



ONTARIO ASSOCIATION OF INSOLVENCY AND RESTRUCTURING PROFESSIONALS

PRESIDENT'S NEWSLETTER • MARCH 2004

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PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT (PIPEDA)

Personal Information Protection and Electronic Documents Act (PIPEDA)

On January 1, 2004, new Federal Privacy Legislation came into force governing the collection, use and disclosure of personal information by organizations in the course of commercial activity. The OAIRP believes that this general legislation has significant implications for insolvency and restructuring practitioners. We refer you to the December 2003 CAIRP Bulletin 03-5 in this regard. Generally, personal information includes age, name, ID numbers, income, ethnic origin, blood type, social status, opinions/comments/evaluations, disciplinary actions, employee files, credit records, loan records, and medical records. The legislation requires that an organization obtain appropriate and up-front consent for the collection, use, or disclosure of personal information for the specific purposes identified. Penalties for non-compliance include fines up to \$100,000 and imprisonment, not to mention adverse publicity to the organization.

Effective January 1, 2004, an organization is now responsible for:

- Establishing policies and practices
- Designating a Chief Privacy Officer to ensure compliance
- Maintaining responsibility for the transfer of personal information to third parties
- Documentation and identification of the specific purposes of collection
- Physical, organizational and technological safeguards against theft, loss or unauthorized access
- Procedures to promptly investigate all complaints and take appropriate measures.

We encourage members to consider these responsibilities carefully in their practices. We understand that the CAIRP will be issuing a model consent form and policy in this regard shortly. Specific guidance can also be sought from the Office of Privacy Commissioner Enquiries at 800 282 1376. We also encourage you to attend the OAIRP/Ontario Bar Association breakfast program at the Albany Club in Toronto on March 31, 2004.

THE LIMITATIONS ACT, 2002

Also on January 1, 2004, The Limitations Act, 2002, came into effect which generally reduces the time limit for commencing litigation from six years from the date the claim was discoverable to only 2 years. OAIRP members are encouraged to consider this drastic reduction in the timeline for commencing legal actions in their practices. Specifically, tolling or standstill agreements, or contractual terms which amend time limitations, may no longer be enforceable. Secondly, defendants seeking contribution and indemnity from third

parties may no longer be able to wait for the resolution of a main action prior to launching a third party claim. There are likely to be many other situations which will require your evaluation and action to preserve the rights of a debtor, creditor or estate.

In addition to the new PIPEDA legislation, this topic will be covered in the March 31, 2004 OAIRP/OBA joint program.

ADDITIONAL REGISTRAR RESOURCES

It remains the view of the OAIRP Board that the Bankruptcy Court continues to be under resourced to serve the Toronto and surrounding area (from Niagara to Sudbury to Oshawa) for taxations and discharges. Your Association is continuing its efforts to encourage the Attorney General's office to add additional resources. Further, two members of the OAIRP Board sit on a Commercial List User's subcommittee which is addressing operational changes in the Registrar's office.

The Bankruptcy Registrar in Toronto has recently announced a new schedule as follows:

Mondays	Motions
Tuesdays	Taxations of Trustees' statements of receipts and disbursements and Solicitors' accounts
Wednesdays	Bankrupts' applications for discharge
Thursdays	
- Mornings	Short motions (up to 30 minutes)
- Afternoons	Long Matters/Special Appointments and carry over matters
Fridays	Long Matters/Special Appointments

Registrar Sproat also encourages all users of her Court to bring problems to her attention either directly or through the OAIRP.

CAIRP STANDARD OF PROFESSIONAL PRACTICE NUMBER 03-1, INCOME TAX DEBT

In January, 2004, the CAIRP issued Standard Number 03-1: Investigating the Financial Situation of the Proposal Debtor as it Relates to Income Tax Debt. The purpose of this Standard is to establish a consistent method of calculating provisional income tax claims in proposals, as the Income Tax Act does not treat Division I or Consumer Proposals on the same basis as Bankruptcies. This Standard sets out the information

that is required in order for the Canada Revenue Agency to file a provisional proof of claim, the role of the trustee or administrator in assisting the debtor in ensuring the accuracy of the calculation of the estimated pre-proposal income tax debt, and the investigation to be undertaken by the insolvency practitioner. This Standard was circulated by the CAIRP in their January 2004 Bulletin 03-7.

CAIRP MANDATORY PROFESSIONAL DEVELOPMENT PROGRAM

In their August 2003 meeting, the CAIRP Board of Directors resolved to implement a mandatory professional development program for general members. The CAIRP has now developed a schedule of guidelines which list insolvency and restructuring activities which would qualify for professional development hours.

The minimum professional development activities established by CAIRP is 60 hours over a three year period commencing January 1, 2005, with a minimum of 15 hours per year. Of those 15 hours, at least 7 hours must consist of attendance at a seminar or conference. For 2004, minimum professional development activity continues to be voluntary.

NOMINATIONS FOR THE 2004/2005 OAIRP BOARD OF DIRECTORS

At this time, the Nominating Committee of the Board of the OAIRP is asking for nominations for membership on the Board for 2004/2005. We ask that you consider your interest in participating as a member of the OAIRP Board. In addition to participating on various Provincial and National Committees, Board members

are required to attend and participate in monthly meetings of the Board and at the Annual General Meeting in order to further the goals of the Association. This year's Annual General Meeting is scheduled for May 25, 2004 at the Metro Toronto Convention Centre. The Secretary of the Association will be sending out a formal election notice shortly.

TOP ONTARIO CANDIDATES FROM THE NATIONAL INSOLVENCY QUALIFICATION PROGRAM

The Association has annually recognized the top Ontario scholars in each of the NIQP exams. The OAIRP Board wishes to congratulate the following students who achieved the highest marks in the Province in their respective courses and exams. The OAIRP will be awarding \$250 each to the following individuals:

Course 201, September 2003
Michael Baigel, Toronto

National Insolvency Exam, November 2003 (tied)
Jason Zielski, Belleville
Robert Link, Toronto

Well done!

DEEMED ANNULMENTS IN CONSUMER PROPOSALS

You will have recently received the CAIRP's Bulletin 03-6 discussing Swinton J's decision in Re: Wiggins. We have been advised that the Office of the

Superintendent of Bankruptcy will be posting procedures and policy to address this situation shortly.

OSB LIAISON

As part of the implementation of the OAIRP's Strategic Plan, the Board resolved to improve its communication with the various offices of the Superintendent of Bankruptcy. We are pleased to report that two members

of our Board are meeting on a regular basis with representatives of the Hamilton, London and Toronto OSB offices to discuss practice issues.

INSOLVENCY AND RESTRUCTURING PROGRAM CALENDAR

Upcoming professional programs of interest:

March 31, 2004	OAIRP/OBA Joint Program – PIPEDA, Limitations Act
May 25, 2004	CAIRP – Insolvency and Restructuring Forum
June 2, 2004	OBA – Commercial List Golf Tournament/Program
August 19, 2004	CAIRP – 2004 Annual Conference, St. John's Newfoundland

COMMENTS AND SUBMISSIONS ON THE PRESIDENT'S NEWSLETTER ARE WELCOME.



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