

# **Bromwich & Smith Inc.**

Proposal Administrators, Trustees in Bankruptcy  
[www.solvingdebt.ca](http://www.solvingdebt.ca)

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**Call for additional meeting locations.**

## **INITIAL CONSULTATION FOR AN INSOLVENT PERSON**

### **Attachments:**

- Options Available if you are Insolvent
- Proposals to Creditors
- A Brief Overview of Bankruptcy
- What will Bankruptcy Cost?
- Details about Bankruptcy
- Crisis Resources
- Information Form

### **When attending your initial consultation with us to discuss your financial situation, please bring with you:**

- The attached **completed** Information Form. (It is important that the form be completed as fully as possible. Note: It is only for information and is not an application for anything.)
- A copy of your last personal tax return filed, current year-to-date pay stub, most recent RRSP statement and life insurance documentation;
- Any judgements, writs, garnishees, wage assignments, etc;
- Any security documents, such as chattel mortgages, conditional sales contracts, promissory notes, etc.;
- Driver's license, vehicle registrations and insurance pink slips;
- A note of your questions about the process, to remind you! (see page 12)

Revised: January 26, 2010

## **OPTIONS AVAILABLE IF YOU ARE INSOLVENT \***

### **Are you having financial problems?**

If you have a debt problem or are simply over indebted, you are not alone; thousands of people share the same problem.

### **Watch for these danger signals.**

If you answer "yes" to any of the following questions, you may have a debt problem or are heading for one:

- . Do you have to borrow money to make it from one payday to the next?
- . Have your wages been garnisheed to pay for outstanding debts?
- . Do your creditors contact you for payment? Do they threaten to repossess your car, furniture, television or even sue?
- . Do you pay interest and service charges on monthly charge accounts because you can't pay on time?

### **Possible Solutions:**

1. Contact your creditors, explain your difficulties (layoff, illness, strike) and ask for some kind of temporary arrangement. If you contact creditors prior to missing payments, you may be surprised how many are more than willing to work with you.
2. Try a Debt Consolidation Loan. All debts are paid by one creditor and you make one monthly payment to that creditor. For your own benefit, try to obtain the loan at the lowest rate of interest. For debt consolidation to work, further credit is not recommended, otherwise your debt load may become unmanageable. Talk to your banker.
3. A Consolidation Order under Part X of the Bankruptcy and Insolvency Act (Orderly Payment of Debts) allows for full payment of debts generally over a maximum 4 year period (longer with Student Loan debt) while being free from creditor harassment and wage garnishments. Under this program, a debtor normally keeps all assets. In Alberta this program is operated by Money Mentors. Contact 1-888-294-0076 for further information.
4. Consumer Proposals under Part III, Division II of the Bankruptcy and Insolvency Act are an alternative to Bankruptcy. These proposals are available to an individual debtor who owes less than \$250,000.00 (excluding mortgage(s)) and typically provides for payment of less than 100 cents on the dollar to creditors. We will explain and administer this option.
5. A Proposal under Division I is available for all individuals (and corporations) regardless of the size of the debts. If a Division I Proposal fails, bankruptcy is an automatic consequence.
6. If none of the above solves your problem, or is impractical in the circumstances, bankruptcy is typically the best solution. We will guide you through this process and explain the "pros and cons" to you.

