the practice of publishing ongoing consolidations, the first need is met. It remains to be seen how jurisdictions will deal with the second need. Part V of Ontario's *Legislation Act*, S.O 2006, c. 21, could serve as a model. It confers a broad power on the Chief Legislative Counsel to make non-substantive changes to Ontario's consolidated law (the on-line version is official) to ensure consistency across the statute book.

§ 13.08 Weight of Presumptions Respecting Related Legislation

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CHAPTER 13 The Act as a Whole, the Statute Book as a Whole and Related Legislation

§ 13.08 Weight of Presumptions Respecting Related Legislation

Like all the so-called rules of statutory interpretation, the ones respecting the use of related legislation operate as presumptions and are rebutted by sufficient evidence of a contrary legislative intent. As Duff J. wrote in *Miln-Bingham Printing Co. v. Canada*,

> No doubt, for the purpose of ascertaining the meaning of any given word in a statute, the usage of that word in other statutes may be looked at, especially if the other statutes happen to be *in pari materia*, but it is altogether a fallacy to suppose that because two statutes are *in pari materia*, a definition clause in one can be bodily transferred to the other.[1]

Some courts have been inclined to give presumptions respecting the use of related legislation only modest weight. In *Township of Goulbourn v. Regional Municipality of Ottawa Carleton*, for example, Estey J. wrote:

> A comparison of like statutes enacted by the same Legislature is at most of peripheral assistance in determining the proper interpretation of the statute before the Court.[2]

Other courts have preferred a more nuanced approach in which the importance attached to related statutes depends on a variety of factors: how closely the statutes are related,[3] the extent to which their language tracks one another,[4] whether they were enacted around the same time; whether they target the same mischief[5] and so on. In *Janzen v. Platy Enterprises Ltd.*,[6] for example, Dickson C.J. emphasized the importance of the related statutes having a similar purpose and structure. In *Re Canada Labour Code*, evidence that the legislature actually examined and relied on the related legislation was considered important.[7] In cases like *Boros*,[8] where the Court relies on the legislature's departure from an established pattern, a key factor will be how consistent and well-established the pattern is. And in cases like *Morguard Properties*,[9] where the Court relies on cross-jurisdictional comparison, much will depend on the nature and extent of the commonalities between the two jurisdictions.

Footnote(s)

1 [1930] S.C.J. No. 7, [1930] S.C.R. 282 at 283 (S.C.C.), cited by Rothstein J.A. dissenting in *Marinos v. Canada (Treasury Board)*, [2000] F.C.J. No. 446, 186 D.L.R. (4th) 517 at para. 64 (F.C.A.) and by Cummings J.A. dissenting in *Claridge Development (Hawthorne) Ltd. v. British Columbia*, [2000] B.C.J. No. 621, 2000 BCCA 104 at para. 20 (B.C.C.A.). See also *United Food & Commercial Workers Union, Local 1518 v. Sunrise Poultry Processors Ltd*., [2015] B.C.J. No. 1713, 2015 BCCA 354 at paras. 80-83 (B.C.C.A.); *O.K. Economy Stores v. Retail Wholesale and Department Store Union, Local 454*, [1994] S.J. No. 437, 118 D.L.R. (4th) 345 at para. 63 (Sask. C.A.).

2 [1979] S.C.J. No. 118, [1980] 1 S.C.R. 496, 101 D.L.R. (3d) 1 at 15 (S.C.C.). See also *B.C. Development Corp. v. Friedmann (Ombudsman) and Attorney General for B.C.*, [1984] S.C.J. No. 50, [1984] 2 S.C.R. 447 at 468 (S.C.C.);

Miln-Bingham Printing Co. v. The King, [1930] S.C.J. No. 7, [1930] S.C.R. 282 at 283 (S.C.C.); *Students' Union, University of Alberta v. University of Alberta*, [1990] A.J. No. 122, 67 D.L.R. (4th) 593 at 595 (Alta. C.A.).

3 In *R. v. Croft*, [1979] N.S.J. No. 810, 35 N.S.R. (2d) 344 at 350 (N.S.C.A.), for example, MacDonald J.A. refused to rely on cases interpreting non-penal legislation because the provision he was concerned with was penal.

4 See, for example, *Waldick v. Malcolm*, [1991] S.C.J. No. 55, [1991] 2 S.C.R. 456, 125 N.R. 372, at 395-396 (S.C.C.).

5 See, for example, *Canadian Pacific Airlines Ltd. v. British Columbia*, [1989] S.C.J. No. 43, [1989] 1 S.C.R. 1133, 59 D.L.R. (4th) 218, at 230-231 (S.C.C.).

6 [1989] S.C.J. No. 41, [1989] 1 S.C.R. 1252, 59 D.L.R. (4th) 352 (S.C.C.).

7 [1992] S.C.J. No. 49, [1992] 2 S.C.R. 50 at 105-106 (S.C.C.), *per* Cory J., dissenting on another point.

8 [1985] S.J. No. 913, 24 D.L.R. (4th) 628 (Sask. C.A.).

9 [1983] S.C.J. No. 84, [1983] 2 S.C.R. 493 (S.C.C.).

BRIEFING BOOK
An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts

Bill Clause No.	Section No.	Topic
1	1	SHORT TITLE

Proposed Wording

1. This Act may be cited as the *Wage Earner Protection Program Act.*

Rationale

This provision provides the short title of the Act.

Present Law

Not applicable.

BRIEFING BOOK
An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts

Bill Clause No.	Section No.	Topic
1	6	ELIGIBILITY FOR PAYMENTS

Proposed Wording

6. (1) An individual is ineligible to receive a payment if, at the date of his or her former employer's bankruptcy, or the first day on which there was a receiver in relation to the former employer, the individual had been employed by the former employer for a period of three months or less or, in relation to any category of wage earners specified by the regulations, any shorter period specified in the regulations.

(2) An individual is ineligible to receive a payment in respect of any wages earned during a period in which the individual

(*a*) was an officer or a director of the former employer;

(*b*) had a controlling interest, within the meaning of the regulations, in the business of the former employer; or

(a) occupied a managerial position, within the meaning of the regulations, with the former employer.

Rationale

Excluding employees with less than three months' experience:

Section 6(1), which restricts the eligibility of workers with less than three months' experience, is designed to address potential abuse of the program. Employers may hire workers in the period leading up to their insolvency without intending to pay those workers, on the understanding that the WEPP would pay them. However, provisions can be made through regulations to exempt certain workers in special circumstances, particularly workers with limited (or determinant) tenure – such as seasonal workers, temporary workers or students – from the three month restriction. This strikes a balance between the need to deter abuse of the program and the need to be flexible to meet the needs of workers in a variety of situations. For a discussion of the policy intent that will inform this regulation, please refer to the discussion of section 41(1)(c) of the WEPP Act, below.

Excluding corporate directors, "controlling" owners and certain managers:

Section 6(2) is intended to prevent abuse of the WEPP by excluding individuals from receiving WEPP payments who (i) would have had privileged information on the financial situation of the company and who may forego payments for themselves knowing they would receive payment from the WEPP; and/or (ii) bear responsibility for the insolvency of the business. These individuals are ineligible as it would be perverse to compensate individuals who bear responsibility for the insolvency of the business and who may be responsible for incurring liabilities for unpaid wages (which constitutes a violation of labour or employment standards legislation in all jurisdictions).

Present Law

Not applicable.

BRIEFING BOOK
An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts

Bill Clause No.	Section No.	Topic
1	36	FINANCIAL PROVISIONS

Proposed Wording

36. (1) If a payment is made under this Act to an individual in respect of unpaid wages, Her Majesty in right of Canada is, to the extent of the amount of the payment, subrogated to any rights the individual may have in respect of those unpaid wages against

(*a*) the bankrupt or insolvent employer; and

(*b*) if the bankrupt or insolvent employer is a corporation, a director of the corporation.

(2) For the purposes of subsection (1), Her Majesty in right of Canada may maintain an action against a bankrupt or insolvent employer, or a director, either in the name of the individual referred to in that subsection or in the name of Her Majesty in right of Canada.

Rationale

This provision requires an individual who receives a payment from the WEPP to sign over his or her claim as a creditor against the bankrupt or insolvent employer's estate to the government, *up to the amount of the payment that he or she receives from the WEPP.* If the unpaid wage earner is owed any amounts not covered by the WEPP payment (e.g. for wage claims over and above the $3,000 limit, or for severance and termination pay), he or she can still submit a proof of claim against the employer's estate, or pursue payment from corporate directors (in jurisdictions in which corporate or labour laws hold corporate directors personally liable for those amounts).

This provision allows the Government of Canada to:

Recover pay-outs from the Program:

The WEPP will recover pay-outs as fully as possible by making claims against the bankrupt employer's estate in the place of the wage earner. This Bill (clause 67, sections 81.3 and 81.4) proposes a "limited super priority" in the BIA that will cover bankruptcies and receiverships. The limited super priority will allow unpaid wage claims, up to $2,000, to be paid out of the proceeds of current assets (including inventory, accounts receivable and cash on hand), ahead of secured creditors. Furthermore, the existing “preferred creditor” status – set out under section 136(1)(d) – will remain for any amounts owing, under the $2,000 cap, that were not satisfied through the current assets (if there are any “fixed” assets left after the claims of secured creditors and the claims of “preferred creditors” that take priority over unpaid wage claims). With the new limited super priority, combined with the existing preferred creditor status of unpaid wage claims, it is estimated that the Government will be able to recover up to half of unpaid wage claims.

Deter strategic behaviour on the part of employers:

This provision will deter strategic behaviour on the part of employers (i.e. the “moral hazard”) who may forego paying wages in the period leading to bankruptcy on the understanding that payment would be forthcoming from the WEPP. The deterrent is provided through s. 36(1)(b) and 36(2), which allow the Government of Canada to assume the rights of unpaid employees against the directors of insolvent companies under existing provisions in labour and corporate statutes. The threat of a legal action from the federal government to recover unpaid wages will provide a strong incentive for corporate directors to take steps to ensure that the business does not default on its obligation to pay wages as they become due.

Encourage secured lenders to monitor payment of wages:

The limited super priority will provide an incentive for employers to meet their payroll obligations, which will prevent abuse of the Program. The limited super priority will give unpaid wage claims (up to $2,000) priority ahead of secured creditors on current assets. Secured lenders will therefore monitor employers to ensure that they will meet their payroll obligations, as any amounts for unpaid wages that accumulate will reduce the amount that those creditors can realize from the current assets.

Present Law

Not applicable.

House of Commons
CANADA

Standing Committee on Industry, Natural Resources, Science and Technology

INDU • NUMBER 060 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Tuesday, November 1, 2005

Chair

Mr. Brent St. Denis

In most cases that we studied—and we tried to do a sampling of recent prominent bankruptcies—there were enough assets left over to make all the employees' pensions whole and for the banks, being next in line, to get their stuff too...you know, that there is enough assets, when you count real estate, to go around. When you reverse that and put the employees at the bottom, there's never enough left over for wages. We rank dead last. Somehow, Canadians rank dead last and everybody else gets their stuff first.

That's what's upside down here. When you talk about the House of Commons, which is supposed to be advocating on behalf of the little guys—

Hon. Marlene Jennings: Mr. Martin, I don't mean to interrupt, but I only have two minutes.

Is your answer that you're not aware of, or you haven't looked at, other jurisdictions to see whether there's legislation under their bankruptcy system?

Mr. Pat Martin: I can't remember, Marlene, whether we did this or not. I'd have to look deeper into my files.

Hon. Marlene Jennings: Could you check into whether you have that information?

Mr. Pat Martin: I'd be happy to.

Hon. Marlene Jennings: Thank you.

The Chair: Thank you, Marlene, and Pat.

[*Translation*]

Mr. Vincent will have the last word on the subject.

Mr. Robert Vincent (Shefford, BQ): Thank you. I'm delighted to have the last word. That isn't always the case, so I'd better use this opportunity to my advantage.

I listened to your arguments and I'd like to focus on the responsibilities of managers and on bringing legal action against them. I liked what I heard. However, not every worker has the means to bring legal action against their manager. However, maybe unions could take legal action.

Furthermore, some caution is in order when we speak about banks. Often, businesses that have existed for over 10, 15 or 20 years are the ones that have a pension fund for their workers, not SMEs that are just starting up. Moreover, banks are not required to lose money. Given the billions in profit that they make, they have some leeway between loans and... However, they will continue to lend money because they make profits on the interest they charge. Otherwise, they would not make any money. I'm convinced that they will stay the course, and take more risks.

I also agree with the principle of the bill whereby no worker should lose money in a business. Workers are not there to lose money. They are there to give of their time and to be remunerated for their performance at the plant. All collective agreements provide for severance pay of some kind. However, I see no mention of severance pay in your bill.

Could severance provisions be included in the bill?

[*English*]

The Chair: Pat, I'll get you to wind this up.

Mr. Pat Martin: Thank you for that question.

My bill in fact does contemplate back wages, benefits, severance pay, termination pay, and pensions. Bill C-55, which you'll be dealing with next, doesn't allow for severance pay or termination pay, only back wages and holiday pay. In Bill C-281 we do recognize that termination pay and severance pay should be considered part of your wage package as well and be contemplated under the definition of wages. The next bill you'll deal with, Bill C-55, doesn't. I think that's a major shortfall in it.

The Chair: Thank you, Pat. Merci, Robert. Excellent, colleagues. Thank you for your cooperation.

We are going to thank Mr. Martin for presenting his bill, and we're going to suspend for two minutes to allow Minister Fontana and his officials to come to the table, and the parliamentary secretary to Minister Emerson and his officials to come to the table as well. So we're suspended for two minutes.

● (0939)

(Pause)

● (0941)

The Chair: Thank you, everyone.

We're going to reconvene our November 1 meeting of the Standing Committee on Industry, Natural Resources, Science, and Technology. We are commencing a study of Bill C-55, which is a bill covering bankruptcy and insolvency that includes measures for wage earner protection.

This portion of the meeting could effectively be seen as having two key elements, colleagues. We'll start with and welcome Monsieur Fontana.

Thank you for being here this morning. We'll start with your presentation of five, six, or seven minutes. It is a briefing more than anything else this morning. Immediately after you, we'll ask Mr. Pickard to do a presentation on the non-wage earner protection features of Bill C-55, and then we'll try to get in as many succinct questions as we can.

With that, I welcome you and invite you to start. Mr. Fontana.

Hon. Joe Fontana (Minister of Labour and Housing): Thank you, Mr. Chair and *chers collègues*. It's a pleasure to be here this morning.

At the outset, let me thank you for your general support for Bill C-55 and thank Pat Martin for his contribution, not only through his private member's bill but through some of the very important issues.

I also understand that as you hear testimony over the next number of days and weeks, you will in fact come forward with, hopefully, constructive ways of how to improve this piece of legislation. We always like to think that we've got it right, but there's no doubt that, based on your hard work, we will be able to move forward in a very constructive way. So let me at the outset indicate that I look forward to your input and to your willingness to try to improve a very good piece of legislation.

I believe this is indeed a very special program, one that is designed to improve the situation for workers and that will in fact touch a great many people. It is a program we are very proud of, and you should all be very proud in the sense that you have all been very supportive.

The wage earner protection program, or WEPP, as we will call it, was developed because of a broad consensus that the situation confronting unpaid workers is unfair and that the insolvency system presently needs to be rebalanced to protect workers more fully. We have heard from labour unions, the insolvency community, and the lending community on the need to take steps to improve the protection of workers because they are truly the most vulnerable party in a bankruptcy. Unlike other creditors, they cannot diversify their risks, and they never agreed to become lenders to their employers in the first place. Bill C-55 provides a comprehensive and balanced approach that deals with this issue and addresses the needs of unpaid workers in two ways.

First, the bill contains the Wage Earner Protection Program Act, which will establish a new program to protect the wages and vacation pay of workers. The act will apply when employers enter bankruptcy or are subject to receivership under the Bankruptcy and Insolvency Act up to a cap of $3,000.

Second, the bill establishes a way the government can recover some of the amount paid out to workers from the insolvent estate under WEPP. That is, the Bankruptcy and Insolvency Act creates a limited super priority for unpaid wage claims up to $2,000—but more on that a little later.

First, I would like to point out the key features of this legislation—why there is a need to improve wage protection—and then I'll explain the operation of the program, how it would be funded and how it would operate.

But why do we need such legislation? The short answer is that workers fare badly under our current system. Each year between 15% and 30% of business bankruptcies include unpaid wage claims. That means about 10,000 to 15,000 workers each year are left without some of their wages due to their employer's bankruptcy. Of those workers, we estimate that 75% receive zero, nothing. Overall, workers recover an average of only 13¢ per dollar of the unpaid wages owed to them. It can sometimes take up to three years to see that money—13¢ on the dollar and workers having to wait three years to get that measly amount of money.

It is the most vulnerable workers who are affected, because many business bankruptcies occur in retail, food, or personal service sectors, sectors with low-paying jobs, precarious employment relationships, and little or no benefits whatsoever. It is the role of government, we believe, to provide protection for the most vulnerable in our society and to ensure basic fairness in our economic system. That is why the wage earner protection program is proposed, and that is why the source of funding is the general revenue fund.

Costs for the administration and payout of the program are estimated at about $30 million per year, and in the event of a dramatic increase in the number of bankruptcies it could go as high as $50 million per year. The money will come from the general revenue fund; however, about half of the cost of the wage earner protection program payouts could be recovered, and I will get into that a little later.

The limited super priority provision of the insolvency legislation will make more assets from bankruptcy available for employees' wage claims. Let me explain how this will work.

● (0945)

When individuals apply to WEPP, they will sign over their claim against a bankrupt or insolvent employer to the Government of Canada, up to a maximum of $3,000. This will allow the government to take the place of the worker in recovering, to the extent possible from the bankrupt estate, the wages that were paid out under WEPP. The limited super priority in the Bankruptcy and Insolvency Act will ensure that employees' unpaid wages up to $2,000 will receive first priority—emphasis on “first priority”—ahead of secured creditors on the current assets of the bankrupt estate, which includes cash, accounts receivable, and inventory. So government, in taking the place of the employee as the first priority over liquid assets of the estate, will be able to recover the amount it has paid out in the WEPP claim, up to a maximum of $2,000 for each of the claims. The super priority accorded to wage claims in the BIA is limited to $2,000 to diminish the impact on the lending community. It is to provide that balance. We must achieve an appropriate balance between the interests of various creditors. We do not want to reduce assets to credit for small business.

Now I'd like to describe how the program will operate. The WEPP will be delivered in an efficient and cost-effective manner through the new Service Canada agency. The application process will be straightforward, building upon existing systems. The wage earner could use one of three points of contact. First, Service Canada officers would be able to alert any unpaid worker about WEPP and the application process, and when applying for EI benefits, individuals must indicate on their application why they lost their job. Indicating bankruptcy could lead applicants to the wage earner protection program.

Second, depending upon the jurisdiction, federal or provincial labour standards officers would assist a worker in filing a complaint for unpaid wages, normally during the time leading up to the insolvency, or to make a wage claim to the bankruptcy trustee. Because labour laws in every jurisdiction in Canada provide recourse for unpaid wage earners and the tools to recover the wages owing, the trustee or receiver who is in possession of their employer's property would inform the employees whether and how they could recover their wages owing.

Finally, WEPP establishes that bankruptcy trustees and receivers have a duty to inform unpaid wage earners of their prospective eligibility. Any of these points of contact would refer the employee to the application process. The claimant would then apply for payment to the program administration. The claims process can therefore be undertaken relatively quickly so that the workers can receive payment of their wages quickly, anticipated to be within six weeks of filing. The program administration will then review each application, determine whether the applicant is eligible and the amount of the entitlement, and authorize payment to the unpaid earner directly from the consolidated revenue fund. Individuals who are eligible for WEPP will receive payments of wages and vacation pay owing up to $3,000.

It is estimated that the $3,000 cap—and I know there has been some question as to why the cap is at $3,000—is sufficient to pay up to 97% of the claims for unpaid wages in full. Also, the WEPP claimant who is unsatisfied with the determination of the program can request and review the application—in other words, there's an appeal procedure in place.

Honourable committee members, this is a summary of how the program would operate. Of course it would take some time to get this system fully operational, and manual systems would be needed in the beginning. This program is designed to treat workers differently from other parties because they are different. Workers are the most vulnerable party in an insolvency, and they deserve their hard-earned wages. Wages are not—are not—a loan to the employer.

The costs of the program are not excessive and are indeed shared among the government, employers' estates, the lending market, and other creditors to the estate. Overall costs to the government are capped and are predictable, but the losses to the lending market are also within predictable levels because of the cap on the wage claims and the super priority that covers only the liquid assets. We believe that this is a fair and balanced program and hope the committee can finally support it.

Before concluding, I would also like to highlight important changes that I think are important. In my capacity as Minister of Labour and Housing, I've been aware that there has been considerable concern expressed in the labour relations community over the way that collective agreements have been treated in certain jurisdictions. Consistent with the philosophy behind the WEPP, the bill treats employees as a special class of creditor, deserving of additional protection. Accordingly, the proposed amendments require that an insolvent employer will have to meet a stringent test in order to persuade a judge to grant the employer leave to serve a notice to bargain under the relevant labour legislation.

● (0950)

If leave were granted to both parties, the union and the insolvent employer would be subject to a requirement to bargain in good faith over possible amendments to any existing collective agreement. Should the parties be unable—and I want to repeat, unable—to reach an agreement on such amendments, then the existing collective agreement would remain in place and could not be changed by the courts. Should the parties reach an agreement on concessions, then the bargaining agent would become an unsecured creditor for an amount equal to the value of those concessions.

Mr. Chairman, these amendments to the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act have been developed with the intention of creating a fair and balanced regime for the conduct of labour-management relations in an insolvency situation and to ensure appropriate protection for all employees.

Thank you very much, Mr. Chairman.

The Chair: Minister, just before I invite Mr. Pickard to continue, I would just advise members that this part of the meeting is being televised.

For the benefit of viewers, there are two presentations, because Bill C-55 has generally two major sections. One is the wage earner protection, which Mr. Fontana is dealing with, and the other is all other provisions in the changes to bankruptcy and insolvency measures, which Mr. Pickard will deal with.

Jerry, I invite you to make a presentation.

Hon. Jerry Pickard: Thank you very much, Mr. Chair.

I'm really pleased to be here today to represent Minister Emerson. He passes his apologies for being unable to be here today because of cabinet commitments.

This bill is a very important one. It's an important one in the fact that it is striving to create balance between what wage earners should have and how we can protect the system and make sure the lending institutions move forward in appropriate ways.

The bill really deals with amendments to the proposed Wage Earner Protection Program Act and to the Bankruptcy and Insolvency Act and Companies' Creditors Arrangement Act, and makes consequential amendments to other acts.

This bill proposes a comprehensive reform to Canada's insolvency system. It contains substantive amendments to our two main insolvency statutes, the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act, or CCAA. It also creates a new statute, the Wage Earner Protection Program Act, which will be under the responsibility of the Minister of Labour and Housing. The bill introduces changes to provisions of law affecting both corporate and personal bankruptcy, as well as corporate restructuring and consumer proposals.

The comprehensiveness of the proposed reforms of Bill C-55 means it will have a significant impact on the economy and on individual Canadians. It will affect entrepreneurs large and small, investors, trade creditors, lending institutions, consumers, workers, and students.

An extensive consultation process led to the preparation of Bill C-55. The department also benefited from detailed work of the Senate Standing Committee on Banking, Trade and Commerce, which carried out a review of the BIA and the CCAA in 2003, pursuant to the statutory review clause inserted in these acts when they were amended in 1997.

The message received was clear. Reforms are needed to ensure that Canada's insolvency system meets the needs of the Canadian marketplace and to address the inequities between and interests of debtors and creditors and between different classes of creditors, interests that are the cornerstone of a fair, effective insolvency system.

The department has prepared briefing materials to assist committee in its review of the bill. In addition to the traditional clause-by-clause book that explains the rationale for each of the proposed amendments, we've provided the committee with an issues briefing book on selected key issues addressed in Bill C-55. Of course, we would be happy to prepare additional information on all other elements of the bill should anyone request that.

The issues have been grouped under four main headings, to correspond to the key objectives of the bill: first, better protection of workers; second, encouraging restructuring as an alternative to bankruptcy; third, eliminating inequities and reducing the scope of abuse; and fourth, improving the administration of the insolvency system. Allow me, Mr. Chair, to give you further details on some of these objectives that we are trying to achieve in Bill C-55.

The absence of adequate protection for employees has been a long-standing issue. Previous reform attempts have all failed. The problem has always been that while everyone agrees more protection is needed, there has been no consensus on where to get the money. Bill C-55 proposes an innovative approach to resolve this problem. The centrepiece is the creation of a Wage Earner Protection Program Act, WEPP, which is a government-funded program that will ensure the timely payment of unpaid wages.

However, in order to avoid an unfair burden on taxpayers, the government will recoup part of the payments made to workers by assuming the rights of employees in bankruptcy proceedings. The priority ranking for claims of unpaid wages is also elevated to come ahead of some secured creditors. This means that a sizeable portion —likely more than 50% of the government disbursements—will be recovered through the bankruptcy proceedings.

In the past, concerns were raised that a higher priority for wage claims would potentially have an adverse impact on credit and thus could be detrimental to entrepreneurs and job creation. Bill C-55 attempts to mitigate these concerns by eliminating the application of a super priority to current assets, cash on hand, inventory, and accounts receivable, so as not to affect the security on fixed assets like buildings, machinery, and equipment. Higher priority will be capped at $2,000.

● (0955)

It's very common for financial institutions to include a provision for wages when granting lines of credit and working capital loans. The impact should therefore be manageable.

Another important aspect of improving protection for workers included in Bill C-55 is a new priority for regular pension plan contributions not remitted to pension plans at the time of bankruptcy. This priority should also be manageable from a credit risk standpoint, as these amounts are known and easily monitored. However, a significant credit risk would be created if the priority were to apply to special deficiency payments or unlimited liabilities. Bankruptcy law is the wrong instrument to address obligations relating to pension deficits.

Mr. Chair, since the reforms enacted in 1992, the number of restructuring proceedings under the BIA and the CCAA have constantly increased. Approximately 25% of business filings under the BIA proceed through restructuring. The CCAA went from a handful of cases in 1980 to now more than 50 cases per year. All major corporate restructuring is done under the CCAA.

Bill C-55 aims at fostering this culture of reorganization as an alternative to bankruptcy, because it saves jobs, allows better recovery for creditors, and stimulates competition.

The CCAA will be substantially rewritten, providing guidance and certainty where none previously existed and codifying the existing practice, while still preserving the flexibility that has made the CCAA such a successful restructuring vehicle. The extent of the changes will ensure greater transparency in the process, a better ability for the affected parties to defend their interests, and a fairer system of checks and balances so critical to the efficient insolvency system.

Bill C-55 provides several new rulings, building on efficient jurisprudence, with respect to such matters as interim financing, termination of assessment of contracts, governance of arrangements of debtor companies, including the role of a monitor, who will need to be a licensed trustee, the sale of assets outside the ordinary course of business, and the application of regulatory measures.

Bill C-55 also provides detailed rules governing the treatment of collective agreements in the restructuring process. The amendment recognizes that the renegotiation of a collective agreement may be necessary for a successful restructuring. The court will have the authority to direct the parties to renegotiate in good faith under the relevant labour relations process. The court will not have the authority to unilaterally terminate or modify the collective agreement. If the parties do not agree to amend the collective agreement, the existing agreement remains in force.

The restructuring of debts is also available for individuals through consumer proposals under the BIA. Of 100,000 filings under the BIA last year, more than 15,000 were proposals instead of bankruptcy.

A number of changes are included in Bill C-55 to encourage consumer proposals. For instance, the eligibility threshold is increased from $75,000 to $250,000, and proposals for minor defaults are there as well and are made easier. The bill also imposes additional payment obligations on bankruptcies with income, providing incentive for these individuals to proceed with the consumer proposal rather than filing for bankruptcy.

Eliminating inequities and reducing potential abuse is important as well. Let me mention a few proposals in Bill C-55 that will address these problems.

Under the current rules, there is a lack of uniformity in the treatment of retirement savings in a bankruptcy. Amounts deposited in registered pension plans, including employer-sponsored plans, and some RRSPs offered through insurance companies are exempt from seizure. However, RRSPs held through most financial institutions are not protected. This raises issues of fairness. Bill C-55 proposes that all registered retirement savings plan and registered retirement income plans will be exempt from seizure subject to certain conditions.

● (1000)

As well, student loan debt will be eligible for discharge in bankruptcy if seven years have passed since the former student has ended his or her studies. Currently student loan debt can only be discharged after 10 years. In cases of hardship, a bankruptcy will be able to apply to the court to obtain a discharge for student loans after five years. This proposal complements a variety of programs and services available to former students under the Canada student loans program to help them manage their student loan debt when they experience financial difficulty.

At the same time, Bill C-55 contains a number of provisions to prevent potential abuse. For instance, the provision dealing with preferences and transfers at under value will be strengthened, providing for more scope to challenge transactions between related parties. There will also be stronger rules to prevent the individual from using bankruptcy to avoid large income tax debts.

Finally, Bill C-55 contains many technical changes designed to improve the administration of the insolvency system. The role and power of trustees, including when they act as monitor in CCAA cases and as receivers on behalf of secured creditors, are further clarified, along with the supervisory role of the Office of the Superintendent of Bankruptcy.

The new provision allowing for appointments of a receiver with powers to access across the country will significantly streamline the process. The central registry of CCAA cases will be established by OSB.

Mr. Chair, these are many changes that have been brought forward. I thank you for the time and for allowing us to present that case.

● (1005)

The Chair: Thank you.

I have Werner first, then I suppose Carole or Robert, then Marlene, and then Brian.

Werner.

Mr. Werner Schmidt: Mr. Chair, I'm not sure how you want to handle this, because we have one minister with us and—-

The Chair: I'm going to assume wage earner protection related questions should go to Mr. Fontana, and all others to Mr. Pickard for the moment—unless Mr. Pickard wants to jump in on that as well.

Try your best, and we'll go from there.

Mr. Werner Schmidt: Thank you very much.

To Mr. Fontana, the Minister of Labour, and also to Jerry, we've very pleased you are here.

I also want to congratulate whoever put this briefing book together; it's an excellent briefing book. It is very well organized and succinct, and I really appreciate that very much. I wish all ministers would prepare their legislation and briefing book as comprehensively and concisely as this one.

I do have a couple of questions with regard to the assets. You probably were present when Pat Martin presented his bill, C-281. I think that's the number. He indicated the assets include all of the assets. Bill C-55 deals only with current assets, and I'm sure there's a reason for this. I wonder if you could explain that to some degree.

Also, I'd like to ask you, with regard to the collective agreements, is there the potential of a conflict between the federal jurisdiction with regard to labour negotiations and provincial governments and labour negotiations?

Hon. Joe Fontana: Let me deal with the collective agreement one, and Jerry can do the assets.

Thank you, Werner. Maybe it's because Jerry and I have held positions as chairs of committees that we know how important it is to make sure the committee members get all the information. I want to thank the staff and Judi for helping provide the briefing books that I think are helpful.

On the collective agreement, as you know, there are various jurisdictions. There are two jurisdictions with regards to labour law. One is federal and one is provincial. Only about 15% of the workforce is under federal jurisdiction, and 85% is under provincial jurisdiction. Within that provincial jurisdiction, it varies all over the countryside in terms of what those provincial labour laws might be. But in the case of bankruptcy and CCAA, jurisdiction doesn't matter.

So if one is accessing the CCAA or bankruptcy, we're trying to make sure we don't go to the American model—if I can put it that way—and throw out the collective agreement that essentially respects, as part 1 of the Labour Code does, that the two parties, employers and employees, have come to an agreement on how they will deal with certain issues. We want to maintain that standard. To ensure that the collective agreements are respected, even under receivership or bankruptcy, they can't just be holus-bolus thrown out by a particular judge, and so on. That's why I think we've put in place some greater clarity as to what the responsibilities would be.

As we've said, notice must be given to reopen the collective agreement, and it's only with the agreement of both parties, especially the employees, that such a thing could happen. If they don't agree with the notice or want to fight the notice, they can. If they can't come to an agreement, if the collective agreement is open, the employees can essentially say no.

So for all intents and purposes, they have a veto on whether or not a collective agreement should be reopened. I think this is a fundamental value that we want to maintain in our system. This bill essentially does that and clarifies what has been very unclear in terms of what courts have been able to do with collective agreements.

● (1010)

The Chair: Mr. Pickard, do you want to deal with the asset question?

Hon. Jerry Pickard: Yes.

Thank you for your comment about the briefing book. As a committee member, I know how important it is. Our officials were very kind in trying to get everything together as well as they could so everyone would understand Bill C-55.

When we talk about the assets, we are talking about wage earner recovery in the neighbourhood of $3,000. That is significant because it covers 97% of the wages owing in a bankruptcy, so almost all workers would be protected. There are some very high-contract people who might be considered in that top 3%, and it's questionable whether we should move into that. You know, contract workers may be very high. However, when we look at what the government would recover in a bankruptcy, that's limited to $2,000 in Bill C-55.

So if we look at those assets recoverable in a bankruptcy to a maximum of $2,000 per worker, we're looking at a limited amount that we would recover in the bankruptcy transaction. So the government's risk is probably $1,000 over and above, in some cases, what would be recovered in the bankruptcy.

However, if we then take Mr. Martin's bill and deal with that, the potential liability in pensions could be in the billions in certain instances. As a result, you would not only have to secure all the machinery, all the assets that are there, and all the real estate; everything that potentially could be seized would be seized, and you'd be into a much greater payment rate. From our point of view, that is not an issue that should be settled in the bankruptcy act. It should be settled with the agreement of information in trust.

You have to realize that when people pay money into pension plans, that money is paid into a trust. As the federal government, we can only deal with federal trusts that are involved there, but we can encourage the provinces to look at those trusts as well. We intend to work on the trusts side of the issue to make sure that where moneys are paid into a pension plan, or not paid into a pension plan, we will go back after those companies to make sure they bring those debts up to where they should be, and not allow them to slip into 50% or more debt.

The Chair: Thank you, Mr. Pickard.

Next are Carole, Marlene, and Brian.

[*Translation*]

Mrs. Carole Lavallée: Do I have five minutes?

● (1015)

The Chair: Yes, you have about five minutes.

Mrs. Carole Lavallée: Fine. Thank you.

I want to start by congratulating Mr. Fontana and Mr. Pickard for introducing Bill C-55. You're correct, Mr. Fontana, in saying that this bill isn't perfect, but that it is a step in the right direction.

I also learned that you've been working for the past five years on reforming the Bankruptcy Act. I'd like to think that the bill tabled by my colleague Pat Martin made you pick up the pace a little and even outdo yourself.

This bill isn't perfect. A few minor irritants remain and maybe the committee can work on making some changes for the better. In particular, persons who have worked for a company for less than three months will not receive the compensation they are owed should the business go under. Quebec's Building and Construction Trades Council is one of a number of organizations with its very own wage protection program in the event this very situation arises. All workers who have been on the job for less than three months receive some compensation. In my view, the Government of Canada could follow Quebec's lead.

Another problem is the maximum limit of $3,000 that a worker can recover. Perhaps we should look at ways for workers to recover up to $25,000, including severance pay.

With respect to students with student loans who declare bankruptcy, you are prepared to reduce the period during which they are obligated to repay a loan from ten to seven years. This is an excellent step in the right direction, except that this number is rather arbitrary. Why seven years? Why not five, or four? Why even set a time limit? You don't really think students declare bankruptcy for the fun of it? In any event, if there is no real reason for them to declare bankruptcy, there are judges to keep them in line.

Lastly, Mr. Fontana, you stated in your June presentation that there were some precedents when it came to governments protecting wages. You mentioned two in particular. Apparently, there are other precedents in the world, but you named two countries, Australia and the United Kingdom, that have brought in this type of program.

Have you studied these two precedents closely to see if the program is working well, if it has solved the problems and if the results have proven to be interesting?

The Chair: Mr. Fontana.

[*English*]

Hon. Joe Fontana: Thank you, Mr. Chairman.

Carole, *merci.*

First, there is no Canadian jurisdiction that has such a thing. Ontario did at one time, but it was thrown out by the former Conservative government as not necessary.

Second, believe it or not, the labour department has been working on such a program for over fifteen years and it's never been able to get to this point. So I think a number of people have agreed that wage earners need to be protected.

Let me just deal with the exclusion. I think Carole raises a very good point about certain classes, certain employees, or certain exclusions, and I'd very much like to hear from you on this. As you know, we put in place a three-month provision for eligibility, but two things are important. One, corporate officers and directors will definitely be excluded, because they may have been part of the problem. Second, we also believe that employers may choose to hire workers in a period leading up to bankruptcy without intending to pay them, on the understanding that the WEPP will pay.

I think my colleague Mr. Pickard has tried to say that we have to strike an important balance. That's not to suggest that businesses plan for bankruptcies or insolvencies, but let's say you know about your financial situation and hire a whole bunch of students or other people, knowing full well that you may never pay them. It's not the fault of the employees, obviously. This will make sure the system is not going to be abused. Again, it strikes the right balance.

I think you're going to hear from some people—and I look forward to your information—about how we can protect those most vulnerable, in other words those employees who didn't know what was happening within that three-month period, to ensure they can also get it. There are some regulatory powers in the bill that can allow us to make sure those people are not penalized by virtue of what is happening. So I look forward to that information.

The other question that always come up is, why is it \$3,000? As I've said before, the \$3,000 will make it possible for 97% of the claims to be taken care of. But some people have suggested \$5,000. On what we have essentially tried to do, the \$3,000 is very much tied to EI, which identifies \$3,000 as the average industrial wage. So \$3,000 would cover most of the wage claims that come forward. A few might be greater than that, but I can tell you that \$3,000 is based on a medium range of wages. As I said before, the most vulnerable are in the sector we are really trying to get to—the retail sector. They are the people who are making \$7, \$8, or \$10 an hour. They are the ones who are really not getting any benefits whatsoever.

So the \$3,000 does capture 97%, but I look forward to your input. Obviously moving it to \$5,000 would cost a lot more, but we've tried to have a benchmark, and the benchmark is related very much to EI and an average wage for the purposes of receiving the EI premium.

● (1020)

The Chair: Marlene is next, and then Brian.

Hon. Marlene Jennings: *Merci, monsieur le président.*

Thank you very much for being here today.

Minister Fontana, in your presentation you talked about 15% to 30% of business bankruptcies including unpaid wage claims, and that means some 10,000 to 15,000 workers are left without some of their wages. You also estimated that 75% of that number who are left without some of their wages being paid to them actually receive nothing. You stipulated that workers, overall, receive 13¢ per dollar owed.

The first thing I'd like to know is what is included in the term “wages”. If we do a comparison between Bill C-281 and Bill C-55, Mr. Martin has a much more exhaustive list of what he considers to be unpaid wages in general. So I'd like to know the basis for the unpaid wages that then lead to those figures.

The second thing is, under Bill C-55 the limited super priority in favour of workers is up to \$2,000, over the inventory, accounts receivable, and cash cover—and you list a number of things—wages and salaries, vacation, paid commissions. Then you say “other compensation”. Exactly what is that other compensation? That's a question I meant to ask Mr. Martin, because he has it under his bill as well. I'd like to know what precisely that is.

The last point is, why is termination pay not included under the limited super priority? If it were included, what would be the impact of that in terms of the cost of the program overall as opposed to the cost of the program as you're estimating it now, with termination pay not included?

Mr. Pickard, I also have a question for you. It relates to the issue of the unfunded pension liabilities. You went into it a little bit with one of my colleagues. I'm going to ask you the same question I asked Mr. Martin. Are there any other jurisdictions where under their bankruptcy act it provides for a first priority or a super priority for unfunded pension liabilities, and if there are, what is the impact on the availability of credit to businesses?

You also stipulated that the bankruptcy act is not the appropriate tool to settle that kind of question—the issue of unfunded pension liabilities. I'd like you to give a little bit more information about what the appropriate instrument is. Is that instrument adequate today? If it's not, what does the government intend to do to make it adequate?

Thank you.

The Chair: Thank you, Marlene.

Minister Fontana.

Hon. Joe Fontana: I have a list of questions, but let me try to get through them very quickly.

With regard to covering terminations and severance, you should understand there are some reasons we can't do that.

First, under labour laws, termination severance pay increases with the employee's level of seniority. As you know, the longer you work for someone, the greater those potential liabilities are. But as a result, some workers would qualify for no payments of severance on termination, while some would qualify for very large payments. Therefore, we're trying to build an equitable system. You may find, depending on long you've worked for a place—five years or ten years, or five or six months—that some would get it and some wouldn't. Therefore, we want to set it up.

Secondly, termination severances by jurisdiction vary provincially. Therefore, again, we're trying to harmonize a national system, and there are provincial regulations that would come into play.

Last, though, this is not to say that the employee couldn't go after severance and termination from the estate of the employer. What we're saying is that what we can do through Bill C-55 is wages and vacation pay. They're the easiest. We can get to them as quickly as possible. The other ones tend to be much more complicated.

