

Creditor Access to Future Income Security Plans 1998

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APPENDIX F

CREDITOR ACCESS TO FUTURE INCOME SECURITY PLANS CONSULTATION REPORT

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I. INTRODUCTION

At the August, 1997 meeting of the Uniform Law Conference of Canada (ULC) in Whitehorse, Yukon, the Working Group on the Exigibility of Future Income Security Plans presented a Discussion Paper for the consideration of the ULC. Following considerable discussion, it was resolved:

That the paper presented by the Saskatchewan Commissioners form the basis for further consultations and the Working Group report back with an Issues Paper and, if possible, a draft Act at the 1998 meeting.

Two major changes were made to that initial Discussion Paper for the purposes of the actual consultation. The first was to provide a more fully articulated discussion of the basic options available:

The public policy issue which this Discussion Paper considers is generated, in large part, by the manner in which retirement savings in a pension fund and retirement funds held in a registered retirement savings plan (RRSP) are addressed differently under provincial and federal legislation in the context of debt enforcement. Simply put, RRSPs held outside an insurance contract are subject to exigibility while pensions are not. For reasons which will be outlined in greater detail below, it is apparent that this discrepancy has occurred more as a matter of accident than design. Accordingly, the options in seeking to address this inequity, while not simple, are relatively clear:

(a) Status Quo.

(b) Remove the protection from exigibility currently enjoyed by pension funds and insurance contracts.

(c) Extend the protection from exigibility enjoyed by pensions to RRSPs.

Simple fairness dictates that the first option should not be chosen until such time as the second and third options have been explored. Following such consideration, the merits of the other options may more fairly be compared to any identified advantages or disadvantages of the status quo.

Even if removal of the protection from exigibility for pension funds and insurance contracts were considered to be a technically viable option, it is an option for which there has been little public demand. It can be anticipated that such an initiative would be strongly opposed by those who currently hold such funds and have conducted their affairs with this existing exemption in mind. With respect to pension funds, the A locked in @ nature of these legislatively controlled funds suggests that there has not been widespread abuse of this protection from exigibility and, further, that it has been relatively successful in achieving its apparent policy goal of providing retirement income for pension members. In other words, it is not at all clear that it is A broken .

It is therefore the third option that the ULC feels compelled to consider. Accordingly, at the direction of the ULC, this Discussion Paper is intended to serve as an exploration of the issues presented by the extension of the existing exemption from exigibility for insurance contracts and pensions to RRSPs. This Discussion Paper is presented for consultation purposes only and does not represent the definitive position of the ULC.

The second substantive change was in the tone of the paper itself. Submissions were changed to inquiries and recommendations became questions which were set out in the form of a questionnaire for the consultation group to consider and to respond to (see appendix A).

Rather than a reiteration of the arguments presented in the Discussion Paper itself, the intention of this report will be to summarize for the ULC the substance of the responses which were received, highlight the issues which are central to any decision with respect to this overall proposal and, finally, to recommend a course of action for the ULC to consider.

II. SUMMARY OF RESPONSES

The Working Group Discussion Paper and questionnaire was again sent out to the consultation list established by the Alberta Commissioners during the initial round of consultations on this project (see appendix B). Of necessity, this report is restricted to those responses which were received at the time of preparation of this report. Perhaps not surprisingly, the volunteer-based Seniors' and Consumers' associations were in many cases unable to dedicate the time and human resources necessary to provide a substantive response, however, the responses that were received from these sectors do provide some indication of their general reactions with respect to these issues.

Those organizations which did respond to the questionnaire expressed considerable interest in the overall issue and some expressed the view that the ULC was the appropriate policy vehicle for the development of a national approach to the existing inequity in the treatment of retirement income instruments. Very few of the respondents indicated a preference for the status quo. In general terms, to the extent that the initial goal of the consultation was to take a reading of whether change was desirable or required, a very clear, albeit not unanimous, message in favour of change was received (in particular the Canadian Bankers Association indicated that the banking industry has mixed views on the question). The more specific issue of what form such change should take is, of course, the subject of this report.

