



Innovation, Science and Economic Development Canada

[Home](#) ▫ [About us](#) ▫ [Corporate, Insolvency and Competition Law Policy](#) ▫ [Insolvency](#)
▫ [Bill C-55: clause by clause analysis](#)

Corporate, Insolvency and Competition Law Policy

[First](#) [Previous](#) [Next](#) [View all pages](#)

Archived — CCAA: Duties of the Monitor

Archived Information

Clause by Clause Briefing Book

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts

- [Bill Clause No. 131 - CCAA Section 23](#)
- [Bill Clause No. 131 - CCAA Section 24](#)
- [Bill Clause No. 131 - CCAA Section 25](#)
- [Bill Clause No. 131 - CCAA Section 26](#)
- [Bill Clause No. 131 - CCAA Section 27](#)
- [Bill Clause No. 131 - CCAA Section 28](#)
- [Bill Clause No. 131 - CCAA Section 29](#)
- [Bill Clause No. 131 - CCAA Section 30](#)
- [Bill Clause No. 131 - CCAA Section 31](#)

[Bill Clause No. 131](#)

Section No. 23

Topic: Monitor's Duties

Proposed Wording

23. (1) The monitor shall

- (a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,
 - (i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and
 - (ii) within five days after the order is made,
 - (A) send a copy of the order to every known creditor who has a claim against the company of more than \$1,000, and
 - (B) make a list showing the name and address of those creditors publicly available in the prescribed manner;
- (b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;
- (c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;
- (d) file a report with the court on the state of the company's business and financial affairs, containing prescribed information,
 - (i) without delay after ascertaining any material adverse change in the company's projected cash-flow or financial circumstances,
 - (ii) at least seven days before any meeting of creditors under section 4 or 5,
 - (iii) not later than 45 days, or any longer period that the court may specify, after the end of each of the company's fiscal quarters, and
 - (iv) at any other times that the court may order;
- (e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d);
- (f) file with the Superintendent of Bankruptcy a copy of the documents specified by the regulations and pay the prescribed filing fee;
- (g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;
- (h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the *Bankruptcy and Insolvency Act*, so advise the court without delay after coming to that opinion;
- (i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;
- (j) unless the court otherwise orders, make publicly available, in the prescribed manner, all documents filed with the court, and all court decisions, relating to proceedings held under this

Act in respect the company and provide the company's creditors with information as to how they may access those documents and decisions; and

(k) carry out any other functions in relation to the company that the court may direct.

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

Rationale

The monitor has a significant role in a CCAA proceeding as an officer of the court, overseer of the business and impartial observer of the restructuring. The current legislation does not set out the obligations of the monitor clearly; making it unclear exactly what is expected of the monitor during the restructuring.

Subsection (1) sets out the specific duties required of the monitor. In conjunction with other amendments to professionalize the role of the monitor, the list of duties should provide better context during a restructuring for the monitor, creditors and the debtor as to the role of the monitor.

Subsection (2) provides the monitor with a due diligence defence in respect of the monitor's review of reports prepared by the debtor company. A monitor must rely, to a certain extent, on the information provided by the debtor company, however, the monitor must also take positive steps to confirm that information for the benefit of the creditors and other stakeholders.

Present Law

None.

Senate Recommendation

None.

[top of page](#)

[Bill Clause No. 131](#)

Section No. 24

Topic: Monitor's Rights

Proposed Wording

24. For the purposes of monitoring the company's business and financial affairs, the monitor shall have access to the company's property, including the premises, books, records, data, including data in electronic form, and other financial documents of the company, to the extent that is necessary to adequately assess the company's business and financial affairs.

Rationale

The reform supports the expanded duties of the monitor set out in section 23. As the monitor is required to take greater action to oversee the business and affairs of the debtor company, including

reviewing the cash-flow statement and other financial statements to be filed with the court, the monitor requires the authority to access the information necessary to determine the accuracy of such documents.

Present Law

None.

Senate Recommendation

None.

[top of page](#)

[Bill Clause No. 131](#)

Section No. 25

Topic: Monitor's Obligations

Proposed Wording

25. In exercising any of his or her powers or in performing any of his or her duties and functions, the monitor must act honestly and in good faith and comply with the Code of Ethics referred to in section 13.5 of the *Bankruptcy and Insolvency Act*.

Rationale

The monitor's role will be expanded by the reforms, to create a more effective and independent overseer of the debtor company's business and affairs. To balance the new duties and powers granted by sections 23 and 24 of the Bill, this provision sets guidelines for the behaviour of the monitor by requiring them to comply with the Code of Ethics applicable to trustees.

The provision mirrors the obligations that trustees face in proceedings under the BIA.

Present Law

None.

Senate Recommendation

None.