**Our policy is to explain all the options to you and allow you to make an informed decision.**

\* "Insolvent person" is defined on Page 7

## PROPOSALS FOR INDIVIDUALS

1. An individual whose total debts do not exceed \$250,000, excluding mortgages on a principal residence, can make a consumer proposal to creditors. If the total debts exceed \$250,000 or if you want bankruptcy to be the consequence of the failure of a proposal then a Division I proposal can be filed.
2. A proposal may provide for an extension of time for payment, reductions in interest rates, and typically provides for repayment of less than the total of all debt owing. A proposal must be made to all unsecured creditors generally, must be completed within five years and must provide that preferred creditors (child support, rent arrears, Administrator fees) are paid before other creditors. Proposals can include student loan debts.
3. An individual who wishes to make a proposal must obtain the assistance of an Administrator. Bromwich & Smith Inc as the Administrator will prepare and file the proposal. Once the proposal is filed, unsecured creditors cannot take any collection action against you. However, secured creditors are not prevented from realizing on their security.
4. The Administrator will prepare a report on the debtor's financial affairs and send this report to all creditors so that they may assess the proposal. Unlike bankruptcy, you do not turn control of your non exempt assets over to a Trustee.
5. Two counselling sessions must be attended. The first counselling session is held after about two months and the second session is held after six months the filing of a proposal.
6. In case of a consumer proposal, there will usually be no meeting of creditors. If no meeting is requested by creditors within 45 days of the filing of the consumer proposal, it is deemed to be accepted by the creditors. If a meeting is requested by creditors, it is held within a further 21 days and the proposal is voted on at the meeting.
7. An accepted proposal is binding on all unsecured creditors.
8. All monies in a proposal are paid to the Administrator who then makes distributions to unsecured creditors at regular intervals.
9. When a proposal is fully performed, the Administrator will issue a completion certificate to you.
10. If a consumer proposal is not approved, the debtor is not automatically in bankruptcy. The debtor can make a revised proposal if so desired. If a debtor is in default on the performance of the consumer proposal, the consumer proposal may be annulled and, if it is not revived, the debtor cannot make another consumer proposal.
11. A Division I proposal is similar to a consumer proposal but a meeting of creditors is mandatory and bankruptcy is the automatic consequence of a rejection by creditors. The Division I proposal can offer repayment terms longer than five years. Further details of the specific differences between the two types of proposals will be explained to you by Bromwich & Smith Inc.
12. Please note that any proposal will have a negative impact on your credit rating.

## A BRIEF OVERVIEW OF BANKRUPTCY

1. Filing an Assignment in Bankruptcy changes your legal relationship to your creditors. You obtain immediate protection from collection efforts by unsecured creditors and you are committing to complete a legal process which will eliminate your debts.
2. To file an assignment in bankruptcy you must work with a Trustee such as Bromwich & Smith Inc. The Trustee is responsible for actually filing the legal documents, notifying all creditors of your bankruptcy and ensuring your creditors stop all collection efforts. The Trustee is also responsible to all creditors to ensure they get fair and equal treatment under the Bankruptcy and Insolvency Act.
3. If you file an assignment in bankruptcy, you retain exempt assets (See Page 7) and turn over control of your non-exempt assets to the Trustee. The non-exempt assets are disposed of by the Trustee for the benefit of your creditors. Often the non-exempt assets are sold back to you at a fair value. An asset that is secured to a creditor by means of a security agreement must still be paid for or given to the creditor.
4. Usually a meeting of creditors is not required. If it is required it will normally be held within 21 days after you make an assignment into bankruptcy and you will be required to be there. Often, creditors choose not to attend this meeting.
5. There are two required counselling sessions. The first counselling session is held after about two months and the second session is held about six months after the date of assignment in bankruptcy. To be eligible for an automatic discharge from bankruptcy, the Trustee must confirm that the two counselling sessions have been attended.
6. Occasionally, the Official Receiver (an employee of the Office of the Superintendent of Bankruptcy) will want to question you. If so, you will receive a Notice of Examination from the Official Receiver in the mail, setting up a date and time for this examination.
7. You will be required to submit monthly statements of your income and expenses together with appropriate verification of income. The monthly statements are to be submitted to the Trustee's office on a regular monthly basis.
8. Depending on the amount of your income and size of your family a portion of your income may have to be paid to the Trustee. A bankrupt is required to pay 50 per cent of the net monthly income that is **above** the Superintendent's Standards. The details of how this works will be explained to you at your initial consultation.

If no portion of your income is payable to the Trustee your bankruptcy will last for 9 months (or 24 months where there has been a previous bankruptcy). If a portion of your income is payable to the Trustee this reporting and the payments are required for 21 months (or 36 months where there has been a previous bankruptcy).
9. The Trustee will file tax returns for the year of bankruptcy and for the year prior to bankruptcy if not already done. You are required to give whatever assistance is necessary in obtaining and delivering information to the Trustee.
10. If you have complied with all of your normal duties (as listed above) in a timely basis you are eligible for an automatic discharge. This means the process is complete and your debts are formally forgiven (exception for those listed under Debts or Obligations not Forgiven on