In responding to the questionnaire, the consultees were asked to proceed through a series of questions designed to require them to consider not only the initial choices which must be made to address this issue, but also some of the consequences of those policy choices as one proceeded through the logical sequence of actually implementing an extension of the exemption from eligibility for RPPs and insurance retirement instruments to RRSPs and DPSPs. Having completed this largely sequential process, the final question in the questionnaire (#12) then represented somewhat of an omnibus summary of the key elements of the proposal. The responses of the consultation group to this question will form the basis for this general summary of the results of the consultation (see also the more detailed chart of specific responses).

A Question #12: Should the ULC direct that uniform legislation be prepared to implement a proposed exemption from exigibility for future income security plans that would have the following constituent elements:

- (a) The extension of the exemption from exigibility of RPPs to RRSPs and DPSPs;
- (b) That funds held in RRSPs and DPSPs would enjoy the protection of this exemption only so long as they retain their status as RRSPs and DPSPs under the *ITA [Income Tax Act]*;
- (c) That the *BIA [Bankruptcy and Insolvency Act]* be amended to provide that continued RRSP/DPSP

status under the *ITA* is a statutory condition of discharge for any bankrupt who utilizes this exemption and that failure to comply with this condition would annul the order of discharge and re-establish the debt;

- (d) That the exemption from exigibility be extended to an RRIF based on these exempt funds;
- (e) That any payments out of an exempt RRIF would be subject to exigibility; and,
- (f) That the exemption would apply to new debt only on all RRSPs and DPSPs?

(a) The extension of the exemption from exigibility of RPPs to RRSPs and DPSPs:

As noted, the strong majority of respondents supported the development of uniform draft legislation to address the inequity in the manner in which the existing provincial and federal legislative framework differentiated between retirement income instruments. The opposing view was, however, expressed that the immediate needs of the creditor outweighed the long term retirement needs of the debtor and that, accordingly, extension of the exemption to RRSPs and DPSPs was undesirable. It was not clear, however, whether those expressing

this position supported the removal of the exemption from exigibility for pensions and life insurance retirement instruments for the same reasons.

Equity in the legal treatment of insurance, pension and RRSP retirement instruments was the dominant theme amongst those respondents supporting extension of the exemption. It was noted by several respondents that self-employed individuals were at a marked disadvantage to those who enjoyed the protection provided by pension vehicles. It was also noted that life insurance retirement vehicles used their exemption status as a selling point for these instruments and that this created a competitive disadvantage which could not be justified on a policy basis.

Of the responses received, approximately 90% supported the extension of the exemption from exigibility of RPPs to RRSPs and DPSPs.

(b) That funds held in RRSPs and DPSPs would enjoy the protection of this exemption only so long as they retain their status as RRSPs and DPSPs under the *ITA*:

This question presumes that if the choice is made to provide an exemption, that exemption must be targeted to ensure that the exemption applies only to the funds intended to be protected. As an alternative to a contractual or statutory A lock-in @ of those funds, this would be achieved by making the exemption conditional on the funds retaining their status as RRSPs and DPSPs under the *ITA*. Insofar as abuse of the exemption remains a particular concern for most respondents, this restriction was viewed as an appropriate method of targeting the exemption through utilization of the existing legislative framework.

While strongly supportive of the overall proposal, the Canadian Insolvency Practitioners Association (C.I.P.A.) indicated that the retention of RRSP or DPSP status was not an essential element of the exemption and that it was not cost effective. It was their view that the exemption process crystallized at the time of bankruptcy or judgment enforcement and that, in the same way that existing exemptions are not usually monitored after that process, this exemption should not be contingent on retaining the assets in the form that was held to be exempt. They expressed the view that to do so created an unreasonable and unnecessary burden on estate administrators in the bankruptcy process.

Of the responses received, approximately 70% were of the view that funds held in RRSPs and DPSPs should enjoy the protection of this exemption only so long as they retain their status as RRSPs and DPSPs under the *ITA*.