[top of page](#)

[Bill Clause No. 131](#)

Section No. 26

Topic: Superintendent's Duties – Public Records

Proposed Wording

26. (1) The Superintendent of Bankruptcy must keep, or cause to be kept, in the form that he or she considers appropriate and for the prescribed period, a public record of prescribed information relating

to proceedings under this Act. On request, and on payment of the prescribed fee, the Superintendent of Bankruptcy must provide, or cause to be provided, any information contained in that public record.

(2) The Superintendent of Bankruptcy must keep, or cause to be kept, in the form that he or she considers appropriate and for the prescribed period, any other records relating to the administration of this Act that he or she considers appropriate.

Rationale

Currently, the Office of the Superintendent of Bankruptcy (OSB) is charged with keeping records of BIA proceedings, however, there is no corresponding power in the CCAA. The information obtained regarding BIA proceedings is a tool for research by academics and the government. In addition, collection of the material has allowed the OSB to assist creditors and interested members of the public to understand the events in specific files.

The provisions are similar to provisions in the BIA. Subsection (1) is related to a duty of the monitor to file prescribed documents with the OSB. The subsection requires the OSB to maintain the records and to provide access on a cost recovery basis. Subsection (2) provides that the OSB with the authority to collect and maintain records other than those prescribed. Creditors seeking information regarding a specific matter or academics researching topics in the area of the CCAA may be interested in the material. In addition, the information obtained from the materials will assist the OSB, Industry Canada and other government departments in recognizing trends and policy development.

Present Law

None.

Senate Recommendation

None.

[top of page](#)

[Bill Clause No. 131](#)

Section No. 27

Topic: Superintendent's Duties – Monitor

Proposed Wording

27. The Superintendent of Bankruptcy may apply to the court to review the appointment or conduct of a monitor and may intervene, as though he or she were a party, in any matter or proceeding in court relating to the appointment or conduct of a monitor.

Rationale

Concurrent with amendments giving the Superintendent oversight authority over monitors, this provision provides the Superintendent with the authority to apply to the court or intervene in court hearings relating to the appointment or conduct of a monitor. It is expected that the Superintendent will exercise the power in situations where the monitor has breached the duties imposed by this Act.

Present Law

None.

Senate Recommendation

None.

top of page

[Bill Clause No. 131](#)

Section No. 28

Topic: Superintendent's Duties – Complaints

Proposed Wording

28. The Superintendent of Bankruptcy must receive and keep a record of all complaints regarding the conduct of monitors.

Rationale

Concurrent with amendments giving the Superintendent oversight authority over monitors, this provision charges the Superintendent with keeping a record of public complaints regarding monitors.

The provision mirrors a similar provision in the [BIA](#).

Present Law

None.

Senate Recommendation

None.

top of page

[Bill Clause No. 131](#)

Section No. 29

Topic: Superintendent's Duties – Investigations

Proposed Wording

29. (1) The Superintendent of Bankruptcy may make, or cause to be made, any inquiry or investigation regarding the conduct of monitors that he or she considers appropriate.

(2) For the purpose of the inquiry or investigation, the Superintendent of Bankruptcy or any person whom he or she appoints for the purpose

(a) shall have access to and the right to examine and make copies of all books, records, data, including data in electronic form, documents and papers in the possession or under the control of a monitor under this Act; and

(b) may, with the leave of the court granted on an ex parte application, examine the books, records, data, including data in electronic form, documents and papers relating to any compromise or arrangement to which this Act applies that are in the possession or under the control of any other person designated in the order granting the leave, and for that purpose may under a warrant from the court enter and search any premises.

(3) The Superintendent of Bankruptcy may engage the services of persons having technical or specialized knowledge, and persons to provide administrative services, to assist the Superintendent of Bankruptcy in conducting an inquiry or investigation, and may establish the terms and conditions of their engagement. The remuneration and expenses of those persons, when certified by the Superintendent of Bankruptcy, are payable out of the appropriation for the office of the Superintendent.

Rationale

Currently, monitors are accountable only to the court based solely on the instructions given to them by the court. The intention of the reform is to ensure that persons appointed as monitors are reliable, credible professionals. Concurrent amendments require that monitors be licensed trustees. The Office of the Superintendent of Bankruptcy is responsible for licensing matters related to trustees.

Subsection (1) provides the Superintendent with the authority to investigate the conduct of monitors. This power mirrors the authority of the Superintendent to investigate the conduct of trustees under the BIA.

Subsection (2) provides the Superintendent with the powers necessary to effectively investigate the monitor's conduct. Paragraph (a) provides the Superintendent with the authority to review information within the monitor's control without requiring court approval. Paragraph (b) provides the Superintendent with the means to obtain information from third parties to ensure that a monitor does not defeat an investigation by giving up control or possession of relevant documents.

Subsection (3) provides the Superintendent with the authority to engage experts in connection with the investigation of a monitor. It would not be economically feasible for the OSB to maintain a staff with the full range of legal, financial and technical expertise that may be required from time to time.

The provisions mirror similar provisions in the BIA.

Present Law

None.

Senate Recommendation

None.