Again, just to reinforce, in ours, 97% of the people are going to get 100¢ dollars. The present system is that 24% of the people get 13¢ on the dollar. So we are doing an incredible change, and I think the $3,000 actually captures that.

On the question of other compensation, as you know, that is for travelling salespeople. They may have certain expenses that need to be covered off. Therefore, other expenses relate to travelling salesmen and some of the others.

Jerry.

● (1025)

Hon. Jerry Pickard: Thank you, Joe.

Marlene, with regard to your question about other jurisdictions, about other countries having pension benefits, there are none; there are no agreements that take that into account. It's obvious that other jurisdictions that the Senate committee studied, that our department has studied, realized that this is the problem, that somebody is going to latch onto everything that company had and leave the lender in the lurch. Their dollars are going to dry up, and it's not just a matter of dollars drying up in Canada. If you were a company that was in the lending business, you probably would take your money offshore and invest in other countries where you know that you don't stand the risk of losing everything you loaned in that form.

The other point I could make, if you give me a little latitude, Mr. Chair, is on the student loans. Student loans basically have to have some integrity, and the reason we don't write student loans off at zero, or at three years or at two years, is that we expect students to try to repay those loans. Now, at this point in time it was a 10-year period under which students repaid the loans. We're trying to reduce that. Certainly in cases of hardship we're trying to reduce it to five years, and in normal cases to seven. If we were to reduce it to one, two, three, or four years, the integrity of the student loans would be very much in question because repayments would not be then a high priority.

Hon. Marlene Jennings: Mr. Pickard, I want to thank you for using my time to answer the other member's question.

The Chair: Marlene—

Hon. Marlene Jennings: I had other questions and therefore I know that the chair, at some point before we adjourn, is going to give me the extra time that was used up to answer a member of the opposition's question.

The Chair: Thank you, Marlene. We're certainly going to try to do that for you.

Hon. Marlene Jennings: No, not try; you will do it. Thank you.

The Chair: Brian Masse, Brian Jean, then Judi Longfield.

Mr. Brian Masse: And I would argue she already used that time now.

My first question will lead me to Mr. Fontana, followed with a couple to Mr. Pickard.

The first is with regards to the $3,000, the capping in that. I know it's been talked about extensively, but if we're covering off 97% of the people there, why wouldn't we want to backfill that other 3% for a matter of principle, especially seeing that if you're owed more money, you've probably worked at that company longer and could be more vulnerable to re-entering the marketplace, or another occupation?

The second question would be in regard to the three months. There has to be a remedy somewhere in there, and you're quite right to note that these are the most vulnerable individuals. You'll have temporary agencies, you'll have part-time workers who are trying to get into the workforce to start with, and then to have this experience is bad enough. Couldn't there be a further penalization put on those employers that would take advantage of the situation? I would suggest that the obligation is on the government to make that remedy, because we do know that those people are the true victims and could least afford not to get what is owed and deserved to them. So there has to be a remedy there, I would argue.

Third, I have a last question for you before I go to Mr. Pickard. Judges opening up collective agreements are a concern to me in terms of the delay it could take for people to receive their pension settlement. So why would we do that anyway when those benefits have been negotiated through an agreement, to start with, in good faith? During the middle of record profits of a corporation, unions don't ask to reopen up benefits plans. They do that through collective bargaining. So when the time of need is there on the other end, it doesn't seem fair that they don't open up in the good times, but at the sign of the bad times...then we can go to a judge and have a delay in terms of benefits.

Mr. Pickard, in terms of what's used in terms of capital, looking at the issue of real estate, for example, how in this system would there be protection if a company was having some pension difficulties or had some suspicions about bankruptcy, on the edge? Wouldn't you start shifting money into real estate, for example, which could then avoid this as something asseted against in terms of bankruptcy? And it is also something the banks would encourage because it is a hard asset to draw upon for borrowing. So that's one specific example there.

Last, in your testimony to Bill C-281 you said there would be some monitoring over pensions from this bill, but at the same time in your testimony here, you said bankruptcy law is the wrong instrument to address obligations relating to pension deficits. That seems to contradict what you said earlier to Mr. Martin, where you suggested that this actually was a vehicle that would improve that situation.

● (1030)

The Chair: Thank you, Brian. We'll try to get the witnesses to answer all those as succinctly as possible.

Hon. Joe Fontana: Brian, good questions.

Listen, I'm not terribly exercised about the $3,000, but we needed to pick a number. I gave you some justification. I think the briefing books and additional questions of your witnesses and our administration would tell you that $3,000 gets you the 97%. I would agree. Why would we want to eliminate anybody who's entitled? And so I look forward to your information. Obviously costs have to be taken into account, but I'm flexible, and if it's $3,500 or $4,000, whatever, I think I'm prepared to look at it. Why wouldn't we?

Secondly, I agree with you on the three months. I don't want to penalize anybody. I don't believe an employee enters into a labour agreement, showing up to work, knowing full well that the employer may or may not be scamming him or her, and I worry about that. Therefore I can tell you that under subclause 6(1) of the WEPP, there are regulatory provisions to safeguard employees. At the end of the day, it's about trying to strike a little bit of a balance.

I think you will speak with the lending institutions. We have regulatory powers in subclause 6(1) to do what I think we all want to do, and that's to make sure we can cover as many people as possible, even during that short period of time. I think we were just trying to strike a balance to make sure there was no abuse.

Thirdly, on collective agreements, as I think I've indicated, unlike in the United States where collective agreements are open for renegotiation and so on, I think in Canada we have many more safeguards, and I think our part 1 speaks to how important collective agreements are for both the employers and the employees. But sometimes, let's face it, when a fairly significant company is faced with having to go out of business, there may very well be a willingness on both parties to enter into an agreement.

What I want to make sure of is that it can't be automatically done by a particular judge who says, let's throw open the whole collective agreement. That's not what we want. And therefore, due notice has to be given by the employer to do this. The union, in fact, can fight that notice because it's a high threshold to even get to that particular point, and I don't expect the unions to have to make concessions whatsoever, as you indicated. When there is a collective agreement in place, if both parties agree that there should be some discussion in order to save a company, to save those jobs, why not?

But I'd like to remind everybody that at the end of the day the employees have the final say. If no agreement can take place, then the existing collective agreement stays in place.

Hon. Jerry Pickard: Thank you again, Brian, for your question.

The issue of trusts and pension payments is a pension regulation issue. My colleagues and people in the federal government have really committed to making certain that those trusts will be monitored and dealt with in an appropriate way.

What has happened in the past, and Pat was right, is that in a lot of cases the monitoring was not done appropriately, and so some of these pension plans went adrift and they were very much in deficit. To control that, we on the federal side have agreed that we will work very hard at monitoring the federal programs. Now, that leaves open another area, and that's the provincial trusts that are in place as well, and we must make certain that we move forward as far as we can in encouraging the provincial governments to do the same thing with their trusts.

In fact, trying to close the door after the horse is out is the wrong thing to do, and that's really what we're saying here. If we monitor those trusts and make sure delinquent corporations are forced up front, as soon as possible, to put money in—and I'm not talking about when they're declaring bankruptcy, I'm talking about when they're first in breach—if we go after them and make sure their money goes into those funds, then they're not borrowing the workers' contributions or the workers' salaries. We must stop it at that level, not wait for the bankruptcy to try to stop it.

So it's really pre-action rather than post-action that we're looking at here.

● (1035)

The Chair: Thank you, Jerry.

We're going to try to get at least four other members on, maybe around four minutes each. Brian Jean, Judi Longfield, Robert, and then Marlene.

Brian.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair.

If I understand it correctly, in essence the government is providing a guarantee for the employee wages in the case of an insolvent corporation, as necessary.

Hon. Joe Fontana: Yes.

Mr. Brian Jean: And in turn the insolvent corporation assigns their liquid assets to the government to pay for that.

Hon. Joe Fontana: Yes.

Mr. Brian Jean: Is there anything in the act that restricts corporations from utilizing this legislation for financing? For instance, I think they all realize before they're bankrupt that they will be bankrupt, and they may use this as a form of financing to keep afloat for a certain period of time and extend, in essence, their liabilities. Is there any thought on that? Are there any specific restrictions in the act to disallow them to utilize the act for some form of financing?

For instance, they know they're going to get $3,000 for employee wages for liquid assets. As I said, I think many corporations recognize that they will be going bankrupt and will use that as a way to keep themselves afloat for a longer period of time.

Hon. Joe Fontana: We carried out a lot of consultation before this bill was actually drafted, especially with the lending institutions and CFIB, and it's a proper question to pose of them and the lenders. When this kind of protection is afforded both employees and employers, the lending institution will have a greater comfort level because the government is stepping in and therefore allows for credit provisions to occur. I'd like to take that as a positive view as opposed to.... We're trying to get it right; we don't want to have businesses not be able to get credit. I think that's the lifeblood of any small business, to make sure they have the capital, the cash, whatever they need in order to continue to do business.

However, I think this brings certain predictability that may in fact help the situation. So I invite you to ask the lending institutions whether or not this causes them any particular difficulty. In fact, it brings predictability, and I think the balance is what limited super priority....

I think the questions and the debates in the House were, why don't you ask or try to recover the full $3,000? You're able to get $3,000 in terms of wages, but don't forget, limited super priority only will allow the government to get up to $2,000, not $3,000. We're only going to get $2,000. Why? We're prepared to take a little bit of that risk, and essentially, it's coming out of consolidated revenue. Why? Because we think there's a public interest there as opposed to using the EI system, which would be really difficult and in fact would be taxing employers and employees on the very things they've already paid for.

This is why I think there's a public interest that the government believed we ought to cover. We are taking a little bit of a risk, because we're only going to get $2,000 back out of the $3,000 claim. Why? In order to make sure the lending institution doesn't penalize all businesses by virtue of the money they need to operate.

Hon. Jerry Pickard: May I add one comment to that, because I think it's critical. We're still only talking about 3% of potential pay-backs. In fact, the government's risk is very low when you look at it, because in most cases the $2,000 would be there. It's a very tiny risk we're taking, and it's only on very high wages. They would be way above the norm—special contracts, the type of things an engineering firm might have, certain contracts with someone that could have wages involved in them.

The Chair: Please wrap up, Brian. Go ahead, if you have a quick question.

Mr. Brian Jean: I think you misunderstood the question, in essence, but that's all right.

My friend Mr. Trost actually had a question.

● (1040)

The Chair: I'm going to try to get Brad on, because we gypped him another time.

We're going to Judi, Robert, then Marlene.

Hon. Judi Longfield (Whitby—Oshawa, Lib.): Thank you, Mr. Chair, and thank you, Minister Fontana, and the parliamentary secretary, Mr. Pickard.

With respect to Mr. Jean's comment about companies taking advantage, in reading the bill, my view was that the three months' exemption was part of the way we were sort of building in a mechanism to protect abuse. Minister Fontana, is that the reason we put in the three-month exemption?

Hon. Joe Fontana: Precisely. We recognized, obviously, that there were certain risks to particular individuals in which that might be the case. But yes, that was building in an abuse sort of mechanism, that you wouldn't qualify unless you had worked for three months, thereby signalling to employers that they couldn't go out and hire a whole bunch of people thinking they could get away with not paying any wages the day after they hired them.

It was a sort of a risk and benefit there. As I said, I think the provisions in the bill make sure we exempt certain classes; it may very well be students, it may very well be seasonal workers, it may very well be others, and the regulatory powers are in this bill in order to do it. That's why I indicated that I look forward to this committee's input with respect to that issue.

Hon. Judi Longfield: So I take it that you are sensitive to seasonal workers, who, by their very nature, may only be employed for three or four or months, that they wouldn't be—

Hon. Joe Fontana: Yes.

Hon. Judi Longfield: The other thing I was struck by when we were talking about the severance and termination—and I appreciate the rationale as to why it's not included as a super priority—is the question of whether an employee loses his right to sue or to make other attempts to get severance or termination pay. By this bill, are we taking away any existing rights that an employee has? Right now, he has to sue for everything or to go after the employer. We haven't taken this away, have we?

Hon. Joe Fontana: No. In fact, while we didn't want to, and couldn't, within the $3,000 amount, for the reasons I told you, it should be noted that the employees always have the right essentially to go after the bankrupt estate for the purposes of severance and termination pay. So we would encourage them to do so. If you had worked there for seven or ten years, you're owed some money in terms of severance and termination and whatever, and you should do it. And we just couldn't take it away; therefore, that right is still there.

Secondly, they could even go after the corporate directors, who might be personally liable for severance and termination. So not only can they go after the company's estates, but also, in some particular cases, they can go after the directors of the company.

Hon. Judi Longfield: Okay.

Do I have any more time?

The Chair: Very briefly, as we have public accounts meeting at 11. We are going to have to be very tight with the time.

Hon. Judi Longfield: Very briefly, I've heard you speak before about the unfunded pension liability being a concern, but do you know if any other department is currently looking at that issue of underfunded liabilities?

Hon. Joe Fontana: I think Jerry has done a good job explaining how we want to be much more proactive as a government to safeguard...because there are a number of jurisdictions—private, provincial, and federal.

Mr. Goodale, as you know, has launched a consultation paper with regards to pension reforms, including how pension surpluses are dealt with—an issue for employees—and how we can deal with arrears, some of which are covered here, or how we can deal with pension deficits.

As Jerry indicated, the government takes this issue very seriously. Why would anybody, or any parliamentarian, suggest that any worker who has worked 20 or 25 years for a company essentially have absolutely no pension at the end of their working career? That's absolutely absurd.

Not only do we want to proactively make sure those pension funds are solid and are there for people, but at the end of the day we also want to look at, in terms of bankruptcy, how the arrears could be looked after. But what can we do with regards to deficits? I can tell you that the government, on two or three occasions, has helped with some major restructurings, i.e., with Air Canada, for the purposes of dealing with pension deficits.

The Chair: Thank you, Judi.

Now, a few minutes to Robert.

[*Translation*]

Mr. Robert Vincent: Thank you, Mr. Chairman.

I'm dying to ask you one question in particular. Your bill makes no mention whatsoever of employment insurance. You claim that the government is assuming some of the risk. In fact, it's prepared to risk $1,000, a rather small amount of money, as it happens.

Where is the risk to the government? I don't see one. When a business declares bankruptcy, employment stops. A worker will have to declare the $3,000 he receives to EI and he will be penalized for weeks during which he should be receiving benefits. The government will end up taking $2,000 from this worker, money which he is entitled to receive as income from the company that went bankrupt.

Can you explain to me exactly how you plan to proceed? With $2,000 from the bankruptcy and the $3,000 that the worker must declare to EI, in my view, the worker will be penalized because he will need to declare the money he receives from the government. Furthermore, you will recover this money through EI.

● (1045)

[*English*]

Hon. Joe Fontana: Robert is wrong, and I hope the bill would explain that.

The only thing that has to be accounted in EI is the vacation pay, not the wages. To suggest that EI would pay anyway is not correct. The only part that would impact on the EI would be the vacation part of the claim. Say there was a wage of up to $2,500, or $2,700, of the $3,000, and only $200 of that was in regards to vacation pay, the only thing that would have to be reported to EI would be the vacation pay part, not the wages. So it's not true that the EI system would be paying for that.

[*Translation*]

Mr. Robert Vincent: As a matter of fact, when a person files for employment insurance benefits, he is asked if he has received or will be receiving some money. Therefore, if a worker receives a cheque for $2,500 or $3,000, this sum will be considered as earnings that must be declared to EI.

Shouldn't the Employment Insurance Act be amended so that this money is not deemed to be earnings?

[*English*]

Hon. Joe Fontana: No, the employee would have received the wages anyway. That has been accounted for. If he doesn't receive the wages because the employer was going bankrupt and didn't pay him, and he receives money from the estate, that's the same thing.

EI is for vacation pay, severance, and termination. Those have an impact on EI payments because they are under the EI definition. That's another issue, and it's for another minister and you to decide on whether or not other things ought to be included.

Do severance, termination, and vacation pay have an impact on EI claims? Yes, they do, but not for wages under the wage earner protection program.

The Chair: Thank you, Mr. Minister. *Merci.*

Robert.

[*Translation*]

Mr. Robert Vincent: That wasn't clear in your bill and that's why I asked for more explanations.

[*English*]

Hon. Joe Fontana: Well, if we have to make it more clear, Robert, we're prepared to do that.

The Chair: Thank you, gentlemen.

Brad, please.

Mr. Bradley Trost (Saskatoon—Humboldt, CPC): Thank you, Mr. Chair.

I have a few general and broad overview questions.

Let me reiterate some of the comments on the pension issue that have been made around this table. It's an extraordinarily serious issue, and one that I don't think this committee will have the time to study, but it should be dealt with in a more comprehensive fashion. I'm glad to hear that some steps are being taken.

I know a little of my first question was covered earlier, but as we're studying Bill C-55 and Bill C-281 in tandem, could it again be stated? What specifically are the differences between the bills, from your perspective, particularly for pensions and any other areas of major note?

Hon. Jerry Pickard: I think I want to start with the pension issue. Bill C-55 would pay workers' wages up to $3,000. We would go through a process, through bankruptcy claims, and we would be able to bring $2,000 back to the government. Bill C-55 would allow that $3,000 to be paid more quickly, rather than waiting for the bankruptcy process to go forward.

Mr. Bradley Trost: One positive thing is speed; your bill is faster.

● (1050)

Hon. Jerry Pickard: That's exactly right.

On money to the workers, the worker doesn't have to wait for the bankruptcy proceedings to go forward, as was mentioned a little earlier. It could be five or even six years that the worker is waiting in some of these cases. They would receive the money up front, and the government would then take on the responsibility of reclaiming $2,000 of that.

Mr. Bradley Trost: What other...?

Hon. Jerry Pickard: On the pension side, it is a situation where corporations put money into a trust with regard to pensions. It can be private, it can be provincial, or it can be federal.

On the federal side, we see that the moneys are put in a federal trust for pensions. We will monitor those trusts very carefully.

Mr. Bradley Trost: That's not included in Bill C-55; it's going to be separate.

Hon. Jerry Pickard: No, it's not. The point I was trying to make is that it is a commitment that we are moving forward on the trust side to make sure that happens when reviewing pension plans.

Mr. Bradley Trost: Bill C-281 deals specifically with pensions. That's one other key difference.

Hon. Jerry Pickard: Bill C-281 would take all the liability of the pensions.

As a result, with that pension liability, corporations may be exposed—well, it wouldn't be corporations. Any lender could be exposed to billions of dollars in assets that they wouldn't normally lend money for. Quite frankly, the money would dry up.

Mr. Bradley Trost: I'm trying to hurry through some of this because of the time, Jerry.

There are two major differences. There is faster payment with Bill C-55 than with Bill C-281, and pension coverage is in Bill C-281 and not in Bill C-55.

Hon. Jerry Pickard: There's guaranteed payment of wages too. We're guaranteeing the payment of wages and making sure that goes through, even if the government doesn't recoup the dollars.

Hon. Joe Fontana: Brad, maybe we could provide a synopsis. There are some good things in Bill C-281, but there are some very difficult things that I think you and Jerry have covered. It also triggers some real problems with regard to EI. That is because what it seeks to do, which is to help people, will in fact hurt unless you do a whole bunch of other things.

For some of the points that Jerry and I made, perhaps we can provide the committee with some additional information.

That's not to suggest that the intent of what Pat was doing is not good; in fact, it's complementary. I think this bill does a lot of good things more quickly, but it obviously can't do what Pat suggests, because it's really problematic, especially as it relates to liabilities and pensions.

Mr. Bradley Trost: I'm just trying to sort those out into neat little boxes.

The Chair: Could you wrap up, Brad? Thank you.

Mr. Bradley Trost: I have a quick question about the cost to the treasury. You're looking at about 50% recoup. What is the number you're estimating for, say, 2005 or 2004—the latest year to calculate—as the cost to the treasury?

Hon. Joe Fontana: It's about $18 million to $20 million net cost annually.

Mr. Bradley Trost: That's $18 million to $20 million. Thank you.

The Chair: Thank you.

Thank you, Mr. Minister.

The last word goes to Judi Longfield, please.

Hon. Judi Longfield: Thank you, Mr. Chair.

I know that my colleague Ms. Jennings, who had to leave, felt that some of her questions didn't get as full a response as they might have. I'm wondering, Mr. Pickard or Mr. Fontana, if you have some closing remarks that might respond to those questions that were left unanswered on the part of my colleague Ms. Jennings.

Hon. Joe Fontana: I answered about two or three of Marlene's questions with regard to the 13¢ on the dollar and the 75% of people who get absolutely nothing. The extra compensation was related to the salespeople and some of the commissions.

I don't know, I must admit.... I think Jerry had a couple of those particular questions—unless, Chair, you can remember what those were. I'd be happy to do so.

The Chair: I thought it had something to do with the pension question.

Hon. Joe Fontana: Can I just close off?

First and foremost, Chair, I hope the committee can deal with this bill as expeditiously as possible, because I think it's an important bill. It's been introduced. As I indicated, Pat's bill does some very good things, but I'd hope the committee—and I think there's all-party support for the basic essentials of this particular bill—can deal with the witnesses and expedite this as quickly as possible. I think it's good social policy, it's good economic policy, and it's good policy to protect every worker. The quicker we can do that and put it in place, the more people we're going to protect as quickly as possible.

So I want to thank you for your input and for your support. I look forward to working with you in the next number of weeks as we conclude a very good and important piece of legislation.

● (1055)

The Chair: We'll have time for a quick intervention by Jerry, and a 30-second comment or question by Werner. Then we'll give the room to the public accounts committee.

Jerry.

Hon. Jerry Pickard: Thank you very much, Mr. Chair.

We have a comparison of the two bills that I thought was distributed to the committee. I will make sure all committee members have that comparison if they've not already received it. Quite frankly, when we talk about Bill C-281, there are wages, salaries, severances, termination pay, commissions, and other compensation that carry a super priority classification, which means they would be paid first. Under Bill C-55, the WEPP system would be in place, and we've done a lot to explain that.

When it comes to pension and benefits, we give priority over creditors on all benefits, outstanding contributions, and unfunded pension liabilities. Those unfunded pension liabilities and all benefits are huge. I think from the pension and benefit side of Bill C-55, we're looking at employer contributions and employee contributions and making certain that we know what that controlled amount is, and we can make sure those move forward in the proper system. There is quite a difference in the two, if you analyze the amounts of money.

But again, I want to say thank you to the committee for allowing us to present the general nature of Bill C-55. I think it is critical that we get it passed as soon as possible.

Hon. Joe Fontana: We'll answer Marlene's questions. We'll review the case and make sure the committee gets a full response to Marlene's questions.

The Chair: Thank you.

I'll give one minute to you, Werner, and then we'll adjourn.

Mr. Werner Schmidt: Thank you very much, Mr. Chairman.

This has to do with the provision in Bill C-55 for a judge to order that creditors be paid directly without going through the trustee of bankruptcy. I'm just wondering, why was that kind of provision made, and what is the advantage of circumventing and not going to the trustee? It seems to me that the trustee is charged with the application of the proceeds from the bankruptcy—the sale of assets or the distribution of assets—and being as fair and equitable as possible to all the creditors involved. Why would the bill provide in certain cases that the court can order that this be paid directly?

The Chair: Will you answer now or later?

Hon. Joe Fontana: Just let me say this. At the end of the day, we wanted to make this system work as very quickly as possible. I think you will hear from trustees and receivers who in fact are impacted; I know they have some questions in terms of their liabilities and their compensation. It may very well be that as you hear from the stakeholders and the people who will help us all deliver the system you might want to ask them specifically. I think we wanted to do it to expedite it as quickly as possible and not to take away the important role that trustees play in the overall restructuring or receivership or bankruptcy of a particular company.

Mr. Werner Schmidt: It's important to be fair to all creditors.

Hon. Joe Fontana: Yes.

The Chair: Thank you, Werner.

Thank you, Mr. Minister.

Thank you, Mr. Pickard.

Colleagues, well done. We're adjourned, and we'll see you tomorrow afternoon at 3:30.

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1st SESSION • 38th PARLIAMENT • VOLUME 142 • NUMBER 98

OFFICIAL REPORT
(HANSARD)

Wednesday, November 23, 2005

THE HONOURABLE DANIEL HAYS
SPEAKER

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FOOD AND DRUGS ACT

BILL TO AMEND—THIRD READING

Hon. Terry M. Mercer moved third reading of Bill C-28, to amend the Food and Drugs Act.

The Hon. the Speaker: Honourable senators, are you ready for the question?

Hon. Senators: Question!

Motion agreed to and bill read third time and passed.

WAGE EARNER PROTECTION PROGRAM BILL

SECOND READING

Hon. Bill Rompkey (Deputy Leader of the Government) moved second reading of Bill C-55, to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts.

He said: Honourable senators, I rise to speak to Bill C-55, to establish the Wage Earner Protection Program Act, to amend both the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act, and to make consequential amendments to other acts.

[*Translation*]

The bill proposes an ambitious, comprehensive and balanced reform of the insolvency system in Canada. It will have a significant impact and positive effects on both the economy and individuals. We believe that this bill enjoys relatively widespread support, and I urge all honourable senators to support it so as to ensure it speedy passage.

[*English*]

The bill is the product of significant consultation with stakeholders, and many of its provisions were drawn from the report prepared by my honourable colleagues in this chamber entitled *Debtors and Creditors: Sharing the Burden*, a review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act, released in November 2003.

Since the introduction of the bill, stakeholders from a broad spectrum of interests have studied its implications. The reaction has been positive. Of course there have been suggestions for further improvements. I think there will be a number of senators who will say that this is not a perfect bill. However, it is clear that the bill has considerable support and will impact positively the thousands of Canadians who rely on the insolvency system to protect their interests in situations of financial distress.

I should like to highlight a few of the reforms proposed in Bill C-55. Most significantly, the bill proposes changes to ensure that workers are better protected in the case of insolvency of their employer. It proposes the creation of the wage earner protection program, an unlimited super-priority for unpaid wages that will combine to protect workers without creating undue risks for creditors or enticing strategic behaviour that would have been unfair to taxpayers. The wage earner protection program will be a safety net, paying up to $3,000 of lost wages owed to workers whose employer goes bankrupt or is put into receivership. This type of program is not radical or new. Many countries already have a similar program to protect their workers, countries such as the United Kingdom and Australia, and it is time now for Canada to have one, too.

The government expects to recover up to half of the money paid out by the program by acting as a creditor to the employer. The government will assume workers' claims against their employers' estate, including their right to use the new, limited super-priority for unpaid wages. As suggested in the Senate report, this limited super-priority is capped at $3,000 and will only apply to current assets in order to mitigate potential impact on credit.

The proposed reforms will result in better protection to pensions, an issue of critical importance to many Canadians. In a bankruptcy, a receivership, a proposal or a CCAA filing, regular contributions that an employer should have made or that were deducted from an employees' paycheque will be required to be paid into the pension plan for the benefit of workers before most other creditors are paid.

The status of collective agreements during a corporate restructuring is also of great importance to workers. This reform will allow employers and unions to renegotiate collective agreements under the relevant labour legislation, but the changes are explicit. If there is no agreement between the employer and the union, the existing collective agreement remains in force. A court may not unilaterally change a collective agreement.

CANADA

Debates of the Senate

2nd SESSION • 39th PARLIAMENT • VOLUME 144 • NUMBER 12

OFFICIAL REPORT
(HANSARD)

Thursday, November 15, 2007

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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Many stories have been going around for years. The thing that changed, as all honourable senators know, is that Mr. Schreiber swore an affidavit last Thursday or Friday, which became public on Friday. As it impacted upon the Office of the Prime Minister, the Prime Minister immediately announced that he would appoint an independent third-party adviser. That affidavit started the whole thing. As the Prime Minister said yesterday, Dr. Johnston will report and the government will follow the recommendations he makes.

ORDERS OF THE DAY

BANKRUPTCY AND INSOLVENCY ACT COMPANIES' CREDITORS ARRANGEMENT ACT WAGE EARNER PROTECTION PROGRAM ACT

BILL TO AMEND—SECOND READING

Hon. Michael A. Meighen moved second reading of Bill C-12, An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada, 2005.

He said: Honourable senators, it is my pleasure to rise today to open the second reading debate on Bill C-12.

[*Translation*]

Bill C-12 makes a number of technical amendments to the aforementioned legislation in order to correct a wide range of flaws and to allow the government to implement the wage earner protection program.

• (1450)

[*English*]

Honourable senators will recall that the Standing Senate Committee on Banking, Trade and Commerce expressed serious reservations about chapter 47 — or Bill C-55, as it then was — and urged the government of the day not to bring it into force until amendments such as those proposed in this bill were made.

I will begin by highlighting the purpose of chapter 47, which consists of reforms to bankruptcy and insolvency laws in Canada and includes the introduction of a wage earner protection program. Following that, I will share some of the key technical changes the government proposes to make to this legislation so as to meet many if not all of the concerns raised by honourable senators and others.

Even in good economic times, bankruptcies are a fact of life in a free market economy. Businesses fail for many reasons and, when they do, workers are among the most vulnerable due to the uncertainties that ensue.

Anyone who has worked at a company that has experienced a bankruptcy or insolvency will express that it is an unsettling business. Not only are workers left wondering about future employment, but many are troubled with doubts about whether they will receive money owed to them. This bill is another step in helping to resolve those doubts.

Legislation was passed by Parliament in 2005 to address this issue. However, as I indicated earlier, certain technical amendments were required to ensure that insolvency reform and wage earner protection measures will function as intended. The bill now under consideration contains the requisite technical amendments.

[*Translation*]

The government has promised to help all Canadians and their families and the companies that employ them. It is determined to treat all parties fairly and is succeeding in doing so with Bill C-12.

[*English*]

The wage earner protection program will help to safeguard workers in companies facing bankruptcy or receivership. It will ensure that workers will receive their money when they need it most.

Currently, provisions in the Canada Labour Code provide some recourse for workers whose employers do not pay the wages owing. Provincial labour laws also have similar provisions. However, when an employer declares bankruptcy or is subject to receivership, insolvency laws take precedence, and, in a bankruptcy, unpaid wages become a debt of the employer's estate. This places an unfair burden on workers because, unlike other creditors, workers do not generally have other sources of income to fall back on.

Even worse, honourable senators, current laws do not guarantee that insolvent employers will pay claims of unpaid wages owed to their workers. As matters stand, those claims can only be paid after the claims of secured creditors have been resolved. As a result, many workers who find themselves in this position, through no fault of their own, never receive all of the wages owed to them.

One estimate, honourable senators, indicates that only 13 cents on the dollar in unpaid wages are ever recovered. In most cases, that is, three quarters of unpaid wage earners receive absolutely nothing. Just as noteworthy, 70 per cent of corporate bankruptcies are small businesses, companies that have fewer than 10 employees, and many of these are in the retail, food services and accommodation industries, where wages are generally lower than in other areas.

Our government is bringing greater fairness to circumstances such as these. The wage earner protection program guarantees reimbursement of unpaid wages within a reasonable time frame. Earned but unused vacation pay will also be protected.

The program will pay workers an amount up to the equivalent of four weeks' maximum insurable earnings under the Employment Insurance Act. That sum is currently about $3,000. The expectation is that this sum will cover amounts owing for wages and vacation pay in full 97 per cent of the cases. Not only will this program protect workers in the federal jurisdiction, honourable senators, but it will also protect all Canadian workers.

Payment will no longer depend upon the amount of assets in an employer's estate. Workers will be paid what is owed to them in a timely manner.

That brings me to another important consideration about this program, which is the price tag. The program will be very affordable, honourable senators. Annual costs are estimated at $35 million, reaching $50 million in the event of serious economic downturn. However, given the super-priority established in the legislation, the government will be able to recover a large part of its payment from the assets of the insolvent business.

Under the wage earner protection program, payment will be provided in a timely way. Government will wait, as it should, to recover the money from insolvent businesses.

The program will be delivered by Service Canada, in collaboration with trustees in bankruptcy and receivers. The trustee or receiver will inform prospective claimants of eligibility and will provide Service Canada, as well as the unpaid worker, with information on unpaid wages and vacation pay. Service Canada will determine the amount and make the payment.

[*Translation*]

Honourable senators, the wage earner protection program is a good legislative measure that is well thought out and well designed. We were very proud to propose it and adopt it.

Every party in Parliament supported the program during debate on the original bill.

The unions also support it, as do bankruptcy experts. They have witnessed first-hand the need to better protect workers in these circumstances.

Furthermore, this is a program Canadian workers have been asking for. Many of them were surprised to learn that such a protective measure did not already exist.

[*English*]

Honourable senators, as I indicated earlier, key adjustments are being proposed to this important new program. The adjustments include ensuring that standard deductions are made from program payments just as they are for wages; enhancing the fairness of the conditions of eligibility; allowing trustees, receivers and other persons a defence of due diligence when they have proven that they have done everything in their power to fulfil their duties under the act but were unable to do so; and ensuring that people who have acquired payroll information will assist trustees and receivers in performing their duties.

Eligibility requirements are being adjusted to safeguard against those who might attempt to abuse the program. For instance, it is proposed that applicants not be related, whether by marriage, blood or adoption, to the main decision-makers of a company facing insolvency, but those who are excluded, honourable senators, will have an opportunity to prove that their family relationship is not related to their employment relationship. In such cases, an applicant could be eligible for the program.

Measures must also be taken, honourable senators, to ensure that insolvency professionals are supported and properly paid for their work under the program. In cases where a company's assets are modest, insolvency professionals could otherwise decline to take on the bankruptcy, concerned perhaps that they would not recover enough money to cover their fees. That would prevent wage earners from receiving assistance from the program. In turn, this could reduce the number of wage earners eligible for the program and create inequities among unpaid wage earners. This would run counter to the program's intent, which is to protect vulnerable workers.

The amendments contained in Bill C-12 in relation to the wage earner protection program are carefully considered, and I do commend them to the attention of honourable senators.

I now turn to the broader scope of insolvency and bankruptcy reforms proposed in this bill. A smoothly running economy depends on having rules governing businesses that are both fair and balanced. Canada's insolvency system is no exception. It must be fair. It must be predictable as far as being able to assess risk. It must be transparent so creditors can defend their interests, and it must be efficient, ensuring that there are appropriate incentives while deterring abuse.

Building on measures first introduced in Parliament in 2005, as I mentioned earlier, the bill before us today will complete the modernization of Canada's insolvency system. It also addresses technical errors in the previous legislation that prevented it from operating as was intended. The bill makes it easier for financially troubled companies to restructure. It makes the system fairer. The proposed amendments will also reduce the possible abuse by those debtors who might be tempted to dispose of their assets prior to filing insolvency proceedings.

For example, honourable senators, the new rules will deter selling or transferring ownership of assets at unreasonable prices — I believe it is called "transfers undervalued" — to a spouse or family member to reduce the ability of creditors to recover unpaid claims.

Another amendment will help to protect trustees. There was some concern that trustees might be held personally responsible for debts and obligations resulting from the debtor's conduct prior to the trustee's appointment. This was clearly not what was intended, and the amendment clarifies this situation. This will help to encourage insolvency professionals to participate in restructuring efforts and accordingly will help to protect employment.

• (1500)

[*Translation*]

In the past, student loan debt was non-dischargeable if the bankruptcy occurred within 10 years after studies ended. Under the proposed reforms, that period would be reduced to seven years for a normal bankruptcy process and to five years in cases of proven financial difficulty.

[*English*]

In addition, there was an unforeseen deficiency in the earlier legislation. The current wording does not allow the changes to be applied retrospectively, as had originally been intended.

A student loan recipient who filed for bankruptcy before the coming into force of chapter 47 would be required to re-file for bankruptcy in order to apply to the court for hardship under the new five-year rule. The purpose of the amendment to the Bankruptcy and Insolvency Act is to ensure that the new seven and five-year discharge provisions are immediately available to individuals for whom the benefits were intended.

Insolvency laws should prevent the abuse of the rules intended to help honest but unfortunate debtors, but some people try to use bankruptcy to avoid paying income tax while they reap the benefits of keeping that money. That is unfair to the vast majority of Canadians who do pay their taxes.

The plan in chapter 47 was to address this problem by prohibiting an automatic discharge for those debtors with over $200,000 in income tax debt representing 75 per cent or more of their total debt. Debtors would instead be required to go before a judge and explain why their debts should be discharged. A judge could refuse a discharge or order a repayment of a portion or all of the debts. The amendments in Bill C-12 ensure that those who find themselves liable for a tax debt of a third party are not captured inadvertently by these provisions.

Honourable senators, the proposed measures we are contemplating in this chamber today are equitable, balanced and efficient. If brought into force in conjunction with these technical amendments, chapter 47 is an appropriate response, it seems to me, to the many calls heard from Canadians for a more modern insolvency system, and it extends important new provisions to safeguard workers' wages in the event of a bankruptcy or receivership on the part of their employer.

The proposed new measures address technical deficiencies found in previous legislation. By remedying these deficiencies they allow chapter 47 to protect jobs by ensuring that companies have every opportunity to restructure rather than closing their doors.

Honourable senators, this bill does not pretend to be a perfect solution to every issue, but it does make it possible to bring into force some long-awaited improvements to our insolvency and bankruptcy laws. I look forward, both here and probably in committee, to the comments in this regard of Senator Goldstein. Our colleague, as many of you know, is a widely acknowledged expert in matters of bankruptcy and insolvency whose talents I came to admire and respect during the years that I practiced law before the bar of Montreal.

[*Translation*]

In conclusion, honourable senators, I would ask that you carefully consider this important bill, and I urge you to pass it quickly at second reading.

[*English*]

Hon. Yoine Goldstein: Honourable senators, Senator Meighen has given us a splendid overview of Bill C-12 and its history, and I thank him for his very kind and thoroughly unjustified words. I would like to hope that he would have occasion to repeat them to my wife.

Honourable senators, I do not intend to repeat any of what Honourable Senator Meighen has said so very eloquently, nor do I intend to speak for more than just a few minutes. Because of the very important nature of this legislation, I hope that there will be a motion today to refer the bill to committee so that the Standing Senate Committee on Banking, Trade and Commerce, under the supervision, guidance and the presidency of Senator Angus, can give it the study it deserves and move it along. It has been long delayed, and it is time that Canada's bankruptcy legislation were updated.

Before I enter into the few remarks that I intend to make, I want to state for the record that, as Senator Meighen has suggested, I was very active in another life in bankruptcy and insolvency matters. I remain loosely associated with a law firm that handles bankruptcy and insolvency matters. I am occasionally asked questions — not that I have all the answers — about bankruptcy and insolvency, and I answer them.

I say this because I would like to assume and hope that no one in this chamber will think that I am dealing with this legislation, either here or in the committee, in a way suitable to my interests and not suitable to the interests of the people of Canada. My sole interest is to have excellent legislation for the excellent people of Canada.

Honourable senators, bankruptcy law is framework legislation. It is essential to have an updated bankruptcy law for the commercial welfare of Canada. Trade is increasingly cross border or borderless, and unless Canada has a modern and efficient bankruptcy and insolvency system, we cannot be players in this competitive commercial world of ours.

However, independent of commercial insolvency, there remains a generically different type of insolvency, one that directly affects almost a quarter of a million Canadians each and every year. I am talking about personal bankruptcy and insolvency. Honourable senators, almost a hundred thousand Canadians go into bankruptcy each and every year. Many of them — perhaps most of them — have spouses. Many of them have children. All of them obviously have creditors. The net result is that personal insolvency touches, directly and immediately, well over a quarter of a million different Canadians each and every year.

It is therefore essential that the provisions dealing with personal insolvency be fair, humane, equitable, and achieve a reasonable balance between the interests and the needs of creditors who advance credit on the one hand and individual debtors who are unable to cope with the credit system upon which our entire economy relies.

Honourable senators, we faced a dilemma, as almost all of you will recall, in November of 2005. On the one hand, everyone was very anxious to pass the wage earner protection program. On the other hand, that plan was not readily severable from the rest of the bill, and the rest of the bill contained numerous failings. Many of them were technical failures, but some of them were quite substantive. I do not intend to deal with all of them because that would be lengthy, and I do not intend to touch upon the ones with which Honourable Senator Meighen has already dealt.

However, I do want to point out, as the honourable senator has done, that the current legislation effectively precludes students from declaring bankruptcy any earlier than ten years from the date that they finish their studies. That is inhuman and is unknown in the entire Western world. That provision for ten years in the desert was put into the Bankruptcy and Insolvency Act in 1998 without notice or the knowledge of anyone at the behest of, I suppose, certain stakeholders who had a particular interest in so doing. It has wrought untold misery to many students in this country, those who are unfortunate enough to not be able to get the jobs which would allow them to repay their indebtedness.

There is presently pending before this honourable chamber a private member's bill — modesty prevents me from telling you who the sponsor is — that seeks the possibility of students making an application to a court of competent jurisdiction, where there is significant and terrible hardship in the repayment of a student loan, to allow that student to repay only part of that loan, or perhaps none of it, depending on the circumstances and depending on the discretion of the judge and the explanations of that student. I would like to hope that that aspect, which is covered by the bill, will receive further study by the committee.