(c) That the *BIA* be amended to provide that continued RRSP/DPSP status under the *ITA* is a statutory condition of discharge for any bankrupt who utilizes this exemption and that failure to comply with this condition would annul the order of discharge and re-establish the debt:

This question was intended to further address the perceived concern that an exemption from exigibility would be subject to abuse by bankrupt debtors who availed themselves of

the exemption only to use the exempt funds subsequently for a purpose other than retirement income. Approximately one-half of the respondents supported this proposal as a method of preventing abuse of the funds for non-retirement purposes by a discharged debtor.

It is important to note however that this proposal did not receive uniform support and that those opposed to amending the *BIA* were often those organizations that could be expected to be most familiar with the bankruptcy process. C.I.P.A., the Canadian Life and Health Insurance Association Inc. (C.L.H.I.A.) and the Chartered Accountants of Saskatchewan all opposed amendments to the *BIA*. They argued that the perceived risk of abuse was in fact quite small. When they compared this proposed benefit to the negative impact which keeping the file open required in order to monitor compliance by the debtor, it was their view that it created an unjustifiable disruption and burden on estate administrators. It was also suggested that this approach would run contrary to the policy objective of the *BIA* to allow the bankrupt a new start and that, if needed, the bankruptcy court already had sufficient discretion to address this issue as a condition of discharge. It was also noted that RPPs do not face similar restrictions following discharge of a bankrupt. Even proponents of amending the *BIA* such as the Canadian Bankers Association noted that the change could lead to a need for additional monitoring that would be difficult to establish.

Of the responses received, approximately 50% supported the position that the *BIA* be amended to provide that continued RRSP/DPSP status under the *ITA* is a statutory condition of discharge for any bankrupt who utilizes this exemption and that failure to comply with this condition would annul the order of discharge and re-establish the debt .

(d) That the exemption from exigibility be extended to an RRIF based on these exempt funds:

This question was intended to solicit responses on the need to address the application of an exemption for RRSPs and DPSPs at the time when the funds are removed either voluntarily (pre- age 69) or in compliance with the requirements of the *ITA*. The main rationale cited by respondents for the extension of the exemption to RRIFs based on those funds was that having protected those funds for retirement, to then allow them to be wholly exigible at retirement was undesirable. It was viewed as consistent and appropriate that these funds be convertible to an exempt RRIF or an insurance contract (which is already exempt) in order to protect the accumulated funds for retirement income.

Of the responses received, approximately 95% were of the view that the exemption from exigibility should be extended to an RRIF based on these exempt funds.

(e) That any payments out of an exempt RRIF would be subject to exigibility:

This question presumes support for exempting an RRIF based on exempt funds by asking the further question of whether the payments out of the RRIF would themselves be subject to exigibility. In considering this issue the extent to which the core element of this income would be exempted under provincial legislation was of crucial import. Respondents varied between arguing that if the RRIF is exempt so too should be the entirety of the payments,

to arguing that as with any income, retirement income should be exigible at least to the extent that such payments exceed minimum subsistence requirements. The C.L.H.I.A. noted that recent case law (*Whalley v. Harris Steel Limited* (1998), 46 C.C.L.I. (2nd), (Ont. C.A.)) has held that payments from an exempt instrument are themselves also exempt. Accordingly, it may therefore be necessary to speak specifically to this issue if part or all of such payments were to be exigible.

Of the responses received, approximately 85% were of the view that any payments out of an exempt RRIF should be exigible subject to provincial garnishment minimum income level restrictions.

(f) That the exemption would apply to new debt only on all RRSPs and DPSPs:

The final element of Question 12 addressed the difficult issue of implementation. Simplicity and clarity were the motivating factors for those respondents that squarely addressed this issue. Several indicated that they found the need to differentiate between before and after the proclamation date for either the debt or the RRSP/DPSP to be confusing.

Notwithstanding the risk to existing or potential judgment creditors, there was a preference expressed for having the exemption apply to all debt, all RRSPs and DPSPs following a prolonged delay for a well publicized proclamation date that would allow potentially affected creditors the time to make informed decisions.

