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## BANKRUPTCY

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Bankruptcy, not a nice word. It conjures up all sorts of bad impressions. However, on the other hand, it may be the start of a new life. How can that be? Read on. It might be just what you need.

The word bankruptcy has had various origins. I like the one that I read, the origin is Italian. Banco rutto. In other words where you couldn't pay your bills, your creditor broke your work bench. In essence, however, where it came from is not really important. What is important is how it affects you.

**The *Bankruptcy and Insolvency Act*** is Federal Law in Canada and applies to businesses and individuals. We will only focus on individuals in this writing. The bankruptcy laws are a help to people who get into financial problem over their head, and can see no way out. It is not hard to get into a financial mess. Credit is so easily attainable. Credit card companies do not have any idea as to what their competitors are doing. Most companies rely on credit bureau reports, and if you pay your bills on time, you usually qualify for a credit card. Then of course you get unsolicited offers in the mail telling you that you have been approved for a \$10,000.00 line of credit. There are some cheques for you to sign, and pay off some of your other creditors or make that purchase that you always wanted. Meanwhile, you continue to pay on time (the minimum payment) the credit card company gives you a higher limit on your card to reward you for paying on time. The next thing you know you are borrowing from one card to pay the other cards because you don't want to have your credit ruined by not paying on time. You continue to go deeper and deeper into debt all the while hoping some day you can get off this rollercoaster ride. At some point in time, it all catches up with you and the creditors' and collection agencies start calling. They can be very nasty. I know, I used to work for one. Some of the collectors are downright mean. It is their job to collect. The stress from bill collectors is not as bad as the stress that is now being caused in your home life and family because of the increasing size of your debt. You are not alone in this situation. People make mistakes. It is not because you have evil intentions that you are in this mess. In Canada, sixty to seventy thousand people find themselves with this problem, every year. So you are not alone. What to do?

Well bankruptcy doesn't look so bad. Oh sure, it carries a certain stigma to it. You will get over the stigma very quickly. There are many people today who are very wealthy who at some point in time had to declare bankruptcy because they got in over their head. So your first step is to get hold of a trustee. This is a person who is approved by the Federal Government to act as a trustee in bankruptcy.

At your first meeting, he will take down all the information with respect to your debts and assets. Now in order to declare bankruptcy, you have to be insolvent. That means that you owe more than what you are worth, and you are unable to make your commitment on a regular basis. In other words, you cannot pay your bills on time. Bring your credit cards to the meeting. The trustee will cut them up. You cannot keep any of them, and you can no longer apply for credit. You won't need to, as now you will be on a cash basis.

At the first meeting, depending on your situation, the trustee might suggest that you make a proposal to your creditors instead of going bankrupt. For example, he might suggest that you make a proposal to pay 50 cents on the dollar i.e. one half of your debt over a period of time, let's say 5 years. You might have the income to support such a payment. Of course this proposal has to be accepted by the creditors. It usually is as the other alternative is bankruptcy, and there is no doubt they will get less than the proposal.

So you do not qualify for a proposal. You owe way too much money, and do not have the income to allow you to make a proposal. I once had a client who between him and his wife earned \$30,000.00 a year. They had \$260,000.00 worth of credit card debt. You can see why they would not qualify for a proposal. They didn't have any assets either. When you go bankrupt, you lose everything. Well not everything, but let's start with that premise. You lose your house, your car, your savings, your RRSP's, and any cash that you have. You are starting from scratch. Wait a minute. There is a mortgage on your house, and there is hardly any equity e.g. value of house \$80,000.00, mortgage is \$74,000.00. The trustee will not be interested in your home. The bank will probably not be interested in foreclosing on your house as they usually lose money on foreclosures. If the trustee is not interested in your house, you are in a position to make an arrangement with the bank (if they want to) to keep your house, and continue to make payments on the mortgage. You need a place to live anyway,

so pay rent or pay your mortgage. What's the difference? Chances are you will pay your mortgage, and if the bank accepts, then you get to continue to live in your house.