Another matter which is incomplete is with respect to businesses that are undergoing reorganization and need to borrow money. That is called, for a variety of reasons, "DIP financing." In other words, debtor-in-possession financing. DIP financing is covered by the bill, but incompletely so, in the minds of some stakeholders, and therefore some stakeholders who will be appearing before the committee will be seeking amendments to that clause.

• (1510)

Certain other matters require consideration, and I hope the Standing Senate Committee on Banking, Trade and Commerce will be able to provide legislation to address them as quickly as possible.

The Hon. the Speaker *pro tempore***:** Continuing debate?

Senator Comeau: Question!

[*Translation*]

The Hon. the Speaker *pro tempore***:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker *pro tempore***:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Meighen, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

PROPOSED REGULATIONS AMENDING THE CITIZENSHIP REGULATIONS (ADOPTION) AND REGULATORY IMPACT ANALYSIS STATEMENT

MOTION TO REFER TO SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of November 14, 2007, proposed:

> That the document entitled *Proposed Regulations Amending the Citizenship Regulations (Adoption) and Regulatory Impact Analysis Statement*, tabled in the Senate on Wednesday, November 14, 2007, be referred to the Standing Senate Committee on Social Affairs, Science, and Technology for review and report.

Motion agreed to.

[*English*]

CANADA PENSION PLAN

SENIORS' BENEFITS—INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Callbeck, calling the attention of the Senate to the thousands of Canadian seniors who are not receiving the benefits from the Canada Pension Plan to which they are entitled.—(*Honourable Senator Robichaud, P.C.*)

Hon. Elizabeth Hubley: Honourable senators, I would like to thank Honourable Senator Robichaud, who is allowing me to speak today. When I complete my presentation, I would like the adjournment to remain in his name.

Honourable senators, it is my pleasure to participate in this inquiry calling the attention of the Senate to the thousands of Canadian seniors who are not receiving the benefits to which they are entitled from the Canada Pension Plan.

Senator Callbeck is to be commended for raising this issue, as it is an important one that affects seniors across the country. It is also important for many thousands more Canadians who are approaching retirement age.

The issue is straightforward. According to the government's own statistics, tens of thousands of Canadians have failed to apply for a Canada Pension Plan benefit for which they qualify, whether it is the retirement benefit or the survivor's benefit. This failure to apply appears to result mainly from the fact that beneficiaries do not realize they are eligible.

As Senator Callbeck has pointed out, the problem seems to affect women disproportionately. This situation is particularly true for women who may have participated in the workforce for only a few years, or who may have left the workforce long before reaching retirement age. Often, women in these circumstances are not aware that they are eligible for a benefit.

Honourable senators, I recall a similar problem with the Guaranteed Income Supplement. Often, seniors failed to apply, either because they did not know the GIS existed or they did not know they qualified.

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(2) The amount payable is equal to the least of the following amounts, minus any amount paid under section 18:

(*a*) the sum of

(i) 95 % of the value of current assets realized that are worth less than $2,000,

(ii) 50 % of the value of current assets realized that are worth between $2,000 and $4,000,

(iii) 35 % of the value of current assets realized that are worth between $4,000.01 and $10,000,

(iv) 5 % of the value of current assets realized that are worth $10,000.01 or more, and

(v) the fees and expenses

(A) for taking possession of the property, making an inventory and securing and insuring the property,

(B) for mail-outs to creditors to advise them of the meeting of creditors and the discharge hearing of the trustee,

(C) for the cost of publishing a newspaper notice of the bankruptcy,

(D) of the official receiver and the registrar, and

(E) for other items that may be allowed by the court on the taxation of the statement of receipts and disbursements to a maximum of $1,000;

(*b*) if a guarantee has been provided by a creditor of the employer in respect of the fees and expenses, the value of that guarantee; and

(*c*) the value of the rights under sections 81.3 and 81.4 of the *Bankruptcy and Insolvency Act*.

COMING INTO FORCE

20. These Regulations come into force on the day on which the *Wage Earner Protection Program Act*, as enacted by section 1 of chapter 47 of the Statutes of Canada, 2005, comes into force.

REGULATORY IMPACT ANALYSIS STATEMENT

(*This statement is not part of the Regulations.*)

Executive summary

Issue: The *Wage Earner Protection Program Regulations* (the Regulations) provide essential administrative details to accompany the *Wage Earner Protection Program Act* (the WEPP Act).

Description: The Regulations are an administrative tool required to set parameters for the WEPP Act. They establish procedural details in 11 subject areas under the Act, ranging from a definition of "wages" to the fees payable to insolvency professionals for duties performed under the Act.

Cost-benefit statement: The costs and benefits associated with the Regulations are the same as those arising from the implementation of the Wage Earner Protection Program (WEPP) as a whole. The costs occur under three headings: benefit payments to eligible workers, administrative expenses and payments to insolvency professionals. The benefits are those enjoyed by the eligible workers, who receive up-front

(2) La somme à payer correspond à la moins élevée des sommes ci-après, déduction faite de toute somme payée en vertu de l'article 18 :

a) le total des sommes suivantes :

(i) 95 % de la valeur de l'actif à court terme réalisé, si celui-ci vaut moins de 2 000 $,

(ii) 50 % de la valeur de l'actif à court terme réalisé, si celui-ci vaut de 2 000 à 4 000 $,

(iii) 35 % de la valeur de l'actif à court terme réalisé, si celui-ci vaut de 4 000,01 à 10 000 $,

(iv) 5 % de la valeur de l'actif à court terme réalisé, si celui-ci vaut 10 000,01 $ et plus,

(v) le total des honoraires et dépenses :

(A) liés à la prise de possession des biens et à leur inventaire, sécurité et assurance,

(B) liés aux envois postaux visant à informer les créanciers de la tenue d'une réunion de créanciers et de l'audience de libération du syndic,

(C) liés à la publication d'un avis de faillite dans un journal,

(D) du séquestre officiel et du registraire,

(E) liés à tous les autres éléments qui peuvent être autorisés par le tribunal lors de la taxation de l'état des recettes et des débours, jusqu'à concurrence de 1 000 $;

b) si une garantie a été accordée par un créancier de l'employeur pour couvrir les honoraires et les dépenses, la valeur de la garantie;

c) la valeur des droits visés aux articles 81.3 et 81.4 de la *Loi sur la faillite et l'insolvabilité*.

ENTRÉE EN VIGUEUR

20. Le présent règlement entre en vigueur à la date d'entrée en vigueur de la *Loi sur le Programme de protection des salariés*, édictée par l'article 1 du chapitre 47 des Lois du Canada (2005).

RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION

(*Ce résumé ne fait pas partie du Règlement.*)

Résumé

Question : Le *Règlement sur le Programme de protection des salariés* (le Règlement) établit les dispositions administratives détaillées nécessaires à l'application de la *Loi sur le Programme de protection des salariés* (la Loi sur le PPS).

Description : Le Règlement est un outil administratif nécessaire pour établir les paramètres de la Loi sur le PPS. Il établit les procédures détaillées à l'égard des 11 champs d'application de la Loi, allant d'une définition du concept de « salaire » aux honoraires payables aux professionnels de l'insolvabilité pour les tâches qu'ils accomplissent en vertu de la Loi.

Énoncé des coûts et avantages : Les coûts et avantages du Règlement sont les mêmes que ceux qui découlent de la mise en œuvre du Programme de protection des salariés (PPS) dans son ensemble. Ces coûts se regroupent sous trois rubriques : les prestations versées aux salariés admissibles, les frais administratifs et les paiements versés aux professionnels de l'insolvabilité. Les avantages sont ceux dont bénéficieront les salariés payments of wages and earned vacation pay, to a maximum of approximately $3,162, instead of having to wait through lengthy bankruptcy proceedings only to receive a fraction of what they are owed.

Business and consumer impacts: The Regulations will have no significant impact on the business or consumer sectors.

Domestic and international coordination and cooperation: Stakeholders have been consulted several times in the course of preparing the Regulations, particularly Canadian bankruptcy and insolvency professionals whose cooperation is essential to the successful implementation of the Regulations. These Regulations will have no significant impact on any aspect of domestic or international trade.

Issue

The WEPP assists workers who are owed wages and vacation pay by an employer who has declared bankruptcy or is subject to receivership. These Regulations provide certain administrative details essential to the operation of the WEPP.

Objective

The objective of this regulatory action is to set the parameters for specific administrative functions that must be performed to meet the purposes of the WEPP.

Description

The Regulations are administrative regulations required to set parameters for the operation of the WEPP Act.

On June 3, 2005, Bill C-55, *An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts* was introduced in the House of Commons. The purposes of Bill C-55 included facilitating the restructuring of viable but financially troubled companies, better protecting workers' claims for wages and pensions, making the system fairer, reducing abuse and improving the administration of the insolvency system. Bill C-55 received Royal Assent on November 25, 2005 and became Chapter 47 of the Statutes of Canada, 2005 (Chapter 47).

Subsequently, it was determined that certain corrective amendments were needed to Chapter 47 (including the WEPP Act) prior to it coming into force. Those amendments were introduced in the House of Commons as part of Bill C-12, which received Royal Assent on December 14, 2007, and became Chapter 36 of the Statutes of Canada, 2007 (Chapter 36).

The WEPP Act is designed to protect the wages of workers whose employers declare bankruptcy or are subject to receivership. The WEPP pays unpaid wages and earned vacation pay to workers up to the equivalent of four weeks' maximum insurable earnings under the *Employment Insurance Act* (currently about $3,162). Total WEPP payments will vary from year to year depending on the number of bankruptcies that occur in the year and the number of eligible workers who apply for benefits relating to those bankruptcies.

admissibles, qui reçoivent des paiements équivalant aux salaires impayés et aux indemnités de vacances accumulées, jusqu'à concurrence d'environ 3 162 $, plutôt que de les contraindre à attendre qu'une longue procédure de faillite soit terminée pour ne toucher qu'une fraction de ce qu'on leur doit.

Incidences sur les entreprises et les consommateurs : Le Règlement lui-même n'aura aucune incidence significative sur les entreprises ou sur les consommateurs.

Coordination et coopération à l'échelle nationale et internationale : Les intervenants ont été consultés plusieurs fois pendant l'élaboration du Règlement, en particulier les professionnels canadiens de l'insolvabilité et de la faillite dont la coopération est essentielle à la mise en œuvre du Règlement. Ce règlement n'aura aucune incidence marquée sur un aspect quelconque du commerce intérieur ou international.

Question

Le PPS est conçu pour venir en aide aux salariés dont l'employeur a déclaré faillite ou a été mis sous séquestre et leur doit des sommes au titre du salaire et des indemnités de vacances. Le Règlement établit les dispositions administratives détaillées essentielles à l'application du PPS.

Objectif

L'objectif de la mesure réglementaire est d'établir les paramètres des fonctions administratives spécifiques qui doivent être accomplies aux fins du PPS.

Description

Le Règlement est un règlement administratif établissant les paramètres d'application de la Loi sur le PPS.

Le 3 juin 2005, le projet de loi C-55, *Loi édictant la Loi sur le Programme de protection des salariés et modifiant la Loi sur la faillite et l'insolvabilité, la Loi sur les arrangements avec les créanciers des compagnies et d'autres lois en conséquence* a été déposé à la Chambre des communes. Il avait pour objet de faciliter la réorganisation des entreprises viables, mais en difficulté financière, de mieux protéger les réclamations des salariés au titre du salaire et des pensions, de rendre le système plus équitable, de réduire les abus et d'améliorer l'administration du système d'insolvabilité. Le projet de loi a reçu la sanction royale le 25 novembre 2005 et est devenu le chapitre 47 des Lois du Canada, 2005 (chapitre 47).

Par la suite, on a constaté que certaines modifications au chapitre 47 (notamment à la Loi sur le PPS) s'imposaient avant qu'il n'entre en vigueur. Ces modifications ont été déposées à la Chambre des communes dans le cadre du projet de loi C-12, qui a reçu la sanction royale le 14 décembre 2007 et qui est devenu le chapitre 36 des Lois du Canada, 2007 (chapitre 36).

La Loi sur le PPS est conçue pour protéger les gains des salariés dont les employeurs déclarent faillite ou font l'objet d'une mise sous séquestre. Le PPS paie aux salariés leur dû au titre du salaire et des indemnités de vacances jusqu'à concurrence de l'équivalent de quatre semaines au maximum de la rémunération assurable aux termes de la *Loi sur l'assurance-emploi* (actuellement environ 3 162 $). Le total des paiements versés par le PPS fluctuera d'une année à l'autre selon le nombre de faillites déclarées et selon le nombre de salariés admissibles qui réclameront des prestations à la suite de ces faillites.

It has been estimated that approximately 97% of the workers who are eligible for WEPP payments will receive the entire amounts that they are owed in wages and vacation pay. The current average wage claim is about $1,500. The very few eligible workers who receive less than their claimed amounts will still be entitled to pursue the remainder through the bankruptcy process.

Most of the features of the WEPP are based on statutory provisions, that is, provisions contained in the WEPP Act. As with all statutes, those statutory provisions have been determined by Parliament, and so are not the subject matter of this Regulatory Impact Analysis Statement (RIAS). This RIAS describes the content of the Regulations, prepared under the authority of the WEPP Act.

As authorized in section 41 of the WEPP Act, the Regulations provide the following administrative details for the operation of the WEPP:

(*a*) Amounts to be included as "wages" for the purpose of calculating benefits;

(*b*) Interpretation of the term "termination of employment";

(*c*) Definitions of the terms "controlling interest" and "managerial position";

(*d*) Amounts that may be paid to eligible individuals under the WEPP;

(*e*) Allocation of WEPP payments to the different components of wages;

(*f*) The manner of making an application for WEPP benefits, and the period during which an application is to be made;

(*g*) The manner of applying for a review of a Ministerial determination concerning the eligibility of an applicant to receive WEPP benefits, the period during which such a review may be requested, and the manner in which and the period during which an appeal may be made to an adjudicator concerning the outcome of the aforementioned review;

(*h*) The classes of individuals to whom a bankruptcy trustee or a receiver is *not* required to provide information about the existence of the WEPP, about the conditions under which WEPP payments may be made, or about individuals and the amounts of wages owing to those individuals;

(*i*) The information that is to be communicated to individuals and to the Minister by trustees and receivers about those individuals and the amounts of wages owing to them, and the period during which and the manner in which that information is to be communicated;

(*j*) The period during which, and the manner in which

(i) information about the existence of the WEPP and the conditions under which WEPP payments may be made is to be provided to individuals by trustees and receivers, and

(ii) information in the possession of payroll contractors, or information accessible to other persons, about individuals and the amounts of wages owing to those individuals is to be provided to trustees and receivers; and

(*k*) The fees and expenses that the Minister may pay to a trustee or a receiver for duties performed under the WEPP Act, and the circumstances in which such fees may be paid.

Several of the items listed above deserve some elaboration. For example, with regard to item (*c*), section 4 of the Regulations

On estime qu'environ 97 % des salariés admissibles aux prestations du PPS recevront la totalité de leur dû au titre du salaire et des indemnités de vacances. La réclamation salariale moyenne est actuellement d'environ 1 500 $. Les rares salariés admissibles qui recevront moins que la somme réclamée pourront toujours avoir recours à la procédure de faillite pour tenter d'obtenir le solde.

La plupart des modalités du PPS sont fondées sur des dispositions législatives figurant dans la Loi sur le PPS. Ces dispositions ont été établies par le Parlement (comme celles de toutes les lois) et ne sont donc pas visées par ce Résumé de l'étude d'impact de la réglementation (RÉIR). Le présent RÉIR décrit le contenu du Règlement, en application de la Loi sur le PPS.

Comme l'article 41 de la Loi sur le PPS le prévoit, le Règlement établit les modalités administratives suivantes pour l'application du PPS :

a) les sommes assimilées au « salaire » aux fins du calcul des prestations;

b) l'interprétation de l'expression « fin d'emploi »;

c) la définition des expressions « participation assurant le contrôle » et « poste de cadre »;

d) les sommes payables aux personnes admissibles sous le régime du PPS;

e) l'affectation des prestations du PPS aux différents éléments du salaire;

f) les modalités — délai et autres — applicables à la présentation des demandes de prestations du PPS;

g) les modalités relatives à la présentation des demandes de révision relatives aux décisions du ministre quant à l'admissibilité d'un demandeur aux prestations du PPS, le délai dans lequel la demande de révision doit être présentée, ainsi que les modalités et le délai pour la présentation d'un appel à un arbitre concernant les résultats de la révision susmentionnée;

h) les catégories de personnes auxquelles le syndic ou le séquestre ne sont *pas* tenus de fournir des renseignements sur l'existence du PPS, sur les conditions régissant le versement des prestations du PPS ou sur les personnes auxquelles des sommes sont dues, ainsi que sur le montant du salaire qui leur est dû;

i) les renseignements qui doivent être communiqués par le syndic et par le séquestre au ministre ainsi qu'aux personnes intéressées à propos de ces personnes et du salaire qui leur est dû ainsi que le délai dans lequel ces renseignements doivent être communiqués, de même que la façon de les communiquer;

j) les modalités — délai et autres — applicables :

(i) aux renseignements que le syndic et le séquestre doivent communiquer aux personnes intéressées à propos de l'existence du PPS et des conditions dans lesquelles ces prestations peuvent être versées,

(ii) aux renseignements, à propos des personnes admissibles et du montant du salaire qui leur est dû, en possession des responsables de la paie ou accessibles à d'autres personnes, qui doivent être communiqués au syndic et au séquestre;

k) les honoraires et dépenses que le ministre peut payer à un syndic ou un séquestre pour les tâches accomplies en application de la Loi sur le PPS et les circonstances dans lesquelles ces sommes doivent être versées.

Il est important d'expliquer plusieurs des points qui précèdent. Par exemple, en ce qui concerne le point *c*), l'article 4 du Règlement explains that an individual is considered to have had a "controlling interest" in the business of their former employer if the individual owned

(*a*) more than 40% of the voting shares in the company;

(*b*) a block of voting shares that is large enough such that no one shareholder or coalition of shareholders can block a motion; or

(*c*) enough shares in the business to control the business's policy.

This interpretation may be key to determining the eligibility of an applicant for a WEPP payment, since any individual who has had a controlling interest in the insolvent business during the period in which wages were earned is not eligible to receive a WEPP payment in respect of those wages.

Similarly, an individual who has occupied a managerial position in the business of their former employer is not eligible for a WEPP payment if the responsibilities of the individual included making binding:

(*a*) financial decisions affecting the business of the former employer; and

(*b*) decisions with respect to the payment or the non-payment of wages by the former employer.

Regarding item (*f*) above, the manner and timing of an application may also be of critical importance in establishing a worker's eligibility. Section 10 of the Regulations stipulates that an application must be made in writing in the form provided by the Minister, and that it must normally be made (pursuant to section 9) within 56 days of the latest of the following dates:

(*a*) the date of the bankruptcy or receivership of the applicant's former employer;

(*b*) the date on which that applicant's employment terminates in accordance with section 3 (which defines what is meant by a termination of employment); or

(*c*) the date on which the trustee or receiver terminates the applicant's employment.

Item (*i*) refers to the body of information that must be communicated by trustees and receivers to individuals and to the Minister about those individuals and the amounts owing to them, and item (*j*)(i) which prescribes the manner and period in which that information must be provided. This information may be crucial to determining the total sum to which the individuals may be entitled under the WEPP, and so must be provided promptly. In order for that to happen, certain information about individuals and the amounts of wages owing to them must be provided to a trustee or receiver by those who have access to this information, or a payroll service provider [as listed in item (*j*)(ii)].

Finally, in addition to establishing the WEPP Act, Chapter 47, as amended by Chapter 36, also included amendments to the *Bankruptcy and Insolvency Act* which establishes a "limited super-priority" for unpaid wage claims up to $2,000, which grants those claims a priority charge—ahead of secured creditors—over the current assets of the bankrupt employer's estate (cash, accounts receivable and inventory). This will aid the Government when it assumes the rights of a wage earner as a creditor in the bankruptcy process, to recover a WEPP payment.

précise qu'une personne est réputée avoir une « participation assurant le contrôle » de l'entreprise de son ancien employeur si elle détient :

a) plus de 40 % des actions avec droit de vote de l'entreprise;

b) un bloc d'actions comportant un droit de vote suffisamment important pour qu'aucun actionnaire ou aucune coalition d'actionnaires ne puisse faire opposition à une motion;

c) un nombre suffisant d'actions pour exercer un contrôle sur les politiques.

Cette interprétation peut être cruciale pour déterminer l'admissibilité d'un demandeur de prestations du PPS, puisque quiconque a détenu une participation assurant le contrôle de l'entreprise insolvable durant la période au cours de laquelle son salaire a été gagné n'est pas admissible à toucher une prestation du PPS au titre de ce salaire.

De même, quiconque a occupé un poste de cadre dans l'entreprise de son ancien employeur n'est pas admissible à une prestation du PPS si dans l'exercice de ses fonctions, il pouvait prendre les décisions exécutoires suivantes :

a) de nature financière influant sur les affaires de son ancien employeur;

b) qui portent sur le paiement ou le non-paiement des salaires par son ancien employeur.

En ce qui a trait au point *f*) susmentionné, les modalités quant à la manière et au délai pour présenter la demande peuvent aussi être d'importance critique pour l'établissement de l'admissibilité du salarié. L'article 10 du Règlement stipule en effet que la demande doit être présentée par écrit sous la forme prescrite par le ministre, normalement dans les 56 jours (conformément à l'article 9) de la plus tardive des dates suivantes :

a) la date de la faillite ou de la mise sous séquestre de l'ancien employeur du demandeur;

b) la date à laquelle l'emploi du demandeur a pris fin conformément à l'article 3 (qui définit ce qu'on entend par la fin d'emploi);

c) la date à laquelle le syndic ou le séquestre met fin à l'emploi du demandeur.

Le point *i*) porte sur les renseignements que le syndic et le séquestre doivent communiquer au ministre et à chaque personne visée, concernée par les renseignements, en leur précisant aussi le montant du salaire dû à cette personne; le point *j*)(i) décrit les modalités (manière et délai) selon lesquelles ces renseignements doivent être communiqués. Les renseignements en question peuvent être d'importance capitale pour déterminer le montant total auquel la personne visée peut avoir droit sous le régime du PPS, et c'est pourquoi ils doivent être communiqués rapidement. À cette fin, certains renseignements concernant les personnes intéressées ainsi que le montant du salaire qui leur est dû doivent être transmis à un syndic ou à un séquestre par les personnes qui y ont accès ou par le service de la paie [point *j*)(ii)].

Enfin, en plus d'établir la Loi sur le PPS, le chapitre 47, tel qu'il est modifié par le chapitre 36, renfermait également des modifications de la *Loi sur la faillite et l'insolvabilité*, qui établit une « super-priorité limitée » à l'égard des demandes de versement de salaire non payé d'au plus 2 000 $, qui accordaient aux demandeurs la priorité, avant même les créanciers garantis, sur les actifs de l'employeur failli (espèces, comptes créditeurs et inventaire). Cette disposition aidera le gouvernement à recouvrer les prestations du PPS quand il assumera les droits de créancier d'un salarié dans les procédures de faillite.

Regulatory and non-regulatory options considered

The Regulations are essential to the operation of the WEPP Act. Indeed, regulations are anticipated by the Act, not only in section 41 which authorizes them, but also in sections 5, 6, 8, 11, 14, and 21. It is in response to those requirements, and to those requirements only, that the Regulations have been drafted. No instrument other than these Regulations could meet those requirements to establish the essential administrative details of the WEPP.

It should be noted, however, that, in conjunction with the Regulations, other instruments may be used to set out some of the secondary details of the WEPP. Those other instruments may include ministerial guidelines, other guidelines, policy statements, etc. In all such cases, the policy instrument would be developed in consultation with all directly affected parties, and would be made available to those parties and to all other interested parties.

Benefits and costs

As mentioned above, the key operational provisions of the WEPP are statutory provisions, that is, they are contained in the WEPP Act rather than in the Regulations. It is those statutory provisions that result in the measurable costs and benefits of the Program, e.g. the annual cost of about $35 million to the Government, and the economic benefits to society that result from maintaining the health and well-being of the workers protected by the Program.

However, since the Regulations are an essential component of the WEPP, the costs and benefits of the Program (and, hence, of the Regulations) are outlined in the following table.

COST- BENEFIT STATEMENT		**Base Fiscal Year: 2008-2009**	**Each Subsequent Fiscal Year**	**Average Annual**
A. Quantified Impacts ($)				
Benefits	Eligible Workers	28.7 million	28.7 million	28.7 million
	Insolvency Professionals (fees and expenses)	2.5 million	2.5 million	2.5 million
Gross Costs[1]	Government of Canada	34.7 million	34.7 million	34.7 million
Recovered Costs[2]	Government of Canada	14 million	14 million	14 million
Net Costs	Government of Canada	20.7 million	20.7 million	20.7 million

[1] Includes: payments to workers; administrative expenses; and payments to insolvency professionals.

[2] To be recovered by the Government of Canada through the bankruptcy process, having assumed the rights of the workers as creditors after the latter have received their respective WEPP payments.

The only substantial benefits to be gained from the WEPP are the payments of wages and earned vacation pay to be received by eligible workers formerly employed by insolvent employers, upon application to the Government. Those benefits are significant not only in monetary terms, but also in that the workers will receive them in a timely fashion. That is in sharp contrast to the current situation in which workers typically wait through the bankruptcy process for as much as three years, only to receive a small fraction of the money that they are owed.

Options réglementaires et non réglementaires considérées

Le Règlement est indispensable à l'application de la Loi sur le PPS. Il est d'ailleurs prévu par la Loi non seulement à l'article 41, qui l'autorise, mais aussi aux articles 5, 6, 8, 11, 14 et 21. C'est pour satisfaire à ces exigences, et à elles seules, qu'il a été élaboré. Aucun autre instrument que ce règlement ne saurait en effet y satisfaire en établissant les dispositions administratives détaillées essentielles à l'application du PPS.

Il faut toutefois souligner qu'on peut avoir recours à d'autres instruments, parallèlement au Règlement, pour établir certains des aspects secondaires du PPS. Il peut s'agir de lignes directrices ministérielles, d'autres lignes directrices, d'énoncés de politique, etc. Dans tous les cas, l'instrument stratégique devrait être conçu en consultation avec toutes les parties directement touchées, en plus d'être mis à leur disposition ainsi qu'à celle de toutes les autres parties intéressées.

Avantages et coûts

Nous avons déjà précisé que les principales dispositions opérationnelles du PPS sont législatives et figurent donc dans la Loi sur le PPS plutôt que dans le Règlement. Ce sont ces dispositions législatives qui entraînent les coûts et les avantages mesurables du Programme; le coût annuel pour le gouvernement s'élève à quelque 35 millions de dollars, il y a aussi les avantages économiques pour la société canadienne résultant du maintien de la santé et du bien-être des salariés protégés par le Programme.

Toutefois, puisque le Règlement est un élément essentiel du PPS, les coûts et les avantages du Programme lui-même (et donc du Règlement) sont présentés dans le tableau suivant.

ÉNONCÉ DES COÛTS-AVANTAGES		**Année de base 2008-2009**	**Chaque année suivante**	**Moyenne annuelle**
A. Incidences chiffrées (en dollars)				
Avantages	Salariés admissibles	28,7 millions	28,7 millions	28,7 millions
	Professionnels de l'insolvabilité (honoraires et dépenses)	2,5 millions	2,5 millions	2,5 millions
Coûts bruts[1]	Gouvernement du Canada	34,7 millions	34,7 millions	34,7 millions
Coûts recouvrés[2]	Gouvernement du Canada	14 millions	14 millions	14 millions
Coûts nets	Gouvernement du Canada	20,7 millions	20,7 millions	20,7 millions

[1] Notamment : prestations versées aux salariés, frais administratifs et honoraires payés aux professionnels de l'insolvabilité.

[2] À recouvrer par le gouvernement du Canada grâce à la procédure de faillite quand il aura assumé les droits de créanciers des salariés, une fois que ceux-ci auront touché leurs prestations du PPS.

Les seuls avantages substantiels qu'on peut tirer du PPS sont les salaires et les indemnités de vacances accumulés qui seront payés aux salariés admissibles, auparavant employés par des employeurs insolvables, sur présentation d'une demande à cette fin au gouvernement. Ces avantages sont importants non seulement en termes financiers, mais aussi en ce que les salariés les toucheront en temps opportun. Ce sera bien différent de ce qui se passe actuellement, puisqu'ils attendent généralement jusqu'à trois ans afin que la procédure de faillite se termine, pour ne toucher alors qu'une infime fraction de l'argent qui leur est dû.

All of the costs of the WEPP will be borne by the Government. Drawing from the Consolidated Revenue Fund, Service Canada will make payments to eligible applicants and will also cover administration costs and make payments, as necessary, to insolvency professionals who perform essential services. Each worker who is eligible for a WEPP payment will be required to sign over to the Government all of his or her rights as a creditor. The Government will then proceed to recover the maximum available to it through the bankruptcy process; it is estimated that, in the long term, the Government will be able to recover approximately one-half of the sums paid out in WEPP payments.

The WEPP will have negligible impacts. Specifically, there will be no significant impact on

- health or safety;
- the environment;
- the economy;
- the industrial sector;
- employment;
- competitiveness;
- domestic or international trade; or
- public security.

Regarding international cooperation, the Regulations (and the Act) apply only to workers legally entitled to work in Canada. The WEPP is similar to the wage earner protection schemes of other countries. Until now, Canada was one of the few member countries of the Organization for Economic Co-operation and Development lacking such a program.

Rationale

As mentioned above, the Regulations are required by the WEPP Act and are essential to its operation. The Regulations establish the specific administrative procedural details of the WEPP, as authorized by, and anticipated in, the Act. No other option would accomplish that purpose.

Consultation

Bill C-55, mentioned above, was prepared in 2005 following extensive public consultations on Canada's insolvency laws, which were conducted by Industry Canada in 2001 and 2002 and by the Standing Senate Committee on Banking, Trade, and Commerce in 2003.

After Bill C-55 was introduced in the House of Commons, interested parties had an opportunity to express their views on the content of the Bill, including the proposed establishment of the WEPP Act. Among the stakeholders that chose to make their opinions known were the Canadian Association of Insolvency and Restructuring Professionals (CAIRP), the Insolvency Institute of Canada, the Canadian Bar Association, and several labour unions.

The Regulations have been drafted by Justice Canada using drafting instructions prepared by the Labour Program of Human Resources and Social Development Canada (HRSDC). Discussion papers based on preliminary versions of those drafting instructions were the subject of confidential consultations with the Office of the Superintendent of Bankruptcy and with the CAIRP. In each case, the consulted parties were invited to express any concerns about the content of the Regulations.

Tous les coûts du PPS seront financés par le gouvernement. Service Canada puisera à même le Trésor le montant des paiements aux demandeurs admissibles et couvrira aussi les coûts d'administration, en payant également les honoraires aux professionnels de l'insolvabilité qui lui fourniront les services essentiels. Chaque salarié admissible à une prestation du PPS devra céder tous ses droits de créancier au gouvernement, qui recouvrera le maximum possible en ayant recours à la procédure de faillite. À long terme, on estime que le gouvernement pourra recouvrer environ la moitié de ce qu'il aura versé en prestations du PPS.

Les répercussions du PPS seront négligeables. Plus précisément, il n'y aura aucune incidence significative sur :

- la santé ou la sécurité;
- l'environnement;
- l'économie;
- le secteur industriel;
- l'emploi;
- la compétitivité;
- le commerce intérieur ou international;
- la sécurité publique.

Quant à la coopération internationale, il est important de souligner que le Règlement (et la Loi) ne s'appliquent qu'aux salariés ayant légalement le droit de travailler au Canada. Le PPS est analogue aux régimes de protection des salariés des autres pays. Jusqu'à présent, le Canada était l'un des rares pays membres de l'Organisation de coopération et de développement économiques à ne pas avoir un programme de ce genre.

Justification

Nous l'avons déjà dit, le Règlement est requis par la Loi sur le PPS et est indispensable à son application. Le Règlement établit les dispositions administratives détaillées nécessaires à la mise en œuvre du PPS, comme la Loi le permet et le prévoit. Aucune autre option n'en serait capable.

Consultation

Le projet de loi C-55 a été déposé en 2005 après de longues consultations publiques sur la législation canadienne en matière d'insolvabilité, menées par Industrie Canada en 2001 et en 2002 ainsi que par le Comité sénatorial permanent des banques et du commerce en 2003.

Après le dépôt du projet de loi C-55 à la Chambre des communes, les parties intéressées ont eu la possibilité d'exprimer leur opinion sur son contenu, notamment en ce qui concernait la Loi sur le PPS proposée. Les intervenants qui ont décidé de se faire entendre étaient, entre autres, l'Association canadienne des professionnels de l'insolvabilité et de la réorganisation (ACPIR), l'Institut d'insolvabilité du Canada, l'Association du Barreau canadien et plusieurs syndicats.

Le Règlement a été rédigé par les juristes de Justice Canada, conformément aux instructions du Programme du travail de Ressources humaines et Développement social Canada (RHDSC). Les documents de travail basés sur les versions préliminaires de ces instructions avaient fait l'objet de consultations confidentielles avec le Bureau du surintendant des faillites ainsi qu'avec l'ACPIR. Dans chaque cas, les parties consultées avaient été invitées à partager leurs préoccupations quant au contenu du Règlement.

Concerns were voiced regarding a number of proposed provisions, including: the deadlines for performance of certain duties by insolvency professionals and the circumstances under which insolvency professionals should be reimbursed for performing WEPP-related duties. The Regulations reflect careful consideration of those expressed concerns. In particular, certain deadlines have been adjusted to allow sufficient time for the performance of the related duties.

The WEPP Regulations were pre-published in Part I of the *Canada Gazette* on June 7, 2008, for which interested parties were given a 15-day period to provide comments. During this period, submissions were received from CAIRP and the Ontario Association of Insolvency and Restructuring Professionals (OAIRP), who collectively represent some 900 general members acting as trustees in bankruptcy, receivers, agents, monitors and consultants in insolvency matters. Broadly speaking, the comments focused on improving the efficiency of the application process; clarifying the information that is to be provided by trustees and receivers; and simplifying the payment scheme for insolvency professionals' fees and expenses. No input was received from individuals. The comments were reviewed, analyzed and responded to by officials in the Labour Program of HRSDC.

A number of the issues raised have been addressed directly through revisions to the Regulations, while other issues will be clarified through policy directives. For example, the directives will specify that trustees and receivers will have no duties to perform under the WEPP Act if all wage arrears are paid in full by the trustee or receiver. These directives will be communicated to the insolvency community directly and will be made available to them on-line.

The following amendments have been made to the Regulations based on the comments received during the pre-publication of the Regulations in Part I of the *Canada Gazette*.

Section 9 — This section has been amended to provide the individual with an additional 11 days to apply to the Program, providing them with a total of 56 days instead of 45. This modification addresses the concerns expressed by CAIRP that the individual would not have sufficient time to comply with the application requirements.

Subsection 15(1) — This subsection has been amended to specify the requirement of trustees and receivers to provide the required information to the Minister on the form prescribed by the Minister. This modification, coupled with the amendment to paragraph 15(1)(*b*) (see below), provides trustees with a clear and simple method of providing information pertaining to the managerial function of the individual.

Paragraph 15(1)(*b*) — This paragraph has been amended by requesting that the trustee or receiver provide the Minister with the "job title" of the individual. This information will assist the Minister in his determination of whether or not the individual should be considered as an Excluded Manager under section 5.

Paragraph 15(1)(*d*) — This paragraph has been amended to remove the requirement of trustees and receivers to provide a copy of the individual's proof of claim to the Minister. This serves two purposes. First, given that the trustee or receiver must attest to the

Elles étaient préoccupées par plusieurs des dispositions, notamment les délais d'exécution de certaines tâches par les professionnels de l'insolvabilité et les circonstances dans lesquelles ceux-ci devraient être indemnisés pour l'exécution de fonctions liées au PPS. Le Règlement reflète le résultat de l'examen de ces préoccupations. En particulier, certains délais ont été rajustés afin de laisser suffisamment de temps pour l'exécution des tâches connexes.

Le 7 juin 2008, le Règlement sur le PPS a été publié préalablement dans la Partie I de la *Gazette du Canada*, et les parties intéressées ont eu 15 jours pour formuler des observations. Pendant cette période, nous avons reçu des observations de l'ACPIR et de l'Ontario Association of Insolvency and Restructuring Professionals (OAIRP) qui, ensemble, représentent quelque 900 membres ordinaires agissant comme syndics de faillite, séquestres, agents, surveillants et consultants en matière d'insolvabilité. De façon générale, les observations étaient axées sur l'amélioration de l'efficacité du processus de demande, la clarification des renseignements que les syndics et les séquestres doivent fournir et, enfin, la simplification de la méthode de calcul des paiements pour les honoraires et les dépenses des professionnels de l'insolvabilité. Aucune observation n'a été formulée par des particuliers. Des agents du Programme du travail de RHDSC ont examiné et analysé les observations reçues et y ont répondu.

Un certain nombre de questions soulevées ont été réglées directement en révisant le Règlement, tandis que d'autres seront clarifiées au moyen de directives en matière de politique. Par exemple, dans les directives, il sera précisé que les syndics et les séquestres n'auront aucune tâche à exécuter en application de la Loi sur le PPS s'ils paient au complet l'arriéré des salaires. Ces directives seront communiquées directement aux membres de la communauté de l'insolvabilité et seront mises à leur disposition en ligne.

Les modifications qui suivent ont été apportées au Règlement en fonction des observations reçues au cours de la période de publication du Règlement dans la Partie I de la *Gazette du Canada.*

Article 9 — Cet article a été modifié afin d'accorder au demandeur 11 jours de plus pour présenter sa demande, ce qui signifie qu'il disposera en tout de 56 jours plutôt que de 45 comme c'était le cas auparavant. Cette modification permet de tenir compte des préoccupations exprimées par l'Association canadienne des professionnels de l'insolvabilité et de la réorganisation qui estimait que les particuliers n'auraient pas assez de temps pour satisfaire aux exigences relatives à la présentation de la demande.

Paragraphe 15(1) — Les modifications apportées à ce paragraphe visent à préciser que les syndics et les séquestres doivent transmettre au ministre l'information demandée en utilisant le formulaire fourni par le ministre. Cette modification et celle qui a été faite à l'alinéa 15(1)*b*) (voir ci-dessous) indiquent de façon claire et simple aux syndics la méthode à suivre pour transmettre les renseignements au sujet des fonctions de cadre du demandeur.

Alinéa 15(1)*b*) — Cet alinéa a été modifié afin de demander au syndic ou au séquestre de fournir au ministre le « titre du poste » du demandeur. Cette information aidera le ministre à déterminer si le demandeur doit être considéré comme étant un cadre exclu au sens de l'article 5.

Alinéa 15(1)*d*) — Cet alinéa a été modifié par la suppression de l'obligation, pour les syndics et les séquestres, de fournir au ministre une copie de la preuve de réclamation du demandeur. Cette modification était nécessaire pour deux raisons. Premièrement, fact that a proof of claim was submitted, and that applicants will be required to attest on their application form to having submitted one, it was deemed unnecessary to include this requirement. Second, it eliminates unnecessary duplication of documents. Under paragraph 16(1)(*c*), trustees and receivers are required to provide individuals a copy of the documents they provided to the Minister. In effect, a trustee or receiver would be required to provide a copy of a document the individual already possesses—his or her own proof of claim.

Section 17 — This section has been removed since the aggregate time frame that trustees have to perform their duties is specified in subsection 16(2).

Paragraph 19(2)(*b*) — This paragraph, now 18(2)(*b*), has been replaced with new wording that simplifies and clarifies the payment scheme to trustees and receivers in response to their concerns that the existing payment parameters were overly complex and confusing. The new section establishes one payment scheme, regardless of the completeness of the information available or the level of cooperation from those in possession of information with respect to their duties, and establishes a higher minimum threshold of payment.

Paragraph 20(2)(*b*) — The previous wording could have been interpreted to mean that if the value of the guarantee provided by a creditor was zero, then no payment would be made under section 20, since “zero” would represent the least of the amounts enumerated in paragraphs (*a*) through (*c*). This was not the intent, but rather, if there were no guarantee provided, paragraph (*b*) would simply not have been considered in the calculation; meaning that the lesser of (*a*) and (*c*) would be paid. This paragraph, now 19(2)(*b*), has been replaced with new wording to clarify that the calculation will only consider the value of the guarantee if a guarantee has been provided by a creditor of the employer in respect of the fees and expenses.

All of these amendments are administrative in nature and do not alter the pre-existing policy. There is also no change in the intent of the Regulations and the impact of these changes is deemed to be beneficial to all stakeholders. Therefore, new consultations are not deemed necessary.

Both CAIRP and OAIRP recommended that a joint oversight committee be established between HRSDC and CAIRP to resolve issues that arise pertaining to the administration of the Act, and that a formal review of the WEPP Regulations be undertaken within one year. HRSDC agrees with these recommendations, and will take the necessary steps to put those measures in place.

