

Alberta Model Court Orders

2014 Updated Information Package

Purpose: To provide guidance to Licensed Insolvency Trustees in the preparation of various Court Orders relating to the discharge of a bankrupt in the following areas:

- i. Supplementary Documents
- ii. Model Bankruptcy Orders and Commentary
- iii. List and Use of Sample Clauses
- iv. Modifications to Orders
- v. List of Section 173 Facts

The information contained in this package was drafted with careful consideration and involvement of members of AAIRP, the Courts and the Office of the Superintendent of Bankruptcy.

Supplementary Documents for Court

The Courts have provided guidance on important documents which should be **available** to the Registrar at a discharge hearing.

In the preferred order, they are:

1. Draft Order
 - Deviations from the Model orders provided in this package must be brought to the Registrar's attention.
2. Section 170 Report
 - Causes of previous bankruptcies should be reflected in this report.
3. Amended Section 170 Report / Licensed Insolvency Trustee's Supplementary Report
4. Claims Register
 - The register must be filed with the Section 170 and Licensed Insolvency Trustee's Supplementary Reports.
5. Statement of Affairs
6. Copy of transcript of Examination by Official Receiver and the Official Receiver's Report, if applicable
7. Surplus income calculation spreadsheet
 - Accompanied by the three (3) most recent income and expense statements.
8. Any other documentation that may be applicable
 - Copy of self-exclusion from gambling
 - Letter from outside counsellor regarding treatment for non-budgetary causes
 - Current dated consent agreement (section 68)
 - Any other documents pertinent to the bankrupt's conduct which could impact the discharge
9. If the bankrupt is self-employed, proof of tax remittances paid during the post-bankruptcy period, if any

Model Orders and Commentary

| Order Type | Wording | Commentary |
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| <p>1. Section 68</p> | <p>Upon the application of [], Licensed Insolvency Trustee of the Estate of [], a bankrupt who filed an assignment on the [] day of [];</p> <p>And upon the Registrar being satisfied that all interested parties have been served with notice of this hearing;</p> <p>And upon reading the affidavit (or report) of [];</p> <p>And upon hearing from the Licensed Insolvency Trustee;</p> <p>(If applicable) Any upon hearing from the bankrupt on his/her own behalf;</p> <p>It is ordered that the Licensed Insolvency Trustee is hereby authorized to attach an amount up to \$[] per month of the bankrupt's employment income from [Name of Employer], and from any subsequent employer, pursuant to Section 68 of the <i>Bankruptcy and Insolvency Act</i>, until the sum of \$[] has been paid or until further written notice from the Licensed Insolvency Trustee. Payments shall be made to the Licensed Insolvency Trustee at the address listed above.</p> | <ul style="list-style-type: none"> • Such an order may require additional clauses (see ii. Sample Clauses). • A signed Consent by the debtor agreeing to the wage garnishment should be included in the supporting documentation. • If Consent has not been given, the Licensed Insolvency Trustee must provide proof of service on the bankrupt to establish that they are aware of the application being made by the Licensed Insolvency Trustee for such an Order. • The Licensed Insolvency Trustee must be prepared to explain the calculation of the payment being sought in the Order (i.e. The bankrupt reported [] number of months of income reflecting an average surplus income payment requirement of \$[.] |
| <p>2. Order Setting Conditions of Bankrupt's Discharge</p> | <p>Upon the application of [], a bankrupt, who filed an assignment on the [] day of [];</p> <p>And upon the Registrar being satisfied that all interested parties have been served with notice of this hearing;</p> <p>And upon reading the Report of the Licensed Insolvency Trustee as to the bankrupt's conduct and affairs;</p> <p>And upon hearing the Licensed Insolvency Trustee;</p> <p>(If applicable) And upon hearing from the bankrupt;</p> <p>And whereas proof has been made of the following fact(s) under Section 173 of the <i>Bankruptcy and Insolvency Act</i>, namely;</p> <p>[cut and paste section here]</p> | <ul style="list-style-type: none"> • The amount to be paid pursuant to a Conditional Order is the amount owing from the date of the Order. No reference is needed for any amounts paid prior to the Order being granted. • Do not bold the payment terms in the Conditional Order unless the payment terms wording deviates from the model wording. • Not all Orders containing the optional tax clause will be granted. The Licensed Insolvency Trustee must be prepared to explain the reasoning for the direction of subsequent year income tax refunds from the debtor to the |