[top of page](#)

[Bill Clause No. 131](#)

Section No. 30

Topic: Superintendent's Powers

Proposed Wording

30. (1) If, after making or causing to be made an inquiry or investigation into the conduct of a monitor, it appears to the Superintendent of Bankruptcy that the monitor has not fully complied with this Act and its regulations or that it is in the public interest to do so, the Superintendent of Bankruptcy may

(a) cancel or suspend the monitor's licence as a trustee under the *Bankruptcy and Insolvency Act*, or

(b) place any condition or limitation on the licence that he or she considers appropriate.

(2) Before deciding whether to exercise any of the powers referred to in subsection (1), the Superintendent of Bankruptcy shall send the monitor written notice of the powers that the Superintendent may exercise and the reasons why they may be exercised and afford the monitor a reasonable opportunity for a hearing.

(3) The Superintendent of Bankruptcy may, for the purpose of the hearing, issue a subpoena or other request or summons, requiring and commanding any person named in it

(a) to appear at the time and place mentioned in it;

(b) to testify to all matters within his or her knowledge relative to the subject-matter of the inquiry or investigation into the conduct of the monitor; and

(c) to bring and produce any books, records, data, including data in electronic form, documents or papers in the person's possession or under the control of the person relative to the subject-matter of the inquiry or investigation.

(4) A person may be summoned from any part of Canada by virtue of a subpoena, request or summons issued under subsection (3).

(5) Any person summoned under subsection (3) is entitled to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

(6) At the hearing, the Superintendent of Bankruptcy

(a) has the power to administer oaths;

(b) is not bound by any legal or technical rules of evidence in conducting the hearing;

(c) shall deal with the matters set out in the notice of the hearing as informally and expeditiously as the circumstances and a consideration of fairness permit; and

(d) shall cause a summary of any oral evidence to be made in writing.

(7) The notice referred to in subsection (2) and, if applicable, the summary of oral evidence referred to in paragraph (6)(d), together with any documentary evidence that the Superintendent of Bankruptcy receives in evidence, form the record of the hearing, and that record and the hearing are public unless the Superintendent of Bankruptcy is satisfied that personal or other matters that may be disclosed are of such a nature that the desirability of avoiding public disclosure of those matters, in the interest of a third party or in the public interest, outweighs the desirability of the access by the public to information about those matters.

(8) The decision of the Superintendent of Bankruptcy after the hearing, together with the reasons for the decision, must be given in writing to the monitor not later than three months after the conclusion of the hearing, and is public.

(9) A decision of the Superintendent of Bankruptcy given under subsection (8) is deemed to be a decision of a federal board, commission or other tribunal that may be reviewed and set aside under the *Federal Courts Act*.

Rationale

The CCAA provides only a modest outline for the process of corporate restructuring, leaving flexibility for creative responses to novel situations. The monitor is a key part of the process, but there is currently little oversight of the monitor's actions during the restructuring process to ensure that the monitor acts fairly and equitably.

Section 30 is modelled on sections 14.01 and 14.02 of the BIA. It provides that the Superintendent may take complaints about the conduct of the monitor, investigate such complaints and intervene in proceedings in respect of the conduct of the monitor or appointment of a monitor. Monitors will be required to be licensed trustees. Accordingly, the CCAA will provide that the Superintendent shall have powers to affect the trustee licence of a monitor on the same grounds and with the same restrictions as the Superintendent has under the BIA to affect the licence of a trustee.

This provision is aimed at enhancing transparency and providing all parties with clearer expectations.

Present Law

None.

Senate Recommendation

None.

top of page

Bill Clause No. 131

Section No. 31

Topic: Delegation of Superintendent's Powers

Proposed Wording

31. (1) The Superintendent of Bankruptcy may, in writing, authorize any person to exercise or perform, subject to any terms and conditions that he or she may specify in the authorization, any of the powers, duties or functions of the Superintendent of Bankruptcy under sections 29 and 30.

(2) If the Superintendent of Bankruptcy delegates in accordance with subsection (1), the Superintendent or the delegate must give notice of the delegation in the prescribed manner to any monitor who may be affected by the delegation.

Rationale

Concurrent with amendments giving the Superintendent oversight authority over monitors, this provision provides that the Superintendent may delegate that oversight authority to another person.

This provision mirrors a similar provision in the [BIA](#).

Present Law

None.

Senate Recommendation

None.

[First](#) [Previous](#) [Next](#) [View all pages](#)



Date modified: 2011-09-06

[Terms and conditions](#) | [Transparency](#)

About us

[Our organization](#)

[Our ministers](#)

[Publications](#)

[Policies and research](#)

[Careers](#)

News

[Media advisories](#)

[News releases](#)

[Speeches](#)

[Statements](#)

[Photo gallery](#)

[Videos](#)

Contact us

[By phone](#)

[By email](#)

[By mail](#)

[Access to information](#)

Stay connected



[Email subscriptions](#)

[RSS feeds](#)

[Public consultations](#)