Of the responses received approximately 40% took the position that the exemption would apply to new debt only on all RRSPs.

It is, of course, difficult to seek to delineate the trends established in the small sample of varied responses received to this complex issue. Nevertheless, it is a necessary exercise in order to assess community reaction to this broad ranging Discussion Paper. The Working Group has concluded that there is a strong majority trend supporting the extension of the existing pension exemption from exigibility for RPPs to RRSPs and DPSPs in the measured fashion contemplated by the Discussion Paper. The specific responses of each of the respondents to the entire questionnaire will be circulated in chart form at the ULC in order to best accommodate late respondents to the questionnaire.

III. ISSUES

The responses to the questionnaires have identified five central policy issues which, in the view of the Working Group, are likely to be determinative in the ULC's consideration of implementation of an exemption for RRSPs and DPSPs from exigibility.

1. Preference of debtor's retirement interests over immediate creditor's interests.

The fundamental threshold issue to consider with respect to extending an exemption from exigibility to RRSPs and DPSPs is whether it is appropriate on a policy basis to value the private retirement funds of a debtor over the immediate rights of a creditor.

In isolation, this issue is particularly difficult to resolve. The Discussion Paper identifies the very real concern that government-sponsored programs may well be insufficient to adequately fund the retirement needs of the majority of Canadians. The policy issue is

therefore framed within the context of a creditor = s legitimate immediate rights against a broader societal risk of being required to fund a debtor's retirement through potentially inadequate state welfare mechanisms because of the lack of private funds (see pages 3 to 10 in the Discussion Paper).

In several of the questionnaires, respondents indicated that the nature of the creditor involved had a significant impact on their response to this threshold issue. Their attitude with respect to accidental creditors such as tort judgment creditors or maintenance creditors was that they were to be viewed as preferential to any retirement interests, while the rights of consensual creditors were viewed as subordinate to that interest. In large part, however, this distinction in the type of creditor was recognized as an exception to the exemption issue rather than as being itself determinative of the overall issue of whether to provide such an exemption.

Notwithstanding the difficulty of this issue in isolation, in the existing context, (that is, where this choice has already been made in favour of the debtors retirement in the case of life insurance and pension retirement instruments), respondents to the questionnaire were very clear. An overwhelming majority of respondents favoured extension of an exemption for RRSPs and DPSPs, and equity in the treatment of retirement instruments was repeatedly identified as the determinative factor in addressing this important threshold issue.

2. Dollar limits on amount to be exempt?

The issue of capping the dollar amount which would be protected by an exemption for RRSPs and DPSPs is one which was favoured by a small number of respondents to the questionnaires. The large majority of respondents concluded that such capping was not desirable given the existing contribution limits for these instruments, the great difficulty in identifying and administering an acceptable national dollar limit and the reality that life insurance and pension retirement instruments did not currently face similar restrictions.

Notwithstanding this considerable consensus against dollar capping, it remains an intuitive first blush response that certain members of the public will undoubtedly have to this issue. It will therefore be essential that the arguments to be marshalled in favour of not capping be well articulated and carefully presented. At its core, this argument rests upon the reality that the amounts in an RRSP to be protected by an exemption are already functionally capped by the carefully restricted contribution limits under the ITA. The proposal is therefore not whether there should be no dollar limits for such an exemption but rather whether the existing dollar limits under the ITA for RRSPs and DPSPs are already sufficient.

3. Debtor Abuse

The issue of debtor abuse was addressed within the Discussion Paper from both the pre- and post-bankruptcy perspectives. Pre-bankruptcy abuse by the debtor was addressed through reference to the existing legislative framework for fraudulent preferences and fraudulent conveyances under provincial and federal legislation and through considering the locking in of an RRSP in a manner similar to that which occurs through pension legislation. Post- bankruptcy abuse was addressed by considering limiting the exemption to only those

funds which retain their status as RRSPs or DPSPs under the *ITA* and through potential amendments to the BIA.