- Page 9). The Trustee issues the Certificate of Discharge and no Court hearing is required.
11. The Trustee cannot issue a Certificate of Discharge and mediation or a Court hearing is required in the following circumstances.
    - a) if an objection to discharge is filed by the trustee, a creditor or the Office of the Superintendent of Bankruptcy;
    - b) if there have been more than two previous bankruptcies;
    - c) if the bankrupt has failed to complete all duties imposed in a timely basis;
    - d) If you had \$200,000 or more of personal income tax debt and where your personal income tax debt represents 75% or more of the total unsecured debt.
  12. The Court may make one of the following decisions:
    - (a) Order of Absolute Discharge - meaning the debtor is no longer responsible for his or her debts (except for those listed under Debts or Obligations not Forgiven on Page 9).
    - (b) Order of Conditional Discharge - meaning the bankrupt may be required to pay a certain further sum of money prior to obtaining his or her Absolute Discharge.
    - (c) Order of Suspended Discharge - essentially the same as Absolute Discharge except that the Court orders a delay before the discharge is effective.
    - (d) Order the Discharge Refused. The Court rarely exercises this power, and only for extremely serious abuse or neglect reasons.
    - (e) Order Adjourn Sine Die. The Court may adjourn the hearing without setting a future date and may also order the Trustee to be discharged with the rights of creditors to be reinstated. This leaves the debtor as an undischarged bankrupt without protection from creditors. Typically this occurs when a bankrupt has not been cooperative or has failed to perform the duties imposed. This order typically results in both significant additional costs to the bankrupt to make a future court application and considerable delays in obtaining a discharge.
  13. After you are discharged the Trustee will pay out whatever funds are available to the creditors and then proceed to **his** discharge as your Trustee.
  14. Your credit rating will be affected whether you declare bankruptcy or file a statutory proposal. Your credit rating may already be of similar rating to that of bankruptcy.

### **Role of Trustee**

The Trustee will act like an excellent referee at a hockey game. He is responsible for administering the process and to see fair play by both you and your creditors. All information given to him by you will be considered as on the public record if you declare bankruptcy or file a proposal. If you need a "coach" then you should retain a lawyer.

## **WHAT WILL BANKRUPTCY COST?**

A Trustee in Bankruptcy obtains his fees directly from the funds in a bankrupt estate in priority to other claims. He is only allowed to take fees at certain specified times and his fees are either reviewed and approved by the Courts or based on a tariff laid down in the Bankruptcy and Insolvency Act.

The cost to a debtor of a personal bankruptcy is generally a minimum of \$1,800 for a summary (smaller) Administration. In an Ordinary (larger) Administration the fee is based on time and can vary, but normally these fees are paid through the realization of assets. The Trustee will review with a potential bankrupt how this cost will be covered.

For example:

By retainer (up front) to the Trustee

By monthly payments to the estate

By income tax refunds

By third party deposit with the Trustee

By sale of assets before or during bankruptcy

Or by any combination of the above

This entire area of fees is of as much concern to the Trustee as to the bankrupt. It is important to obtain a clear understanding of what has been agreed, prior to any assignment in bankruptcy.

Note 1. Although monthly payments may be considered as initially covering the Trustee's costs, they are determined based upon the amount of your income and size of the bankrupt's family, accordingly, the payment typically varies during the bankruptcy. With the exception of GST rebates, any surplus in the Trustee's hands after payment of Trustee's fees will be used to pay a dividend to creditors.

Note 2. If an initial retainer is paid we accept cash, certified cheques, and personal cheques. For subsequent payments, we also accept uncertified personal cheques but have a zero tolerance policy on NSF cheques.

## **CORPORATE BANKRUPTCY**

The cost of a corporate bankruptcy will depend entirely upon the complexity of the file and the Trustee's fees will usually be based on time spent. Individual circumstances must be discussed with the Trustee to obtain an estimate.

## **HERE ARE SOME DETAILS ABOUT BANKRUPTCY**

### **What is a Bankruptcy?**

It is a legal process, administered under the Bankruptcy and Insolvency Act, which frees a debtor from all or almost all debts. To benefit from the advantages provided by legislation, a debtor must be insolvent and obtain the services of a Trustee in bankruptcy.

### **Who is an Insolvent Person? Who Can Make an Assignment in Bankruptcy?**

An "insolvent person" can make an Assignment in Bankruptcy. An insolvent person is a person who

- a) is not bankrupt,
- b) who resides, carries on business or has property in Canada,
- c) who owes at least \$1,000; and either
- d) is unable to meet obligations as they become due, or
- e) where the total of non-exempt property is not, at a fair valuation, sufficient to enable payment of all obligations and debts.

### **Property of the Bankrupt (Exempt Assets)**

Generally, the bankrupt is able to keep all assets that are exempt from seizure under the Civil Enforcement Act of Alberta. Here are some examples of exempt assets:

- a) Clothing up to a current realizable value of \$4,000;
- b) Household furnishings and appliances up to a current realizable value of \$4,000 (if there are no liens on the furniture or appliances);
- c) Personal property to a current realizable value of \$10,000 used to earn the debtor's principal source of income (tools of trade);
- d) One vehicle in which the equity or current realizable value is not more than \$5,000;
- e) Equity up to \$40,000 (or their pro-rata share thereof) in the debtor's principal residence, including a mobile home;
- f) RRSPs are exempt but contributions made within 12 months prior to bankruptcy are not exempt.