| | <p>It is ordered that the bankrupt shall pay to the Licensed Insolvency Trustee, the sum of \$[] by making minimum monthly instalments of \$[], commencing on the [] day of each and every month thereafter until paid in full, (or</p> <p>whatever terms are agreed, like a lump sum by a certain date) with the right to prepay in part or in full at any time.</p> <p>(Optional Tax Clause) It is further ordered that notwithstanding the discharge of the Licensed Insolvency Trustee, Canada Revenue Agency shall forward all subsequent year income tax refunds of the bankrupt directly to and they shall remain with the Licensed Insolvency Trustee until further order of the Court.</p> <p>And upon the Registrar being satisfied that the bankrupt has complied with the conditions in this Order the Licensed Insolvency Trustee may, without notice, apply for the Order of Absolute Discharge – Conditions Complete (suspended for a period of [] months).</p> <p>It is further ordered that if a condition has not been fulfilled or the aggregate of three (3) payments have been missed, the Licensed Insolvency Trustee may proceed to its discharge and creditors’ rights to enforce payment will be reinstated upon the discharge of the Licensed Insolvency Trustee.</p> | <p>Estate. (i.e. Has the debtor acknowledged this re-direction?)</p> |
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| Order Type | Wording | Commentary |
| <p>3. Order of Discharge - Absolute</p> | <p>Upon the application of [], a bankrupt, who filed an assignment on the [] day of [];</p> <p>And upon the Registrar being satisfied that all interested parties have been served with notice of this hearing;</p> <p>And upon reading the report of the Licensed Insolvency Trustee as to the bankrupt’s conduct and affairs;</p> <p>And upon hearing from the Licensed Insolvency Trustee;</p> <p>And upon hearing the bankrupt (if applicable);</p> <p>And whereas proof has not been made of any of the facts mentioned in Section 173 of the <i>Bankruptcy and Insolvency Act</i>, nor has the bankrupt been guilty of any misconduct in relation to his/her property or affairs;</p> <p>It is ordered that the bankrupt is discharged.</p> | |
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| <p>4. Order of Discharge – Absolute – Conditions Met</p> | <p>Upon the application of [], a bankrupt, who filed an assignment on the [] day of [],</p> <p>And upon reading the affidavit of []; OR And upon hearing from the Licensed Insolvency Trustee;</p> <p>And whereas the Registrar is satisfied the bankrupt has complied with the Order Setting Conditions of</p> <p>Discharge dated [];</p> <p>It is ordered that the bankrupt is discharged effective [].</p> | <ul style="list-style-type: none"> • If Order is being presented as a Desk Order, delete the line “And upon hearing from the Licensed Insolvency Trustee”. • The Order must be applied for within a reasonable period of time. Otherwise, the Licensed Insolvency Trustee needs to be in court to explain why the “effective date” is not within a reasonable period of time and why the Licensed Insolvency Trustee is seeking the Absolute Order- Conditions Met. • An “effective date” is only to be used by exception (i.e. long delay due to Licensed Insolvency Trustee’s oversight) and on application with an explanation as to why the effective date is being recommended. • A “reasonable” period of time is 2-3 months from the date the debtor fully complied with the terms of the Conditional Order. • If the debtor has not complied with the terms of the Conditional Order in accordance with the schedule anticipated in the Conditional Order, the Licensed Insolvency Trustee must either explain the reasons for the delay in its affidavit submitted with the Desk Order OR proceed with making an application to hear the matter of the bankrupt’s discharge. |
| <p>Order Type</p> | <p>Wording</p> | <p>Commentary</p> |
| <p>5. Order of Absolute discharge (Conditions Met) – Suspended</p> | <p>Same wording as Order of Absolute Discharge (Conditions Met); replace the last paragraph with the following:</p> <p>It is ordered that the bankrupt’s discharge be suspended for a period of [__ months or years] from the date of this Order and that the bankrupt be discharged effective the [] day of [].</p> | |