Pre-bankruptcy Abuse:

Like dollar caps, the concept of statutorily (or contractually) locking in an RRSP at the time of purchase in the same way that pensions are locked in has immediate intuitive appeal. It appears to obviate the need to further consider potential debtor abuse while simultaneously championing parity with the existing pension process. Unfortunately, it also appears to contemplate implementation of an entirely new national bureaucracy to police the locking in of such RRSPs which would parallel the existing Superintendent of Pensions process across Canada. As noted in the Discussion Paper at page 18,

Locking in RRSPs/DPSPs can have several disadvantages depending on the option taken:

(a) Locking in at time of opening, particularly on a non-elective basis, makes an RRSP/DPSP less attractive for buyers and sellers. Removing the flexibility of early withdrawals may have the unintended result of reducing the amount of retirement savings. It would certainly negate the use of RRSPs by self-employed individuals and others as an income smoothing device.

(b) Designation by the debtor of the RRSP as exempt and therefore locked in at the time of execution creates a risk of affecting the availability of credit in non-purchase money lending situations. Faced with the potential but unpredictable withdrawal of a significant portion of the exigible assets, the creditor may choose to avoid such uncertainty and instead forgo lending in that circumstance.

(c) Lock in by court application risks creating a new legal industry for RRSP/DPSP related applications to court by debtors or creditors and invites disparities in results between jurisdictions.

(d) A full statutory lock in must be administered by the financial institution, by the government or by both as shown in the administration of pension benefits standards legislation. In the context of RRSPs as currently defined under the *ITA*, this would require tracking of a broad variety of interprovincial and international investments which are readily moved between financial institutions as well as divided and commingled between several RRSPs and DPSPs.

(e) In each of the above noted options, consensus would have to be reached on administrative details such as earliest retirement age and retirement income options. Pension benefits standards legislation is often criticized for its lack of uniformity across jurisdictions.

Notwithstanding these potential concerns, some respondents, notably the Credit Union Central of Canada, expressed the view that the creation of a parallel statutory process to the pension process would be the preferred approach. They did not however express a view

as to whether they would retain their support for a full statutory lock in if there were not a parallel government bureaucracy to support this process.

The majority of respondents to the questionnaire adopted the view that the existing legislative framework surrounding fraudulent conveyances, fraudulent preferences and offences under the *BIA* were adequate to avoid pre-bankruptcy abuse by debtors under an exemption for exigibility for RRSPs. It was their view that, through these existing mechanisms, any active avoidance of creditors by debtors could be adequately addressed. However, the C.I.P.A. did not share this view. It believed that specific legislative changes would be required to prevent abuse.

Post-bankruptcy Abuse:

The methods discussed with respect to preventing post-bankruptcy abuse by a debtor, in addition to locking in as discussed above, were the restriction of the exemption to only those funds which retain RRSP or DPSP status under the *ITA* and through amendments to the *BIA* to further prevent a debtor's early withdrawal of funds. Support for the first proposal regarding retaining status under the *ITA* was all but universal. It was viewed as an appropriate and measured method to effectively target the proposed exemption. Support for the concept of amending the *BIA* to prevent post-bankruptcy abuse was much less uniform. Among those respondents who were against any possible amendments to the *BIA*, the rationale ranged from simple fatalism i.e., changes to that Act are both slow and hard to come by, to more practical concerns regarding the undesirable shifting of the onus to the estate administrators in a bankruptcy and to the creditor to police that process, to more fundamental policy concerns regarding the need for closure for the bankrupt and the creditor within the existing policy framework of the *BIA*.

Those opposed to amending the *BIA* noted that the Bankruptcy Court already possesses sufficient discretion to address the potential for abuse of an exemption through the conditional discharge process. Where the funds in the RRSP were significant and the creditor indicated sufficient interest, the court could itself indicate that early withdrawal of said funds would terminate the discharge and revitalize the debt. They argued that to take this approach in every instance through amendments would be unnecessarily burdensome on the trustee, the debtor and even the creditors themselves.