Implementation, enforcement and service standards

The WEPP is administered by the Labour Program of HRSDC and delivered through Service Canada. The WEPP is subject to program evaluation and a statutory five-year review. The review is required by section 42 of the WEPP Act.

Regarding enforcement of the Regulations, failure to observe the requirements will result, in most cases, in committing an offence under the WEPP Act. Sections 38 and 39 of the Act list

comme le syndic ou le séquestre doit attester que le demandeur a fourni une preuve de réclamation et que le demandeur devra, pour sa part, attester sur son formulaire de demande qu’il a fourni une telle preuve, cette obligation était superflue. Deuxièmement, cette modification évite la présentation répétée de documents. Selon l’alinéa 16(1)*c*), les syndics et les séquestres sont tenus de fournir au demandeur une copie des documents qu’ils ont transmis au ministre. En fait, cela signifie qu’ils devraient fournir une copie d’un document que le demandeur possède déjà — soit sa propre preuve de réclamation.

Article 17 — Cet article a été supprimé étant donné que le délai dont dispose le syndic pour s’acquitter de ses fonctions est précisé au paragraphe 16(2).

Alinéa 19(2)*b*) — Cet alinéa, qui est devenu l’alinéa 18(2)*b*), a été remplacé par un nouveau texte qui simplifie et clarifie le calcul des paiements faits aux syndics et aux séquestres pour tenir compte des préoccupations exprimées par ceux-ci à propos de la complexité excessive des paramètres établis pour le paiement et de la grande confusion qui en résultait. Dans le nouvel alinéa, il y a une seule méthode de calcul, que l’information disponible soit complète ou non et indépendamment du degré de collaboration des personnes qui ont en leur possession de l’information concernant leurs fonctions, et relève le seuil de paiement minimal.

Alinéa 20(2)*b*) — Le précédent libellé aurait pu être interprété comme signifiant que, si la valeur de la garantie fournie par le créancier était « zéro », aucun paiement ne serait fait aux termes de l’article 20, étant donné que « zéro » constituerait le montant le moins élevé mentionné aux alinéas *a*) à *c*). Ce n’était pas l’intention de cet alinéa. En effet, on voulait plutôt que, en l’absence de garantie, l’alinéa *b*) ne soit tout simplement pas pris en compte dans le calcul, ce qui signifie que le moins élevé des montants prévus aux alinéas *a*) et *c*) devait être payé. Cet alinéa, qui est devenu l’alinéa 19(2)*b*), a été remplacé par un nouveau texte afin de préciser que, dans le calcul, on tiendra seulement compte de la valeur de la garantie si une telle garantie a été fournie par un créancier de l’employeur en ce qui concerne les honoraires et les dépenses.

Toutes ces modifications sont de nature administrative et ne changent en rien la politique existante. De plus, elles n’ont aucune incidence sur l’intention du Règlement, et les répercussions de ces modifications sont jugées favorables à tous les intervenants. Par conséquent, de nouvelles consultations ne sont pas considérées comme étant nécessaires.

L’ACPIR et l’OAIRP recommandent toutes les deux que RHDSC et l’ACPIR mettent en place un comité de surveillance mixte qui serait chargé de régler des questions qui surviendront dans l’application de la Loi. Ces deux associations recommandent également que le Règlement fasse l’objet d’un examen officiel d’ici un an. Les représentants de RHDSC sont d’accord avec ces recommandations et prendront les mesures nécessaires pour les mettre en place.

Mise en œuvre, application et normes de service

Le PPS est administré par le Programme du travail de RHDSC et offert par l’intermédiaire de Service Canada. Il fera l’objet d’une évaluation en bonne et due forme ainsi que de l’examen statutaire dans les cinq ans après l’entrée en vigueur de la Loi sur le PPS, conformément à l’article 42 de la Loi.

En ce qui concerne l’application du Règlement, rappelons que quiconque ne s’y conforme pas commet — dans la plupart des cas — une infraction à la Loi sur le PPS. Les articles 38 et 39 de la nine categories of offences, ranging from the making of false or misleading entries in documents supporting application for WEPP benefits, to delaying or obstructing a person in the exercise of their powers or the performance of their duties under the Act. Conviction of any of those offences could then result in a fine or imprisonment, or both.

Regarding compliance with the Regulations, the Labour Program is in a position to monitor the compliance of applicants for WEPP payments, as well as that of trustees and receivers who are required to submit information to the Minister within specified time limits. The Labour Program is also able to obtain, from trustees and receivers, data on the compliance of payroll contractors and other third parties who must provide information as required by the Regulations.

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Loi prévoient neuf types d'infractions, allant de rédiger des inscriptions fausses ou trompeuses dans les registres contenant des renseignements à l'appui d'une demande de prestations du PPS à retarder ou entraver l'action d'une personne dans l'exercice des attributions qui lui sont conférées sous le régime de la Loi. Le fait d'être déclaré coupable d'une de ces infractions peut entraîner l'imposition d'une amende ou l'emprisonnement, ou les deux peines.

Le Programme du travail est en mesure de vérifier si les demandeurs se conforment au Règlement pour obtenir des prestations du PPS de même que pour s'assurer que le syndic et le séquestre s'y conforment en fournissant l'information au ministre dans les délais prescrits. Le Programme du travail peut aussi obtenir du syndic et du séquestre des renseignements sur la conformité au Règlement, par les services de la paie et les autres tierces parties, car il les oblige à fournir certains renseignements.

Personne-ressource

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r — revises
x — revokes

TABLE DES MATIÈRES DORS : Textes réglementaires (Règlements)
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Vol. 154, No. 48

Canada Gazette
Part I

OTTAWA, SATURDAY, NOVEMBER 28, 2020

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The *Canada Gazette* is published under the authority of the *Statutory Instruments Act*. It consists of three parts as described below:

Part I	Material required by federal statute or regulation to be published in the *Canada Gazette* other than items identified for Part II and Part III below — Published every Saturday
Part II	Statutory instruments (regulations) and other classes of statutory instruments and documents — Published January 8, 2020, and at least every second Wednesday thereafter
Part III	Public Acts of Parliament and their enactment proclamations — Published as soon as is reasonably practicable after royal assent

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Gazette du Canada
Partie I

OTTAWA, LE SAMEDI 28 NOVEMBRE 2020

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La *Gazette du Canada* est publiée conformément aux dispositions de la *Loi sur les textes réglementaires*. Elle est composée des trois parties suivantes :

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Partie II	Textes réglementaires (règlements) et autres catégories de textes réglementaires et de documents — Publiée le 8 janvier 2020 et au moins tous les deux mercredis par la suite
Partie III	Lois d'intérêt public du Parlement et les proclamations énonçant leur entrée en vigueur — Publiée aussitôt que possible après la sanction royale

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Regulations Amending the Wage Earner Protection Program Regulations

Statutory authorities
Budget Implementation Act, 2018, No. 2
Wage Earner Protection Program Act

Sponsoring department
Department of Employment and Social Development

REGULATORY IMPACT ANALYSIS STATEMENT

(*This statement is not part of the Regulations.*)

Executive summary

Issues

On December 18, 2018, the *Budget Implementation Act, 2018, No. 2* introduced amendments to the *Wage Earner Protection Program Act* (WEPP Act) to broaden program eligibility for individuals. Some of these amendments require updated or new regulations before they can come into force.

Description

This initiative proposes to broaden Wage Earner Protection Program (WEPP) access by updating regulations to

- enable earlier WEPP payments when an employer engages in liquidating restructuring proceedings;
- extend coverage to individuals if their employer enters formal insolvency proceedings in another country;
- update the payment of trustee and receiver fees and expenses for low asset insolvencies so that more individuals can access WEPP; and
- address concerns identified by the Standing Joint Committee for the Scrutiny of Regulations (SJCSR).

Règlement modifiant le Règlement sur le Programme de protection des salariés

Fondements législatifs
Loi nº 2 d'exécution du budget de 2018
Loi sur le Programme de protection des salariés

Ministère responsable
Ministère de l'Emploi et du Développement social

RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION

(*Le présent résumé ne fait pas partie du Règlement.*)

Résumé

Enjeux

Le 18 décembre 2018, la *Loi nº 2 d'exécution du budget de 2018* a introduit des modifications à la *Loi sur le Programme de protection des salariés* (LPPS) afin d'élargir l'admissibilité au Programme de protection des salariés (PPS). Des mises à jour de règlements ou de nouvelles dispositions réglementaires sont requises pour que certaines des modifications en question puissent entrer en vigueur.

Description

Le projet de règlement a pour but d'élargir l'accès au PPS en mettant à jour certaines dispositions réglementaires pour :

- permettre le versement anticipé de prestations du PPS lorsqu'un employeur entame une procédure de restructuration à des fins de liquidation;
- élargir la couverture du PPS aux personnes employées par des entreprises qui font l'objet d'une procédure d'insolvabilité dans un autre pays;
- mettre à jour le régime de paiement des honoraires et des dépenses des syndics et des séquestres dans le cadre de l'administration des cas d'insolvabilité où les actifs en cause sont de faible valeur, afin que davantage de personnes puissent se prévaloir du PPS;
- résoudre différents problèmes mis en lumière par le Comité mixte permanent d'examen de la réglementation (CMPER).

Rationale

- Allowing earlier WEPP payments when an employer engages in a liquidating restructuring would reduce delays that some individuals experience in accessing WEPP.
- Extending WEPP coverage to include foreign proceedings would ensure that employees working in Canada for companies that are subject to an insolvency proceeding in another country are not unfairly excluded from the WEPP.
- Updating and improving the scheme for the payment of trustees' fees and expenses would incentivize trustees to accept the administration of low asset bankruptcies, and would improve WEPP access for individuals employed by small businesses that become insolvent.

The estimated present value of the total cost of these proposed regulatory changes is $37.2 million over 10 years.

Issues

The WEPP is a Government of Canada program that provides financial support for individuals' owed eligible wages after they have lost their job and their employer has entered into bankruptcy or become subject to a receivership. This regulatory proposal focuses on improving access to the WEPP by addressing several issues:

1. Sometimes there are delays in accessing the WEPP when an employer engages in a "liquidating restructuring proceeding" before filing for bankruptcy or receivership. For example, Sears Canada began liquidating restructuring proceedings under the *Companies' Creditors Arrangement Act* (CCAA) in June 2017, closed remaining Canadian stores in January 2018, but did not become subject to receivership until January 2019. It was only when that receivership occurred that former employees became eligible for the WEPP, even though many lost their jobs months earlier.
2. Canadian workers affected by foreign insolvency proceedings are not eligible for the WEPP. However, any worker who is legally working in Canada can be eligible for the WEPP if their employer is bankrupt or subject to a receivership in Canada. This represents a coverage gap for Canadian workers when their employer enters receivership in a foreign jurisdiction. For example, in October 2018, the parent company of ServiCom filed for bankruptcy protection in the United States and all operations at the Sydney, Nova Scotia, call centre ceased. More than 500 employees were laid off, many of whom were owed wages. As ServiCom did not file for

Justification

- Le fait d'autoriser le versement anticipé des prestations du PPS lorsqu'un employeur entame une procédure de restructuration à des fins de liquidation permettra de réduire les délais d'accès au PPS pour certaines personnes.
- L'élargissement de la protection du PPS de manière à englober les procédures entamées à l'étranger fera en sorte que les personnes employées au Canada par des entreprises qui font l'objet d'une procédure d'insolvabilité dans un pays étranger ne soient pas injustement exclues du PPS.
- La mise à jour et l'amélioration du régime de paiement des honoraires et des dépenses des syndics inciteront les syndics à administrer des cas d'insolvabilité où les actifs en cause sont de faible valeur; cela servira aussi à améliorer l'accès au PPS pour les personnes employées par des petites entreprises qui deviennent insolvables.

La valeur actualisée du coût total de ces modifications réglementaires proposées est estimée à 37,2 millions de dollars sur 10 ans.

Enjeux

Le PPS est un programme du gouvernement du Canada qui offre une aide financière aux personnes à qui un salaire est dû après la perte de leur emploi et dont l'employeur a fait faillite ou a été mis sous séquestre. Le projet de règlement vise à améliorer l'accès au PPS en donnant suite à plusieurs problèmes :

1. Parfois, il y a des retards lorsqu'une personne veut se prévaloir du PPS et que son employeur entame une procédure de restructuration à des fins de liquidation avant de déclarer faillite ou d'être mis sous séquestre. À titre d'exemple, Sears Canada a entamé une procédure de restructuration à des fins de liquidation sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies* (LACC) en juin 2017, a fermé ses derniers magasins au Canada en janvier 2018, mais n'a fait l'objet d'une mise sous séquestre qu'en janvier 2019. C'est seulement une fois cette mise sous séquestre effectuée que les anciens employés sont devenus admissibles au PPS, même si bon nombre d'entre eux avaient perdu leur emploi plusieurs mois auparavant.
2. Les travailleurs canadiens touchés par une procédure d'insolvabilité entamée à l'étranger ne sont pas admissibles au PPS. Cependant, toute personne qui travaille légalement au Canada peut être admissible au PPS si son employeur fait faillite ou fait l'objet d'une mise sous séquestre au Canada. Cet écart dans la protection du PPS désavantage les travailleurs canadiens dont l'employeur est mis sous séquestre dans un pays étranger. Par exemple, en octobre 2018, la société mère de

Canadian bankruptcy or receivership, the former employees could not access the WEPP. In April 2019, the Nova Scotia government took the step of requesting the court to force ServiCom into Canadian bankruptcy. While this ensured a triggering of WEPP for impacted workers, it was complicated and time consuming.

3. For employees to be eligible for the WEPP, a trustee or receiver must agree to administer the insolvent estate of the former employer. However, when there are very few or no assets remaining in an estate, insolvency professionals are reluctant to assume the financial risks of taking on its administration for a bankruptcy proceeding. When no trustee or receiver agrees to administer an insolvent estate, impacted workers cannot access the WEPP.

ServiCom s'est placée sous la protection de la loi américaine sur la faillite, et toutes les opérations au centre d'appels de Sydney (Nouvelle-Écosse) ont cessé. Plus de 500 employés ont été mis à pied, et un salaire était dû à bon nombre d'entre eux. Étant donné que ServiCom n'a pas déclaré faillite et n'a pas été mise sous séquestre au Canada, ses anciens employés ne pouvaient pas se prévaloir du PPS. En avril 2019, le gouvernement de la Nouvelle-Écosse a demandé aux tribunaux d'obliger ServiCom à déclarer faillite au Canada. Cette mesure rendait les travailleurs mis à pied admissibles au PPS, mais elle a entraîné des complications et a exigé beaucoup de temps.

3. Pour que des travailleurs soient admissibles au PPS, il faut qu'un syndic ou un séquestre évalue l'actif de leur ancien employeur devenu insolvable. Toutefois, lorsqu'il ne reste que très peu d'actifs, voire rien du tout, les professionnels de l'insolvabilité seront réticents à assumer les risques financiers liés à l'administration d'une procédure de faillite. Si aucun syndic ou séquestre n'accepte d'administrer l'actif d'un employeur devenu insolvable, les travailleurs touchés ne peuvent avoir accès au PPS.

Background

Through the WEPP, individuals whose employer is bankrupt or subject to a receivership can claim unpaid eligible wages (basic wages, disbursements, vacation pay, termination and severance pay) up to a maximum amount equivalent to seven weeks of employment insurance maximum insurable earnings ($7,296 for 2020) under the *Employment Insurance Act*.

The WEPP addresses a major gap that existed in Canada's bankruptcy and insolvency system before the program was launched in 2008. Before the WEPP, Canada lacked an effective way to ensure payment of unpaid wages when employers became insolvent. As a result, many individuals remained unpaid for work they had performed before their employer's bankruptcy or receivership.

To be eligible for a WEPP payment, an individual must meet three conditions:

- They were employed in Canada and their employment had been terminated;
- Their employer must be bankrupt or subject to a receivership in Canada; and
- Eligible wages must be owing to the individual.

When the WEPP was launched, amendments made to the *Bankruptcy and Insolvency Act* (BIA) elevated the ranking of unpaid wages and vacation pay to enjoy a limited "super-priority" status. This super-priority status means

Contexte

Dans le cadre du PPS, les personnes dont l'employeur fait faillite ou fait l'objet d'une mise sous séquestre peuvent réclamer un salaire admissible qui leur est dû (salaire de base, débours, indemnité de vacances, indemnité de préavis et indemnité de départ), à concurrence d'un montant maximum qui équivaut à sept fois le maximum de la rémunération hebdomadaire assurable (7 296 $ en 2020) au sens de la *Loi sur l'assurance-emploi*.

Lancé en 2008, le PPS comble une lacune importante qui existait dans le système canadien de gestion des cas de faillite et d'insolvabilité. Avant l'instauration du PPS, le Canada ne disposait d'aucun moyen efficace pour assurer le versement des salaires impayés lorsque les employeurs devenaient insolvables. Par conséquent, de nombreuses personnes n'ont pas reçu la rémunération gagnée pour le travail qu'elles avaient accompli avant la faillite ou la mise sous séquestre de leur employeur.

Pour être admissible au versement de prestations du PPS, une personne doit remplir trois conditions :

- elle travaillait au Canada, et elle a été licenciée ou congédiée;
- son employeur a fait faillite ou fait l'objet d'une mise sous séquestre au Canada;
- un montant de salaire admissible lui est dû.

Lorsque le PPS a été lancé, des modifications apportées à la *Loi sur la faillite et l'insolvabilité* (LFI) ont eu comme effet de hausser le rang de priorité des salaires et des indemnités de vacances non versés, qui se voient ainsi that claims for unpaid wages and vacation pay rank ahead of secured creditors in a bankruptcy process, up to a maximum of $2,000 per wage claim. The purpose of the limited super-priority is twofold:

(1) It allows the Crown to recover up to $2,000 per WEPP claim from insolvent employer estates during the bankruptcy process. This helps reduce overall net program costs; and

(2) It deters employers from avoiding paying workers amounts owed. This deterrence is due to the possibility that the Crown can ensure payment if it decides to purse the super-priority elements of a wage claim when the bankruptcy process later unfolds.

Since its creation, the WEPP has paid more than $411 million in eligible wages to more than 146 000 Canadians (as at June 30, 2020). In a typical year, about 12 000 people benefit from the WEPP, and over the life of the program have received an average WEPP payment of $2,710 per recipient. The Crown has recovered more than $55 million from bankrupt employer estates, of which almost $46 million was for the super-priority wage claims (as at March 31, 2020).

In Budget 2018, it was announced that the Government of Canada would introduce legislative amendments to the WEPP Act. These changes sought to increase the maximum WEPP payment, and make WEPP eligibility more equitable. These legislative amendments received royal assent on December 13, 2018, and

- increased the maximum payment from the equivalent of four weeks, to seven weeks of employment insurance maximum insurable earnings ($7,296 for 2020) under the *Employment Insurance Act*;[1]
- ensured that individuals retained by a trustee or receiver to help wind down business operations remain eligible to receive termination and severance pay under the WEPP;
- granted WEPP recipients the right to request reviews and appeals regarding overpayment decisions; and
- strengthened the Government of Canada's ability to recover monies from estates or properties of bankrupt employers, and from third parties such as directors.

[1] Since this increase in the WEPP maximum payment, the average WEPP payment has risen to about $4,300 per recipient.

accorder une superpriorité limitée. Cette superpriorité signifie que les réclamations au titre de salaires et d'indemnités de vacances dus ont préséance sur celles des créanciers garantis dans un processus de faillite, à concurrence de 2 000 $ par créance salariale. L'objectif de la superpriorité limitée est double :

(1) D'abord, elle permet à l'État de recouvrer jusqu'à 2 000 $ par réclamation en vertu du PPS à l'égard de l'actif d'un employeur insolvable pendant le processus de faillite. Cela contribue à réduire les coûts nets du programme dans leur ensemble;

(2) Ensuite, elle dissuade les employeurs de chercher à éviter de verser des sommes dues aux travailleurs. Cet effet de désincitation tient à la possibilité pour l'État de garantir le paiement en se prévalant des composantes d'une créance salariale qui font l'objet d'une superpriorité une fois le processus de faillite enclenché.

Au 30 juin 2020, le PPS avait versé plus de 411 millions de dollars en salaires admissibles à plus de 146 000 Canadiens depuis sa création. Au cours d'une année type, environ 12 000 personnes bénéficient du PPS; depuis le début du programme, les prestations versées dans le cadre du PPS se sont chiffrées en moyenne à 2 710 $ par personne admissible. Au 31 mars 2020, l'État avait recouvré plus de 55 millions de dollars à même les actifs d'employeurs en faillite, dont près de 46 millions pour les créances salariales faisant l'objet d'une superpriorité.

Le gouvernement du Canada a annoncé dans son budget de 2018 qu'il apporterait des modifications à la LPPS. Le but consistait à accroître le montant maximal des prestations du PPS et à rendre les règles d'admissibilité au PPS plus équitables. Ces modifications législatives, qui ont reçu la sanction royale le 13 décembre 2018, ont :

- haussé le montant maximal des prestations du PPS, qui est devenu égal au salaire dû jusqu'à concurrence de la somme correspondant à sept fois — contre quatre fois auparavant — le maximum de la rémunération hebdomadaire assurable (7 296 $ en 2020) au sens de la *Loi sur l'assurance-emploi*[1];
- fait en sorte que les employés maintenus en poste par un syndic ou un séquestre pour aider à mettre fin aux activités de l'entreprise conservent leur droit à l'indemnité de préavis et à l'indemnité de départ du PPS;
- conféré aux demandeurs du PPS le droit de demander une révision et d'interjeter appel des décisions relatives aux trop-perçus;
- renforcé la capacité du gouvernement du Canada à recouvrer des sommes à même des actifs ou des biens d'employeurs en faillite ainsi qu'auprès de tierces parties, comme les administrateurs.

[1] Depuis cette majoration du montant maximal, les prestations versées dans le cadre du PPS sont passées en moyenne à environ 4 300 $ par personne admissible.

However, other WEPP Act amendments require changes to the *Wage Earner Protection Program Regulations* (WEPP Regulations) before they can take effect. Specifically, the existing WEPP Regulations need to be amended to set the eligibility criteria for earlier WEPP payments in situations where an employer engages in liquidating restructuring proceedings, and for extending WEPP coverage for workers when the employer is subject to insolvency proceedings in another country.

Description

This proposal would amend the WEPP Regulations to allow the remaining amendments to the WEPP Act to come into force. These changes would broaden coverage of the WEPP, create incentives for bankruptcy professionals to undertake low-asset proceedings, and address various concerns raised by the SJCSR.

1. Allowing earlier WEPP payments when an employer engages in liquidating restructuring proceedings

Currently, an individual only becomes eligible for the WEPP when the individual's employer enters bankruptcy or becomes subject to receivership. Changes to the WEPP Act would allow a court to determine that an individual may be eligible for earlier WEPP payments when the individual's employer is subjected to a proceeding under the CCAA or a proposal under the BIA, if a trustee is appointed in respect of the employer, and particular criteria set out in regulation are met. The proposed Regulations would establish the following criteria:

(a) the employer is to have ceased its principal business operations (e.g. all retail stores closed, manufacturing operations have ceased, services are no longer offered); and

(b) the employer is to have terminated all of its employees, except for employees that have been retained to wind down its business operations.

2. Extending WEPP coverage to individuals if their employer is subject to insolvency proceedings in another country

Changes to the WEPP Act would allow a court to determine that individuals employed by an employer subject to an insolvency proceeding in another country may be eligible for WEPP if there is a trustee appointed in respect of the employer, and particular criteria set out in regulation is met. The proposed Regulations would establish the following criteria:

(a) the employer subjected to a foreign proceeding has ceased its principal business operations in Canada

D'autres modifications de la LPPS requièrent toutefois des changements au *Règlement sur le Programme de protection des salariés* (RPPS) avant d'entrer en vigueur. Plus précisément, le RPPS actuel doit être modifié pour établir les critères d'admissibilité au versement anticipé des prestations du PPS dans les situations où un employeur entame une procédure de restructuration à des fins de liquidation, de même que pour étendre la protection du PPS aux travailleurs dont l'employeur fait l'objet d'une procédure d'insolvabilité dans un autre pays.

Description

Le projet de règlement modifie le RPPS pour permettre l'entrée en vigueur des autres modifications apportées à la LPPS. Ces modifications ont comme effet d'élargir la protection du PPS, d'encourager les professionnels de la faillite à administrer des cas d'insolvabilité où les actifs en cause sont de faible valeur et de résoudre différents problèmes mis en lumière par le CMPER.

1. Permettre le versement anticipé de prestations du PPS lorsqu'un employeur entame une procédure de restructuration à des fins de liquidation

À l'heure actuelle, une personne peut se prévaloir du PPS uniquement si son employeur déclare faillite ou fait l'objet d'une mise sous séquestre. Les modifications apportées à la LPPS permettent à un tribunal de déterminer qu'une personne peut être admissible au versement anticipé de prestations du PPS lorsque son employeur fait l'objet d'une procédure en application de la LACC ou d'une proposition sous le régime de la LFI, à la condition qu'un syndic soit nommé à l'égard de l'employeur et que certains critères prescrits par règlement soient remplis. Le projet de règlement établit les critères suivants :

a) les activités commerciales principales de l'employeur ont complètement cessé (par exemple tous les magasins de détail ont fermé, les activités de fabrication ont cessé, les services ne sont plus offerts);

b) l'employeur a mis fin à l'emploi de tous les employés, à l'exception de ceux maintenus en poste pour aider à mettre fin aux activités commerciales de l'entreprise.

2. Étendre la protection du PPS aux personnes dont l'employeur fait l'objet d'une procédure d'insolvabilité dans un autre pays

Les modifications apportées à la LPPS permettent à un tribunal de déterminer que les personnes travaillant pour un employeur qui fait l'objet d'une procédure d'insolvabilité dans un autre pays peuvent être admissibles au PPS si un syndic est nommé à l'égard de l'employeur et si des critères particuliers, prescrits par règlement, sont également remplis. Le projet de règlement établit les critères suivants :

a) les activités commerciales principales au Canada de l'employeur faisant l'objet d'une procédure à l'étranger (e.g. all retail stores closed, manufacturing operations have ceased, services are no longer offered); and

(b) the employer subjected to the foreign proceeding has terminated all of its employees in Canada, except for employees that have been retained to wind down its business operations.

3. Updating the payment scheme for trustees' and receivers' fees and expenses when very few assets remain in an insolvent estate

For employees to be eligible for WEPP, a trustee or receiver must oversee the insolvent estate of the former employer. Trustees and receivers have a number of specific duties under the WEPP Act that allow for the operation of the program. Specifically, trustees and receivers are responsible for identifying current and past employees, determining wages owed, providing information about the WEPP to potential claimants, and submitting specific information via a Trustee Information Form (TIF) to Service Canada for each WEPP claimant to enable the processing of the WEPP claim.

Under the WEPP Act, proceeds from the estate must be used to pay for this work, when there are enough assets to do so. When there are not enough assets remaining in an estate, insolvency professionals have been reluctant to assume the financial risks associated with accepting estate administration, as they have no certainty of payment for their services.

In situations where there are insufficient assets, current WEPP Regulations allow the Minister to pay an insolvency professional for WEPP specific work and, in some cases, for broader estate administration duties. This payment scheme is to encourage insolvency professionals to accept the administration of low- or no-asset bankruptcies so that terminated employees can access the WEPP.

Current payment scheme

Under the existing payment scheme, section 18 of WEPP Regulations allows payment for the fees and expenses in relation to WEPP specific duties under the following conditions:

(a) the estate is in deficit;

(b) no guarantee of any amount has been provided by a creditor in respect of the fees and expenses; and

ont complètement cessé (par exemple tous les magasins de détail ont fermé leurs portes, les activités de fabrication ont cessé, les services ne sont plus offerts);

b) l'employeur faisant l'objet d'une procédure à l'étranger a mis fin à l'emploi de tous les employés au Canada, à l'exception de ceux maintenus en poste pour aider à mettre fin aux activités commerciales de l'entreprise.

3. Mettre à jour le régime de paiement des honoraires et des dépenses des syndics et des séquestres lorsque les actifs de l'employeur insolvable sont très réduits

Pour qu'un employé soit admissible au PPS, un syndic ou un séquestre doit évaluer l'actif de l'ancien employeur devenu insolvable. Les syndics et les séquestres exercent un certain nombre d'attributions aux termes de la LPPS, ce qui rend possible l'exécution du programme. Plus précisément, il incombe aux syndics et aux séquestres d'identifier les employés actuels et passés, de déterminer les salaires dus, de fournir des renseignements sur le PPS aux demandeurs potentiels et de soumettre à Service Canada des renseignements particuliers au moyen d'un formulaire de renseignements sur le syndic (FRS) pour chaque demandeur auprès du PPS afin de permettre le traitement de la demande.

Aux termes de la LPPS, le coût de ces travaux doit être acquitté à même l'actif disponible, s'il est suffisamment important. Lorsque l'actif est insuffisant, les professionnels de l'insolvabilité sont réticents à assumer les risques financiers liés à l'administration de cet actif, car ils ne sont pas certains de recevoir des honoraires en contrepartie.

Dans les cas où il n'y a pas suffisamment d'actifs, le RPPS dans sa version actuelle permet au ministre de payer les honoraires et les dépenses d'un professionnel de l'insolvabilité pour des tâches rattachées au PPS et, dans certains cas, pour l'accomplissement de fonctions d'administration d'actifs de nature plus générale. Ce mécanisme de paiement vise à encourager les professionnels de l'insolvabilité à accepter d'administrer des cas de faillites où il n'y a pas d'actifs, ou très peu, de sorte que les employés dont l'emploi a pris fin puissent se prévaloir du PPS.

Régime de paiement actuel

En ce qui concerne le régime de paiement actuel, l'article 18 du RPPS autorise le paiement des honoraires et des dépenses se rapportant à des fonctions particulières accomplies dans le cadre du PPS, sous réserve des conditions suivantes :

a) l'état de l'actif affiche un déficit;

b) aucune garantie n'a été accordée par un créancier pour couvrir les honoraires et les dépenses;

(c) fees and expenses attributable to WEPP duties account for at least 10% of the total fees charged for the estate, based on the following formula:

- $600 for the initial WEPP wage claim; plus
- $35 for each subsequent claim.

If met, an insolvency professional can claim a payment of $600 for the first WEPP claim submitted, plus $35 for each subsequent claim, with the total amount payable capped at the value of the estate deficit.

Section 19 of current WEPP Regulations outlines conditions when an insolvency professional can claim payment for fees and expenses for broader estate administration duties. To qualify, the following conditions must exist:

(a) the estate is in deficit;

(b) the value of current assets realized is sufficient to pay the super-priority claims that are not wage related, but insufficient to pay all super-priority claims against the estate; and

(c) wage super-priority amounts owed represent the entire value of the property.

When all three conditions occur, a complex formula is prescribed for calculation of payment as follows:

- the sum of a share of the value of each current asset realized (with a decreasing percent as assets are valued more); plus
- amounts for fees and expenses to cover taking possession of the estate, mail-outs to creditors, publishing of bankruptcy notice, etc.; minus
- any amount paid for WEPP-related duties under section 18 (described above), up to the value of any guarantee, or the total value of wage super priorities.

Insolvency professionals have often criticized the current payment scheme as overly stringent, too complicated, and inadequate in terms of allowable compensation. As a result, it is often deemed not financially viable to administer low-asset insolvencies under this current trustee payment scheme. Many low-asset estates therefore remain unadministered, and employees are unable to access the WEPP.

c) les honoraires et les dépenses pour l'accomplissement des fonctions rattachées au PPS représentent au moins 10 % du total des frais facturés pour l'administration de la faillite ou du séquestre, selon la formule suivante :

- 600 $ pour la première créance salariale dans le cadre du PPS;
- 35 $ pour chaque créance salariale supplémentaire.

Si ces conditions sont réunies, un professionnel de l'insolvabilité peut demander 600 $ pour la première créance salariale dans le cadre du PPS, plus 35 $ pour chaque créance salariale supplémentaire, à concurrence du déficit indiqué sur l'état des recettes et des débours.

L'article 19 du RPPS dans sa version actuelle énonce les conditions dans lesquelles un professionnel de l'insolvabilité peut demander le paiement d'honoraires et de dépenses pour des fonctions d'administration d'actifs de plus vaste portée. Ces conditions sont les suivantes :

a) l'état de l'actif affiche un déficit;

b) la valeur de l'actif à court terme réalisé est suffisante pour régler les créances assorties d'une superpriorité qui ne sont pas reliées au salaire, mais elle est insuffisante pour régler l'intégralité des créances assorties d'une superpriorité;

c) les salaires dus qui sont assortis d'une superpriorité constituent la valeur totale des biens.

Lorsque les trois conditions sont réunies, la somme à payer est déterminée selon une formule complexe prescrite et correspond au total des sommes suivantes :

- un pourcentage de la valeur de chaque élément d'actif à court terme réalisé (le pourcentage décroît lorsque la valeur des actifs dépasse certains montants seuils);
- les honoraires et les dépenses liés à la prise de possession des biens, aux envois postaux aux créanciers, à la publication d'un avis de faillite, etc.;
- on soustrait de la somme ainsi obtenue tout montant versé au titre des fonctions accomplies dans le cadre du PPS en application de l'article 18 (décrites ci-dessus), à concurrence de la valeur de toute garantie ou de la valeur totale des créances assorties d'une superpriorité.

Les professionnels de l'insolvabilité ont souvent formulé des critiques à l'endroit du régime de paiement actuel, estimant qu'il est trop rigoureux, trop compliqué, et que la rémunération admissible est inadéquate. Cela conduit souvent à conclure que, compte tenu du régime actuel de paiement des syndics, il n'est pas viable sur le plan financier d'administrer des cas d'insolvabilité où l'actif est de faible valeur. En conséquence, de nombreux cas

Proposed payment system

Proposed changes to the WEPP Regulations would amend the payment scheme by simplifying eligibility requirements, streamlining payment calculations, increasing maximum payment amounts, and introducing indexing.

Eligibility

To be eligible for payment of fees and expenses, the proposed Regulations would require insolvency professionals to

- submit a copy of the statement of receipts and disbursements for the estate;
- provide confirmation through that statement that the estate is in deficit; and
- confirm through that statement that the value of third-party deposits and guarantees are less than the deficit.[2]

Calculation of payment

The amount for payment would be calculated as follows:

- For WEPP specific duties: a $720 set-up fee, plus
  - o $120, for each of the first 10 wage claims;
  - o $90, for each of the next 10 claims;
  - o $75, for each additional claim; and
- For broader estate administration: up to $5,000 for the following fees and expenses, provided that total assets, net of higher-ranking claims, are less than $10,000:
  - o for taking possession of the property, making inventory, and securing and insuring the property;
  - o for mail-outs to creditors;
  - o for the cost of publishing a newspaper notice of the bankruptcy;
  - o of the official receiver and the registrar; and
  - o for other items that may be allowed by the court, up to $1,000.

2 Third-party deposits and guarantees are funds offered by a third party to help cover the costs of administering a bankruptcy by a trustee.

d'insolvabilité entrant dans cette catégorie ne sont pas administrés et les employés ne peuvent donc se prévaloir du PPS.

Système de paiement proposé

Les modifications proposées au RPPS comportent l'apport de changements au régime de paiement en simplifiant les critères d'admissibilité, en rationalisant le calcul des paiements, en haussant le montant maximal des paiements et en instaurant une formule d'indexation.

Admissibilité

Aux termes des modifications proposées, pour être admissibles au paiement des honoraires et des dépenses, les professionnels de l'insolvabilité devront :

- soumettre une copie de l'état des recettes et des débours de la faillite ou de la mise sous séquestre;
- confirmer ainsi que l'état de la faillite ou de la mise sous séquestre affiche un déficit;
- confirmer, au moyen de cet état, que la valeur des dépôts et des garanties de tiers est inférieure au déficit[2].

Calcul du paiement

Le montant du paiement sera calculé comme suit :

- Fonctions propres au PPS : frais d'établissement de dossier de 720 $;
  - o 120 $ pour chacune des 10 premières créances salariales;
  - o 90 $ pour chacune des 10 créances salariales suivantes;
  - o 75 $ pour chaque créance salariale supplémentaire;
- Fonctions générales d'administration d'actifs : jusqu'à 5 000 $ pour les honoraires et dépenses suivants, à condition que la valeur totale de l'actif, après déduction des réclamations de rang supérieur, soit de moins de 10 000 $:
  - o prise de possession des biens et leur inventaire, sécurité et assurance;
  - o envois postaux aux créanciers;
  - o frais de publication d'un avis de faillite dans les journaux;
  - o séquestre officiel et registraire;
  - o autres éléments qui peuvent être autorisés par le tribunal, jusqu'à concurrence de 1 000 $.

2 Les dépôts et garanties de tiers sont des fonds offerts par des tiers pour aider à couvrir les frais d'administration d'une faillite par un syndic.

The total payable under this proposed payment scheme would be capped at the amount by which the estate deficit exceeds the value of third-party deposits or guarantees.

Annual indexation

The amount of payment would be indexed annually using the Consumer Price Index. Specifically, amounts would be rounded to the nearest dollar for the set-up fee and for each submission of a wage claim by the insolvency professional, and to the nearest $500 increment for the calculation and payment for broader estate administration.

4. Improve clarity of the WEPP Regulations and address concerns raised by the SJCSR

A number of proposed regulatory amendments would clarify language, adjust terminology to improve English-French consistency, and include text to clarify that a late applicant, or one who misses the deadline to request a review, must also provide an explanation if they wish their WEPP application or request to be considered. These changes would not result in additional costs as they seek to simplify wording and codify already existing practices.

5. Repeal sections of the WEPP Regulations pertaining to the administration of WEPP appeals

Sections 13 and 14 of the WEPP Regulations deal with timelines and the process for submission of appeals to an adjudicator appointed by the Minister. On July 29, 2019, amendments to the WEPP Act came into force to transfer all adjudicative functions related to the WEPP to the Canada Industrial Relations Board (CIRB). Under the amended WEPP Act, the Minister no longer has authority to make regulations regarding appeals as this now falls under the responsibility of the CIRB.

Regulatory development

Consultation

Consultations with key stakeholders including insolvency professionals, organized labour, and representatives from the legal community, occurred in May and June 2019. Overall, there was a general support for the objectives of the envisioned changes to the WEPP. Stakeholders

- Supported the concept of extending earlier WEPP payments to employees whose employment is terminated during a liquidating restructuring exercise that is expected to fail;

Le montant maximal payable en vertu de ce régime de paiement proposé sera égal à l'excédent du déficit sur la valeur des dépôts ou des garanties de tiers.

Indexation annuelle

Le montant du paiement sera indexé annuellement en fonction de l'Indice des prix à la consommation. Plus précisément, les montants seront arrondis au dollar près pour les frais d'établissement de dossier et pour chaque créance salariale soumise par le professionnel de l'insolvabilité, et au multiple de 500 $ près pour le calcul et le versement du montant rattaché aux fonctions générales d'administration des actifs.

4. Accroître la clarté du RPPS et donner suite aux préoccupations soulevées par le CMPER

Un certain nombre de modifications réglementaires proposées ont pour objet de clarifier le libellé actuel, de modifier la terminologie pour assurer une plus grande uniformité entre le français et l'anglais, et d'apporter des modifications afin de préciser qu'un demandeur tardif, ou un demandeur qui ne respecte pas la date limite pour demander une révision, doit également fournir une explication s'il souhaite que sa demande relative au PPS ou sa demande de révision soit examinée. Ces modifications n'entraîneront pas de coûts supplémentaires, car elles visent seulement à simplifier le libellé et à codifier les pratiques existantes.

5. Abroger les articles du RPPS ayant trait à l'administration des appels relatifs au PPS

Les articles 13 et 14 du RPPS traitent du processus d'appel devant un arbitre nommé par le ministre, de même que des délais connexes. Des modifications de la LPPS entrées en vigueur le 29 juillet 2019 ont eu comme effet de transférer toutes les fonctions judiciaires liées au PPS au Conseil canadien des relations industrielles (CCRI). Aux termes de la LPPS ainsi modifiée, le ministre n'a plus le pouvoir de prendre des règlements concernant les appels, puisque cette responsabilité est maintenant exercée par le CCRI.

Élaboration de la réglementation

Consultation

Des consultations avec des parties concernées clés, notamment des professionnels de l'insolvabilité, des syndicats et des représentants du milieu juridique, ont eu lieu en mai et en juin 2019. On note dans l'ensemble un soutien général concernant les objectifs qui sous-tendent les modifications envisagées du PPS. Ainsi, les parties concernées :

- appuient l'idée d'étendre les modalités de versement anticipé des prestations du PPS aux employés dont l'emploi prend fin au cours d'une procédure de restructuration à des fins de liquidation que l'on s'attend à voir échouer;

- Endorsed the idea of extending WEPP coverage to Canadian employees when their employer enters bankruptcy or receivership proceedings abroad; and
- Agreed that one approach to increasing the administration rates of low-asset insolvencies would be to improve the current payment scheme for trustee and receiver fees and expenses in situations where remaining estate assets are insufficient.