Note: Debtors involved exclusively in farming or fishing have additional exemptions.

The bankrupt must turn over all non-exempt assets to the Trustee.

### **Co-signed Loans**

Regarding debts contracted with the assistance of a co-signatory, the bankruptcy does not discharge the co-signatory of his or her obligation to fully reimburse the loan(s) for which he or she signed.

• **Salary and Wages**

During the bankruptcy all bankrupts are expected to deposit with the Trustee, for the benefit of creditors, a certain amount of "surplus income" as defined in the standards issued by the Superintendent of Bankruptcy, a copy of which will be given to you. If your monthly income changes during your bankruptcy, your required payment will also change in accordance with the standards.

• **Tax Refunds**

A tax return for the period from January to the date of bankruptcy will be prepared by the Trustee. This return is called the Pre-bankruptcy tax return. Another tax return will be completed for the period from the date of bankruptcy to December 31. This return is called the Post-bankruptcy tax return. Any refunds for those periods, as well as refunds of previous years not yet received must be remitted to the Trustee.

• **Mediation for Surplus Income**

Toward the end of a bankruptcy, where the discharge of an individual bankrupt is opposed by a creditor or the trustee on the grounds that the bankrupt has not made the required surplus income payments (see page 4, paragraph 8) or has chosen bankruptcy instead of a proposal as a solution to debt, the trustee must ask the Office of the Superintendent of Bankruptcy for mediation. The mediation can specify the payment terms to fulfill the required surplus income payments. The Superintendent of Bankruptcy offers a booklet with additional information in relation to mediation.

• **Debts or Obligations not Forgiven**

Once discharged, the bankrupt person is no longer responsible for most of his or her debts or obligations. However, they remain responsible for and must pay the following:

- (a) alimony or support of child or spouse;
- (b) fines or penalties imposed by a Court;
- (c) debts obtained by fraud or fraudulent misrepresentations;
- (d) student loans if a full or part-time student within the last seven years, unless hardship can be demonstrated to the Court.

• **Duties of the Bankrupt**

Within three weeks after bankruptcy documents are filed, the bankrupt may be instructed in writing to attend a meeting of creditors in order to supply more information about his or her present financial situation. The bankrupt must be present at this meeting unless prevented by sickness or other sufficient cause. Furthermore, the bankrupt must fulfil all of the following duties and general rules;

- (a) reveal and turn over to the Trustee all assets in his or her possession or control;
- (b) provide to the Trustee all books and records relating to his or her assets or affairs;

- (c) attend at the Office of the Official Receiver at the appointed time, if required to be examined under oath as to the facts relating to the bankruptcy;
- (d) provide a complete statement of assets and liabilities including creditors' names, addresses, account numbers, invoices and amounts. Where additional bills or legal documents are received by the bankrupt, they should be forwarded to the Trustee. If assets or debts have been accidentally omitted, the Trustee must be informed promptly;
- (e) inform the Trustee of the details of all property disposed of during the twelve months prior to the bankruptcy;
- (f) inform the Trustee of the details of all property disposed of by gift during the five years prior to the bankruptcy;
- (g) generally may not attempt to obtain new credit until discharged;
- (h) not make any payment to creditors without consulting with the Trustee;
- (i) keep Trustee informed of any change of address, employment or salary;
- (j) remit to the Trustee, immediately upon receipt, all money received from lotteries, inheritance or any other similar sources;
- (k) deliver to the Trustee, for cancellation, all credit cards in his/her possession or control notwithstanding that there may not be any amount outstanding to the issuer of the credit cards.

## **Offences**

The bankruptcy process is intended to provide financial rehabilitation to an individual. However, the bankrupt person must fulfil his or her obligations and behave in a fair manner with his or her creditors. A bankrupt person is liable under the Bankruptcy and Insolvency Act to imprisonment or a fine if found guilty of any of the following offences:

- (a) failure to perform the previously mentioned duties as a bankrupt;
- (b) fraudulent disposal of assets before or after bankruptcy;
- (c) failure to answer fully and truthfully all questions when examined under oath;
- (d) false declarations regarding assets or liabilities;
- (e) destruction or concealment of books or documents relating to property or affairs;
- (f) obtainment of property or credit by false representation during the period of twelve months prior to the bankruptcy and until the date of discharge; and
- (g) engaging in any trade or business, entering into any business transaction or obtaining credit in excess of \$1,000, without disclosure of undischarged bankrupt status to all

persons thereby affected.

