

Chapter 14: Administration of Income Support

(iii) Bankruptcy

Intent:	To clarify the role of the Department when a recipient or former recipient applies for bankruptcy
Act: (if applicable)	N/A
Regulations:	N/A
Overview: (if applicable)	N/A
Policy:	<ul style="list-style-type: none"> • When a recipient applies for bankruptcy, any overpayment with the Department is reported as a debt. • The trustee will forward a proof of claim form to the Provincial Office for completion by the Department. • Under the Bankruptcy and Insolvency Act, the Crown does not have the status of a preferred creditor as Crown claims under Section 86 also includes departmental overpayments. • Any claim by the Crown for an overpayment which is not barred by Section 178 would be recoverable by civil action, by deductions from Income Support benefits or other actions available under the Income and Employment Support Act. • Recoveries of overpayments, except those created when a recipient was convicted under the Income and Employment Support Act, will cease when bankruptcy process commences. • Any sums received after creditors have petitioned for bankruptcy or after the debtor has made an assignment into bankruptcy, must not be retained by the Department. • If a judgment has been obtained against the bankrupt individual under the Income and Employment Act and has been completely satisfied by executing against the bankrupt individual's property prior to filing for a Petition in Bankruptcy, the Department may retain the amount collected.

- For recipients convicted of an offence under the Income and Employment Support Act, all overpayments which may have been assessed as recoverable outside bankruptcy proceedings, are **valid and can be recovered** even after bankruptcy is completed and the bankrupt discharged.
- After the Order of Discharge, a claim for Income Support that is still unsatisfied can be recovered if the overpayment was caused by the fraudulent misrepresentation of a recipient. Overpayments caused by other means, i.e. a clerical error, cannot be recovered after discharge.
- Once bankruptcy begins, there is no execution against the bankrupt's property and if the Sheriff has seized but not sold property under execution, it must be turned over to the trustee and not the bankrupt.
- New overpayments can be set up if applicable.
- Once an approved Order of Discharge is received by Provincial Office, steps are taken to request a write off of any overpayment included in the order of discharge for which no money was reimbursed by the Minister. The review of the documentation, the preparation of the write off request, and any follow up work is completed at Provincial Office.

Procedure: Client Services Officer:

- return any recoveries made against an overpayment after a recipient files for bankruptcy,
- set recoveries to 0% once a claim has begun unless the overpayment was the result of fraud.

Program Supervisor/Regional Manager:

- provide a detailed record of all overpayments and credits for an existing overpayment to substantiate the present balance of the overpayment as per Section 136(1)(j) of the Bankruptcy and Insolvency Act as the Department can make an unsecured claim.
- request trustee to advise if and when the Bankruptcy is approved.

Authority Level:	Client Services Officer (see Procedure section)
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	Program Supervisor/District Manager (see Procedure section)
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Date revised:	Sept 12, 2007
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