While there was general agreement on the purposes of envisioned changes, there were differing views on how to reach them.

- On the issue of liquidating restructurings, some stakeholders argued that the primary factors to trigger the WEPP should be permanent job loss and wages owed by an insolvent employer who is restructuring, irrespective of whether this is tied to an actual or expected bankruptcy or receivership. This suggestion was not pursued because the objective of the WEPP is to cover eligible wages that are owed when an employer enters bankruptcy or becomes subject to a receivership. The WEPP is not designed to cover all forms of business restructurings.
- On the issue of payment of fees and expenses of insolvency professionals, some argued that the Government of Canada should pay trustees and receivers for all work directly attributable to WEPP obligations, irrespective of whether there are adequate assets in an estate to do so. This suggestion was not pursued because the purpose of paying the fees and expenses of insolvency professionals is to encourage greater levels of estate administration for low-asset insolvencies so that individuals who are owed eligible wages can access the WEPP. Furthermore, section 22 of the WEPP Act requires that the fees and expenses of a trustee or receiver relating to WEPP duties must be paid from the estate or the property of the insolvent employer, when there are adequate assets to do so.
- It was also argued that in situations where no trustee or receiver is willing to administer a low-asset insolvency, the Government of Canada should directly perform the service. This suggestion was not pursued because it fell outside the scope of this regulatory initiative and establishing Government of Canada insolvency professionals to administer insolvent estates is not attainable through changes to the WEPP Regulations. Furthermore, trustees and receivers are specialized in the area of insolvency and already operate across the county.

- appuient l’idée d’étendre la protection du PPS aux employés canadiens dont l’employeur entame une procédure de faillite ou de mise sous séquestre à l’étranger;
- conviennent que l’amélioration du régime de paiement actuel au titre des honoraires et des dépenses des syndics et séquestres lorsque la valeur des actifs restants est insuffisante constitue un moyen de hausser les taux d’administration des cas d’insolvabilité où la valeur de l’actif est faible.

Cela dit, parallèlement à ce consensus sur les objectifs des modifications envisagées, les points de vue divergent sur la façon de les atteindre.

- Concernant les procédures de restructuration à des fins de liquidation, certaines parties concernées ont fait valoir que les principaux facteurs conduisant à l’intervention du PPS devraient être la perte permanente d’un emploi et le salaire dû par un employeur insolvable qui procède à une restructuration, que cette procédure soit rattachée ou non à une faillite ou à une mise sous séquestre réelle ou prévue. Cette suggestion n’a pas été retenue, car l’objectif du PPS est de couvrir les salaires admissibles qui sont dus lorsqu’un employeur fait faillite ou fait l’objet d’une mise sous séquestre. Le PPS n’est pas conçu pour couvrir toutes les formes de restructuration d’activités.
- Au sujet du paiement des honoraires et des dépenses des professionnels de l’insolvabilité, certaines parties concernées ont fait valoir que le gouvernement du Canada devrait payer les syndics et les séquestres pour tous les travaux directement imputables aux obligations liées au PPS, qu’il y ait ou non des actifs suffisants pour le faire. Cette suggestion n’a pas été retenue non plus, parce que l’objectif du paiement des honoraires et des dépenses des professionnels de l’insolvabilité est d’encourager davantage l’administration des cas d’insolvabilité où les actifs en cause sont de faible valeur, de manière que les personnes à qui des salaires admissibles sont dus puissent se prévaloir du PPS. De plus, l’article 22 de la LPPS exige que les honoraires et les dépenses d’un syndic ou d’un séquestre qui sont entraînés par l’accomplissement des fonctions reliées au PPS soient payés à même l’actif ou les biens de l’employeur insolvable, lorsque la valeur de cet actif ou de ces biens le permet.
- On a aussi fait valoir que, dans les situations où aucun syndic ou séquestre n’est disposé à administrer un cas d’insolvabilité où l’actif est de faible valeur, le gouvernement du Canada devrait fournir directement ce service. Là encore, cette suggestion n’a pas été retenue, parce qu’elle va au-delà de la portée de cette initiative réglementaire et que l’apport de modifications au RPPS ne saurait permettre de se doter de professionnels de l’insolvabilité dans l’administration publique fédérale pour l’administration de cas d’insolvabilité. En outre, les syndics et les séquestres sont des spécialistes de l’insolvabilité, et ils exercent déjà leurs activités dans l’ensemble du pays.

Modern treaty obligations and Indigenous engagement and consultation

An Assessment of Modern Treaty Implications did not identify any direct modern treaty implications or obligations that could result from the proposed WEPP regulatory changes.

Consultation activities about the WEPP were conducted as part of a five-year review of WEPP Act in 2015, and additional consultations on amending WEPP Regulations took place in spring 2019. Indigenous representatives were provided a copy of the WEPP discussion paper and were invited to submit recommendations. No input was received from Indigenous representatives.

Instrument choice

Broadening WEPP eligibility for Canadians can only be accomplished by amending WEPP Regulations that prescribe eligibility for the program, pursuant to section 41 of the WEPP Act. In the event WEPP Regulations are not amended, the status quo would continue with some Canadians continuing to experience exclusion from WEPP coverage.

Regulatory analysis

Benefits and costs

The Government of Canada would incur all incremental costs resulting from the proposed Regulations, which would be covered by the existing fiscal allocation for the WEPP. Total additional costs are estimated to be $37,212,916 over the 10-year period (2020–2029) following the coming into force of the proposed Regulations. Total additional benefits to WEPP recipients are estimated to be $40,866,638 over the same 10-year period (2020–2029). The net present value is estimated to be $3,653,722. Unless noted otherwise, all costs are expressed in present value (PV, 7% discount rate) for the 10-year period.

Earlier WEPP payments when an employer engages in liquidating restructuring proceedings to wind down business operations

For CCAA proceedings, businesses who owe creditors more than $5 million can restructure under its protection. As a result, these employers tend to be medium- to large-sized workplaces, and when they restructure it can affect a large number of workers. WEPP payment data from 2009 to 2018 indicates that

- Among CCAA restructurings that ended in a bankruptcy or receivership, almost one in four of those restructurings took at least one year before insolvency, with the average time being just short of eight months.
- While employers involved in CCAA proceedings that ended in a receivership or bankruptcy represented less than 1% of employers whose employees received a

Obligations relatives aux traités modernes et consultation et mobilisation des Autochtones

Une évaluation des répercussions des traités modernes n'a pas permis de cerner les répercussions directes des traités modernes ou les obligations qui pourraient découler des modifications proposées du RPPS.

Des activités de consultation au sujet du PPS ont été menées dans le cadre d'un examen quinquennal de la LPPS en 2015, et d'autres consultations sur la modification du RPPS ont eu lieu au printemps de 2019. Les représentants autochtones ont reçu une copie du document de discussion sur le PPS et ont été invités à présenter des recommandations. Aucun commentaire n'a été reçu des représentants autochtones.

Choix de l'instrument

Pour élargir l'admissibilité des Canadiens au PPS, il faut modifier les dispositions du RPPS qui prescrivent l'admissibilité au Programme, conformément à l'article 41 de la LPPS. Si le RPPS n'est pas modifié, le statu quo sera maintenu, et certains travailleurs canadiens continueront d'être privés de la protection du PPS.

Analyse de la réglementation

Avantages et coûts

Le gouvernement du Canada assumera tous les coûts additionnels découlant du projet de règlement, à même l'affectation financière actuelle du PPS. Le total des coûts additionnels est estimé à 37 212 916 $ sur la période de 10 ans (2020-2029) suivant l'entrée en vigueur du projet de règlement. Le montant estimatif total des prestations additionnelles au cours de cette même période de 10 ans est de 40 866 638 $. La valeur actualisée nette est estimée à 3 653 722 $. Sauf indication contraire, tous les coûts sont exprimés en termes de valeur actualisée (VA, taux d'actualisation de 7 %) pour la période de 10 ans.

Versement anticipé des prestations du PPS lorsqu'un employeur entame une procédure de restructuration visant à mettre fin à ses activités

Pour pouvoir entamer une procédure sous le régime de la LACC, il faut qu'une entreprise doive à ses créanciers plus de 5 millions de dollars. Par conséquent, les employeurs qui entament une telle procédure tendent à être de taille moyenne ou de grande taille, et leur restructuration peut toucher un nombre important de travailleurs. Voici certaines observations fondées sur les données relatives aux prestations du PPS de 2009 à 2018 :

- Parmi les restructurations au titre de la LACC qui se sont soldées par une faillite ou une mise sous séquestre, près d'une sur quatre a pris au moins un an avant de devenir insolvable, la durée moyenne étant d'un peu moins de huit mois.

WEPP payment, these employers accounted for 8% of all individuals who received a WEPP payment.

To accelerate access to the WEPP for terminated workers who are owed eligible wages, the proposed Regulations would allow for the WEPP to be triggered in certain situations prior to the employer filing for bankruptcy or entering into receivership.

Costs

Although the number of workers and amounts paid under the WEPP would not change, an opportunity cost would be incurred by the Government of Canada due to earlier WEPP payment in eligible situations of liquidating proceedings. Specifically, this cost would reflect the opportunity cost of paying WEPP earlier, at the expense of that amount being allocated to other potential public initiatives.

Based on WEPP payment data regarding CCAA proceedings, it is assumed that up to 10% of all WEPP recipients would, on average, receive their WEPP payment about six months earlier in eligible restructuring processes. Using the standardized 7% discount rate for public funds, the total opportunity cost to the Government of Canada would amount to $1,411,512 over 10 years.

Benefits

From the perspective of the WEPP recipient, an earlier WEPP payment would represent potential savings on foregone interest payments, had the amount needed to be borrowed for six months from a lender. An annual rate of 7%, calculated and compounded monthly is assumed. This 7% rate represents a hypothetical interest rate under which an average Canadian could reasonably access credit.[3] Based on this monthly rate, the benefits of earlier WEPP payments to eligible recipients would amount to $1,411,512 over 10 years.

[3] This is the potential median rate of an unsecured line of credit, bank loan, credit card and home equity line of credit. It also corresponds to the annualized return of the Canadian capital market TSX (Toronto Stock Exchange) index over the past 10 years.

- Les employeurs entamant une procédure sous le régime de la LACC qui s'est terminée par une mise sous séquestre ou une faillite ont représenté moins de 1 % des employeurs dont les employés ont reçu des prestations du PPS, mais les personnes travaillant pour ces employeurs ont constitué 8 % de l'ensemble des personnes ayant reçu des prestations du PPS.

Afin d'accélérer l'accès au PPS pour les travailleurs licenciés ou congédiés à qui un salaire admissible est dû, le projet de règlement permettra, dans certaines situations, de déclencher le PPS avant que l'employeur ne déclare faillite ou ne fasse l'objet d'une mise sous séquestre.

Coûts

Malgré le fait que le nombre de travailleurs se prévalant du PPS et que les montants versés dans le cadre de celui-ci ne changeront pas, le gouvernement du Canada assumera un coût de renonciation en raison du versement anticipé de prestations du PPS dans les situations de liquidation admissibles. Il s'agit plus précisément du coût de renonciation découlant du versement anticipé de ces prestations, de sorte que les ressources en question ne pourront être affectées à d'autres initiatives publiques.

À la lumière des données sur les prestations du PPS rattachées aux procédures sous le régime de la LACC, on suppose que jusqu'à 10 % de toutes les personnes pouvant se prévaloir du PPS recevront leur prestation du PPS environ six mois plus tôt en moyenne dans le cas des procédures de restructuration admissibles. En utilisant le taux d'actualisation normalisé de 7 % pour les fonds publics, le coût de renonciation pour le gouvernement du Canada totalisera 1 411 512 $ sur 10 ans.

Avantages

Du point de vue d'une personne admissible aux prestations du PPS, le versement anticipé des prestations pourrait engendrer des économies au titre des paiements d'intérêts qui, sinon, auraient dû être assumés si le montant devait être emprunté pendant six mois auprès d'un prêteur. Le calcul effectué repose sur un taux annuel de 7 %, calculé et composé mensuellement. Ce taux de 7 % représente le taux d'intérêt hypothétique auquel un Canadien pourrait raisonnablement obtenir du crédit[3]. Selon ce taux mensuel, les prestations du PPS versées de façon anticipée aux personnes admissibles s'élèveront à 1 411 512 $ sur 10 ans.

[3] Il s'agit du taux médian potentiel d'une marge de crédit non garantie, d'un prêt bancaire, d'une carte de crédit et d'une marge de crédit hypothécaire. Cela correspond également au rendement annualisé de l'indice du marché financier canadien TSX (Bourse de Toronto) au cours des 10 dernières années.

Updated payment scheme for trustees' and receivers' fees and expenses when remaining estate assets are extremely low

The current formula for eligibility and payment of fees and expenses has been widely criticized by the insolvency community as overly complicated and insufficient. Since 2008, the fees and expenses for only 59 insolvent estates where there were insufficient assets to pay the fees and expenses of the trustee have qualified for payment. This represents fewer than 3 300 WEPP recipients. Only $162,650 in total trustee fees and expenses have been paid to insolvency professionals since 2008.

To encourage greater take-up of low-asset insolvencies, an updated payment scheme would ease eligibility and create improved financial incentives for insolvency professionals to take on the administration of low-asset insolvencies. This will open up access to the WEPP for individuals owed eligible wages.

Costs

Updating the payment scheme is estimated to cost the Government $1,135,942 over a 10-year period. This estimate assumes that low-asset employer insolvencies will add 10% to the total number of estates that fall under the WEPP each year. This would represent an additional 54 employer estates annually.[4] Each of these employer estates is assumed to require completion of 20 TIFs.[5] Based on this, the average payment a trustee would receive per eligible estate under the proposed scheme would be $2,820. By comparison, under the existing payment scheme, the maximum a trustee or receiver could claim for submission of 20 TIFs would be $1,265, assuming they also meet the more restrictive eligibility requirements for payment under the current scheme.

[4] Since the inception of the WEPP, the average annual number of employer insolvencies that have included at least one WEPP claim has been 536 estates. While costing is based on an additional 53.6 estates annually, references in the descriptive text removes the decimal and refers to 54 estates.

[5] WEPP data for the past five years (fiscal years 2015–2016 to 2019–2020) indicates that an average of 17 WEPP TIFs are filed per insolvent employer estate. For the cost estimate, a rounded number of 20 is used to avoid understating costs.

Mise à jour du régime de paiement des honoraires et dépenses des syndics et des séquestres lorsque la valeur des actifs est très faible

La formule actuelle servant à déterminer l'admissibilité et le montant des honoraires et dépenses a fait l'objet de critiques nourries de la part des professionnels de l'insolvabilité, qui estiment que ce régime est trop complexe et que les paiements accordés sont insuffisants. Depuis 2008, sur tous les cas d'insolvabilité où l'actif était insuffisant pour couvrir les honoraires et dépenses du syndic, seulement 59 ont été jugés admissibles au paiement. Cela représente au total moins de 3 300 personnes admissibles aux prestations du PPS. Toujours depuis 2008, le montant total versé à des professionnels de l'insolvabilité au titre de leurs honoraires et dépenses s'est chiffré à seulement 162 650 $.

En vue d'encourager davantage l'administration de cas d'insolvabilité où les actifs sont de faible valeur, la mise à jour du régime de paiement servira à faciliter l'admissibilité et créera de meilleurs incitatifs financiers pour amener les professionnels de l'insolvabilité à administrer ces cas. Ainsi, davantage de personnes à qui un salaire admissible est dû pourront se prévaloir du PPS.

Coûts

La mise à jour du régime de paiement devrait se traduire par des coûts de 1 135 942 $ sur 10 ans pour le gouvernement. Cette estimation repose sur l'hypothèse que l'administration de cas d'insolvabilité des employeurs où la valeur de l'actif est faible fera grimper de 10 % le nombre total de cas qui relèveront du PPS chaque année. Cela représente 54 autres cas d'insolvabilité d'un employeur par année[4]. On fait aussi l'hypothèse que, pour chacun de ces employeurs, il faudra traiter 20 FRS[5]. Par conséquent, le paiement moyen qu'un syndic recevrait par cas admissible selon le régime proposé se chiffrera à 2 820 $. À titre de comparaison, sous le régime de paiement actuel, le montant maximal qu'un syndic ou un séquestre peut réclamer au titre de la soumission de 20 FRS est de 1 265 $, en supposant qu'il satisfasse également aux critères d'admissibilité restrictifs que prévoit le régime actuel.

[4] Depuis la création du PPS, le nombre moyen de cas d'insolvabilité d'employeurs ayant donné lieu à au moins une réclamation au titre du PPS a été de 536 par année. L'estimation des coûts repose sur l'ajout de 53,6 cas par année, mais la décimale est supprimée dans le texte descriptif, et l'on y fait plutôt mention de 54 cas.

[5] Selon les données du PPS pour les cinq dernières années (exercices 2015-2016 à 2019-2020), il y a en moyenne 17 FRS déposés au titre du PPS pour chaque cas d'employeur insolvable. On a arrondi ce nombre à 20 pour l'estimation des coûts, afin d'éviter une éventuelle sous-estimation.

Incremental increase of payments to employees of the new low-asset insolvent firms newly eligible (including incremental recoverable payments)

Costs

The increased administration rates of low-asset insolvencies resulting from the updated payment scheme are estimated to enable access to the WEPP for an additional 1 072 employees each year. It is assumed that each WEPP recipient would be paid the average WEPP payment of $4,300. An incremental increase in the volume of payments to WEPP recipients' year-over-year is not expected.

The estimated additional number of WEPP recipients would result in $39,455,127 gross payments over the 10-year period. A portion of this gross payment would be recoverable from insolvent estates by the Crown through the bankruptcy process.

WEPP payments are comprised of two portions of money: super-priority payments of up to $2,000, which include the wage and vacation components of a WEPP payment, and the severance and termination components, which are unsecured. Their separate ranking means the super-priority and unsecured amounts are recovered at different success rates in a bankruptcy process.

Super-priority payments represent 27% of total WEPP payments made, while unsecured payments represent the remaining 73%. Of the total super-priority payments, the average recovery rate has been 43%, while only 3% has been recovered for unsecured amounts. Taken together the Crown recovers about 14% of total value of WEPP payments issued. This represents an anticipated recoverable amount of $4,812,912 over 10 years.

Taking into account these recoveries, the total estimated net costs to the Government of Canada would be $34,642,215 over the 10-year period.

Benefits

The estimated 1 072 additional WEPP recipients each year would result in a direct transfer of funds from the WEPP to the newly eligible recipients. Total estimated benefits from the WEPP to the new recipients are estimated to be $39,455,127 over the 10-year period.

Augmentation progressive des versements aux employés de nouvelles entreprises insolvables ayant un actif de faible valeur qui deviendront admissibles (y compris les montants additionnels recouvrables)

Coûts

Selon les estimations, par suite de la mise à jour du régime de paiement, l'augmentation du taux d'administration des cas d'insolvabilité où la valeur des actifs est faible permettra à 1 072 employés additionnels de se prévaloir du PPS chaque année. Le montant moyen que chaque personne admissible recevra du PPS est estimé à 4 300 $. Par ailleurs, on n'anticipe aucune hausse progressive du volume des prestations du PPS versées aux personnes admissibles d'une année à l'autre.

Selon les estimations, le nombre additionnel de personnes admissibles aux prestations du PPS se traduira par des versements bruts totalisant 39 455 127 $ sur la période de 10 ans prise en compte. Une partie de ce montant brut sera recouvrable par l'État à même l'actif des employeurs insolvables dans le cadre du processus de faillite.

Les prestations du PPS comportent deux composantes : la composante assortie d'une superpriorité, qui peut aller jusqu'à 2 000 $ et qui comprend le salaire et l'indemnité de vacances; et la composante comprenant les indemnités de départ et de préavis, qui n'est pas garantie. Leur rang de priorité différent signifie que le taux de recouvrement des sommes assorties d'une superpriorité diffère de celui des sommes non garanties dans le cadre d'un processus de faillite.

Les montants assortis d'une superpriorité représentent 27 % du montant total des prestations du PPS versées, et les montants non garantis, 73 %. Le taux de recouvrement moyen pour l'ensemble des montants assortis d'une superpriorité a été en moyenne de 43 %, et celui des montants non garantis, de 3 % seulement. Au total, l'État recouvre environ 14 % de la valeur totale des prestations versées dans le cadre du PPS. Selon ce pourcentage, le montant recouvrable prévu est de 4 812 912 $ sur 10 ans.

Une fois ces recouvrements pris en compte, le coût net sur 10 ans pour le gouvernement du Canada est estimé à 34 642 215 $.

Avantages

Les 1 072 personnes additionnelles qui seront admissibles au PPS chaque année entraîneront un transfert direct de fonds du PPS à ces personnes. Le montant estimatif des prestations du PPS versées aux nouvelles personnes admissibles totaliserait 39 455 127 $ sur 10 ans.

Communication and website costs to update information

Costs

There are anticipated minor costs associated with the development and dissemination of communication products, including the administration of website updates, communication procedures and program information. The Government of Canada would incur these costs in the first year of implementation with an estimated total of $23,247 following introduction of the proposed Regulations.

WEPP coverage extended to individuals if their employer enters formal insolvency proceedings in another country

The WEPP Act was amended to broaden coverage to include terminated employees whose employer has entered insolvency proceedings in a foreign jurisdiction. Amendments to the WEPP Act extend coverage to terminated employees when a foreign proceeding is recognized by a Canadian court, a trustee is appointed under the BIA in respect of the foreign proceeding, and a Canadian court deems that the foreign proceeding meets criteria prescribed by regulation.

Benefits

This proposed change would clarify and simplify WEPP access for Canadian workers when their employer's insolvency occurs in another country. Currently, indirect and occasionally time-consuming ways to trigger WEPP are pursued in situations where a foreign employer becomes insolvent but there is no Canadian bankruptcy or receivership event that takes place. This proposed change is not expected to substantially increase the number of Canadians who access WEPP.

Costs

Overall, no costs would be passed on to workers or consumers of employers that have filed bankruptcy or receivership under the proposed WEPP Regulations. There are no identifiable new costs to Canadian businesses, or likely impacts on trade or investment, that would result from the proposed amendments. The employer community will likely be indifferent to the proposed Regulations, as there will be no changes made to Canada's broader insolvency regime.

Coûts reliés aux communications et au site Web pour la mise à jour de l'information

Coûts

Des coûts mineurs sont prévus pour le développement et la diffusion des produits de communication, y compris l'administration des mises à jour du site Web, les procédures de communication et l'information sur le programme. Le gouvernement du Canada assumera ces coûts au cours de la première année de mise en œuvre, le montant en cause étant estimé à 23 247 $ après l'adoption du projet de règlement.

Protection du PPS étendue aux personnes dont l'employeur entame une procédure officielle d'insolvabilité dans un autre pays

La LPPS a été modifiée afin d'élargir la couverture aux employés licenciés ou congédiés dont l'employeur a entamé une procédure d'insolvabilité dans un autre pays. Les modifications apportées à la LPPS s'appliqueront aux employés licenciés ou congédiés lorsqu'une instance étrangère est reconnue par un tribunal canadien, qu'un syndic est nommé en vertu de la LFI à l'égard de l'instance étrangère et qu'un tribunal canadien décide que l'instance étrangère satisfait aux critères réglementaires.

Avantages

Cette modification proposée clarifiera et simplifiera les conditions d'accès au PPS pour les travailleurs canadiens lorsque la procédure d'insolvabilité de leur employeur a lieu dans un autre pays. À l'heure actuelle, on a recours à des moyens indirects et parfois fastidieux pour déclencher le PPS dans les situations où un employeur étranger devient insolvable, mais où il n'y a pas de faillite ou de mise sous séquestre au Canada. Cette modification particulière ne devrait pas donner lieu à une hausse significative du nombre de Canadiens qui se prévaudront du PPS.

Coûts

Dans l'ensemble, le projet de règlement ne donne lieu à aucun transfert de coût aux travailleurs ou aux consommateurs d'employeurs qui ont fait faillite ou qui ont fait l'objet d'une mise sous séquestre. Les modifications proposées ne devraient entraîner aucun nouveau coût pour les entreprises canadiennes et ne devraient pas avoir d'incidence sur le commerce ou l'investissement. La collectivité des employeurs réagira probablement de façon neutre au projet de règlement, car aucun changement ne sera apporté au régime d'insolvabilité canadien pris dans son ensemble.

Cost-benefit statement

Number of years: 2020 to 2029

Base year for costing: 2020

Present value base year: 2020

Discount rate: 7%

Énoncé des coûts-avantages

Nombre d’années : 2020 à 2029

Année de référence pour l’établissement des coûts : 2020

Année de référence de la valeur actualisée : 2020

Taux d’actualisation : 7 %

Table 1: Monetized costs

Impacted Stakeholder	Description of Costs	Base Year	Year 2024	Final Year: 2029	Total (Present Value)	Annualized Value
Government	Earlier payment to employees	$180,516	$143,307	$107,388	$1,411,512	$200,968
	New pay regime for trustees/receivers who administer low-asset insolvencies	$151,152	$115,313	$82,217	$1,135,942	$161,733
	Payments to new low-asset insolvent firm employees	$4,609,600	$3,516,642	$2,507,317	$34,642,215	$4,932,289
	Communication and website costs to update information	$23,247	$0	$0	$23,247	$3,310
All stakeholders	**Total costs**	**$4,964,516**	**$3,775,262**	**$2,696,921**	**$37,212,916**	**$5,298,300**

Tableau 1 : Coûts exprimés en valeur monétaire

Parties concernées	Description des coûts	Année de référence	Année 2024	Dernière année : 2029	Total (valeur actualisée)	Valeur annualisée
Gouvernement	Versements anticipés aux employés	180 516 $	143 307 $	107 388 $	1 411 512 $	200 968 $
	Nouveau régime de paiement pour les syndics et les séquestres qui administrent des cas d’insolvabilité où l’actif est de faible valeur	151 152 $	115 313 $	82 217 $	1 135 942 $	161 733 $
	Prestations versées à des employés de nouvelles entreprises insolvables dont l’actif est de faible valeur	4 609 600 $	3 516 642 $	2 507 317 $	34 642 215 $	4 932 289 $
	Coûts reliés aux communications et au site Web pour la mise à jour de l’information	23 247 $	0 $	0 $	23 247 $	3 310 $
Ensemble des parties concernées	**Coût total**	**4 964 516 $**	**3 775 262 $**	**2 696 921 $**	**37 212 916 $**	**5 298 300 $**

Table 2: Monetized benefits

Impacted Stakeholder	Description of Benefit	Base Year	Year 2024	Final Year: 2029	Total (Present Value)	Annualized Value
Employees	Earlier payment to employees	$180,516	$143,307	$107,388	$1,411,512	$200,968
	Payments to new low-asset insolvent firm employees and incremental recoverable payments	$5,250,021	$4,005,216	$2,855,664	$39,455,127	$5,617,542
All stakeholders	Total benefits	**$5,430,537**	**$4,148,522**	**$2,963,051**	**$40,866,638**	**$5,818,510**

Tableau 2 : Avantages exprimés en valeur monétaire

Parties concernées	Description de l'avantage	Année de référence	Année 2024	Dernière année : 2029	Total (valeur actualisée)	Valeur annualisée
Employés	Versements anticipés aux employés	180 516 $	143 307 $	107 388 $	1 411 512 $	200 968 $
	Prestations versées à des employés de nouvelles entreprises insolvables dont l'actif est de faible valeur et sommes additionnelles recouvrables	5 250 021 $	4 005 216 $	2 855 664 $	39 455 127 $	5 617 542 $
Ensemble des parties concernées	Valeur totale des avantages	**5 430 537 $**	**4 148 522 $**	**2 963 051 $**	**40 866 638 $**	**5 818 510 $**

Table 3: Summary of monetized costs and benefits

Impacts	Base Year	Year 2024	Final Year: 2029	Total (Present Value)	Annualized Value
Total costs	$4,964,516	$3,775,262	$2,696,921	$37,212,916	$5,298,300
Total benefits	$5,430,537	$4,148,522	$2,963,051	$40,866,638	$5,818,510
NET IMPACT	**$466,021**	**$373,260**	**$266,130**	**$3,653,722**	**$520,210**

Tableau 3 : Résumé des coûts et des avantages exprimés en valeur monétaire

Incidences	Année de référence	Année 2024	Dernière année : 2029	Total (valeur actualisée)	Valeur annualisée
Coût total	4 964 516 $	3 775 262 $	2 696 921 $	37 212 916 $	5 298 300 $
Valeur totale des avantages	5 430 537 $	4 148 522 $	2 963 051 $	40 866 638 $	5 818 510 $
INCIDENCE NETTE	**466 021 $**	**373 260 $**	**266 130 $**	**3 653 722 $**	**520 210 $**

Quantified (non-$) and qualitative impacts

Positive impacts: WEPP recipients

- Clarifying WEPP coverage to Canadian employees affected by insolvencies of their employer in a foreign country will clarify and simplify WEPP access.
- Potential small number of additional WEPP recipients due to simplified WEPP trigger.

Incidence quantifiée (non monétaire) et incidence qualitative

Incidences positives : Personnes admissibles au PPS

- Les précisions concernant la manière dont la protection du PPS s'étend aux employés canadiens dont l'employeur fait l'objet d'une procédure d'insolvabilité dans un pays étranger serviront à clarifier et à simplifier l'accès au PPS.
- Le nombre additionnel de personnes admissibles au PPS, par suite de la rationalisation des modalités d'enclenchement du programme, devrait être peu élevé.

Negative impact: Government of Canada

- Clarifying WEPP coverage to individuals employed by foreign companies operating in Canada, if their employer enters bankruptcy or becomes subject to receivership in a foreign jurisdiction, may result in a small number of additional WEPP claims for processing.

Small business lens

The small business lens does not apply, as the proposed Regulations would not impose costs on small businesses.

One-for-one rule

This regulatory proposal would not impose administrative costs on businesses and would not result in a new regulation.

Regulatory cooperation and alignment

This regulatory proposal has no links to international agreements or obligations.

Strategic environmental assessment

In accordance with the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, a preliminary scan concluded that a strategic environmental assessment is not required.

Gender-based analysis plus

No gender-based analysis plus (GBA+) impacts have been identified for this proposal. Information collected by the WEPP is limited to what is specifically required to administer the program. As a result, indicators are limited to program operations such as the number of payments made, average amounts paid per claimant, and payment timeliness. Personal information such as gender, age, disability, indigenous status, or socio-economic characteristics are not collected. Information to assess the potential impact that WEPP changes could have on different groups is therefore not readily available.

Incidence négative : Gouvernement du Canada

- Les précisions concernant la manière dont la protection du PPS s'étend aux personnes employées par des entreprises étrangères exerçant leurs activités au Canada, si leur employeur fait faillite ou fait l'objet d'une mise sous séquestre dans un pays étranger, pourraient entraîner le traitement d'un petit nombre additionnel de demandes auprès du PPS.

Lentille des petites entreprises

La lentille des petites entreprises ne s'applique pas, car le projet de règlement n'entraîne aucun coût pour les petites entreprises.

Règle du « un pour un »

Le projet de règlement ne donne lieu à aucune augmentation des coûts d'administration pour les entreprises ni à l'ajout d'un nouveau règlement.

Coopération et harmonisation en matière de réglementation

Le projet de règlement n'est aucunement lié à des ententes ou obligations internationales.

Évaluation environnementale stratégique

Une analyse préliminaire, menée conformément à la *Directive du Cabinet sur l'évaluation environnementale des projets de politiques, de plans et de programmes*, a permis de conclure qu'il n'était pas nécessaire de procéder à évaluation environnementale stratégique.

Analyse comparative entre les sexes plus

Aucune incidence relative à l'analyse comparative entre les sexes plus (ACS+) n'a été cernée pour ce projet de règlement. L'information recueillie dans le cadre du PPS se limite aux renseignements expressément requis pour exécuter le programme. Par conséquent, les indicateurs se limitent aux opérations du programme, comme le nombre de prestations versées, les montants moyens versés par demandeur et les délais de versement. On ne recueille pas de renseignements personnels comme le sexe, l'âge, l'incapacité, le statut d'Autochtone ou les caractéristiques socioéconomiques. Il n'y a donc pas de renseignements permettant d'évaluer l'incidence que les modifications apportées au PPS pourraient avoir sur des groupes donnés.

Implementation, compliance and enforcement, and service standards

Implementation

Communications and outreach will be conducted as needed with the insolvency community to ensure they are aware of the changes to WEPP Regulations. This will primarily be accomplished by working with the Canadian Association of Insolvency and Restructuring Professionals (CAIRP) through the existing WEPP Joint Liaison Committee, and on an ad hoc basis, as needed.

The proposed Regulations are anticipated to come into force in spring 2021.

Partner institutions

A number of federal departments and private sector stakeholders are instrumental in the operation of the WEPP. These partner institutions were all consulted during the development of these proposed WEPP Regulations.

- Service Canada processes WEPP applications, issues payments to eligible recipients, oversees the trustee and receiver payment scheme, and administers the review process.
- The Office of the Superintendent of Bankruptcy (OSB) provides advice and guidance with respect to the application of the BIA and the CCAA, both of which are linked to the WEPP Act. The federal insolvency policy, which includes the BIA and CCAA, falls under the mandate of the Minister of Innovation, Science and Economic Development (ISED). Although the WEPP is under the responsibility of the Minister of Labour, it is an important element of Canada's broader insolvency framework.
- The Canada Revenue Agency (CRA) administers the recovery of WEPP overpayments and recovers dividends from insolvent estates. When payments are issued under the WEPP, the Government of Canada is subrogated to any rights the individual may have in respect of unpaid wages, up to the amount of the WEPP payment.
- The CAIRP represents close to 90% of Licensed Insolvency Trustees in Canada. Therefore, CAIRP is the main stakeholder representative for the trustee and receiver community in Canada. The Labour Program works closely with CAIRP to communicate WEPP-related information to the insolvency community, and address WEPP administrative and operational issues with a view to improving the delivery of the program.

Mise en œuvre, conformité et application, et normes de service

Mise en œuvre

Des activités de communication et de sensibilisation seront menées au besoin auprès des professionnels de l'insolvabilité pour s'assurer qu'ils sont au courant des modifications apportées à la réglementation. À cette fin, on travaillera principalement en collaboration avec l'Association canadienne des professionnels de l'insolvabilité et de la réorganisation (ACPIR), par l'entremise du Comité de liaison mixte, de pair avec des initiatives ponctuelles, lorsque cela sera requis.

Le projet de règlement devrait entrer en vigueur au printemps 2021.

Partenaires

Un certain nombre de ministères et organismes fédéraux ainsi que d'intervenants du secteur privé jouent un rôle essentiel dans le fonctionnement du PPS. Ces partenaires ont tous été consultés pendant l'élaboration du projet de règlement modifiant le RPPS.

- Service Canada traite les demandes destinées au PPS, verse les prestations aux personnes admissibles, supervise le régime de paiement des honoraires et dépenses des syndics et des séquestres, et administre le processus de révision.
- Le Bureau du surintendant des faillites (BSF) fournit des conseils et des directives ayant trait à l'application de la LFI et de la LACC, qui sont toutes deux liées à la LPPS. La politique fédérale en matière d'insolvabilité, qui englobe la LFI et la LACC, relève du mandat du ministre de l'Innovation, des Sciences et du Développement économique (ISDE). Bien qu'il relève du ministre du Travail, le PPS constitue un élément important du cadre fédéral canadien en matière d'insolvabilité.
- L'Agence du revenu du Canada (ARC) gère le recouvrement des trop-perçus reliés au PPS et recouvre des dividendes à même les actifs des entités insolvables. Lorsque des versements sont effectués dans le cadre du PPS, le gouvernement du Canada est subrogé dans les droits que le travailleur peut avoir relativement à un salaire qui lui est dû, jusqu'à concurrence du montant versé par le PPS.
- L'ACPIR représente près de 90 % des syndics autorisés en insolvabilité au Canada. À ce titre, l'ACPIR est la principale entité représentant la collectivité des syndics et des séquestres au Canada. Le Programme du travail collabore étroitement avec l'ACPIR pour communiquer l'information relative au PPS à la collectivité des professionnels de l'insolvabilité et pour résoudre les problèmes administratifs et opérationnels reliés au PPS en vue d'améliorer l'exécution de ce dernier.

Performance measurement

The following will be used to assess the effectiveness of the WEPP following the proposed regulatory changes:

- Improved financial support to workers (i.e. a larger number of employees with insolvent employers can access WEPP);
- Total number of workers that receive support under the WEPP (baseline of 12 000 annual); and
- Number of WEPP applicants under the new eligibility triggers (new baseline).

Service standards

Service standards to process WEPP claims will remain unchanged.

Contacts

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PROPOSED REGULATORY TEXT

Notice is given that the Governor in Council, pursuant to section 41[a] of the *Wage Earner Protection Program Act*[b], proposes to make the annexed *Regulations Amending the Wage Earner Protection Program Regulations*.

Interested persons may make representations concerning the proposed Regulations within 30 days after the date of publication of this notice. All such representations must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be addressed to Danijela Hong, Director, Labour Standards and Wage Earner Protection Program, Workplace Directorate, Labour Program, Employment and Social

[a] S.C. 2018, c. 27, s. 652
[b] S.C. 2005, c. 47, s. 1

Mesure du rendement

Les éléments suivants serviront à évaluer l'efficacité du PPS à la suite des modifications réglementaires proposées :

- Mesure dans laquelle le soutien financier offert aux travailleurs est amélioré (hausse du nombre d'employés d'un employeur insolvable qui peuvent se prévaloir du PPS);
- Nombre total de travailleurs qui reçoivent un soutien dans le cadre du PPS (nombre de référence : 12 000 par année);
- Nombre de demandeurs du PPS visés par les nouveaux critères d'admissibilité (nouveau point de référence).

Normes de service

Les normes de service ayant trait au traitement des demandes reliées au PPS demeureront inchangées.

Personnes-ressources

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PROJET DE RÉGLEMENTATION

Avis est donné que la gouverneure en conseil, en vertu de l'article 41[a] de la *Loi sur le Programme de protection des salariés*[b], se propose de prendre le *Règlement modifiant le Règlement sur le Programme de protection des salariés*, ci-après.

Les intéressés peuvent présenter leurs observations au sujet du projet de règlement dans les trente jours suivant la date de publication du présent avis. Ils sont priés d'y citer la Partie I de la *Gazette du Canada*, ainsi que la date de publication, et d'envoyer le tout à Danijela Hong, directrice, Normes du travail et Programme de protection des salariés, Direction du milieu de travail, Programme du travail, Emploi et

[a] L.C. 2018, ch. 27, art. 652
[b] L.C. 2005, ch. 47, art. 1

Development Canada, 165 de l'Hôtel-de-Ville Street, Phase II, Gatineau, Quebec J8X 3X2 (tel.: 819-654-1625; email: danijela.hong@labour-travail.gc.ca).

Ottawa, November 19, 2020

Julie Adair
Assistant Clerk of the Privy Council

Regulations Amending the Wage Earner Protection Program Regulations

Amendments

1 Paragraph 3(b) of the *Wage Earner Protection Program Regulations*[1] is replaced by the following:

(b) the individual's employment has been terminated by the employer;

(b.1) the individual's employment has been terminated by a receiver or trustee; or

2 The Regulations are amended by adding the following after section 3:

Foreign Proceedings

3.1 For the purposes of subsection 5(2) of the Act, a court may determine whether the foreign proceeding meets the following criteria:

(a) the foreign proceeding is to be in respect of a former employer that has ceased its principal business operations in Canada; and

(b) the foreign proceeding is to be in respect of a former employer that has terminated all of its employees in Canada other than any retained to wind down its business operations.

[1] SOR/2008-222

Développement social Canada, 165, rue de l'Hôtel-de-Ville, Phase II, Gatineau (Québec) J8X 3X2 (tél. : 819-654-1625; courriel : danijela.hong@labour-travail.gc.ca).

Ottawa, le 19 novembre 2020

La greffière adjointe du Conseil privé
Julie Adair

Règlement modifiant le Règlement sur le Programme de protection des salariés

Modifications

1 L'alinéa 3b) du *Règlement sur le Programme de protection des salariés*[1] est remplacé par ce qui suit :

b) son licenciement ou son congédiement par l'employeur;

b.1) un syndic ou un séquestre y a mis fin;

2 Le même règlement est modifié par adjonction, après l'article 3, de ce qui suit :

Instances étrangères

3.1 Pour l'application du paragraphe 5(2) de la Loi, le tribunal peut décider si l'instance étrangère satisfait aux critères suivants :

a) elle vise un ancien employeur qui a cessé ses activités commerciales principales au Canada;

b) elle vise un ancien employeur qui a licencié ou congédié tous ses employés au Canada, à l'exception de ceux dont les services sont retenus pour réduire progressivement ses activités commerciales.

[1] DORS/2008-222

Proceedings Under the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether a former employer meets the following criteria:

(a) the former employer is to have ceased its principal business operations in Canada; and

(b) the former employer is to have terminated all of its employees in Canada other than any retained to wind down its business operations.