Notwithstanding this apparent concern with respect to amending the *BIA*, it must be noted that at least from an optics perspective, such amendments would speak directly to the oft mentioned concern of post-bankruptcy abuse. Those respondents who supported such amendments viewed this approach as an important method of ensuring that an exemption provided for retirement funds was not then used for alternative purposes.

4. Exceptions to the Exemption:

The issue of potential exceptions to an overall exemption is a difficult issue which extends beyond the always troublesome and political issue of the exceptions themselves to the efficacy of the proposed overall exemption for exigibility for RRSPs and DPSPs.

A strong majority of respondents indicated that they either understood or strongly supported the need for exceptions to the exemption on grounds such as family maintenance. Some suggested a broad range of exemptions. For example, The Credit Union Central of Canada also referred to criminal restitution, victims of domestic violence, consumer protection and professional liability as potential grounds for exceptions. On the other hand, some respondents -- such as the Chartered Accountants of Saskatchewan and C.I.P.A. -- suggested that exceptions should be kept to a minimum. As noted previously, the type of creditors such as a tort creditor or other such accidental creditor, had a direct impact on the level of support for a retirement based exemption.

This reality presents a number of very real concerns. The overall proposal for an exemption is strongly based on the requirement for a simple, statutorily based solution which does not create a need for a supporting bureaucracy or a stage for endless litigation. The more exceptions which are recognized from this exemption, the more the foundation for the exemption risks collapse under the need for a mechanism to arbitrate such exceptions and other obvious disruptions to the ongoing administration of these RRSPs and DPSPs (see the Discussion Paper at pages 12 and 22-23).

Of equal concern from the ULC perspective is the utter lack of uniformity between jurisdictions with respect to such exceptions. The farm tractor which is viewed as critical and exempt in Saskatchewan is unlikely to be viewed as a policy imperative in certain other jurisdictions. Beyond such regional issues, the priority to be accorded victims for criminal restitution or tort damages, and for losses related to consumer protection or professional liability is either widely disparate between jurisdictions or not yet determined. Even maintenance in the context of pension funds has not been recognized as of sufficient policy import in many jurisdictions to slice through the creditor exemption for exigibility for pension funds.

As noted in the Discussion Paper, the issue of exceptions goes well beyond the parameters of this proposed exemption itself and will undoubtedly be of particular import from a uniformity perspective for any ULC projects regarding the civil enforcement of judgments. Nevertheless, it remains critical to any decision regarding extension of an exemption to RRSPs and DPSPs that the proposed exceptions to such an exemption be carefully considered. The issue may not require uniformity, but it does require consideration, particularly in light of the relative ease with which a debtor can relocate to another jurisdiction.

5. Transition:

Of those respondents who squarely addressed this issue, there was considerable support for the all debt, all RRSPs approach notwithstanding the preference stated for the new debt only on all RRSPs option in the Discussion Paper. The concerns identified in the paper regarding existing creditors losing access to such funds in mid-stream was considered by many respondents to be adequately addressed by a well-publicized uniform proclamation date which was known to the public for over a year in advance. This would allow creditors

who wished to take action to do so without the need for crystallizing either the debt or the RRSPs with a before and after date.

In considering this option, the decision for the ULC would appear to turn largely on an assessment of the number of creditors, particularly accidental creditors, who may not have commenced existing legal actions had they known that RRSP and DPSP funds would not be exigible, and on the proposed duration of an advance publication of the change.

IV. RECOMMENDATIONS

Based on the strong overall support for the proposal as set out in the responses to question 12 in particular, it is recommended that the Uniform Law Conference direct that draft legislation be prepared to extend the existing exemption for life insurance and pension funds to DPSPs and RRSPs.

The consultation would, however, support that the coming into force provision apply to all debt, all RRSPs with sufficient lead time being provided for creditors to make appropriate decisions prior to proclamation.

With respect to amendments to the *BIA*, it is recommended that the proposed amendments be identified but not considered as a condition precedent to proceeding with the proposed exemption. There is an established and perhaps unavoidable process for amendments to the *BIA* and it may be that the consideration of this issue should simply be introduced to that process for further study.