. **Settlement of property**

Gifts or transfers of property during the twelve months prior to the bankruptcy (five years in certain circumstances) are subject to review by the Trustee and may be reversed by the Court.

If, during the three months prior to bankruptcy (twelve months if a related person), a creditor received preferential or special treatment, such as being paid while others were not, the Trustee may demand reimbursement from these creditors. The Trustee must be informed of these payments by the bankrupt individual.

. **Directors of Limited Companies**

Under the Canada Corporations Act and the Companies Act of Alberta, you may not be the Director of a limited company while an undischarged bankrupt.

. **Stay of Proceedings**

The filing of a bankruptcy halts all garnishments, lawsuits or Court proceedings in respect of debts. However, as mentioned before, bankruptcy does not release or affect a bankrupt person in respect of child support payments or alimony. The Court may grant permission to creditors to pursue their action in certain special circumstances.

More information can be seen on our web site at [www.solvingdebt.ca](http://www.solvingdebt.ca)

**Note**

1. **You will be required to disclose your Social Insurance Number (SIN) which, together with other personal information, may then be disclosed to creditors. All this information is available to the public.**
2. **This document does not constitute legal advice nor does it cover everything that you might need to know about bankruptcy and other insolvency remedies. In certain circumstances you may need to get advice from a lawyer who is familiar with bankruptcy matters.**
3. **You will be requested to sign an acknowledgement that you have read and understand this document.**

## CRISIS RESOURCES

Dial **211** to get connected with the community services you need [www.211calgary.ca](http://www.211calgary.ca)

### HOUSING

Calgary Women's Emergency Shelter	234-7233	<a href="http://www.calgarywomensshelter.com">www.calgarywomensshelter.com</a>
Discovery House	670-0467	<a href="http://www.discoveryhouse.ca">www.discoveryhouse.ca</a>
YWCA Sheriff King Family Violence Prevention Centre	266-0707	<a href="http://www.ywcaofcalgary.com">www.ywcaofcalgary.com</a>
Sonshine Centre	243-2002	<a href="http://www.sonshine.ab.ca">www.sonshine.ab.ca</a>
Youville Women's Residence	242-0244	<a href="http://www.youville.net/">www.youville.net/</a>

### FINANCIAL

Alberta Human Resources & Employment	310-0000
Northeast/Southeast - Kensington Road	297-7200
Northeast - Radisson Centre	297-1907
South - Willow Park	297-2020
Central/NW/SW - Alberta Place (AISH)	297-8511

### POLICE/LEGAL

Legal Aid Society	297-2260	
Police Emergency	911	
Victim Assistance Unit(Police)	206-8398	<a href="http://www.gov.calgary.ab.ca/police/inside/victim.html">www.gov.calgary.ab.ca/police/inside/victim.html</a>

### COUNSELLING

AADAC (Alberta Alcohol & Drug Abuse Commission)	1-866-33AADAC	<a href="http://www.aadac.com">www.aadac.com</a>
Alberta Mental Health Services	1-877-303-2642	<a href="http://www.amhb.ab.ca">www.amhb.ab.ca</a>
Canadian Mental Health Association	297-1700	<a href="http://www.cmha.calgary.ab.ca">www.cmha.calgary.ab.ca</a>
Calgary Counseling Centre	265-4980	<a href="http://www.calgarycounselling.com">www.calgarycounselling.com</a>
Calgary Family Services	269-9888	<a href="http://www.calgaryfamilyservices.org">www.calgaryfamilyservices.org</a>
Catholic Family Service	233-2360	
Distress Centre/Drug Centre	266-1605	
Eastside & Westside Family Centre	288-3313/299-9696	
Jewish Family Centre	287-3510	
Kerby Centre (60+)	705-3250	<a href="http://www.kerbycentre.com">www.kerbycentre.com</a>
Parent Development Centre/Support Association	265-1117	<a href="http://www.psa.calgary.ab.ca/reso.htm">www.psa.calgary.ab.ca/reso.htm</a>
YWCA Support Centre (for abused women)	266-4111	

### CHILDREN

Social Services Emergency	270-5335
Alberta Children's Hospital Child Abuse Program	943-7886
Children's Cottage - Crisis Nursery	233-2273
Kid's Help Phone	1-800-668-6868