3 Section 6 of the Regulations is replaced by the following:

6 The following amounts are provided for the purposes of subsection 7(1.1) of the Act:

(a) any eligible wages that the individual has received after the date of the bankruptcy, the first day on which there was a receiver or the day on which a court determines that the former employer meets the criteria set out in section 3.2, as the case may be; and

(b) an amount equal to 6.82% of the amount determined under subsection 7(1) of the Act.

4 Section 9 of the Regulations is replaced by the following:

9 (1) An application for payment shall be made within 56 days after the latest of the following days:

(a) the date of the bankruptcy or receivership of the applicant's former employer,

(b) the day on which the applicant's employment ends for any of the reasons referred to in section 3, and

(c) the day on which a court determines that the former employer meets the criteria set out in section 3.2.

(2) The application may be submitted after the expiry of the 56-day period if circumstances beyond the control of the applicant prevented them from submitting the application during that period.

5 Section 11 of the Regulations is replaced by the following:

11 (1) An applicant shall request a review under section 11 or 32.1 of the Act in writing within 30 days after the

Procédures visées par la Loi sur la faillite et l'insolvabilité ou par la Loi sur les arrangements avec les créanciers des compagnies

3.2 Pour l'application du paragraphe 5(5) de la Loi, le tribunal peut décider si l'ancien employeur satisfait aux critères suivants :

a) il a cessé ses activités commerciales principales au Canada;

b) il a licencié ou congédié tous ses employés au Canada, à l'exception de ceux dont les services sont retenus pour réduire progressivement ses activités commerciales.

3 L'article 6 du même règlement est remplacé par ce qui suit :

6 Les sommes ci-après sont prévues pour l'application du paragraphe 7(1.1) de la Loi :

a) tout salaire admissible que la personne physique a reçu après la date de la faillite, de l'entrée en fonction du séquestre ou de la décision du tribunal selon laquelle l'ancien employeur satisfait aux critères de l'article 3.2, selon le cas;

b) une somme correspondant à 6,82 % du montant déterminé en application du paragraphe 7(1) de la Loi.

4 L'article 9 du même règlement est remplacé par ce qui suit :

9 (1) Toute demande de prestations est présentée dans les cinquante-six jours suivant celle des dates ci-après qui est postérieure aux autres :

a) la date de la faillite ou de la mise sous séquestre de l'ancien employeur du demandeur;

b) la date à laquelle l'emploi du demandeur prend fin pour tout motif mentionné à l'article 3;

c) la date de la décision du tribunal selon laquelle l'ancien employeur satisfait aux critères de l'article 3.2.

(2) La demande peut être présentée après l'expiration du délai de cinquante-six jours si des circonstances indépendantes de la volonté du demandeur l'ont empêché de la présenter avant l'expiration de ce délai.

5 L'article 11 du même règlement est remplacé par ce qui suit :

11 (1) La demande de révision prévue aux articles 11 et 32.1 de la Loi est présentée par écrit dans les trente day on which the applicant is informed under subsection 10(1) or 32(1) of the Act, as the case may be, of the Minister's determination.

(2) The request may be submitted after the expiry of the 30-day period if circumstances beyond the control of the applicant prevented them from submitting the request during that period.

6 The heading before section 13 and sections 13 and 14 of the Regulations are repealed.

7 Paragraph 15(1)(a) of the Regulations is replaced by the following:

(a) the date of bankruptcy or receivership or the day on which a court determines that the former employer meets the criteria set out in section 3.2, as the case may be;

8 Paragraph 16(1)(a) of the Regulations is replaced by the following:

(a) the date of bankruptcy or receivership or the day on which a court determines that the former employer meets the criteria set out in section 3.2, as the case may be;

9 Sections 18 to 20 of the Regulations are replaced by the following:

18 (1) For the purpose of section 22.1 of the Act, the Minister shall, on application by the trustee or receiver, pay the fees and expenses if

(a) the trustee or receiver provides a copy of their final statement of receipts and disbursements for the bankruptcy or receivership;

(b) the final statement of receipts and disbursements for the bankruptcy or receivership shows a deficit; and

(c) the amount of any third-party deposits and guarantees in respect of the fees and expenses is less than the deficit.

(2) The amount payable is equal to the lesser of

(a) the amount by which the deficit exceeds the amount of any third-party deposits or guarantees, and

(b) the amount determined by the formula

$$A + B$$

where

A is the amount obtained by adding $720, as adjusted, to

(i) $120, as adjusted, for each of the first 10 claims,

jours suivant la date à laquelle le demandeur est informé de la décision prise par le ministre au titre des paragraphes 10(1) ou 32(1) de la Loi, selon le cas.

(2) Elle peut être présentée après l'expiration du délai de trente jours si des circonstances indépendantes de la volonté du demandeur l'ont empêché de la présenter avant l'expiration de ce délai.

6 L'intertitre précédant l'article 13 et les articles 13 et 14 du même règlement sont abrogés.

7 L'alinéa 15(1)a) du même règlement est remplacé par ce qui suit :

a) la date de la faillite ou de la mise sous séquestre ou la date de la décision du tribunal selon laquelle l'ancien employeur satisfait aux critères de l'article 3.2, selon le cas;

8 L'alinéa 16(1)a) du même règlement est remplacé par ce qui suit :

a) la date de la faillite ou de la mise sous séquestre ou la date de la décision du tribunal selon laquelle l'ancien employeur satisfait aux critères de l'article 3.2, selon le cas;

9 Les articles 18 à 20 du même règlement sont remplacés par ce qui suit :

18 (1) Pour l'application de l'article 22.1 de la Loi, le ministre acquitte, à la demande du syndic ou du séquestre, les honoraires et les dépenses si, à la fois :

a) le syndic ou le séquestre fournit une copie de l'état définitif des recettes et des débours de la faillite ou de la mise sous séquestre;

b) l'état définitif des recettes et des débours de la faillite ou de la mise sous séquestre affiche un déficit;

c) le montant des dépôts et des garanties de tierces personnes relativement aux honoraires et aux dépenses est inférieur au déficit.

(2) La somme à payer est égale au moindre des montants suivants :

a) l'excédent du déficit sur le montant des dépôts et des garanties de tierces personnes;

b) le montant déterminé selon la formule suivante :

$$A + B$$

où :

A représente le montant obtenu par l'addition d'un montant de 720 $, rajusté, aux montants suivants :

(i) un montant de 120 $, rajusté, pour chacune des dix premières demandes,

(ii) $90, as adjusted, for each of the next 10 claims, and

(iii) $75, as adjusted, for each additional claim, and

B is, to a maximum of $5,000, as adjusted, the total of the fees and expenses incurred

(i) for taking possession of the property, making an inventory and securing and insuring the property,

(ii) for mail-outs to creditors to advise them of the meeting of creditors and the discharge hearing of the trustee,

(iii) for publishing a newspaper notice of the bankruptcy,

(iv) for the official receiver and the registrar, and

(v) for other items that may be allowed by the court on the taxation of the statement of receipts and disbursements to a maximum of $1,000, as adjusted.

(3) Despite subsection (2), the amount determined for B in paragraph (2)(b) is equal to 0 if the amount determined in accordance with the following formula is more than $10,000, as adjusted:

X – Y

where

X is equal to the total value of the former employer's assets; and

Y is the total value of the claims that have priority over the fees and expenses of the trustee or receiver.

19 (1) The amounts, as indicated in subsections 18(2) and (3), that are to be adjusted are to be done so on January 1 of each year in accordance with the percentage increase to the consumer price index for the year ending on September 30 of the previous year.

(2) The consumer price index is the annual average all-items consumer price index for Canada (not seasonally adjusted) published by Statistics Canada.

(3) The adjusted amounts are to be rounded

(a) in the case of those set out in the description of A in paragraph 18(2)(b), to the nearest dollar;

(b) subject to paragraph (c), in the case of those set out in the description of B in paragraph 18(2)(b) and in subsection 18(3), to the nearest $500 increment; and

(ii) un montant de 90 $, rajusté, pour chacune des dix demandes suivantes,

(iii) un montant de 75 $, rajusté, pour chaque demande supplémentaire;

B le total des honoraires et des dépenses, jusqu'à concurrence d'un montant de 5 000 $, rajusté :

(i) liés à la prise de possession et à la réalisation de l'inventaire des biens et à l'obtention d'une garantie et d'une couverture d'assurance,

(ii) liés aux envois postaux visant à informer les créanciers de la tenue d'une réunion des créanciers et de l'audience de libération du syndic,

(iii) liés à la publication d'un avis de faillite dans un journal,

(iv) encourus par le séquestre officiel et le registraire,

(v) liés à tous les autres éléments qui peuvent être autorisés par le tribunal lors de la taxation de l'état des recettes et des débours, jusqu'à concurrence d'un montant de 1 000 $, rajusté.

(3) Malgré le paragraphe (2), le montant déterminé à l'élément B à l'alinéa (2)b) est égal à zéro si le montant déterminé selon la formule ci-après est supérieur au montant de 10 000 $, rajusté :

X – Y

où :

X représente la valeur totale de l'actif de l'ancien employeur;

Y la valeur totale des créances qui ont préséance sur les honoraires et les dépenses du syndic ou du séquestre.

19 (1) Les montants prévus aux paragraphes 18(2) et (3) sont rajustés au 1er janvier de chaque année en fonction de l'augmentation annuelle en pourcentage de l'indice des prix à la consommation mesurée le 30 septembre de l'année précédente.

(2) L'indice des prix à la consommation est l'indice d'ensemble des prix à la consommation établi selon une moyenne annuelle (non désaisonnalisée) pour le Canada et publié par Statistique Canada.

(3) Les montants rajustés sont arrondis de la manière suivante :

a) pour les montants visés à l'élément A à l'alinéa 18(2)b), au dollar près;

b) sous réserve de l'alinéa c), pour les montants visés à l'élément B à l'alinéa 18(2)b) et au paragraphe 18(3), au plus proche incrément de 500 $;

(c) in the case of those set out in subparagraph (v) of the description of B in paragraph 18(2)(b), to the nearest $100 increment.

(4) If, as a result of rounding, an amount set out in the description of B in subsection (2) remains the same as it was for the previous year, the unrounded adjusted amount is to be used for the purposes of the adjustment for the following year.

20 The notice referred to in subsections 36(1.1) and (1.2) of the Act is to be provided to the Minister within 30 days after the day on which the individual becomes aware of the action, proceeding, decision or order, as the case may be, and include

(a) the name, address, telephone number and social insurance number of the individual;

(b) in the case of a notice referred to in subsection 36(1.1),

(i) the date the action or proceeding was commenced,

(ii) the nature of the action or proceeding,

(iii) the name of the person who commenced the action or proceeding and their contact information; and

(c) in the case of a notice referred to in subsection 36(1.2), the date the decision or order was made and, if a payment has been received as a result of the decision or order,

(i) the amount of the payment broken down by the components of wages to which it relates and by recipient,

(ii) the contact information of the recipients,

(iii) the time period for which the payment relates, and

(iv) the source of the payment.

Transitional Provision

10 The *Wage Earner Protection Program Regulations*, as they read immediately before the day on which these Regulations come into force, continue to apply where the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer occurs before the day on which these Regulations come into force.

c) pour les montants visés au sous-alinéa (v) de l’élément B à l’alinéa 18(2)b), au plus proche incrément de 100 $.

(4) Si, du fait de son arrondissement, le montant visé à l’élément B au paragraphe 18(2) demeure le même que celui de l’année précédente, le montant rajusté non arrondi est utilisé aux fins de rajustement pour l’année suivante.

20 Les avis visés aux paragraphes 36(1.1) et (1.2) de la Loi sont transmis au ministre dans les trente jours suivant la date à laquelle la personne physique prend connaissance de l’action, de la procédure, de la décision ou de l’ordonnance, selon le cas, et contiennent les renseignements suivants :

a) les nom, adresse, numéro de téléphone et numéro d’assurance sociale de la personne physique;

b) dans le cas de l’avis visé au paragraphe 36(1.1) :

(i) la date à laquelle l’action ou la procédure a été intentée,

(ii) la nature de l’action ou de la procédure,

(iii) le nom et les coordonnées de la personne ayant intenté l’action ou la procédure;

c) dans le cas de l’avis visé au paragraphe 36(1.2), la date à laquelle la décision ou l’ordonnance a été prise et, si des prestations ont été reçues à la suite de la décision ou de l’ordonnance, les renseignements suivants :

(i) le montant des prestations reçues, ventilé selon les éléments du salaire auxquels il se rapporte et par récipiendaire,

(ii) les coordonnées des récipiendaires,

(iii) la période visée par les prestations,

(iv) la source des prestations.

Disposition transitoire

10 Le *Règlement sur le Programme de protection des salariés*, dans sa version antérieure à la date d’entrée en vigueur du présent règlement, continue de s’appliquer lorsque la date de la faillite ou de l’entrée en fonction du séquestre à l’égard de l’ancien employeur est antérieure à l’entrée en vigueur du présent règlement.

Coming into Force

11 These Regulations come into force on the day on which section 629 of the *Budget Implementation Act, 2018, No. 2*, chapter 27 of the Statutes of Canada 2018, comes into force, but if they are registered after that day, they come into force on the day on which they are registered.

Entrée en vigueur

11 Le présent règlement entre en vigueur à la date d'entrée en vigueur de l'article 629 de la *Loi nº 2 d'exécution du budget de 2018*, chapitre 27 des Lois du Canada (2018), ou, si elle est postérieure, à la date de son enregistrement.

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Canada Gazette Part II

Gazette du Canada Partie II

OTTAWA, WEDNESDAY, SEPTEMBER 1, 2021

Statutory Instruments 2021

SOR/2021-195 to 214 and SI/2021-55 to 62

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OTTAWA, LE MERCREDI 1er SEPTEMBRE 2021

Textes réglementaires 2021

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Registration
SOR/2021-196 August 12, 2021

WAGE EARNER PROTECTION PROGRAM ACT

P.C. 2021-866 August 11, 2021

Her Excellency the Governor General in Council, on the recommendation of the Minister of Labour, pursuant to section 41[a] of the *Wage Earner Protection Program Act*[b], makes the annexed *Regulations Amending the Wage Earner Protection Program Regulations*.

Regulations Amending the Wage Earner Protection Program Regulations

Amendments

1 The *Wage Earner Protection Program Regulations*[1] are amended by adding the following after section 3:

Foreign Proceedings

3.1 For the purposes of subsection 5(2) of the Act, a court may determine whether the foreign proceeding is in respect of a former employer that has terminated all of its employees in Canada other than any retained to wind down its business operations.

Proceedings Under Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

2 Section 6 of the Regulations is replaced by the following:

6 Any amount that an individual has received in respect of eligible wages or in respect of the termination of

[a] S.C. 2018, c. 27, ss. 648(1) and (2)
[b] S.C. 2005, c. 47, s. 1
[1] SOR/2008-222

Enregistrement
DORS/2021-196 Le 12 août 2021

LOI SUR LE PROGRAMME DE PROTECTION DES SALARIÉS

C.P. 2021-866 Le 11 août 2021

Sur recommandation de la ministre du Travail et en vertu de l'article 41[a] de la *Loi sur le Programme de protection des salariés*[b], Son Excellence la Gouverneure générale en conseil prend le *Règlement modifiant le Règlement sur le Programme de protection des salariés*, ci-après.

Règlement modifiant le Règlement sur le Programme de protection des salariés

Modifications

1 Le *Règlement sur le Programme de protection des salariés*[1] est modifié par adjonction, après l'article 3, de ce qui suit :

Instances étrangères

3.1 Pour l'application du paragraphe 5(2) de la Loi, le tribunal peut décider si l'instance étrangère vise un ancien employeur qui a congédié ou licencié tous ses employés au Canada, à l'exception de ceux dont les services sont retenus pour cesser progressivement ses activités commerciales.

Procédures visées par la Loi sur la faillite et l'insolvabilité ou par la Loi sur les arrangements avec les créanciers des compagnies

3.2 Pour l'application du paragraphe 5(5) de la Loi, le tribunal peut décider si l'ancien employeur est l'ancien employeur dont tous les employés ont été congédiés ou licenciés au Canada, à l'exception de ceux dont les services sont retenus pour cesser progressivement ses activités commerciales.

2 L'article 6 du même règlement est remplacé par ce qui suit :

6 Toute somme que la personne physique a reçue à titre de salaire admissible ou relativement à la fin de son emploi

[a] L.C. 2018, ch. 27, par. 648(1) et (2)
[b] L.C. 2005, ch. 47, art. 1
[1] DORS/2008-222

employment that is paid by the former employer or from any other source, excluding any amounts received through other federal or provincial programs, after the date of the bankruptcy or receivership, or the day on which a court determines that the former employer meets the criteria set out in section 3.1 or 3.2, as the case may be, is the amount for the purposes of subsection 7(1.1) of the Act.

3 Section 9 of the Regulations is replaced by the following:

9 (1) An application for payment shall be made within 56 days after the latest of the following days:

(a) the date of the bankruptcy or receivership of the applicant's former employer,

(b) the day on which the applicant's employment ends for any of the reasons referred to in section 3, and

(c) the day on which a court determines that the former employer meets the criteria set out in section 3.1 or 3.2, as the case may be.

(2) The application may be submitted after the expiry of the 56-day period if circumstances beyond the control of the applicant prevented them from submitting the application during that period.

4 Section 11 of the Regulations is replaced by the following:

11 (1) An applicant shall request a review under section 11 or 32.1 of the Act in writing within 30 days after the day on which the applicant is informed under subsection 10(1) or 32(1) of the Act, as the case may be, of the Minister's determination.

(2) The request may be submitted after the expiry of the 30-day period if circumstances beyond the control of the applicant prevented them from submitting the request during that period.

5 The heading before section 13 and sections 13 and 14 of the Regulations are repealed.

6 Paragraph 15(1)(a) of the Regulations is replaced by the following:

(a) the date of bankruptcy or receivership, or the day on which a court determines that the former employer meets the criteria set out in section 3.1 or 3.2, as the case may be;

et qui est payée par l'ancien employeur ou par une autre source — à l'exclusion de toute somme reçue d'autres programmes fédéraux ou provinciaux — après la date de la faillite, de la mise sous séquestre ou de la décision du tribunal selon laquelle l'ancien employeur satisfait aux critères prévus aux articles 3.1 ou 3.2, selon le cas, constitue la somme prévue pour l'application du paragraphe 7(1.1) de la Loi.

3 L'article 9 du même règlement est remplacé par ce qui suit :

9 (1) Toute demande de prestations est présentée dans les cinquante-six jours suivant celle des dates ci-après qui est postérieure aux autres :

a) la date de la faillite ou de la mise sous séquestre de l'ancien employeur du demandeur;

b) la date à laquelle l'emploi du demandeur prend fin pour tout motif mentionné à l'article 3;

c) la date de la décision du tribunal selon laquelle l'ancien employeur satisfait aux critères prévus aux articles 3.1 ou 3.2, selon le cas.

(2) La demande peut être présentée après l'expiration du délai de cinquante-six jours si des circonstances indépendantes de la volonté du demandeur l'ont empêché de la présenter avant l'expiration de ce délai.

4 L'article 11 du même règlement est remplacé par ce qui suit :

11 (1) La demande de révision prévue aux articles 11 ou 32.1 de la Loi est présentée par écrit dans les trente jours suivant la date à laquelle le demandeur est informé de la décision prise par le ministre au titre des paragraphes 10(1) ou 32(1) de la Loi, selon le cas.

(2) Elle peut être présentée après l'expiration du délai de trente jours si des circonstances indépendantes de la volonté du demandeur l'ont empêché de la présenter avant l'expiration de ce délai.

5 L'intertitre précédant l'article 13 et les articles 13 et 14 du même règlement sont abrogés.

6 L'alinéa 15(1)a) du même règlement est remplacé par ce qui suit :

a) la date de la faillite, de la mise sous séquestre ou de la décision du tribunal selon laquelle l'ancien employeur satisfait aux critères des articles 3.1 ou 3.2, selon le cas;

7 Paragraph 16(1)(a) of the Regulations is replaced by the following:

(a) the date of bankruptcy or receivership, or the day on which a court determines that the former employer meets the criteria set out in section 3.1 or 3.2, as the case may be;

8 Sections 18 to 20 of the Regulations are replaced by the following:

18 (1) For the purposes of section 22.1 of the Act, the Minister shall, on application by the trustee, pay the fees and expenses if

(a) the trustee has submitted a claim in the form approved by the Minister;

(b) the claim indicates a deficit; and

(c) the amount of any third-party deposits and guarantees in respect of the fees and expenses is less than the deficit.

(2) The amount payable is equal to the lesser of

(a) the amount by which the deficit exceeds the amount of any third-party deposits and guarantees; and

(b) the amount determined by the formula

$$A + B$$

where

A is the amount obtained by adding $1,000, as adjusted, to

(i) $150, as adjusted, for each of the first 10 claims, and

(ii) $100, as adjusted, for each additional claim; and

B is, the total of the fees and expenses to a maximum of $6,000, as adjusted, not including applicable sales taxes, incurred

(i) for taking possession of the property, making an inventory and securing and insuring the property,

(ii) for mail-outs to creditors to advise them of the meeting of creditors and the discharge hearing of the trustee,

(iii) for publishing a newspaper notice of the bankruptcy,

(iv) for the official receiver and the registrar, and

7 L'alinéa 16(1)a) du même règlement est remplacé par ce qui suit :

a) la date de la faillite, de la mise sous séquestre ou de la décision du tribunal selon laquelle l'ancien employeur satisfait aux critères des articles 3.1 ou 3.2, selon le cas;

8 Les articles 18 à 20 du même règlement sont remplacés par ce qui suit :

18 (1) Pour l'application de l'article 22.1 de la Loi, le ministre acquitte, à la demande du syndic, les honoraires et les dépenses si, à la fois :

a) le syndic a présenté une réclamation sur le formulaire approuvé par le ministre;

b) la réclamation fait état d'un déficit;

c) le montant des dépôts et des garanties de tierces personnes relativement aux honoraires et aux dépenses est inférieur au déficit.

(2) La somme à payer est égale au moindre des montants suivants :

a) l'excédent du déficit sur le montant des dépôts et des garanties de tierces personnes;

b) le montant déterminé selon la formule suivante :

$$A + B$$

où :

A représente le montant obtenu par l'addition d'une somme de 1 000 $, rajustée, aux sommes suivantes :

(i) une somme de 150 $, rajustée, pour chacune des dix premières réclamations,

(ii) une somme de 100 $, rajustée, pour chaque réclamation supplémentaire;

B le total des honoraires et des dépenses, jusqu'à concurrence d'une somme de 6 000 $, rajustée, à l'exclusion des taxes de vente applicables, qui sont :

(i) liés à la prise de possession et à la réalisation de l'inventaire des biens et à l'obtention d'une garantie et d'une couverture d'assurance,

(ii) liés aux envois postaux visant à informer les créanciers de la tenue d'une réunion des créanciers et de l'audience de libération du syndic,

(iii) liés à la publication d'un avis de faillite dans un journal,

(v) for all of the other items that may be allowed by the court on the taxation of the statement of receipts and disbursements, to a maximum of $1,000, as adjusted.

(3) Despite subsection (2), the amount determined for B in paragraph (2)(b) is equal to 0 if the amount determined in accordance with the following formula is more than $10,000, as adjusted:

X – Y

where

X is equal to the total value of the former employer's assets; and

Y is the total value of the claims that have priority over the fees and expenses of the trustee.

(4) The Minister may request that the trustee provide a copy of the final statement of receipts and disbursements.

19 (1) The amounts, as indicated in subsections 18(2) and (3), that are to be adjusted are to be done so on January 1 of each year in accordance with the percentage increase to the consumer price index for the year ending on September 30 of the previous year.

(2) The consumer price index is the annual average all-items consumer price index for Canada (not seasonally adjusted) published by Statistics Canada.

(3) The adjusted amounts are to be rounded

(a) in the case of those set out in the description of A in paragraph 18(2)(b), to the nearest dollar;

(b) subject to paragraph (c), in the case of those set out in the description of B in paragraph 18(2)(b) and in subsection 18(3), to the nearest $500 increment; and

(c) in the case of those set out in subparagraph (v) of the description of B in paragraph 18(2)(b), to the nearest $100 increment.

(4) If, as a result of rounding, an amount set out in the description of B in subsection (2) remains the same as it was for the previous year, the unrounded adjusted amount is to be used for the purposes of the adjustment for the following year.

20 The notice referred to in subsections 36(1.1) and (1.2) of the Act is to be provided to the Minister within 30 days

(iv) encourus par le séquestre officiel et le registraire,

(v) liés à tous les autres éléments qui peuvent être autorisés par le tribunal lors de la taxation de l'état des recettes et des débours, jusqu'à concurrence d'une somme de 1 000 $, rajustée.

(3) Malgré le paragraphe (2), le montant déterminé à l'élément B de la formule figurant à l'alinéa (2)b) est égal à zéro si le montant déterminé selon la formule ci-après est supérieur à la somme de 10 000 $, rajustée :

X – Y

où :

X représente la valeur totale de l'actif de l'ancien employeur;

Y la valeur totale des créances qui ont préséance sur les honoraires et les dépenses du syndic.

(4) Le ministre peut demander au syndic une copie de l'état définitif des recettes et des débours.

19 (1) Les sommes rajustées prévues aux paragraphes 18(2) et (3) sont rajustées au 1er janvier de chaque année en fonction de l'augmentation annuelle en pourcentage de l'indice des prix à la consommation mesurée le 30 septembre de l'année précédente.

(2) L'indice des prix à la consommation est l'indice d'ensemble des prix à la consommation établi selon une moyenne annuelle (non désaisonnalisée) pour le Canada et publié par Statistique Canada.

(3) Les sommes rajustées sont arrondies de la manière suivante :

a) pour les sommes visées à l'élément A de la formule figurant à l'alinéa 18(2)b), au dollar près;

b) sous réserve de l'alinéa c), pour les sommes visées à l'élément B de la formule figurant à l'alinéa 18(2)b) et au paragraphe 18(3), au plus proche incrément de 500 $;

c) pour les sommes visées au sous-alinéa (v) de l'élément B de la formule figurant à l'alinéa 18(2)b), au plus proche incrément de 100 $.

(4) Si, du fait de son arrondissement, la somme visée à l'élément B de la formule figurant à l'alinéa 18(2)b) demeure la même que celle de l'année précédente, la somme rajustée non arrondie est utilisée aux fins de rajustement pour l'année suivante.

20 Les avis visés aux paragraphes 36(1.1) et (1.2) de la Loi sont transmis au ministre dans les trente jours suivant la after the day on which the individual becomes aware of the action, proceeding, decision or order, as the case may be, and include

(a) the name, address, telephone number and social insurance number of the individual;

(b) in the case of a notice referred to in subsection 36(1.1),

(i) the date the action or proceeding was commenced,

(ii) the nature of the action or proceeding,

(iii) the name of the person who commenced the action or proceeding and their contact information; and

(c) in the case of a notice referred to in subsection 36(1.2), the date the decision or order was made and, if a payment has been received as a result of the decision or order,

(i) the amount of the payment broken down by the components of wages to which it relates and by recipient,

(ii) the contact information of the recipients,

(iii) the time period for which the payment relates, and

(iv) the source of the payment.

date à laquelle la personne physique prend connaissance de l'action, de la procédure, de la décision ou de l'ordonnance, selon le cas, et contiennent les renseignements suivants :

a) les nom, adresse, numéro de téléphone et numéro d'assurance sociale de la personne physique;

b) dans le cas de l'avis visé au paragraphe 36(1.1) :

(i) la date à laquelle l'action ou la procédure a été intentée,

(ii) la nature de l'action ou de la procédure,

(iii) le nom et les coordonnées de la personne ayant intenté l'action ou la procédure;

c) dans le cas de l'avis visé au paragraphe 36(1.2), la date à laquelle la décision ou l'ordonnance a été prise et, si des prestations ont été reçues à la suite de la décision ou de l'ordonnance, les renseignements suivants :

(i) le montant des prestations reçues, ventilé selon les éléments du salaire auxquels il se rapporte et par récipiendaire,

(ii) les coordonnées des récipiendaires,

(iii) la période visée par les prestations,

(iv) la source des prestations.

Transitional Provision

9 The *Wage Earner Protection Program Regulations*, as they read immediately before the day on which these Regulations come into force, continue to apply where the date of the bankruptcy or the first day on which there was a receiver in relation to the former employer occurs before the day on which these Regulations come into force.

Disposition transitoire

9 Le *Règlement sur le Programme de protection des salariés*, dans sa version antérieure à la date d'entrée en vigueur du présent règlement, continue de s'appliquer lorsque la date de la faillite ou de l'entrée en fonction du séquestre à l'égard de l'ancien employeur est antérieure à la date d'entrée en vigueur du présent règlement.

Coming into Force

10 These Regulations come into force on the day on which section 626 of the *Budget Implementation Act, 2018, No. 2*, chapter 27 of the Statutes of Canada 2018, comes into force, but if they are registered after that day, they come into force on the day on which they are registered.

Entrée en vigueur

10 Le présent règlement entre en vigueur à la date d'entrée en vigueur de l'article 626 de la *Loi nº 2 d'exécution du budget de 2018*, chapitre 27 des Lois du Canada (2018), ou, si elle est postérieure, à la date de son enregistrement.

REGULATORY IMPACT ANALYSIS STATEMENT

(*This statement is not part of the Regulations.*)

Executive summary

Issues

On December 18, 2018, the *Budget Implementation Act, 2018, No. 2* introduced amendments to the *Wage Earner Protection Program Act* (WEPP Act) to broaden program eligibility for individuals. Budget 2021 committed to simplifying Wage Earner Protection Program (WEPP) payments. Some of these amendments require amendments to the *Wage Earner Protection Program Regulations* (WEPP Regulations) before they can come into force.

Description

The amendments will broaden the WEPP access by

- enabling earlier WEPP payments when an employer engages in liquidating restructuring proceedings;
- extending coverage to individuals if their employer enters formal insolvency proceedings in another country;
- eliminating the 6.82% WEPP offset (a mandatory 6.82% deduction from all WEPP payments); and
- updating the payment of trustee fees and expenses for low asset insolvencies so that more individuals can access the WEPP.

As well, the amendments address concerns identified by the Standing Joint Committee for the Scrutiny of Regulations (SJCSR).

Rationale

- Allowing earlier WEPP payments when an employer engages in a liquidating restructuring will reduce delays that some individuals experience in accessing the WEPP.
- Extending WEPP coverage to include foreign proceedings will help ensure that employees working in Canada for companies that are subject to an insolvency proceeding in another country are not unfairly excluded from the WEPP.
- Repealing the 6.82% WEPP offset will simplify payments, and ensure that Canadian workers are paid more of what they are owed when they need it most.

RÉSUMÉ DE L'ÉTUDE D'IMPACT DE LA RÉGLEMENTATION

(*Le présent résumé ne fait pas partie du Règlement.*)

Résumé

Enjeux

Le 18 décembre 2018, la *Loi nº 2 d'exécution du budget de 2018* a apporté des modifications à la *Loi sur le Programme de protection des salariés* (LPPS) afin d'élargir l'admissibilité au Programme de protection des salariés (PPS). Le budget 2021 s'engageait à simplifier les paiements au titre du PPS. Certaines des modifications au *Règlement sur le Programme de protection des salariés* (RPPS) sont requises pour que ces dernières puissent entrer en vigueur.

Description

Les modifications élargiront l'accès au PPS en :

- permettant le versement anticipé de prestations du PPS lorsqu'un employeur entame une procédure de restructuration à des fins de liquidation;
- élargissant la portée du PPS aux personnes employées par des entreprises qui font l'objet d'une procédure d'insolvabilité dans un autre pays;
- éliminant la compensation de 6,82 % du PPS (déduction obligatoire de 6,82 % de tous les paiements du PPS);
- mettant à jour le régime de paiement des honoraires et des dépenses des syndics dans le cadre de l'administration des cas d'insolvabilité où les actifs en cause sont de faible valeur, afin que davantage de personnes puissent se prévaloir du PPS.

De plus, les modifications répondent à différents problèmes mis en lumière par le Comité mixte permanent d'examen de la réglementation (CMPER).

Justification

- Le fait d'autoriser le versement anticipé des prestations du PPS lorsqu'un employeur entame une procédure de restructuration à des fins de liquidation permettra de réduire les délais d'accès au PPS pour certaines personnes.
- L'élargissement de la portée du PPS de manière à englober les procédures entamées à l'étranger aidera à faire en sorte que les personnes employées au Canada par des entreprises qui font l'objet d'une procédure d'insolvabilité dans un pays étranger ne soient pas injustement exclues du PPS.

- Updating and improving the scheme for the payment of trustees' fees and expenses will encourage more trustees to accept the administration of low asset bankruptcies, and improve WEPP access for individuals employed by small businesses that become insolvent.

Over the 10-year period following coming into force, the amendments are expected to result in present value benefits of $71.2 million, present value costs of $63.8 million and a net present value of $7.4 million.

- L'abrogation de la compensation de 6,82 % du PPS simplifiera les paiements et fera en sorte que les travailleurs canadiens reçoivent une plus grande part de ce qui leur est dû lorsqu'ils en ont le plus besoin.
- La mise à jour et l'amélioration du régime de paiement des honoraires et des dépenses des syndics inciteront davantage de syndics à accepter d'administrer des cas d'insolvabilité où les actifs en cause sont de faible valeur; cela servira aussi à améliorer l'accès au PPS pour les personnes employées par de petites entreprises qui deviennent insolvables.

Au cours de la période de 10 ans suivant l'entrée en vigueur, les modifications devraient entraîner des bénéfices en valeur actuelle de 71,2 millions de dollars, des coûts en valeur actuelle de 63,8 millions de dollars et une valeur actuelle nette de 7,4 millions de dollars.

Issues

The Wage Earner Protection Program (WEPP) is a Government of Canada program that provides financial support for individuals' owed eligible wages after they have lost their job and their employer has entered into bankruptcy or become subject to a receivership. This regulatory initiative will help improve access to the WEPP by addressing several issues:

1. Sometimes, there are delays in accessing the WEPP when an employer engages in a "liquidating restructuring proceeding" before filing for bankruptcy or receivership. For example, Sears Canada began liquidating restructuring proceedings under the *Companies' Creditors Arrangement Act* (CCAA) in June 2017, closed remaining Canadian stores in January 2018, but did not become subject to receivership until January 2019. It was only when that receivership occurred that former employees became eligible for the WEPP, even though many lost their jobs months earlier.
2. Canadian workers affected by foreign insolvency proceedings are not eligible for the WEPP. However, any worker who is legally working in Canada can be eligible for the WEPP if their employer is bankrupt or subject to a receivership in Canada. This represents a coverage gap for Canadian workers when their employer enters receivership in a foreign jurisdiction. For example, in October 2018, the parent company of ServiCom filed for bankruptcy protection in the United States and all operations at the Sydney, Nova Scotia, call centre ceased. More than 500 employees were laid off, many of whom were owed wages. As ServiCom did not file for Canadian bankruptcy or receivership, the former employees could not access the WEPP. In April 2019, the Nova Scotia government took the step of requesting the court to force ServiCom into Canadian bankruptcy. While this ensured a triggering of the WEPP for

Enjeux

Le Programme de protection des salariés (PPS) est un programme du gouvernement du Canada qui offre une aide financière aux personnes à qui un salaire est dû après la perte de leur emploi et dont l'employeur a fait faillite ou a été mis sous séquestre. Cette initiative de réglementation contribuera à améliorer l'accès au PPS en abordant plusieurs enjeux :

1. Parfois, il y a des retards lorsqu'une personne veut se prévaloir du PPS et que son employeur entame une procédure de restructuration à des fins de liquidation avant de déclarer faillite ou d'être mis sous séquestre. À titre d'exemple, Sears Canada a entamé une procédure de restructuration à des fins de liquidation sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies* (LACC) en juin 2017, a fermé ses derniers magasins au Canada en janvier 2018, mais n'a fait l'objet d'une mise sous séquestre qu'en janvier 2019. C'est seulement une fois cette mise sous séquestre effectuée que les anciens employés sont devenus admissibles au PPS, même si bon nombre d'entre eux avaient perdu leur emploi plusieurs mois auparavant.
2. Les travailleurs canadiens touchés par une procédure d'insolvabilité entamée à l'étranger ne sont pas admissibles au PPS. Cependant, toute personne qui travaille légalement au Canada peut être admissible au PPS si son employeur fait faillite ou fait l'objet d'une mise sous séquestre au Canada. Cet écart dans la portée du PPS désavantage les travailleurs canadiens dont l'employeur est mis sous séquestre dans un pays étranger. Par exemple, en octobre 2018, la société mère de ServiCom s'est placée sous la protection de la loi américaine sur la faillite, et toutes les opérations au centre d'appels de Sydney (Nouvelle-Écosse) ont cessé. Plus de 500 employés ont été mis à pied, et un salaire était dû à bon nombre d'entre eux. Étant donné que ServiCom n'a

impacted workers, it was complicated and time consuming.

3. Currently, all payments through the WEPP are subject to a 6.82% offset that represents the deductions at source a worker would normally see on their paycheck. This deduction was intended to mimic the Canada Pension Plan (CPP) and Employment Insurance (EI) contribution amounts that would normally be source deducted, had their paycheck been issued by their employer. The initial intent of this deduction was to ensure that recipients would not receive a WEPP payment greater than what they would have received from their employer. In addition to being a source of confusion for WEPP recipients, this offset unintentionally penalizes many WEPP recipients, such as those who have already paid their maximum yearly contributions towards EI or CPP. It also prevents WEPP recipients from being reimbursed for the full amount of eligible wages owed, as the offset applies to all WEPP payments. The residual amount of money left owing then creates administrative burdens for trustees and receivers.
4. For employees to be eligible for the WEPP, an insolvency professional must agree to administer the insolvent estate of the former employer. However, when there are very few or no assets remaining in an estate, trustees are reluctant to assume the financial risks of taking on its administration for a bankruptcy proceeding. When no trustee agrees to administer an insolvent estate, impacted workers cannot access the WEPP.

pas déclaré faillite et n'a pas été mise sous séquestre au Canada, ses anciens employés ne pouvaient pas se prévaloir du PPS. En avril 2019, le gouvernement de la Nouvelle-Écosse a demandé aux tribunaux d'obliger ServiCom à déclarer faillite au Canada. Cette mesure rendait les travailleurs mis à pied admissibles au PPS, mais elle a entraîné des complications et a exigé beaucoup de temps.

3. À l'heure actuelle, tous les paiements effectués dans le cadre du PPS sont assujettis à une compensation de 6,82 % qui représente les retenues à la source qu'un travailleur verrait normalement sur son chèque de paie. Cette déduction visait à reproduire les cotisations au Régime de pensions du Canada (RPC) et à l'assurance-emploi (A.-E.) qui seraient normalement déduites à la source si leur chèque de paie avait été émis par leur employeur. L'objectif initial de cette déduction était de veiller à ce que les bénéficiaires ne reçoivent pas un paiement du PPS supérieur à ce qu'ils auraient reçu de leur employeur. En plus de représenter une source de confusion pour les bénéficiaires du PPS, cette compensation pénalise involontairement de nombreux bénéficiaires du PPS, comme ceux qui ont déjà versé leurs cotisations annuelles maximales à l'A.-E. ou au RPC. Cela empêche également les bénéficiaires du PPS d'être remboursés du montant total des salaires admissibles dus, car la compensation s'applique à tous les paiements du PPS. Le montant résiduel d'argent restant dû crée alors des charges administratives pour les syndics et les séquestres. Le reste des sommes dues crée alors un fardeau administratif pour les syndics et les séquestres.
4. Pour que les particuliers soient admissibles au PPS, il faut qu'un professionnel de l'insolvabilité évalue l'actif de leur ancien employeur devenu insolvable. Toutefois, lorsqu'il ne reste que très peu d'actifs, voire rien du tout, les syndics seront réticents à assumer les risques financiers liés à l'administration d'une procédure de faillite. Si aucun syndic n'accepte d'administrer l'actif d'un employeur devenu insolvable, les travailleurs touchés ne peuvent avoir accès au PPS.

Background

Through the WEPP, individuals whose employer is bankrupt or subject to a receivership can claim unpaid eligible wages (basic wages, disbursements, vacation pay, termination and severance pay) up to a maximum amount equivalent to seven weeks of EI's maximum yearly insurable earnings under the *Employment Insurance Act* ($7,579 for 2021).

The WEPP addresses a major gap that existed in Canada's bankruptcy and insolvency system before the program was launched in 2008. Before the WEPP, Canada lacked an effective way to ensure payment of unpaid wages when employers became insolvent. As a result, many

Contexte

Au titre du PPS, les personnes dont l'employeur fait faillite ou fait l'objet d'une mise sous séquestre peuvent réclamer un salaire admissible qui leur est dû (salaire de base, débours, indemnité de vacances, indemnité de préavis et indemnité de départ), jusqu'à un montant maximal équivalant à sept semaines du maximum de la rémunération annuelle assurable en vertu de la *Loi sur l'assurance-emploi* (7 579 $ pour 2021).