Finally, with respect to exceptions to the exemption itself, the Working Group on the Exigibility of Future Income Security Plans looks forwards to the direction of the full quorum of the ULC with respect to this important issue.

Accordingly, the Working Group **recommends** that:

The ULC direct that uniform legislation be prepared to implement a proposed exemption from exigibility for future income security plans that would have the following constituent elements:

- (a) The extension of the exemption from exigibility of RPPs to RRSPs and DPSPs;
- (b) That funds held in RRSPs and DPSPs would enjoy the protection of this exemption only so long as they retain their status as RRSPs and DPSPs under the *ITA*;
- (c) That the exemption from exigibility be extended to an RRIF based on these exempt funds;
- (d) That any payments out of an exempt RRIF would be subject to exigibility;
- (e) That the exemption would apply to all debt and to all RRSPs and DPSPs with the proclamation date for the legislation publicized well in advance; and,
- (f) That the option of complementary amendments to the *BIA* be considered through the Bankruptcy and Insolvency Advisory Committee (BIAC) consultation process to provide that continued RRSP/DPSP status under the *ITA* is a statutory condition of discharge for any bankrupt who utilizes this exemption and that failure to comply with this condition would annul the order of discharge and re-establish the debt.

The Working Group further **recommends** that an ongoing dialogue be maintained with the respondents to the questionnaire to ensure that the views expressed by these organizations on various issues may be more clearly defined in the drafting process.

Appendix A

RESPONSE FORM FOR CONSULTATION QUESTIONS:

Question #1: Should the existing exemption from exigibility for RPPs be extended to all RRSPs and DPSPs?

Question #2: Should the designation of beneficiaries in the context of an RRSP/DPSP be in any way determinative of its exempt status?

Question #3: How can an exemption of RRSPs/DPSPs from creditor exigibility best be structured to avoid unnecessary administrative costs to third parties and, where possible, excessive tax consequences to the debtor/planholder?

Question #4: Are any further legislative amendments to existing statutory provisions required to ensure the adequate protection of creditors with respect to pre-execution or bankruptcy abuse?

Question #5: Are express dollar limits required or desirable with respect to an RRSP/DPSP exemption from exigibility?

Question #6: Should the exemption from exigibility of the money held in an RRSP/DPSP be bound to the maintenance of that status under the *ITA*?

Question #7: Should the BIA be amended to include continued RRSP status for such funds as a condition of discharge, to impose a positive duty on a debtor to report early withdrawal of exempt funds, and to provide for the annulment of an order of discharge where the discharged bankrupt accesses such funds inappropriately?

Question #8: Upon maturation of the RRSP/DPSP under the *ITA*, should the exemption be extended to a RRIF based on those exempt funds?

Question #9: Should the payments under the RRIF themselves be exigible subject to a minimum exemption?

Question #10: What, if any, exception(s) should be recognized to the proposed exemption from exigibility for RRSPs/DPSPs/RRIFs?

Question #11: Should the exemption from exigibility apply to all funds held in all RRSPs/DPSPs, but only with respect to debt incurred after the proclamation of the implementing legislation?

Question #12: Should the ULC direct that uniform legislation be prepared to implement a proposed exemption from exigibility for future income security plans that would have the

following constituent elements:

- (a) The extension of the exemption from exigibility of RPPs to RRSPs and DPSPs;
- (b) That funds held in RRSPs and DPSPs would enjoy the protection of this exemption only so long as they retain their status as RRSPs and DPSPs under the *ITA*;
- (c) That the *BIA* be amended to provide that continued RRSP/DPSP status under the *ITA* is a statutory condition of discharge for any bankrupt who utilizes this exemption and that failure to comply with this condition would annul the order of discharge and re-establish the debt;
- (d) That the exemption from exigibility be extended to an RRIF based on these exempt funds;
- (e) That any payments out of an exempt RRIF would be subject to exigibility; and,
- (f) That the exemption would apply to A new debt @ only on all RRSPs and DPSPs?

Appendix B

Consultation List

ULC Creditor Access to Income Security Plans Paper and Questionnaire

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