



April 27, 2005

The Honourable Jeannot Volpé
Minister of Finance
Centennial Building
P. O. Box 6000
Fredericton NB E3B 5H1

Dear Minister:

RE: Pension Equity in Creditor-Proofing Registered Retirement Savings Plans

I write to urge you to work together with your federal, provincial and territorial counterparts to creditor-proof Registered Retirement Savings Plans (RRSPs).

The Canadian Bar Association is a national association representing over 34,000 jurists, including lawyers, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

Retirement income schemes should provide internal fairness for those who rely more heavily on RRSPs for their retirement income — self-employed professionals and owners of small-and medium-sized businesses. Currently, if an individual declares bankruptcy, creditors can claim RRSP assets, except those held under an insurance contract. In contrast, if employees with a Registered Pension Plan (RPP) declare bankruptcy, creditors are unable to lay claim to their RPP. Self-employed individuals and non-pensioned employees can lose their retirement savings on bankruptcy. Our view is fairness requires equitable treatment for various retirement saving methods.

In May 2003, the CBA National Bankruptcy and Insolvency Section recommended to the Senate Banking Committee that RRSPs should be creditor-proofed and specifically stated only recent contributions (up to two years) be available to creditors upon bankruptcy.¹ The CBA National Bankruptcy and Insolvency Section in its February 2005 submission to Industry Canada on insolvency reform repeated its call for creditor-proofing of RRSPs.² I attach excerpts from those CBA submissions.

1 CBA Submission on "the Five Year Review of the *Bankruptcy and Insolvency Act* and the *Companies Creditors Arrangement Act*" (May 2003) at 23. (attached)

2 CBA Submission on "Insolvency Law Reform" (February 2005) at 51-53. (attached)



In its final report of November 2003, the Senate Banking Committee stated:

The Committee is concerned about the inequity: the inequity between the treatment of registered pension plans and RRSPs, and the inequity between insurance RRSPs and non-insurance RRSPs.³

The Senate Banking Committee recommended that the *Bankruptcy and Insolvency Act* be amended to exempt funds in *all RRSPs* from seizure in bankruptcy, provided that three conditions are met: the RRSP plan is locked in; contributions made in the year period prior to bankruptcy are paid to the trustee for distribution to creditors; and the exempt amount is no greater than a maximum amount set by regulation and increased annually in accordance with increases in the cost of living.⁴

The CBA urges all level of government to act promptly to ensure that all RRSPs are properly creditor-proofed.

Yours truly,

(Original signed by Susan T. McGrath)

Susan T. McGrath

Encls

cc The Honourable Bradley Green, Q.C.
Minister of Justice and Attorney General – New Brunswick

cc Kathleen A. Quigg, President, CBA – New Brunswick

3 Report of the Standing Senate Committee on Banking, Trade and Commerce: "Debtors and Creditors: Sharing The Burden: A Review of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*" (November 2003) at 28. (attached)

4 *Ibid* at 29. See also Saskatchewan's, "*The Registered Plan (Retirement Income) Exemption Act*", S.S. 2002, c. R-13.01. (attached)