Lancé en 2008, le PPS comble une lacune importante qui existait dans le système canadien de gestion des cas de faillite et d'insolvabilité. Avant l'instauration du PPS, le Canada ne disposait d'aucun moyen efficace pour assurer le versement des salaires impayés lorsque les employeurs individuals remained unpaid for work they had performed before their former employer's bankruptcy or receivership.

To be eligible for a WEPP payment, an individual must meet three conditions:

- They were employed in Canada and their employment had been terminated;
- Their former employer must be bankrupt or subject to a receivership in Canada; and
- The individual must be owed eligible wages by their former employer.

When the WEPP was launched, amendments made to the *Bankruptcy and Insolvency Act* (BIA) elevated the ranking of unpaid wages and vacation pay to enjoy a limited "super-priority" status. This super-priority status means that claims for unpaid wages and vacation pay rank ahead of secured creditors in a bankruptcy process, up to a maximum of $2,000 per wage claim. The purpose of the limited super-priority is twofold:

(1) It allows the Crown to recover up to $2,000 per WEPP claim from insolvent employer estates during the bankruptcy process. This helps reduce overall net program costs; and

(2) It deters employers from avoiding paying workers amounts owed. This deterrence is due to the possibility that the Crown can ensure payment if it decides to purse the super-priority elements of a wage claim when the bankruptcy process later unfolds.

Since its creation, the WEPP has paid $461 million in eligible wages to nearly 158 000 Canadians (as at March 31, 2021). In a typical year, about 12 000 people benefit from the WEPP, and over the life of the program, have received an average WEPP payment of about $2,920 per recipient. The Crown has recovered almost $60 million from bankrupt employer estates, of which almost $50 million was for the super-priority wage claims (as at March 31, 2021).

In Budget 2018: Equality and Growth for a Strong Middle Class, it was announced that the Government of Canada would introduce legislative amendments to the *Wage Earner Protection Program Act* (WEPP Act). These changes sought to increase the maximum WEPP payment, and make the WEPP eligibility more equitable by broadening

devenaient insolvables. Par conséquent, de nombreuses personnes n'ont pas reçu la rémunération gagnée pour le travail qu'elles avaient accompli avant la faillite ou la mise sous séquestre de leur employeur.

Pour être admissible au versement de prestations du PPS, une personne doit remplir trois conditions :

- elle travaillait au Canada, et elle a été licenciée ou congédiée;
- son ancien employeur a fait faillite ou fait l'objet d'une mise sous séquestre au Canada;
- un montant de salaire admissible lui est dû par son ancien employeur.

Lorsque le PPS a été lancé, des modifications apportées à la *Loi sur la faillite et l'insolvabilité* (LFI) ont eu comme effet de hausser le rang de priorité des salaires et des indemnités de vacances non versés, qui se voient ainsi accorder une superpriorité limitée. Cette superpriorité signifie que les réclamations au titre de salaires et d'indemnités de vacances dus ont préséance sur celles des créanciers garantis dans un processus de faillite, à concurrence de 2 000 $ par créance salariale. L'objectif de la superpriorité limitée est double :

(1) D'abord, elle permet à l'État de recouvrer jusqu'à 2 000 $ par réclamation en vertu du PPS à l'égard de l'actif d'un employeur insolvable pendant le processus de faillite. Cela contribue à réduire les coûts nets du programme dans leur ensemble;

(2) Ensuite, elle dissuade les employeurs de chercher à éviter de verser des sommes dues aux travailleurs. Cet effet de désincitation tient à la possibilité pour l'État de garantir le paiement en se prévalant des composantes d'une créance salariale qui font l'objet d'une superpriorité une fois le processus de faillite enclenché.

Depuis sa création, le PPS a versé 461 millions de dollars en salaires admissibles à près de 158 000 Canadiens (au 31 mars 2021). Au cours d'une année type, environ 12 000 personnes bénéficient du PPS; depuis le début du programme, les prestations versées dans le cadre du PPS se sont chiffrées en moyenne à 2 920 $ par personne admissible. Au 31 mars 2021, l'État avait recouvré près de 60 millions de dollars à même les actifs d'employeurs en faillite, dont près de 50 millions de dollars pour les créances salariales faisant l'objet d'une superpriorité.

Dans le budget de 2018 : Égalité et croissance pour une classe moyenne forte, il a été annoncé que le gouvernement du Canada apporterait des modifications à la *Loi sur le Programme de protection des salariés* (LPPS). Le but consistait à accroître le montant maximal des prestations du PPS et à rendre les règles d'admissibilité au PPS plus eligibility. These legislative amendments received royal assent on December 13, 2018, and

- increased the maximum payment from the equivalent of four weeks, to the equivalent of seven weeks of employment insurance yearly maximum insurable earnings under the *Employment Insurance Act*;[1]
- ensured that individuals retained by a trustee or receiver to help wind down business operations remain eligible to receive termination and severance pay under the WEPP;
- granted WEPP recipients the right to request reviews and appeals regarding overpayment decisions; and
- strengthened the Government of Canada's ability to recover monies from estates or properties of bankrupt employers, and from third parties, such as directors.

However, other WEPP Act amendments require changes to the *Wage Earner Protection Program Regulations* (WEPP Regulations) before they can take effect. Specifically, the existing WEPP Regulations require amending to set the eligibility criteria for earlier WEPP payments in situations where an employer engages in liquidating restructuring proceedings, to extend WEPP coverage for workers when the employer is subject to insolvency proceedings in another country, and to repeal the application of the 6.82% offset applied to all WEPP payments, as recently announced in Budget 2021: A Recovery Plan for Jobs, Growth, and Resilience.

Description

The *Regulations Amending the Wage Earner Protection Program Regulations* will allow the remaining amendments to the WEPP Act to come into force. These regulatory amendments will broaden WEPP coverage, repeal the 6.82% offset applied to all WEPP payments, create improved incentives for bankruptcy professionals to undertake low-asset proceedings, and address various concerns raised by the SJCSR.

1. Allowing earlier WEPP payments when an employer engages in liquidating restructuring proceedings

Currently, an individual only becomes eligible for the WEPP when the individual's employer enters bankruptcy

[1] Following the increased maximum WEPP payment, the average amount of payment in fiscal years 2019–2020 and 2020–2021 has risen to $4,246.

équitables en élargissant l'admissibilité. Ces modifications législatives, qui ont reçu la sanction royale le 13 décembre 2018 :

- ont haussé le montant maximal des prestations du PPS, qui est devenu égal au salaire dû jusqu'à l'équivalent de sept semaines du maximum de la rémunération annuelle assurable, au sens de la *Loi sur l'assurance-emploi*[1];
- fait en sorte que les employés maintenus en poste par un syndic ou un séquestre pour aider à mettre fin aux activités de l'entreprise conservent leur droit à l'indemnité de préavis et à l'indemnité de départ du PPS;
- confèrent aux demandeurs du PPS le droit de demander une révision et d'interjeter appel des décisions relatives aux trop-perçus;
- renforcent la capacité du gouvernement du Canada à recouvrer des sommes à même des actifs ou des biens d'employeurs en faillite ainsi qu'auprès de tierces parties, comme les administrateurs.

Toutefois, d'autres modifications apportées à la LPPS exigent des modifications au *Règlement sur le Programme de protection des salariés* (RPPS) avant de pouvoir entrer en vigueur. Plus précisément, le règlement actuel sur le PPS exige une modification afin d'établir les critères d'admissibilité aux paiements antérieurs du PPS dans les situations où un employeur prend part à des procédures de restructuration de liquidation, d'étendre la portée du PPS aux travailleurs lorsque l'employeur fait l'objet de procédures d'insolvabilité dans un autre pays, et d'abroger l'application de la compensation de 6,82 % appliquée à tous les paiements du PPS, comme annoncé récemment dans le Budget 2021 : une relance axée sur les emplois, la croissance et la résilience.

Description

Le *Règlement modifiant le Règlement sur le Programme de protection des salariés* permettra l'entrée en vigueur des autres modifications à la LPPS. Ces modifications auront comme effet d'élargir la portée du PPS, d'abroger la compensation de 6,82 % qui s'appliquait aux paiements du PPS, de créer de meilleurs incitatifs pour encourager les professionnels de la faillite à administrer des cas d'insolvabilité où les actifs en cause sont de faible valeur, et de résoudre différents problèmes mis en lumière par le CMPER.

1. Permettre le versement anticipé de prestations du PPS lorsqu'un employeur entame une procédure de restructuration à des fins de liquidation

À l'heure actuelle, une personne peut se prévaloir du PPS uniquement si son employeur déclare faillite ou fait l'objet

[1] Après l'augmentation du paiement maximal du PPS, le montant moyen du paiement pour les exercices 2019-2020 et 2020-2021 est passé à 4 246 $.

or becomes subject to receivership. Changes to the WEPP Act would allow a court to determine that an individual may be eligible for earlier WEPP payments when the individual's former employer is subjected to a proceeding under the CCAA or a proposal under the BIA, if a trustee is appointed in respect of the former employer, and particular criteria set out in regulation are met. The WEPP Regulations will establish the criteria that the former employer is to have terminated all of its employees, except for employees that have been retained to wind down its business operations.

2. Extending WEPP coverage to individuals if their employer is subject to insolvency proceedings in another country

Changes to the WEPP Act allow a court to determine that individuals employed by an employer subject to an insolvency proceeding in another country may be eligible for the WEPP if there is a trustee appointed in respect of the former employer, and particular criteria set out in regulation are met. The WEPP Regulations will establish the criteria that the former employer subjected to the foreign proceeding is to have terminated all of its employees in Canada, except for employees that have been retained to wind down its business operations.

3. Removing the mandatory reduction of 6.82% applied to all WEPP payments.

The WEPP Regulations are amended to repeal the 6.82% WEPP offset.

4. Updating the payment scheme for trustees' fees and expenses when very few assets remain in an insolvent estate

For employees to be eligible for the WEPP, a trustee or receiver must oversee the insolvent estate of the former employer. Insolvency professionals have a number of specific duties under the WEPP Act that allow for the operation of the program. Specifically, they are responsible for identifying current and past employees, determining wages owed, providing information about the WEPP to potential claimants, and submitting specific information via a Trustee Information Form (TIF) to Service Canada for each WEPP claimant to enable the processing of the WEPP claim.

Under the WEPP Act, proceeds from the estate must be used to pay for this work, when there are enough assets to do so. When there are not enough assets remaining in an estate, insolvency professionals have been reluctant to assume the financial risks associated with accepting estate administration, as they have no certainty of payment for their services.

d'une mise sous séquestre. Les modifications apportées à la LPPS permettent à un tribunal de déterminer qu'une personne peut être admissible au versement anticipé de prestations du PPS lorsque son ancien employeur fait l'objet d'une procédure en application de la LACC ou d'une proposition sous le régime de la LFI, à la condition qu'un syndic soit nommé à l'égard de l'ancien employeur et que certains critères prescrits par règlement soient remplis. Le RPPS établira les critères selon lesquels l'ancien employeur doit avoir licencié tous ses employés, à l'exception de ceux qui ont été maintenus en poste pour contribuer à mettre fin à ses activités commerciales.

2. Étendre la portée du PPS aux personnes dont l'employeur fait l'objet d'une procédure d'insolvabilité dans un autre pays

Les modifications apportées à la LPPS permettent à un tribunal de déterminer que les personnes travaillant pour un employeur qui fait l'objet d'une procédure d'insolvabilité dans un autre pays peuvent être admissibles au PPS si un syndic est nommé à l'égard de l'ancien employeur et si des critères particuliers, prescrits par règlement, sont également remplis. Le RPPS établira les critères selon lesquels l'ancien employeur assujetti à la procédure étrangère doit avoir licencié tous ses employés au Canada, à l'exception de ceux qui ont été maintenus en poste pour contribuer à mettre fin à ses activités commerciales.

3. Élimination de la réduction obligatoire de 6,82 % appliquée à tous les paiements du PPS.

Le RPPS est modifié pour abroger la compensation de 6,82 % du PPS.

4. Mettre à jour le régime de paiement des honoraires et des dépenses des syndics lorsque les actifs de l'employeur insolvable sont très réduits

Pour qu'un employé soit admissible au PPS, un syndic ou un séquestre doit évaluer l'actif de l'ancien employeur devenu insolvable. Les professionnels de l'insolvabilité exercent un certain nombre de fonctions aux termes de la LPPS, ce qui rend possible l'exécution du programme. Plus précisément, il leur incombe d'identifier les employés actuels et passés, de déterminer les salaires dus, de fournir des renseignements sur le PPS aux demandeurs potentiels, et de soumettre à Service Canada des renseignements particuliers au moyen d'un formulaire de renseignements sur le syndic (FRS) pour chaque demandeur auprès du PPS afin de permettre le traitement de la demande.

Aux termes de la LPPS, le coût de ces activités doit être acquitté à même l'actif disponible, s'il est suffisamment important. Lorsque l'actif est insuffisant, les professionnels de l'insolvabilité sont réticents à assumer les risques financiers liés à l'administration de cet actif, car ils ne sont pas certains de recevoir des honoraires en contrepartie.

In situations where there are insufficient assets, the WEPP Regulations set out the eligibility criteria and formula for reimbursing insolvency professionals' fees and expenses. This payment scheme is to encourage trustees to accept the administration of low- or no-asset bankruptcies so that terminated employees can access the WEPP.

Changes to the WEPP Regulations will amend the payment scheme for trustees by simplifying eligibility requirements, streamlining payment calculations, increasing maximum payment amounts, and introducing indexing. The intent is to encourage more trustees to accept the administration of low asset bankruptcies, and improve WEPP access for individuals employed by small businesses that become insolvent.

Eligibility

To be eligible for payment of fees and expenses, the Regulations will require a trustee to

- submit a copy of the Trustee Claim Form for the estate;
- provide confirmation through the Trustee Claim Form that the estate is in deficit; and
- confirm through the Trustee Claim Form that the value of third-party deposits and guarantees are less than the deficit.[2]

Calculation of payment

The amount for payment would be calculated as follows:

- For WEPP specific duties: a $1,000 set-up fee, plus
  - $150 for each of the first 10 wage claims;
  - $100 for each additional claim; and
- For broader estate administration: up to $6,000, plus applicable sales taxes, for the following fees and expenses, provided that total assets, net of higher-ranking claims, are less than $10,000:
  - for taking possession of the property, making inventory, and securing and insuring the property;
  - for mail-outs to creditors;
  - for the cost of publishing a newspaper notice of the bankruptcy;
  - of the official receiver and the registrar; and
  - for other items that may be allowed by the court, up to $1,000.

[2] Third-party deposits and guarantees are funds offered by a third party to help cover the costs of administering a bankruptcy by a trustee.

Dans les cas où il n'y a pas assez d'actifs, le RPPS énonce les critères d'admissibilité et la formule de remboursement des honoraires et des dépenses des professionnels de l'insolvabilité. Ce mécanisme de paiement vise à encourager les syndics à accepter d'administrer des cas de faillites où il n'y a pas d'actifs, ou très peu, de sorte que les employés dont l'emploi a pris fin puissent se prévaloir du PPS.

Les modifications proposées du RPPS comporteront l'apport de changements au régime de paiement des syndics en simplifiant les critères d'admissibilité, en rationalisant le calcul des paiements, en haussant le montant maximal des paiements et en instaurant une formule d'indexation. L'objectif consiste à encourager un plus grand nombre de syndics à accepter l'administration des faillites à faible actif et à améliorer l'accès au PPS pour les personnes employées par les petites entreprises qui deviennent insolvables.

Admissibilité

Pour être admissible au paiement d'honoraires et de dépenses, le Règlement exigera que le syndic :

- dépose une copie du formulaire de réclamation du syndic pour l'actif;
- confirme au moyen du formulaire de réclamation du syndic que le dossier est déficitaire;
- confirme, au moyen de ce formulaire, que la valeur des dépôts et des garanties de tiers est inférieure au déficit[2].

Calcul du paiement

Le montant du paiement sera calculé comme suit :

- Fonctions propres au PPS : frais d'établissement de dossier de 1 000 $
  - 150 $ pour chacune des 10 premières créances salariales;
  - 100 $ pour chaque créance salariale supplémentaire;
- Fonctions générales d'administration d'actifs : jusqu'à 6 000 $, plus les taxes de vente applicables, pour les dépenses et honoraires suivants, à condition que la valeur totale de l'actif, après déduction des réclamations de rang supérieur, soit de moins de 10 000 $:
  - prise de possession des biens et leur inventaire, sécurité et assurance;
  - envois postaux aux créanciers;
  - frais de publication d'un avis de faillite dans les journaux;

[2] Les dépôts et garanties de tiers sont des fonds offerts par des tiers pour aider à couvrir les frais d'administration d'une faillite par un syndic.

- ◦ séquestre officiel et registraire;
- ◦ autres éléments qui peuvent être autorisés par le tribunal, jusqu'à concurrence de 1 000 $.

The total payable under this payment scheme will be capped at the amount by which the estate deficit exceeds the value of third-party deposits or guarantees.

Le montant maximal payable en vertu de ce régime de paiement sera limité à l'excédent du déficit sur la valeur des dépôts ou des garanties de tiers.

Annual indexation

The amounts of payment for fees and expenses will be indexed annually using the consumer price index. Specifically, amounts would be rounded to the nearest dollar for the set-up fee and for each submission of a wage claim by the insolvency professional, and to the nearest $500 increment for the calculation and payment for broader estate administration.

Indexation annuelle

Le montant du paiement des dépenses et honoraires sera indexé annuellement en fonction de l'indice des prix à la consommation. Plus précisément, les montants seront arrondis au dollar près pour les frais d'établissement de dossier et pour chaque créance salariale soumise par le professionnel de l'insolvabilité, et au multiple de 500 $ près pour le calcul et le versement du montant rattaché aux fonctions générales d'administration des actifs.

5. Improve clarity of the WEPP Regulations and address concerns raised by the SJCSR

A number of regulatory amendments will clarify language, adjust terminology to improve English-French consistency, and include text to clarify that a late applicant, or one who misses the deadline to request a review, must also provide an explanation as to why they were unable to respect the deadline if they wish their WEPP application or request to be considered. In addition to the current 6.82% offset, WEPP payments are also offset by any eligible wages that an individual receives after the date of bankruptcy or the first day there was a receiver. The WEPP Regulations were amended to also apply to amounts received in respect of the termination of employment paid from any source, other than a federal or provincial government program. These changes will not result in additional costs as they seek to simplify wording, provide clarifications, and codify already existing practices.

5. Accroître la clarté du RPPS et donner suite aux préoccupations soulevées par le CMPER

Un certain nombre de modifications réglementaires auront pour objet de clarifier le libellé actuel, de modifier la terminologie pour assurer une plus grande uniformité entre le français et l'anglais, et d'apporter des modifications afin de préciser qu'un demandeur tardif, ou un demandeur qui ne respecte pas la date limite pour demander une révision, doit expliquer pourquoi il n'a pu respecter l'échéancier s'il souhaite que sa demande au titre du PPS ou sa demande de révision soit examinée. Outre réduction obligatoire de 6,82 %, les paiements du PPS sont également réduits par le salaire admissible qu'une personne reçoit après la date de la faillite ou le premier jour où il y avait un séquestre. Le RPPS a été modifié pour s'appliquer également aux montants reçus à l'égard de la cessation d'emploi payés de toute source autre qu'un programme fédéral ou provincial. Ces modifications n'entraîneront pas de coûts supplémentaires, car elles visent seulement à simplifier le libellé, à apporter des précisions et à codifier les pratiques existantes.

6. Repeal sections of the WEPP Regulations pertaining to the administration of WEPP appeals

Sections 13 and 14 of the WEPP Regulations deal with timelines and the process for submission of appeals to an adjudicator appointed by the Minister. On July 29, 2019, amendments to the WEPP Act came into force to transfer all adjudicative functions related to the WEPP to the Canada Industrial Relations Board (CIRB). Under the amended WEPP Act, the Minister no longer has authority to make regulations regarding appeals, as this now falls under the responsibility of the CIRB.

6. Abroger les articles du RPPS ayant trait à l'administration des appels relatifs au PPS

Les articles 13 et 14 du RPPS traitent du processus d'appel devant un arbitre nommé par le ministre, de même que des délais connexes. Des modifications de la LPPS entrées en vigueur le 29 juillet 2019 ont eu comme effet de transférer toutes les fonctions judiciaires liées au PPS au Conseil canadien des relations industrielles (CCRI). Aux termes de la LPPS ainsi modifiée, le ministre n'a plus le pouvoir de prendre des règlements concernant les appels, puisque cette responsabilité est maintenant exercée par le CCRI.

Regulatory development

Consultation

Preliminary consultations with key stakeholders including insolvency professionals, organized labour, and representatives from the legal community, occurred in May and June 2019. Overall, there was general support for the objectives of the envisioned changes to the WEPP. Stakeholders

- supported the concept of extending earlier WEPP payments to employees whose employment is terminated during a liquidating restructuring exercise that is expected to fail;
- endorsed the idea of extending WEPP coverage to Canadian employees when their employer enters bankruptcy or receivership proceedings abroad; and
- agreed that one approach to increasing the administration rates of low-asset insolvencies would be to improve the current payment scheme for trustee and receiver fees and expenses in situations where remaining estate assets are insufficient.

While there was general agreement on the purposes of envisioned changes, there were differing views on how to reach them.

- On the issue of liquidating restructurings, some stakeholders argued that the primary factors to trigger the WEPP should be permanent job loss and wages owed by an insolvent employer who is restructuring, irrespective of whether this is tied to an actual or expected bankruptcy or receivership. This suggestion was not pursued because the objective of the WEPP is to cover eligible wages that are owed when an employer enters bankruptcy or becomes subject to a receivership. The WEPP is not designed to cover all forms of business restructurings.
- On the issue of payment of fees and expenses of insolvency professionals, some argued that the Government of Canada should pay trustees and receivers for all work directly attributable to WEPP obligations, irrespective of whether there are adequate assets in an estate to do so. This suggestion was not pursued because the purpose of paying the fees and expenses of insolvency professionals is to encourage greater levels of estate administration for low-asset insolvencies so that individuals who are owed eligible wages can access the WEPP. Furthermore, section 22 of the WEPP Act requires that the fees and expenses of a trustee or receiver relating to WEPP duties must be paid from the estate or the property of the insolvent employer, when there are adequate assets to do so.

Élaboration de la réglementation

Consultation

Des consultations préliminaires avec des parties concernées clés, notamment des professionnels de l'insolvabilité, des syndicats et des représentants du milieu juridique, ont eu lieu en mai et en juin 2019. On note dans l'ensemble un soutien général concernant les objectifs qui sous-tendent les modifications envisagées du PPS. Ainsi, les parties concernées :

- appuient l'idée d'étendre les modalités de versement anticipé des prestations du PPS aux employés dont l'emploi prend fin au cours d'une procédure de restructuration à des fins de liquidation que l'on s'attend à voir échouer;
- appuient l'idée d'étendre la portée du PPS aux employés canadiens dont l'employeur entame une procédure de faillite ou de mise sous séquestre à l'étranger;
- conviennent que l'amélioration du régime de paiement actuel au titre des honoraires et des dépenses des syndics et séquestres lorsque la valeur des actifs restants est insuffisante constitue un moyen de hausser les taux d'administration des cas d'insolvabilité où la valeur de l'actif est faible.

Cela dit, parallèlement à ce consensus sur les objectifs des modifications envisagées, les points de vue divergent sur la façon de les atteindre.

- Concernant les procédures de restructuration à des fins de liquidation, certaines parties concernées ont fait valoir que les principaux facteurs conduisant à l'intervention du PPS devraient être la perte permanente d'un emploi et le salaire dû par un employeur insolvable qui procède à une restructuration, que cette procédure soit rattachée ou non à une faillite ou à une mise sous séquestre réelle ou prévue. Cette suggestion n'a pas été retenue, car l'objectif du PPS est de couvrir les salaires admissibles qui sont dus lorsqu'un employeur fait faillite ou fait l'objet d'une mise sous séquestre. Le PPS n'est pas conçu pour couvrir toutes les formes de restructuration d'activités.
- Au sujet du paiement des honoraires et des dépenses des professionnels de l'insolvabilité, certaines parties concernées ont fait valoir que le gouvernement du Canada devrait payer les syndics et les séquestres pour tous les travaux directement imputables aux obligations liées au PPS, qu'il y ait ou non des actifs suffisants pour le faire. Cette suggestion n'a pas été retenue non plus, parce que l'objectif du paiement des honoraires et des dépenses des professionnels de l'insolvabilité est d'encourager davantage l'administration des cas d'insolvabilité où les actifs en cause sont de faible valeur, de manière que les personnes à qui des salaires admissibles sont dus puissent se prévaloir du PPS. De plus, l'article 22 de la LPPS exige que les honoraires et les

- It was also argued that in situations where no trustee or receiver is willing to administer a low-asset insolvency, the Government of Canada should directly perform the service. This suggestion was not pursued because it fell outside the scope of this regulatory initiative and establishing Government of Canada insolvency professionals to administer insolvent estates is not attainable through changes to the WEPP Regulations. Furthermore, trustees and receivers are specialized in the area of insolvency and already operate across the county.

Prepublication

The proposed Regulations were prepublished in Part I of the *Canada Gazette* on November 28, 2020, for consultations which ended on January 15, 2021. In total, eight submissions were received from:

- the Canadian Association of Insolvency and Restructuring Professionals;
- the Insolvency Institute of Canada;
- Ursel Phillips Fellows Hopkinson (counsel for Sears Canada employees);
- Service Canada, Ontario Region;
- the Canada Revenue Agency; and
- three individual trustees.

These consultations identified various stakeholder concerns with the proposed WEPP Regulations, some of which have been addressed in the final Regulations.

Eligibility criteria for foreign proceedings and liquidations

The proposed Regulations would have only allowed the WEPP to be paid in foreign proceedings or liquidations in cases where the former employer has ceased its principal business operations and terminated all its employees, except for employees retained to wind down its business operations.

Stakeholder concerns

Stakeholders suggested that these requirements be eliminated or made more lenient. One stakeholder proposed replacing the "and" with "or" so that only one of the test

dépenses d'un syndic ou d'un séquestre qui sont entraînés par l'accomplissement des fonctions reliées au PPS soient payés à même l'actif ou les biens de l'employeur insolvable, lorsque la valeur de cet actif ou de ces biens le permet.

- On a aussi fait valoir que, dans les situations où aucun syndic ou séquestre n'est disposé à administrer un cas d'insolvabilité où l'actif est de faible valeur, le gouvernement du Canada devrait fournir directement ce service. Là encore, cette suggestion n'a pas été retenue, parce qu'elle va au-delà de la portée de cette initiative réglementaire et que l'apport de modifications au RPPS ne saurait permettre de se doter de professionnels de l'insolvabilité dans l'administration publique fédérale pour l'administration de cas d'insolvabilité. En outre, les syndics et les séquestres sont des spécialistes de l'insolvabilité, et ils exercent déjà leurs activités dans l'ensemble du pays.

Publication préalable

Le projet de règlement a fait l'objet d'une publication préalable dans la Partie I de la *Gazette du Canada* le 28 novembre 2020 pour des consultations qui ont pris fin le 15 janvier 2021. Au total, huit présentations ont été reçues des intervenants suivants :

- l'Association canadienne des professionnels de l'insolvabilité et de la réorganisation;
- l'Institut d'insolvabilité du Canada;
- Ursel Phillips Fellows Hopkinson (avocat des employés de Sears Canada);
- Service Canada, région de l'Ontario;
- l'Agence du revenu du Canada;
- trois syndics individuels.

Ces consultations ont permis de cerner diverses préoccupations des intervenants concernant le projet de règlement sur le PPS, dont certaines ont été abordées dans la version finale du Règlement.

Critères d'admissibilité aux procédures et liquidations étrangères

Le projet de règlement aurait permis que le PPS soit payé seulement dans le cadre de procédures ou de liquidations à l'étranger dans les cas où l'ancien employeur a mis fin à ses activités commerciales principales et a licencié tous ses employés, à l'exception de ceux qui ont été maintenus en poste pour contribuer à mettre fin à ses activités commerciales.

Préoccupations des intervenants

Les intervenants ont suggéré que ces exigences soient éliminées ou assouplies. Un intervenant a proposé de remplacer le « et » par « ou » afin qu'un seul des critères criteria need apply. Stakeholders also noted that "principal business operations" was undefined. Finally, stakeholders suggested that that the proposed requirement that all employees need to be terminated (except those retained to wind down its business operations) may be too strict.

The proposed requirement that the employer has ceased principal business operations has been eliminated as the requirement was deemed redundant, and would have added unneeded complexity. It is unlikely an employer could terminate all employees yet maintain principal business operations.

The requirement that the employer has terminated all its employees, except those who have been retained to wind down business operations, will, however, be retained. This criterion is needed to ensure the WEPP targets employees whose insolvent employers are likely to become subject to a receivership or enter into bankruptcy. Keeping this criterion remains aligned with the target population for the WEPP which is to cover eligible wages owed to workers when the employer becomes subject to receivership or enters into bankruptcy under the BIA.

Trustee payment amounts for WEPP specific and broader estate administration work for low asset insolvencies

Stakeholder concerns

Stakeholders commented that the proposed payment formula represented a major improvement over the existing payment scheme. However, they argued that the proposed payment amounts remained too low to encourage trustees to accept the administration of low asset insolvencies. An approximate doubling of payment amounts was proposed. Stakeholders also noted that the payment amounts were presale tax. It was recommended that, to the extent a trustee must remit taxes (e.g. GST, HST, QST) on amounts received on account of fees and disbursements, that the payment scheme covers those amounts.

To better align with the fees commonly charged by trustees of small and medium sized insolvency firms, maximum payment amounts have been raised. This will help encourage uptake of more low-asset estates so workers can access the WEPP. The updated Regulations now allow payment of a $1,000 set-up fee (up from $720), plus $150 for each of the first 10 wage claims (up from $120), and $100 (up from $75) for each subsequent claim. The maximum payment to subsidize broader estate administration will also be raised from the previously proposed maximum of $5,000 to a new maximum of $6,000.

d'essai doive s'appliquer. Les intervenants ont également noté que les « principales activités opérationnelles » n'étaient pas définies. Enfin, les intervenants ont suggéré que l'exigence proposée selon laquelle tous les employés doivent être licenciés (à l'exception des employés retenus pour contribuer à mettre fin à leurs activités opérationnelles) pourrait être trop stricte.

L'exigence proposée selon laquelle l'employeur a cessé ses activités principales a été éliminée parce qu'elle était jugée redondante et aurait ajouté une complexité inutile. Il est peu probable qu'un employeur puisse licencier tous ses employés tout en maintenant ses activités opérationnelles principales.

L'exigence selon laquelle l'employeur a licencié tous ses employés, à l'exception de ceux maintenus en poste pour contribuer à mettre fin aux activités de l'entreprise, demeurera toutefois. Ce critère est nécessaire pour s'assurer que le PPS cible les employés des employeurs insolvables qui sont susceptibles de faire l'objet d'une mise sous séquestre ou de faire faillite. Le maintien de ce critère demeure harmonisé avec la population cible du PPS, soit celle qui reçoit habituellement les salaires admissibles dus aux travailleurs lorsque l'employeur fait l'objet d'une mise sous séquestre ou fait faillite en vertu de la *Loi sur la faillite et l'insolvabilité*.

Montants des paiements du syndic pour les travaux particuliers et généraux d'administration des actifs du PPS dans le cas d'insolvabilité comportant des actifs de faible valeur

Préoccupations des intervenants

Les intervenants ont indiqué que la formule de paiement proposée représentait une amélioration majeure par rapport au régime de paiement existant. Toutefois, ils ont fait valoir que les montants proposés demeuraient trop bas pour encourager les syndics à accepter l'administration de cas d'insolvabilité comportant des actifs à faible valeur. On propose de doubler approximativement les montants des paiements. Les intervenants ont également noté que les montants des paiements étaient avant la taxe de vente. Il a été recommandé que, dans la mesure où le syndic doit verser des taxes (par exemple TPS, TVH, TVQ) sur les montants reçus au titre des honoraires et débours, le régime de paiement couvre ces montants.

Afin de mieux correspondre aux honoraires généralement facturés par les syndics des petites et moyennes entreprises d'insolvabilité, les montants maximaux des paiements ont été augmentés. Cela favorisera l'adoption d'un plus grand nombre de dossiers dont les actifs ont une faible valeur afin que les travailleurs puissent avoir accès au PPS. Le Règlement mis à jour permet maintenant le paiement de frais d'établissement de 1 000 $ (en hausse par rapport à 720 $), plus 150 $ pour chacune des 10 premières demandes salariales (en hausse par rapport à 120 $) et 100 $ (en hausse par rapport à 75 $) pour chaque demande subséquente. Le paiement maximal pour subventionner l'administration des actifs à plus grande échelle sera également augmenté de 5 000 $ à 6 000 $.

Updated Regulations will also clarify that payment amounts for fees and disbursements will reflect amounts after applicable sales taxes. This is consistent with how third-party deposits are used to cover the costs of administration, as they also cover sales taxes. The updated Regulations thus align to common industry practice. Finally, as payment of fees and expenses for receivers are funded through a secured creditor, the Regulations clarify that the payment scheme is to cover the fees and expenses of trustees.

La mise à jour du Règlement précisera également que les montants versés au titre des honoraires et des débours refléteront les montants après les taxes de vente applicables. Cela est conforme à la façon dont les dépôts de tiers sont utilisés pour couvrir les frais d'administration, car ils comprennent également les taxes de vente. La réglementation mise à jour est donc conforme aux pratiques courantes de l'industrie. Enfin, comme le paiement des honoraires et des dépenses des séquestres est financé par un créancier garanti, le Règlement précise que le régime de paiement vise à couvrir les honoraires et les dépenses des syndics.

Documentation for adjudication of trustee payment applications

Stakeholder concerns

Sections 18 and 19 of the current WEPP Regulations specify that a final Statement of Receipts and Disbursements (SRD) is required for the purpose of adjudicating and issuing a trustee payment. This has caused problems because a payment issued to a trustee by the Minister is considered a "receipt" for the purpose of the SRD, and that receipt must be accounted for before the Superintendent of Bankruptcy can deem the SRD final. This means that the trustee must record the trustee payment amount prior to actually receiving the payment. Due to this problem, stakeholders have recommended that the Regulations clarify that application for payment of fees and expenses be based on a document other than the final SRD.

The final Regulations have been revised to replace references to the final SRD with a requirement to instead submit a completed claim form approved by the Minister. As a matter of current practice, a "Trustee Claim Form" is already used by Service Canada due to the challenges using the final SRD, as described above. This "Trustee Claim Form" collects the information needed to adjudicate a trustee's eligibility, and to calculate payment. It will be updated to reflect the new trustee payment scheme set out in the WEPP Regulations.

While stakeholder input helped inform the final Regulations, some stakeholder suggestions were not pursued. These include:

Timeliness-equity concerns regarding WEPP payment for liquidations

Some stakeholders noted that employees terminated early on in a liquidation proceeding would often need to wait

Documentation pour l'arbitrage des demandes de paiement des syndics

Préoccupations des intervenants

Les articles 18 et 19 du RPPS actuel précisent qu'un état définitif des recettes et des débours (ERD) est requis pour rendre une décision et émettre un paiement au syndic. Cette situation a causé des problèmes parce qu'un paiement fait à un syndic par le ministre est considéré comme un « reçu » aux fins de l'ERD et qu'il doit en rendre compte avant que le surintendant des faillites puisse considérer l'ERD comme définitif. Cela signifie que le syndic doit enregistrer le montant du paiement du syndic avant de recevoir le paiement. En raison de ce problème, les intervenants ont recommandé que le Règlement précise que la demande de paiement des frais et des dépenses soit fondée sur un document autre que l'ERD final.

La version définitive du Règlement a été révisée pour remplacer les renvois à l'ERD définitif par l'exigence de présenter plutôt un formulaire de demande dûment rempli et approuvé par le ministre. À l'heure actuelle, Service Canada utilise déjà un « formulaire de réclamation du syndic » en raison des difficultés liées à l'utilisation de l'ERD final, comme il est décrit ci-dessus. Ce « formulaire de réclamation du syndic » recueille les renseignements nécessaires pour évaluer l'admissibilité d'un syndic et calculer le paiement. Il sera mis à jour en fonction du nouveau RPPS sur les paiements aux syndics.

Bien que les commentaires des intervenants aient contribué à éclairer la version définitive du Règlement, certaines suggestions n'ont pas été appliquées. Celles-ci comprennent :

Préoccupations en matière de respect des délais-équité concernant le paiement des liquidations au titre du PPS

Certains intervenants ont fait remarquer que les employés licenciés tôt dans le cadre d'une procédure de liquidation longer for the WEPP than those terminated nearer the date of the court determination.

This concern could not be addressed through the WEPP Regulations, as it is related to requirements set out in the WEPP Act.

In eligible liquidations, some employees will end up waiting longer than others to receive their WEPP payment. The WEPP Act does not provide the authority needed to address this particular timeliness issue through regulation.

The amended WEPP Regulations will allow the WEPP to be paid once the employer has terminated all of its employees, except for employees that have been retained to wind down its business operations. This is expected to accelerate WEPP payments for up to 10% of all WEPP recipients by about six months.

Trustee reluctance to administer foreign insolvencies

Some stakeholders noted that it would be unlikely for a trustee to accept administration of a foreign insolvency because of difficulties accessing estate assets to cover their fees and expenses. If no trustee accepts to administer the estate, impacted employees cannot access the WEPP. The WEPP Act does not provide the authority to address this concern through the Regulations.

Continuity of employment

Some stakeholders recommended including an additional condition to the WEPP eligibility test that would prevent the WEPP access for terminated employees who continue employment undisturbed when a new employer acquires the assets of the debtor undergoing a restructuring. It was argued if the employee is not affected by the restructuring proceeding, they should not have access to WEPP.

This concern was not pursued because the difference between a terminated and transferred employee is often a *post-facto* decision made by a court. Furthermore, if truly a successor employer, the employee would not typically be entitled to severance or termination pay, as there would be continuity of employment. The successor employer would also be responsible for any outstanding wages or vacation pay and any WEPP payments received by an employee would likely be considered overpayments, requiring repayment.

devraient souvent attendre plus longtemps avant d'obtenir le PPS que ceux qui ont été licenciés plus près de la date de la décision du tribunal.

Cette préoccupation ne pourrait être traitée par le RPPS, car elle se rapporte aux exigences énoncées dans la LPPS.

Dans le cas des liquidations admissibles, certains employés attendront plus longtemps que d'autres pour recevoir leur paiement du PPS. La LPPS ne confère pas le pouvoir nécessaire pour régler ce problème particulier de respect des délais par voie réglementaire.

Les modifications apportées par le RPPS permettent que le PPS soit payé lorsque l'employeur aura licencié tous ses employés, à l'exception de ceux dont les services ont été retenus pour contribuer à mettre fin à ses activités commerciales. Cette mesure devrait accélérer d'environ 6 mois les paiements du PPS pour jusqu'à 10 % de tous les bénéficiaires du PPS.

Réticence du syndic à administrer les cas d'insolvabilité étrangers

Certains intervenants ont souligné qu'il serait peu probable qu'un syndic accepte l'administration d'une insolvabilité étrangère en raison de difficultés à accéder aux actifs pour couvrir leurs honoraires et dépenses. Si aucun syndic n'accepte d'administrer l'actif, les employés touchés ne peuvent accéder au PPS. La LPPS ne confère pas le pouvoir de traiter cette préoccupation par l'entremise du Règlement.

Continuité d'emploi

Certains intervenants ont recommandé d'ajouter une condition au critère d'admissibilité du PPS qui empêcherait les employés licenciés qui continuent d'occuper un emploi sans être perturbés lorsqu'un nouvel employeur acquiert les actifs du débiteur en cours de restructuration. On a fait valoir que si l'employé n'est pas touché par la restructuration, il ne devrait pas avoir accès au PPS.

Cette préoccupation n'a pas été soulevée parce que la différence entre un employé licencié et un employé muté est souvent une décision postérieure rendue par un tribunal. En outre, s'il s'agissait véritablement d'un employeur successeur, l'employé n'aurait habituellement pas droit à une indemnité de départ ou de cessation d'emploi, car il y aurait continuité d'emploi. L'employeur successeur serait également responsable du salaire impayé ou de l'indemnité de vacances et tout paiement du PPS reçu par un employé serait probablement considéré comme un trop-perçu, nécessitant un remboursement.

Use of third-party guarantees in low asset insolvencies

Stakeholders argue that a third-party guarantor should not be required to cover the fees and expenses of a trustee relating to the administration of the WEPP in a low asset insolvency. Under the existing WEPP Regulations, the simple existence of any guarantee disqualifies a trustee from receiving any payment by the Minister.

The proposal was not pursued. When there is a low asset insolvency, it would be very unusual for there to be a third-party guarantor. It is the very absence of a source of funds for the trustee — either through access to estate assets, or potential guarantor — which makes the trustee payment scheme needed to encourage the adoption of low asset estates which would typically go un-administered.

