

Retirement safe with C-55?: Still just a bill, but it's a step closer to creditor protection for RRSPs

by Jamie Golombek | July 30, 2005

Creditor protection may soon be coming to an RRSP near you.

A new federal bill, if enacted, would exempt all registered retirement savings plans and RRIFs from being liquidated on behalf of creditors, should an investor declare personal bankruptcy.

Currently, many life insurance-based RRSP products, such as segregated funds, and employer-sponsored registered pension plans are exempt, while regular RRSPs are wide open to creditors seeking repayment.

"There is incongruous treatment between people whose employers force them to save for retirement versus those who save on their own," says insolvency expert Natasha MacParland, a lawyer and partner with Davies Ward Phillips & Vineberg LLP in Toronto who has been involved in various industry consultations on amendments to the Bankruptcy and Insolvency Act (BIA) and Companies' Creditors Arrangement Act (CCAA).

Bill C-55 proposes putting RRSP and RRIF savings on the same grounds as registered pension plans and RRSPs issued by insurance companies.

This new legislation would also bring RRSPs in line with their U.S. counterparts: individual retirement accounts, or IRAs. In a unanimous U.S. Supreme Court decision in April of this year, the United States' highest court ruled that creditors could not seize IRAs in bankruptcy proceedings.

Note that, once passed, the new legislation won't give you leave to make a massive RRSP contribution on one day, declare bankruptcy the next and pull all the money out a week later. There are several conditions being contemplated to avoid just such a scenario.

First, the draft Bill proposes RRSP contributions made in the last 12 months prior to bankruptcy will not be exempt from seizure. Second, the seizure exemption would only apply if an individual "locks in" his or her RRSPs, possibly similar to the current locking-in rules for monies transferred from registered pension plans, as in a LIRA.

Finally, there will likely be a cap on the amount that can be exempted, which would be tied to the bankrupt's age and the maximum RRSP contribution limit in the year of bankruptcy, such that older Canadians would be permitted to protect more of their savings than younger ones.

Protecting RRSPs from seizure is consistent with the public policy objective of helping Canadians save for their retirement. evidenced by the tax assistance provided to such

retirement savings vehicles inherent in our tax system. This is especially important to employees who cannot participate in an employer-sponsored pension plan, and for self-employed businesspeople and professionals.

In fact, professionals, especially doctors, have often been the primary target of aggressive marketing by some life insurance advisors who heavily promoted the creditor-protection benefits of segregated funds and other life insurance products.

Parliament is expected to reconvene on Sept. 26, and the second reading of the Bill is expected sometime this fall. That being said, given the minority government's difficulty in passing the 2005 federal budget, it's possible the Bill will die should an election be called in the fall.

Nonetheless, Ottawa has got the ball rolling with Bill C-55 and it's likely just a matter of time before all RRSPs and RRIFs are afforded the same creditor protection treatment as other products.

"It creates a level playing field," says J-P Bernier, vice-president and general counsel with the Canadian Life and Health Insurance Association.

Ms. MacParland adds, "It's the right thing to do."