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| <p>6. Order Adjourning Bankrupt's Discharge Indefinitely</p> | <p>Upon the application of [], a bankrupt, who filed an assignment on the [] day of [];</p> <p>And upon the Registrar being satisfied that all interested parties have been served with notice of this hearing;</p> <p>And upon reading the report of the Licensed Insolvency Trustee as to the bankrupt's conduct and affairs;</p> <p>And upon hearing from the Licensed Insolvency Trustee;</p> <p>(If applicable) And upon hearing from the bankrupt;</p> <p>And whereas proof has been made of the following fact(s) under Section 173 of the <i>Bankruptcy and Insolvency Act</i>, namely; [cut and paste section here]</p> <p>It is ordered that the application for discharge of the bankrupt be and is hereby adjourned indefinitely.</p> <p>(Optional Tax Clause) It is further ordered that notwithstanding the discharge of the Licensed Insolvency Trustee, Canada Revenue Agency shall forward all subsequent year income tax refunds of the bankrupt directly to and they shall remain with the Licensed Insolvency Trustee until further order of the Court.</p> <p>It is further ordered that the Licensed Insolvency Trustee has leave to proceed to its discharge and creditors' rights to enforce payment will be reinstated upon the discharge of the Licensed Insolvency Trustee.</p> | <ul style="list-style-type: none"> • The Order must stand on its own to explain the reason(s) the discharge application has been adjourned. • If the bankrupt has failed to submit certain income and expense statements, list the specific statements outstanding. • If the bankrupt has failed to attend one or both counselling sessions, indicate it. • Not all Orders containing the optional tax clause will be granted. The Licensed Insolvency Trustee must be prepared to explain the reasoning for the direction of subsequent year income tax refunds from the debtor to the Estate. • NOTE: The optional tax clause provides the holding of subsequent year income tax refunds in-trust subject to further direction by the Court. Until such time, the Licensed Insolvency Trustee cannot distribute the funds. |
| <p>7. Order Compelling Bankrupt</p> | <p>Upon the application of [], Licensed Insolvency Trustee of the estate of [];</p> <p>And upon the Registrar being satisfied that all interested parties have been served with notice of this hearing;</p> <p>And upon reading the application/affidavit/report of the Licensed Insolvency Trustee as to the bankrupt's conduct and affairs;</p> <p>And upon hearing from the Licensed Insolvency Trustee;</p> | <ul style="list-style-type: none"> • Licensed Insolvency Trustee should be seeking "Adjourned Order Compelling Bankrupt" order if the facts and circumstances warrant it. Specifically, where the Court requires certain information to issue a reasoned final decision, the Court directs that the bankrupt remedy outstanding deficiencies within a specific time period (e.g. 3 months) and requires the Licensed Insolvency Trustee to return |

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| | <p>(If applicable) And upon hearing from the bankrupt;</p> <p>And whereas proof has been made of the following fact(s) under Section 173 of the <i>Bankruptcy and Insolvency Act</i>, namely; [cut and paste section here]</p> <p>It is ordered that the bankrupt is to [set out the requirement and outstanding duties with dates for completion].</p> <p>(Optional Tax Clause) It is further ordered that notwithstanding the discharge of the Licensed Insolvency Trustee, Canada Revenue Agency shall forward all subsequent year income tax refunds of the bankrupt directly to and they shall remain with the Licensed Insolvency Trustee until further order of the Court.</p> <p>It is further ordered that if the bankrupt fails to comply with any of the terms of this Order, the Licensed Insolvency Trustee has leave to proceed to its discharge and creditors’ rights to enforce payment will be reinstated upon the discharge of the Licensed Insolvency Trustee.</p> <p>The bankrupt’s application for discharge is hereby adjourned indefinitely.</p> | <ul style="list-style-type: none"> the matter to court for final disposition. The bankrupt should attend the hearing to afford the Court the opportunity to examine the bankrupt. When e-filing this order with the OSB, please ensure that you select “adjourned Order” from drop down menu. |
| Order Type | Wording | Commentary |
| <p>8. Order of Discharge – Refused</p> | <p>Upon the application of [], a bankrupt who made an assignment on the [] day of [];</p> <p>And upon the Registrar being satisfied that all interested parties have been served with notice of this hearing;</p> <p>And upon reading the report of the Licensed Insolvency Trustee as to the bankrupt’s conduct and affairs;</p> <p>And upon hearing from the Licensed Insolvency Trustee;</p> <p>(If applicable) And upon hearing from the bankrupt on his/her own behalf;</p> <p>And whereas proof has been made of the following fact(s) under Section 173 of the <i>Bankruptcy and Insolvency Act</i>, namely; [cut and paste section here]</p> <p>AND/OR</p> <p>And whereas it has been proved that the bankrupt has been guilty of misconduct in relation to his property and affairs in the following respects, namely;</p> | <ul style="list-style-type: none"> Refusals should be reserved for the most egregious cases. |