Amendments to the Regulations governing the trustee payment scheme will significantly increase the amounts a trustee can be paid by the WEPP and does not alter the status quo with respect to how third-party deposits and guarantees are currently used to support the administration of insolvent estates.

Modern treaty obligations and Indigenous engagement and consultation

An assessment of modern treaty implications did not identify any direct modern treaty implications or obligations that could result from the amendments to the WEPP Regulations.

Consultation activities about the WEPP were conducted as part of a five-year review of the WEPP Act in 2015, and additional consultations on amending the WEPP Regulations took place in spring 2019. Indigenous representatives were provided a copy of the WEPP discussion paper and were invited to submit recommendations. No input was received from Indigenous representatives.

Instrument choice

Broadening the WEPP eligibility for Canadians can only be accomplished by amending the WEPP Regulations that prescribe eligibility for the program, pursuant to section 41 of the WEPP Act. In the event WEPP Regulations are not amended, the status quo would continue with some Canadians continuing to experience exclusion from WEPP coverage.

Regulatory analysis

Benefits and costs

The Government of Canada will incur all incremental costs resulting from the amendments to the WEPP

Utilisation de garanties de tiers en cas d'insolvabilité où l'actif est de faible valeur

Les intervenants soutiennent qu'un garant tiers ne devrait pas être tenu de couvrir les honoraires et les dépenses d'un syndic relativement à l'administration du PPS dans le cas d'une insolvabilité où l'actif est de faible valeur. En vertu du RPPS actuel, la simple existence d'une garantie empêche un syndic de recevoir un paiement du ministre.

La proposition n'a pas été retenue. Lorsque l'insolvabilité comporte des actifs à faible valeur, il serait très inhabituel qu'il y ait un garant tiers. C'est l'absence même d'une source de fonds pour le syndic — soit par l'accès aux actifs, soit par un garant potentiel — qui fait en sorte que le système de paiement du syndic est nécessaire pour encourager l'adoption d'actifs à faible valeur qui ne seraient généralement pas administrés.

Les modifications apportées au Règlement régissant le régime de paiement des syndics augmenteront beaucoup les montants qu'un syndic peut recevoir du PPS et ne modifieront pas le statu quo quant à la façon dont les dépôts et les garanties de tiers sont actuellement utilisés pour appuyer l'administration des actifs insolvables.

Obligations relatives aux traités modernes et consultation et mobilisation des Autochtones

Une évaluation des répercussions des traités modernes n'a pas permis de cerner les répercussions directes des traités modernes ou les obligations qui pourraient découler des modifications proposées du RPPS.

Des activités de consultation au sujet du PPS ont été menées dans le cadre d'un examen quinquennal de la LPPS en 2015, et d'autres consultations sur la modification du RPPS ont eu lieu au printemps de 2019. Les représentants autochtones ont reçu une copie du document de discussion sur le PPS et ont été invités à présenter des recommandations. Aucun commentaire n'a été reçu des représentants autochtones.

Choix de l'instrument

Pour élargir l'admissibilité des Canadiens au PPS, il faut modifier les dispositions du RPPS qui prescrivent l'admissibilité au programme, conformément à l'article 41 de la LPPS. Si le RPPS n'est pas modifié, le statu quo sera maintenu, et certains travailleurs canadiens continueront d'être privés de la portée du PPS.

Analyse de la réglementation

Avantages et coûts

Le gouvernement du Canada assumera tous les coûts additionnels découlant des modifications du Règlement, à

Regulations, which will be covered by the existing fiscal allocation for the WEPP. Total additional costs are estimated to be $63.8 million over the 10-year period (2022–2031) following the coming into force of the Regulations. Total additional benefits to the WEPP recipients are estimated to be $71.2 million over the same 10-year period. The net present value is estimated to be $7.4 million. Unless noted otherwise, all costs are expressed in present value (PV, 7% discount rate) for the 10-year period.

Earlier WEPP payments when an employer engages in liquidating restructuring proceedings to wind down business operations

For CCAA proceedings, businesses who owe creditors more than $5 million can restructure under its protection. As a result, these employers tend to be medium- to large-sized workplaces, and when they restructure, it can affect a large number of workers. The WEPP payment data from 2009 to 2018 indicates that

- among CCAA restructurings that ended in a bankruptcy or receivership, almost one in four of those restructurings took at least one year before insolvency, with the average time being just short of eight months; and
- while employers involved in CCAA proceedings that ended in a receivership or bankruptcy represented less than 1% of employers whose employees received a WEPP payment, these employers accounted for 8% of all individuals who received a WEPP payment.

To accelerate access to the WEPP for terminated workers who are owed eligible wages, the WEPP Regulations will allow for the WEPP to be triggered in certain situations prior to the employer filing for bankruptcy or entering into receivership.

Costs

Although the number of workers and amounts paid under the WEPP would not significantly change, an opportunity cost would be incurred by the Government of Canada due to earlier WEPP payment in eligible situations of liquidating proceedings. Specifically, this cost would reflect the opportunity cost of paying the WEPP earlier, at the expense of that amount being allocated to other potential public initiatives.

Based on the WEPP payment data regarding the CCAA proceedings, it is assumed that up to 10% of all WEPP recipients would, on average, receive their WEPP payment about six months earlier in eligible restructuring

même l'affectation financière actuelle du PPS. Le total des coûts additionnels est estimé à 63,8 millions de dollars sur la période de 10 ans (2022-2031) suivant l'entrée en vigueur du Règlement. Le montant estimatif total des prestations additionnelles au cours de cette même période de 10 ans est de 71,2 millions de dollars. La valeur actualisée nette est estimée à 7,4 millions de dollars. Sauf indication contraire, tous les coûts sont exprimés en termes de valeur actualisée (VA, taux d'actualisation de 7 %) pour la période de 10 ans.

Versement anticipé des prestations du PPS lorsqu'un employeur entame une procédure de restructuration visant à mettre fin à ses activités

Pour pouvoir entamer une procédure sous le régime de la LACC, il faut qu'une entreprise doive à ses créanciers plus de 5 millions de dollars. Par conséquent, les employeurs qui entament une telle procédure tendent à être de taille moyenne ou de grande taille, et leur restructuration peut toucher un nombre important de travailleurs. Voici certaines observations fondées sur les données relatives aux prestations du PPS de 2009 à 2018 :

- Parmi les restructurations au titre de la LACC qui se sont soldées par une faillite ou une mise sous séquestre, près d'une sur quatre a pris au moins un an avant de devenir insolvable, la durée moyenne étant d'un peu moins de huit mois.
- Les employeurs entamant une procédure sous le régime de la LACC qui s'est terminée par une mise sous séquestre ou une faillite ont représenté moins de 1 % des employeurs dont les employés ont reçu des prestations du PPS, mais les personnes travaillant pour ces employeurs ont constitué 8 % de l'ensemble des personnes ayant reçu des prestations du PPS.

Afin d'accélérer l'accès au PPS pour les travailleurs licenciés ou congédiés à qui un salaire admissible est dû, le Règlement permettra, dans certaines situations, de déclencher le PPS avant que l'employeur ne déclare faillite ou ne fasse l'objet d'une mise sous séquestre.

Coûts

Malgré le fait que le nombre de travailleurs se prévalant du PPS et que les montants versés dans le cadre de celui-ci ne changeront pas de façon significative, le gouvernement du Canada assumera un coût de renonciation en raison du versement anticipé de prestations du PPS dans les situations de liquidation admissibles. Il s'agit plus précisément du coût de renonciation découlant du versement anticipé de ces prestations, de sorte que les ressources en question ne pourront être affectées à d'autres initiatives publiques.

À la lumière des données sur les prestations du PPS rattachées aux procédures sous le régime de la LACC, on suppose que jusqu'à 10 % de toutes les personnes pouvant se prévaloir du PPS recevront leur prestation du PPS environ processes. Using the standardized 7% discount rate for public funds, the total opportunity cost to the Government of Canada would amount to $1.4 million over 10 years.

Benefits

From the perspective of the WEPP recipient, an earlier WEPP payment would represent potential savings on foregone interest payments, had the amount needed to be borrowed for six months from a lender. An annual rate of 7%, calculated and compounded monthly is assumed. This 7% rate represents a hypothetical interest rate under which an average Canadian could reasonably access credit.[3] Based on this monthly rate, the benefits of earlier WEPP payments to eligible recipients would amount to $1.4 million over 10 years.

Removing the mandatory reduction of 6.82% applied to all WEPP payments

Costs

Repeal of the 6.82% WEPP offset would result in an incremental cost to the Government of Canada of $28.2 million in transfer payments to employees over a 10-year period. This amount is estimated based on an assumed average gross payment of $4,615, and the average annual number of approximately 13 000 WEPP claimants (over the 10-year period).[4] Some of this amount would be recoverable as subrogated debt by the Crown through the bankruptcy process.

A share of gross WEPP payments are recoverable by the Crown. In the context of insolvencies, WEPP payments are comprised of two portions of money: super priority payments of up to $2,000, which include the wage and vacation component of a WEPP payment, and the severance and termination component, which are unsecured. The super priority and unsecured amounts are recovered at different success rates due to their differing ranking in a bankruptcy process.

Since the inception of the WEPP, data indicates that super priority payment amounts represent 27% of total WEPP payments. Unsecured payments account for the remaining 73%. Of the total super priority payments since inception, the average recovery rate is 43%. Of the total unsecured debt payments, the average recovery rate is 3%.

3 This is the potential median rate of an unsecured line of credit, bank loan, credit card and home equity line of credit. It also corresponds to the annualized return of the Canadian capital market TSX (Toronto Stock Exchange) index over the past 10 years.

4 Assumes 1% annual growth in recipients to reflect labour force growth.

six mois plus tôt en moyenne dans le cas des procédures de restructuration admissibles. En utilisant le taux d'actualisation normalisé de 7 % pour les fonds publics, le coût de renonciation pour le gouvernement du Canada totalisera 1,4 million de dollars sur 10 ans.

Avantages

Du point de vue d'une personne admissible aux prestations du PPS, le versement anticipé des prestations pourrait engendrer des économies au titre des paiements d'intérêts qui, sinon, auraient dû être assumés si le montant devait être emprunté pendant six mois auprès d'un prêteur. Le calcul effectué repose sur un taux annuel de 7 %, calculé et composé mensuellement. Ce taux de 7 % représente le taux d'intérêt hypothétique auquel un Canadien pourrait raisonnablement obtenir du crédit[3]. Selon ce taux mensuel, les prestations du PPS versées de façon anticipée aux personnes admissibles s'élèvent à 1,4 million de dollars sur 10 ans.

Élimination de la réduction obligatoire de 6,82 % appliquée à tous les paiements du PPS

Coûts

L'abrogation de la réduction obligatoire de 6,82 % du PPS entraînerait pour le gouvernement du Canada un coût supplémentaire de 28,2 millions de dollars en paiements de transfert aux employés sur une période de 10 ans. Ce montant est estimé en fonction d'un paiement moyen présumé de 4615 $ et du nombre annuel moyen de 13000 demandeurs du PPS[4]. Une partie de ce montant serait recouvrable à titre de dette subrogée par l'État dans le cadre du processus de faillite.

Une part des paiements bruts du PPS est recouvrable par l'État. Dans le contexte des insolvabilités, les prestations du PPS comportent deux composantes : la composante assortie d'une superpriorité, qui peut aller jusqu'à 2000 $ et qui comprend le salaire et l'indemnité de vacances; et la composante comprenant les indemnités de départ et de préavis, qui n'est pas garantie. Le taux différent de recouvrement des sommes assorties d'une superpriorité diffère de celui des sommes non garanties en raison de leur rang différent dans le cadre d'un processus de faillite.

Depuis la création du PPS, les données indiquent que les montants des paiements super-prioritaires représentent 27 % du total des paiements du PPS. Les paiements non garantis représentent les 73 % restants. Du total des paiements super-prioritaires depuis leur création, le taux moyen de recouvrement est de 43 %. Du total des

3 Il s'agit du taux médian potentiel d'une marge de crédit non garantie, d'un prêt bancaire, d'une carte de crédit et d'une marge de crédit hypothécaire. Cela correspond également au rendement annualisé de l'indice du marché financier canadien TSX (Bourse de Toronto) au cours des 10 dernières années.

4 Suppose une croissance annuelle de 1 % des bénéficiaires pour refléter la croissance de la population active.

Overall, the Crown, via the bankruptcy process, recovers about 14% of total WEPP payments. This represents an anticipated recoverable amount of $3.9 million over 10 years associated with the elimination of the WEPP offset.

The present value cost, net of wages, expected to be recovered through proceedings is $24.2 million.

Benefits

The removal of the WEPP offset is estimated to result in an increased WEPP payment of $315 per WEPP recipient (6.82% of the average gross payment of $4,615). Its removal will also ensure that WEPP recipients receive wage amounts that are consistent with amounts the trustee or receiver has determined they are owed. Its removal will also help simplify WEPP payments, and ensure that recipients are paid more of what they are owed by their insolvent employer. As the total benefit to WEPP recipients is a direct transfer from the Government of Canada, total anticipated benefits amount to $28.2 million over a 10-year period.

Updated payment scheme for trustees' and receivers' fees and expenses when remaining estate assets are extremely low

The current formula for eligibility and payment of fees and expenses has been widely criticized by the insolvency community as overly complicated and insufficient. Since 2008 to June 2021, the fees and expenses for only 67 insolvent estates where there were insufficient assets to pay the fees and expenses of the trustee have qualified for payment. This represents about 3 600 WEPP recipients over the 13-year period. Only $180,075 in total trustee fees and expenses have been paid to insolvency professionals since 2008.

To encourage greater take-up of low-asset insolvencies, an updated payment scheme will simplify eligibility and create improved financial incentives for trustees to take on the administration of low-asset insolvencies. This will open up access to the WEPP for individuals owed eligible wages.

Costs

Updating the payment scheme is estimated to cost the Government $1.3 million over a 10-year period. This estimate assumes that low-asset employer insolvencies will

paiements de la dette non garantie, le taux moyen de recouvrement est de 3 %. Dans l'ensemble, l'État recouvre environ 14 % du total des paiements du PPS au moyen du processus de faillite. Cela représente un montant recouvrable prévu de 3,9 millions de dollars sur 10 ans associé à l'élimination de la réduction obligatoire du PPS.

La valeur actuelle du coût, net des salaires, qui devrait être récupéré par le biais de procédures est de 24,2 millions de dollars.

Avantages

On estime que l'élimination de la réduction obligatoire entraînera une augmentation du paiement du PPS de 315 $ par bénéficiaire du PPS (6,82 % du paiement brut moyen de 4 615 $). Son retrait permettra également de faire en sorte que les bénéficiaires du PPS reçoivent des montants salariaux qui correspondent aux montants que le syndic ou le séquestre a déterminés à leur égard. Son élimination aidera également à simplifier les paiements du PPS et à faire en sorte que les bénéficiaires reçoivent une plus grande part de ce qui leur est dû par leur employeur insolvable. Comme le total des prestations versées aux bénéficiaires du PPS est un transfert direct du gouvernement du Canada, le total des prestations prévues s'élève à 28,2 millions de dollars sur une période de 10 ans.

Mise à jour du régime de paiement des honoraires et dépenses des syndics et des séquestres lorsque la valeur des actifs est très faible

La formule actuelle servant à déterminer l'admissibilité et le montant des honoraires et dépenses a fait l'objet de critiques nourries de la part des professionnels de l'insolvabilité, qui estiment que ce régime est trop complexe et que les paiements accordés sont insuffisants. De 2008 à juin 2021, sur tous les cas d'insolvabilité où l'actif était insuffisant pour couvrir les honoraires et dépenses du syndic, seulement 67 ont été jugés admissibles aux fins de paiement dans le cadre du régime actuel. Cela représente environ 3 600 bénéficiaires du PPS sur une période de 13 ans. Toujours depuis 2008, le montant total versé à des professionnels de l'insolvabilité au titre de leurs honoraires et de leurs dépenses s'est chiffré à seulement 180 075 $.

Afin d'encourager une plus grande participation aux cas d'insolvabilité dont l'actif est de faible valeur, un mécanisme de paiement actualisé simplifiera l'admissibilité et créera des incitatifs financiers améliorés pour que les syndics prennent en charge l'administration de tels cas d'insolvabilité. Ainsi, davantage de personnes à qui un salaire admissible est dû pourront se prévaloir du PPS.

Coûts

La mise à jour du régime de paiement devrait se traduire par des coûts de 1,3 million de dollars sur 10 ans pour le gouvernement. Cette estimation repose sur l'hypothèse add 10% to the total number of estates that fall under the WEPP each year. This would represent an additional 54 employer estates annually.[5] Each of these employer estates is assumed to require completion of 20 TIFs.[6] Based on this, the average payment a trustee would receive per eligible estate under the updated scheme would be $3,500. By comparison, under the existing payment scheme, the maximum a trustee or receiver could claim for submission of 20 TIFs would be $1,265, assuming they also meet the more restrictive eligibility requirements for payment under the current scheme.

que l'administration de cas d'insolvabilité des employeurs où la valeur de l'actif est faible fera grimper de 10 % le nombre total de cas qui relèveront du PPS chaque année. Cela représente 54 autres cas d'insolvabilité d'un employeur par année[5]. On fait aussi l'hypothèse que, pour chacun de ces employeurs, il devra traiter 20 FRS[6]. Sur cette base, le paiement moyen qu'un syndic recevrait pour chaque actif admissible en vertu du régime mis à jour serait de 3 500 $. À titre de comparaison, sous le régime de paiement actuel, le montant maximal qu'un syndic ou un séquestre peut réclamer au titre de la soumission de 20 FRS est de 1 265 $, en supposant qu'il satisfasse également aux critères d'admissibilité restrictifs que prévoit le régime actuel.

Incremental increase of payments to employees of the new low-asset insolvent firms newly eligible (including incremental recoverable payments)

Augmentation progressive des versements aux employés de nouvelles entreprises insolvables ayant un actif de faible valeur qui deviendront admissibles (y compris les montants additionnels recouvrables)

Costs

The increased administration rates of low-asset insolvencies resulting from the updated payment scheme are estimated to enable access to the WEPP for an additional 1 072 employees each year. It is assumed that each WEPP recipient would be paid the average WEPP payment of $4,615, inclusive of the previous offset amount of 6.82%. An incremental increase in the volume of payments to WEPP recipients' year-over-year is not expected.

The estimated additional number of WEPP recipients would result in $34.7 million gross payments over the 10-year period. A portion of this gross payment would be recoverable from insolvent estates by the Crown through the bankruptcy process.

As the Crown recovers approximately 14% of the total value of WEPP payments issued, this represents an anticipated recoverable amount of $4.8 million over 10 years. Taking into account these recoveries, the total estimated net costs to the Government of Canada would be $29.9 million over the 10-year period.

Coûts

Selon les estimations, par suite de la mise à jour du régime de paiement, l'augmentation du taux d'administration des cas d'insolvabilité où la valeur des actifs est très faible permettra à 1 072 employés additionnels de se prévaloir du PPS chaque année. Le montant moyen que chaque personne admissible recevra du PPS est estimé à 4 615 $, y compris le montant précédent de l'élimination de la réduction obligatoire de 6,82 %. Par ailleurs, on n'anticipe aucune hausse progressive du volume des prestations du PPS versées aux personnes admissibles d'une année à l'autre.

Le nombre additionnel de personnes admissibles aux prestations du PPS selon les estimations se traduira par des versements bruts totalisant 34,7 millions de dollars sur la période de 10 ans. Une partie de ce montant brut sera recouvrable par l'État à même l'actif des employeurs insolvables dans le cadre du processus de faillite.

Puisque l'État recouvre environ 14 % de la valeur totale des paiements du PPS versés, cela représente un montant recouvrable prévu de 4,8 millions de dollars sur 10 ans. Une fois ces recouvrements pris en compte, le coût net sur 10 ans pour le gouvernement du Canada est estimé à 29,9 millions de dollars.

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5 Since the inception of the WEPP, the average annual number of employer insolvencies that have included at least one WEPP claim has been 536 estates. While costing is based on an additional 53.6 estates annually, references in the descriptive text remove the decimal and refers to 54 estates.

6 WEPP data for the past five years (fiscal years 2015–2016 to 2019–2020) indicates that an average of 17 WEPP TIFs are filed per insolvent employer estate. For the cost estimate, a rounded number of 20 is used to avoid understating costs.

5 Depuis la création du PPS, le nombre moyen de cas d'insolvabilité d'employeurs ayant donné lieu à au moins une réclamation au titre du PPS a été de 536 par année. L'estimation des coûts repose sur l'ajout de 53,6 cas par année, mais la décimale est supprimée dans le texte descriptif, et l'on y fait plutôt mention de 54 cas.

6 Selon les données du PPS pour les cinq dernières années (exercices 2015-2016 à 2019-2020), il y a en moyenne 17 FRS déposés au titre du PPS pour chaque cas d'employeur insolvable. On a arrondi ce nombre à 20 pour l'estimation des coûts, afin d'éviter une éventuelle sous-estimation.

Benefits

The estimated 1 072 additional WEPP recipients each year would result in a direct transfer of funds from the WEPP to the newly eligible recipients. Total estimated benefits from the WEPP to the new recipients are estimated to be $34.7 million over the 10-year period.

WEPP coverage extended to individuals if their employer enters formal insolvency proceedings in another country

The WEPP Act was amended to broaden coverage to include terminated employees whose employer has entered insolvency proceedings in a foreign jurisdiction. Amendments to the WEPP Act extend coverage to terminated employees when a foreign proceeding is recognized by a Canadian court, a trustee is appointed under the BIA in respect of the foreign proceeding, and a Canadian court deems that the foreign proceeding meets criteria prescribed by regulation. This amendment aims to clarify and simplify the WEPP access for Canadian workers when their employer's insolvency occurs in another country. Indirect and occasionally time-consuming ways have been used to trigger the WEPP in situations where a foreign employer becomes insolvent, but there is no Canadian bankruptcy or receivership event that takes place.

Costs

In addition to simplifying the process to access the WEPP, this change is anticipated to somewhat increase the number of WEPP recipients. It is estimated that an average of approximately 200 additional employees per year will become eligible for WEPP as a result. It is assumed that each WEPP recipient would be paid the average WEPP payment of $4,615, inclusive of the previous offset amount of 6.82%. This is estimated to result in total costs of $6.9 million over 10 years. As foreign insolvencies would represent a new form of coverage for the WEPP, the program will attempt to recover costs to the extent possible. However, the recovery rate will likely differ from amounts successfully recovered in Canada due to various challenges in doing so abroad, such as differing legal systems and how creditors are ranked elsewhere. For simplicity, the recovery rate is assumed to be zero for this particular form of insolvency.

Benefits

As this is a direct payment to these newly eligible employees, and therefore a direct transfer from the government of Canada to WEPP recipients, benefits are equal to costs, approximately $6.9 million over 10 years.

Avantages

Les 1 072 personnes additionnelles qui seront admissibles au PPS chaque année entraîneront un transfert direct de fonds du PPS à ces personnes. Le montant estimatif des prestations du PPS versées aux nouvelles personnes admissibles totalise 34,7 millions de dollars sur 10 ans.

Protection du PPS étendue aux personnes dont l'employeur entame une procédure officielle d'insolvabilité dans un autre pays

La LPPS a été modifiée afin d'élargir la couverture aux employés licenciés ou congédiés dont l'employeur a entamé une procédure d'insolvabilité dans un autre pays. Les modifications apportées à la LPPS s'appliqueront aux employés licenciés ou congédiés lorsqu'une instance étrangère est reconnue par un tribunal canadien, qu'un syndic est nommé en vertu de la LFI à l'égard de l'instance étrangère et qu'un tribunal canadien décide que l'instance étrangère satisfait aux critères réglementaires. Cette modification vise à clarifier et à simplifier l'accès au PPS pour les travailleurs canadiens lorsque l'insolvabilité de leur employeur se produit dans un autre pays. Des moyens indirects et parfois fastidieux ont été utilisés pour déclencher le PPS dans des situations où un employeur étranger devient insolvable sans qu'il y ait de faillite ou de mise sous séquestre au Canada.

Coûts

En plus de simplifier le processus d'accès au PPS, ce changement devrait augmenter quelque peu le nombre de bénéficiaires du PPS. On estime qu'en moyenne, environ 200 employés supplémentaires par an deviendront ainsi admissibles au PPS. On suppose que chaque bénéficiaire du PPS recevra le paiement moyen du PPS, soit 4 615 $, y compris le montant précédent de l'élimination de la réduction obligatoire de 6,82 %. On estime que cela entraînera des coûts totaux de 6,9 millions de dollars sur 10 ans. Comme les insolvabilités étrangères représenteraient une nouvelle forme de couverture pour le PPS, le programme tentera de recouvrer les coûts dans la mesure du possible. Toutefois, le taux de recouvrement sera probablement différent des montants recouvrés avec succès au Canada en raison de divers défis à relever à l'étranger, comme des systèmes juridiques différents et la façon dont les créanciers sont classés ailleurs. Par souci de simplicité, on suppose que le taux de recouvrement est de zéro pour cette forme particulière d'insolvabilité.

Avantages

Comme il s'agit d'un paiement direct à ces nouveaux employés admissibles, et donc d'un transfert direct du gouvernement du Canada aux bénéficiaires du PPS, les prestations sont égales aux coûts, soit environ 6,9 millions de dollars sur 10 ans.

Communication and website costs to update information

Costs

There are anticipated minor costs associated with the development and dissemination of communication products, including the administration of website updates, communication procedures and program information. The Government of Canada will incur these costs in the first year of implementation with an estimated total of $21,727 following the introduction of the Regulations.

Coûts reliés aux communications et au site Web pour la mise à jour de l'information

Coûts

Des coûts mineurs sont prévus pour le développement et la diffusion des produits de communication, y compris l'administration des mises à jour du site Web, les procédures de communication et l'information sur le programme. Le gouvernement du Canada assumera ces coûts au cours de la première année de mise en œuvre, le montant en cause étant estimé à 21 727 $ après l'adoption du Règlement.

Cost-benefit statement

Number of years: 10
Base year for costing: 2022
Present value base year: 2021
Discount rate: 7%

Énoncé des coûts-avantages

Nombre d'années : 10
Année de référence pour l'établissement des coûts : 2022
Année de référence de la valeur actualisée : 2021
Taux d'actualisation : 7 %

Table 1: Monetized costs

Impacted Stakeholder	Description of Costs	Base Year*	Year 2026*	Final Year: 2031*	Total (Present Value)	Annualized Value
Government	**Earlier payment to employees**	$194,394	$202,287	$212,606	$1,420,588	$202,260
	New pay regime for trustees/receivers who administer low-asset insolvencies	$187,600	$187,600	$187,600	$1,317,624	$187,601
	Payments to new low-asset insolvent firm employees (net of recoveries)	$4,259,690	$4,259,690	$4,259,690	$29,918,279	$4,259,705
	Payments to newly eligible employees subject to foreign proceedings	$941,496	$979,725	$1,029,700	$6,880,235	$979,594
	Communication and website costs to update information	$23,247	$0	$0	$21,727	$3,093
	Offset removal (net of recoveries)	$3,317,352	$3,452,050	$3,628,139	$24,242,442	$3,451,590
All stakeholders	**Total costs**	**$8,923,780**	**$9,081,352**	**$9,317,735**	**$63,800,895**	**$9,083,844**

* Not discounted

Tableau 1 : Coûts exprimés en valeur monétaire

Parties concernées	Description des coûts	Année de référence*	Année 2026*	Dernière année : 2031*	Total (valeur actualisée)	Valeur annualisée
Gouvernement	**Versements anticipés aux employés**	194 394 $	202 287 $	212 606 $	1 420 588 $	202 260 $
	Nouveau régime de rémunération pour les syndics/ séquestres qui administrent des cas d'insolvabilité où l'actif est de faible valeur	187 600 $	187 600 $	187 600 $	1 317 624 $	187 601 $

Parties concernées	Description des coûts	Année de référence*	Année 2026*	Dernière année : 2031*	Total (valeur actualisée)	Valeur annualisée
	Prestations additionnelles versées à des employés d'entreprises insolvables dont l'actif est de faible valeur	4 259 690 $	4 259 690 $	4 259 690 $	29 918 279 $	4 259 705 $
	Paiements aux employés nouvellement éligibles soumis aux procédures étrangères	941 496 $	979 725 $	1 029 700 $	6 880 235 $	979 594 $
	Coûts reliés aux communications et au site Web pour la mise à jour de l'information	23 247 $	0 $	0 $	21,727 $	3 093 $
	Retrait de la compensation	3 317 352 $	3 452 050 $	3 628 139 $	24 242 442 $	3 451 590 $
Ensemble des parties concernées	**Coûts totaux**	**8 923 780 $**	**9 081 352 $**	**9 317 735 $**	**63 800 895 $**	**9 083 844 $**

* Non actualisé

Table 2: Monetized benefits

Impacted Stakeholder	Description of Benefit	Base Year*	Year 2026*	Final Year: 2031*	Total (Present Value)	Annualized Value
Employees	**Earlier payment to employees**	$194,394	$202,287	$212,606	$1,420,588	$202,260
	Payments to new low-asset insolvent firm employees and incremental recoverable payments	$4,946,984	$4,946,984	$4,946,984	$34,745,548	$4,947,002
	Payments to newly eligible employees subject to foreign proceedings	$941,496	$979,725	$1,029,700	$6,880,235	$979,594
	Offset removal (direct transfer from government to recipient)	$3,852,602	$4,009,033	$4,213,534	$28,153,923	$4,008,499
All stakeholders	**Total benefits**	**$9,935,476**	**$10,138,029**	**$10,402,825**	**$71,200,294**	**$10,137,355**

* Not discounted

Tableau 2 : Avantages exprimés en valeur monétaire

Parties concernées	Description de l'avantage	Année de référence*	Année 2026*	Dernière année : 2031*	Total (valeur actualisée)	Valeur annualisée
Employés	**Versements anticipés aux employés**	194 394 $	202 287 $	212 606 $	1 420 588 $	202 260 $
	Prestations versées à des employés de nouvelles entreprises insolvables dont l'actif est de faible valeur et sommes additionnelles recouvrables	4 946 984 $	4 946 984 $	4 946 984 $	34 745 548 $	4 947 002 $
	Paiements aux employés nouvellement éligibles soumis aux procédures étrangères	941 496 $	979 725 $	1 029 700 $	6 880 235 $	979 594 $

Parties concernées	Description de l'avantage	Année de référence*	Année 2026*	Dernière année : 2031*	Total (valeur actualisée)	Valeur annualisée
	Élimination des compensations (transfert direct du gouvernement au bénéficiaire)	3 852 602 $	4 009 033 $	4 213 534 $	28 153 923 $	4 008 499 $
Ensemble des parties concernées	**Valeur totale des avantages**	**9 935 476 $**	**10 138 029 $**	**10 402 825 $**	**71 200 294 $**	**10 137 355 $**

* Non actualisé

Table 3: Summary of monetized costs and benefits

Impacts	Base Year*	Year 2026*	Final Year: 2031*	Total (Present Value)	Annualized Value
Total costs	$8,923,780	$9,081,352	$9,317,735	$63,800,895	$9,083,844
Total benefits	$9,935,476	$10,138,029	$10,402,825	$71,200,294	$10,137,355
NET IMPACT	**$1,011,697**	**$1,056,677**	**$1,085,089**	**$7,399,399**	**$1,053,512**

* Not discounted

Tableau 3 : Résumé des coûts et des avantages exprimés en valeur monétaire

Répercussions	Année de référence*	Année 2026*	Dernière année : 2031*	Total (valeur actualisée)	Valeur annualisée
Coûts totaux	8 923 780 $	9 081 352 $	9 317 735 $	63 800 895 $	9 083 844 $
Valeur totale des avantages	9 935 476 $	10 138 029 $	10 402 825 $	71 200 294 $	10 137 355 $
INCIDENCE NETTE	**1 011 697 $**	**1 056 677 $**	**1 085 089 $**	**7 399 399 $**	**1 053 512 $**

* Non actualisé

Quantified (non-$) and qualitative impacts

Positive impacts: WEPP recipients

- Clarifying WEPP coverage to Canadian employees affected by insolvencies of their employer in a foreign country will clarify and simplify the WEPP access.
- Potential small number of additional WEPP recipients due to simplified WEPP trigger.

Negative impact: Government of Canada

- Clarifying WEPP coverage to individuals employed by foreign companies operating in Canada, if their employer enters bankruptcy or becomes subject to receivership in a foreign jurisdiction, may result in a small number of additional WEPP claims for processing.

Incidence quantifiée (non monétaire) et incidence qualitative

Incidences positives : Personnes admissibles au PPS

- Les précisions concernant la manière dont la portée du PPS s'étend aux employés canadiens dont l'employeur fait l'objet d'une procédure d'insolvabilité dans un pays étranger serviront à clarifier et à simplifier l'accès au PPS.
- Le nombre additionnel de personnes admissibles au PPS, par suite de la rationalisation des modalités d'enclenchement du programme, devrait être peu élevé.

Incidence négative : Gouvernement du Canada

- Les précisions concernant la manière dont la portée du PPS s'étend aux personnes employées par des entreprises étrangères exerçant leurs activités au Canada, si leur employeur fait faillite ou fait l'objet d'une mise sous séquestre dans un pays étranger, pourraient entraîner le traitement d'un petit nombre additionnel de demandes auprès du PPS.

Small business lens

Analysis under the small business lens concluded that the Regulations will not impact Canadian small businesses.

One-for-one rule

The one-for-one rule does not apply, as these regulatory changes will not impose administrative costs on businesses and will not result in new regulations.

Regulatory cooperation and alignment

These regulatory changes have no links to international agreements or obligations.

Strategic environmental assessment

In accordance with the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, a preliminary scan concluded that a strategic environmental assessment is not required.

Gender-based analysis plus

No gender-based analysis plus (GBA+) impacts have been identified. Information collected by the WEPP is limited to what is specifically required to administer the program. As a result, indicators are limited to program operations, such as the number of payments made, average amounts paid per claimant, and payment timeliness. Personal information, such as gender, age, disability, indigenous status, or socio-economic characteristics, are not collected. Information to assess the potential impact that changes to the WEPP could have on different groups is therefore not readily available.

Implementation, compliance and enforcement, and service standards

Implementation

Communications and outreach will be conducted as needed with the insolvency community to ensure they are aware of the changes to the WEPP Regulations. This will primarily be accomplished by working with the Canadian Association of Insolvency and Restructuring Professionals (CAIRP) through the existing WEPP Joint Liaison Committee, and on an ad hoc basis, as needed.

The Regulations come into force on November 20, 2021.

Lentille des petites entreprises

L’analyse sous la lentille des petites entreprises a conclu que le Règlement n’aura pas d’incidence sur les petites entreprises canadiennes.

Règle du « un pour un »

La règle du « un pour un » ne s’applique pas puisque ces modifications réglementaires n’entraîneront pas de coûts administratifs pour les entreprises ou l’ajout d’un nouveau règlement.

Coopération et harmonisation en matière de réglementation

Ces modifications réglementaires n’ont aucun lien avec les ententes ou obligations internationales.

Évaluation environnementale stratégique

Une analyse préliminaire, menée conformément à la *Directive du Cabinet sur l’évaluation environnementale des projets de politiques, de plans et de programmes*, a permis de conclure qu’il n’était pas nécessaire de procéder à une évaluation environnementale stratégique.

Analyse comparative entre les sexes plus

Aucune incidence relative à l’analyse comparative entre les sexes plus (ACS+) n’a été cernée. L’information recueillie dans le cadre du PPS se limite aux renseignements expressément requis pour exécuter le programme. Par conséquent, les indicateurs se limitent aux opérations du programme, comme le nombre de prestations versées, les montants moyens versés par demandeur et les délais de versement. On ne recueille pas de renseignements personnels, comme le sexe, l’âge, l’incapacité, le statut d’autochtone ou les caractéristiques socioéconomiques. Il n’y a donc pas de renseignements permettant d’évaluer l’incidence que les modifications apportées au PPS pourraient avoir sur des groupes donnés.

Mise en œuvre, conformité et application, et normes de service

Mise en œuvre

Des activités de communication et de sensibilisation seront menées au besoin auprès des professionnels de l’insolvabilité pour faire en sorte qu’ils soient au courant des modifications apportées à la réglementation. À cette fin, on travaillera principalement en collaboration avec l’Association canadienne des professionnels de l’insolvabilité et de la réorganisation (ACPIR), par l’entremise du Comité de liaison mixte, de pair avec des initiatives ponctuelles, lorsque cela sera requis.

Le Règlement entre en vigueur le 20 novembre 2021.

Partner institutions

A number of federal departments and private sector stakeholders are instrumental in the operation of the WEPP. These partner institutions were all consulted during the development of the WEPP Regulations:

- Service Canada processes the WEPP applications, issues payments to eligible recipients, oversees the trustee and receiver payment scheme, and administers the review process.
- The Office of the Superintendent of Bankruptcy (OSB) provides advice and guidance with respect to the application of the BIA and the CCAA, both of which are linked to the WEPP Act. The federal insolvency policy, which includes the BIA and CCAA, falls under the mandate of the Minister of Innovation, Science and Economic Development (ISED). Although the WEPP is under the responsibility of the Minister of Labour, it is an important element of Canada's broader insolvency framework.
- The Canada Revenue Agency (CRA) administers the recovery of the WEPP overpayments and recovers dividends from insolvent estates. When payments are issued under the WEPP, the Government of Canada is subrogated to any rights the individual may have in respect of unpaid wages, up to the amount of WEPP payment.
- The CAIRP represents close to 90% of Licensed Insolvency Trustees in Canada. Therefore, the CAIRP is the main stakeholder representative for the trustee and receiver community in Canada. The Labour Program works closely with the CAIRP to communicate WEPP-related information to the insolvency community, and address the WEPP administrative and operational issues with a view to improving the delivery of the program.

Performance measurement

The following will be used to assess the effectiveness of the WEPP following the coming into force of the amended WEPP Regulations:

- Improved financial support to workers (i.e. a larger number of employees with insolvent employers can access the WEPP);
- Total number of workers that receive support under the WEPP (baseline of 12 000 annual); and
- Number of WEPP applicants under the new eligibility triggers (new baseline).

Partenaires

Un certain nombre de ministères et d'organismes fédéraux ainsi que d'intervenants du secteur privé jouent un rôle essentiel dans le fonctionnement du PPS. Ces partenaires ont tous été consultés pendant l'élaboration du Règlement modifiant le RPPS :

- Service Canada traite les demandes destinées au PPS, verse les prestations aux personnes admissibles, supervise le régime de paiement des honoraires et dépenses des syndics et des séquestres, et administre le processus de révision.
- Le Bureau du surintendant des faillites (BSF) fournit des conseils et des directives ayant trait à l'application de la LFI et de la LACC, qui sont toutes deux liées à la LPPS. La politique fédérale en matière d'insolvabilité, qui englobe la LFI et la LACC, relève du mandat du ministre de l'Innovation, des Sciences et du Développement économique (ISDE). Bien qu'il relève du ministre du Travail, le PPS constitue un élément important du cadre fédéral canadien en matière d'insolvabilité.
- L'Agence du revenu du Canada (ARC) gère le recouvrement des trop-perçus reliés au PPS et recouvre des dividendes à même les actifs des entités insolvables. Lorsque des versements sont effectués dans le cadre du PPS, le gouvernement du Canada est subrogé dans les droits que le travailleur peut avoir relativement à un salaire qui lui est dû, jusqu'à concurrence du montant versé par le PPS.
- L'ACPIR représente près de 90 % des syndics autorisés en insolvabilité au Canada. À ce titre, l'ACPIR est la principale entité représentant la collectivité des syndics et des séquestres au Canada. Le Programme du travail collabore étroitement avec l'ACPIR pour communiquer l'information relative au PPS à la collectivité des professionnels de l'insolvabilité et pour résoudre les problèmes administratifs et opérationnels reliés au PPS en vue d'améliorer l'exécution de ce dernier.

Mesure du rendement

Les éléments suivants serviront à évaluer l'efficacité du PPS après l'entrée en vigueur des modifications réglementaires :

- Mesure dans laquelle le soutien financier offert aux travailleurs est amélioré (hausse du nombre d'employés d'un employeur insolvable qui peuvent se prévaloir du PPS);
- Nombre total de travailleurs qui reçoivent un soutien dans le cadre du PPS (nombre de référence : 12 000 par année);
- Nombre de demandeurs du PPS visés par les nouveaux critères d'admissibilité (nouveau point de référence).

Service standards

Service standards to process WEPP claims will remain unchanged.

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Normes de service

Les normes de service ayant trait au traitement des demandes reliées au PPS demeureront inchangées.

Personnes-ressources

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FORM 4C – BACKSHEET (Rule 4.02(3))

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED

Court File No. CV-25-00739279-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SYNAPTIVE MEDICAL INC

APPLICANT

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding Commenced in Toronto

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