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Wage Earner Protection Program in Force, July 7, 2008

The Wage Earner Protection Program Act (the “WEPP”) was proclaimed in force as of Monday July 7th, 2008. This is despite the fact that the regulations are not yet in final form and an unusually short period of time was provided for comment on the draft regulations. The “revised” regulations will apparently not come out until July 23, 2008. Despite the fact that the Regulations will only be published later this summer, trustees and receivers will be provided with an OSB communiqué detailing the presumably “final” requirements.

The WEPP provides employees with the opportunity to claim up to \$3000 from the government for unpaid wages and expenses in the six months prior to the bankruptcy or receivership. This claim is given a priority over all other secured and unsecured creditors to the extent of \$2000. “Wages” includes salaries, commissions, compensation for services rendered, vacation pay and other prescribed amounts but does not include severance and termination pay.

Please note that the balance of the change to the Bankruptcy and Insolvency Act and the Companies Creditors Arrangement Act have not yet been declared in force.

To summarize the confusing number of insolvency legislation changes, here is the short chronology.

- June 3, 2005, Bill C-55, 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 was introduced in the House of Commons.
- Bill C-55 received Royal Assent on November 25, 2005, and became Chapter 47 of the Statutes of Canada, 2005.
- Corrective amendments were required to Chapter 47 prior to it coming into force. Those amendments were introduced in the House of Commons as part of Bill C-12, which received Royal Assent on December 14, 2007, and became Chapter 36 of the Statutes of Canada, 2007. Only the WEPP changes are now in force.

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The WEPP does not apply to officers or directors of the bankrupt nor to those who have controlling interests nor those who occupy management positions (defined as those in financial control positions). The regulations clarify the meaning of these provisions.

As noted, the maximum amount payable to the individual is \$3,000 or four times the maximum weekly insurable earnings under the Employment Insurance Act, all of which are less any applicable deductions.

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Inquiries from workers and trustees/receivers may be directed to Service Canada's dedicated toll free WEPP line at 1-866-683-6516 (TTY 1-866-926-9109) or they may visit the Service Canada Web Site www.servicecanada.gc.ca.

The comments on the regulations by the Canadian Association of Insolvency and Restructuring Professionals can be found at [http://www.cairp.ca/english/communications_advo/doc/WEPPA%20Regulation%20\(Final\).doc](http://www.cairp.ca/english/communications_advo/doc/WEPPA%20Regulation%20(Final).doc)

The Regulations, at least as of June 7th, can be read (starting at page 1789) at: <http://gazetteducanada.gc.ca/part1/2008/20080607/pdf/g1-14223.pdf>

There is no current indication of when the BIA or CCAA changes will come into effect.

