

## Winter 2008

The Office of the Superintendent of Bankruptcy recently published the following information:

- for the 12 month period ending July 31, 2008, there were 89,346 bankruptcies in Canada. This represents a 17.2% increase from July 31, 2007
- in addition to the bankruptcies, there were 24,234 proposals filed. This represents an increase of 30%
- business bankruptcies decreased by 6.4% in the same period

A bankruptcy occurs when there has been an assignment in bankruptcy or a bankruptcy order has been made. Whereas, a proposal is an offer to creditors to settle debts under conditions other than the existing terms. A proposal is a formal agreement under the Bankruptcy and Insolvency Act.

The increase in personal bankruptcies is not surprising given the problems in the manufacturing industry. However, these stats were released prior to the recent troubles in the financial markets. In this edition of the Canadian Financial Planner, we shall review a number of the legislative changes that have recently been introduced in the area of bankruptcy and provide an overview of the Canadian bankruptcy system.

## Surplus Income

Prior to reviewing the recent changes in bankruptcy legislation, it is important to understand the concept of “surplus income.” On an annual basis, the Superintendent of Bankruptcy publishes guidelines which outline the amount of money individuals are allowed to keep to pay their personal expenses. Any income earned above this level must be paid to the creditors.

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At the beginning of the bankruptcy process, the trustee determines the amount the bankrupt individual must pay to creditors and this amount is called surplus income. The trustee determines the amount by taking into account:

- annual guidelines published by the Superintendent of Bankruptcy
- the bankrupt individual's situation which takes into account both family income and unusual expenses

The following example outlines a surplus income calculation for a family where only one spouse declares bankruptcy:

Bankrupt individual's monthly income	\$1,800
Spouse's income	<u>\$1,000</u>
Family's available income	\$2,800
Less: Superintendent's guidelines	<u>(\$2,286)</u>
Monthly surplus income	\$ 514

Bankrupt individual's portion of the family's monthly income ( $1,800 \div 2,800 = 64.3\%$ )

Payment required from bankrupt individual                      \$165.25  
[( $514 \times 64.3\%$ )  $\times 50\%$  = 165.25]

This calculation is important as it not only determines the amount of monthly payments that must be made, but it determines the time period to obtain an absolute discharge from bankruptcy. If there is no surplus income, an individual can be discharged in nine months; however, if there is a surplus amount, the time frame is extended to twenty one months.

Note – The remainder of this article is only available to subscribers of the Canadian Tax Planners Newsletter. If you elect to subscribe and wish to receive a copy of this newsletter, advise us accordingly and the complete article will be forwarded by return mail.