Chances are you get to keep your furniture, even if you bought it on credit. Unless there have been documents registered somewhere to prove that in fact your creditor has a registered security interest in your furniture you will probably keep it. Besides repossessing furniture is costly and used furniture does not sell for very much. That leaves your motor vehicle. Most provinces have legislation that exempts from seizure of motor vehicles of certain value. In New Brunswick, if the vehicle is less than \$6,000.00, and you need it for work, you get to keep it under the Bankruptcy legislation. However, if you purchased your vehicle through a bank or finance company, and they have a registered lien on your vehicle, they have the right to repossess it.

So now you are very embarrassed. Not to worry. No more phone calls, no more harassment, no more threats from bill collectors. You don't cringe when the telephone rings. If a creditor calls, you give him the trustee's number, and hang up. If you are being sued, all actions against you are stopped. You are now on the road to recovery. Other than what you pay the trustee for his fees (very reasonable) or what you pay if a proposal is accepted, your pay cheque is yours. You will have to budget and live on a cash basis for a while. You have no credit, and you cannot get any credit while you are in the bankruptcy process. Living on a cash basis is not that bad. It is good training for when you get your discharge so that you never end up in this situation again.

Once you have declared bankruptcy there will be a meeting held between the trustee, you and the creditors. Most of the time the creditors never show up, but if they do, your trustee will probably handle most of the questions directed at you. You have no reason to fear this meeting.

Now, what debts are covered by the Bankruptcy Act, almost everything. But there are a few exceptions like student loans, and child support payments. If you committed fraud, and have to make restitution, that debt is probably exempt from bankruptcy. Student loans are iffy. If you have a student loan, and because of your situation, have been unable to pay it for a seven to ten year period, it might fall with the bankruptcy. I have seen a few cases where it has. Income taxes are a great one. Revenue Canada has so much power to seize your bank

accounts, as well as other things. When you go bankrupt, Revenue Canada is the same as any other creditor.

During the time you are in the state of bankruptcy, you will have specific instructions to follow from your trustee. Make sure you follow them to the letter. They won't be difficult but you don't want anything to stop you from getting your discharge nine months down the road.

At some point in time, your trustee will apply to have you discharged. This usually is done after nine months. You are now officially free of all your debts other than those which are exempted under the Bankruptcy Act. "But" you say "my credit is ruined". Your credit was already ruined, that's why you went bankrupt. However, all is not lost. You can now start to re-establish your credit, and it won't take you as long as you think.

Up to now, you have been pretty much living on a cash basis. You really should try, and continue to do this. However, it is nice to have a good credit rating. Your first step is to save some money, preferably \$1,000.00 to \$2,000.00 dollars. You then go to your bank, and ask for a secured credit card. In other words, you put up one to two thousand dollars as security, and the credit card company issues you a credit card with the same limit as the amount of your security. The secret is to use your credit card as often as you can, but only if you can pay off the amount you are charging on your credit card immediately. You have already been paying cash for your purchases. You want to keep up this habit. The credit card is for your convenience not to go further in debt. When you pay credit cards immediately, you avoid interest' charges, and at the end of each month the credit card company reports to the credit bureau that you are paying your debts on time. If you are going to get a credit card, get one that gives you air miles. You may as well get something for free while you are re-establishing your credit. You should also try to live on 70 to 80 percent of your income. Sometimes it is not easy, but with no debts other than your living expenses, depending on your income, you should be able to. At the least, try to save 10 percent of your pay cheque. This should be the first thing that comes off your cheque. If you get into the habit, saving becomes natural. There is nothing like having some money in your bank account for times when you might have an emergency, or if you lost your home in the bankruptcy, to have the down payment to purchase another home.

So that is bankruptcy in a nut shell. You will have to contact a trustee in Bankruptcy, and they will walk you through the entire procedure in detail. Look at bankruptcy as the first day of the rest of your life. You start off with a clear slate, and do your best to operate on a cash basis other than your mortgage and car payment. I have a client who is 70 years old, and cannot read or write. He was working from the time he was 10 years old. He never borrowed a cent from any bank, never was into financial difficulty. He always spent less then he earned, and in his golden years, has more than enough money to live a grand life, stress free. This is your chance to do the same.

Good Luck!

Martin J. Siscoe