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| | <p>a) [set out details] b) [set out details]</p> <p>It is ordered that the bankrupt's discharge be refused absolutely and that the bankrupt not be entitled to reapply for a discharge for a period of [] from the date of this Order.</p> | |
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Use of Sample Clauses

Standard wording for the more common clauses included in Orders has been provided. This is not intended to be a comprehensive list, and it is understood that modifications are acceptable or may be required by the presiding Registrar.

Use of these or additional clauses must be BOLDED or highlighted in the Orders.

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| Where OSB has examined bankrupt and/or attended the discharge hearing. | And upon reading the section 170(3) report filed on behalf of the Superintendent of Bankruptcy; and upon hearing [], Senior Bankruptcy Analyst appearing on behalf of the Superintendent of Bankruptcy. |
| Undertaking not to use credit. | <p>It is ordered that the bankrupt execute an undertaking not to apply for credit for a period of [] from the date of this Order, in the form attached as Schedule A to this Order, and provide proof satisfactory to the Licensed Insolvency Trustee that the undertaking has been lodged with the two National Credit Reporting Agencies: Equifax Canada Inc. and Trans Union of Canada.</p> <p><u>Schedule A – Undertaking of Bankrupt</u> I, [], a bankrupt, further to the Order of Registrar [] made on [] day of [] hereby undertakes as follows:</p> <p>I will not apply for, nor will I accept any offer of credit of any kind, directly or indirectly, prior to [date].</p> |
| Addiction | It is ordered that, upon the Registrar being satisfied that: |

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| | <p>a) the bankrupt has undertaken a program to combat his/her [INSERT FORM OF ADDICTION] addiction satisfactory to the Licensed Insolvency Trustee; and</p> <p>b) a period of [] has passed from the date of this Order.</p> |
| Tax compliance provision | <p>It is ordered that the bankrupt provide proof that he/she has filed with Canada Revenue Agency an Income Tax Return for the taxation year(s) [] in accordance with the <i>Income Tax Act</i>; and further provide proof that payment has been made for any amount due to Canada Revenue Agency for the taxation year(s) set out above within the time periods described by the <i>Act</i>.</p> |

Modifications to Orders

In many cases, these model Orders can be presented to Court as they are prepared within this package. However, it is understood that there be instances where modifications to the wording of an Order may be required. Orders with variations to suit the specific circumstances will still be acceptable for presentation to Court, or may be directed by the Registrar hearing the application.

In the event there is a variation from the model orders, the variation must be bolded or highlighted, the Licensed Insolvency Trustee must advise the presiding Registrar of the variance and reason for same, and the Registrar must initial the variant clause indicating that it has been discussed and approved.

Section 173 Facts

Part of a clause or all of these clauses may be used:

(a) the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible;

(b) the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by the bankrupt and as sufficiently disclose the business transactions and financial position of the bankrupt within the period beginning on the day that is three years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;

(c) the bankrupt has continued to trade after becoming aware of being insolvent;

(d) the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities;

(e) the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt's business affairs;

(f) the bankrupt has put any of the bankrupt's creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against the bankrupt;

(g) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, incurred unjustifiable expense by bringing a frivolous or vexatious action;

(h) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, when unable to pay debts as they became due, given an undue preference to any of the bankrupt's creditors;

(i) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, incurred liabilities in order to make the bankrupt's assets equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities;

(j) the bankrupt has on any previous occasion been bankrupt or made a proposal to creditors;

(k) the bankrupt has been guilty of any fraud or fraudulent breach of trust;

(l) the bankrupt has committed any offence under this Act or any other statute in connection with the bankrupt's property, the bankruptcy or the proceedings thereunder;

(m) the bankrupt has failed to comply with a requirement to pay imposed under section 68;

(n) the bankrupt, if the bankrupt could have made a viable proposal, chose bankruptcy rather than a proposal to creditors as the means to resolve the indebtedness; and

(o) the bankrupt has failed to perform the duties imposed on the bankrupt under this Act or to comply with any order of the court.