

# focus

on

## Insolvency Law

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### MILITARY DANGER PAY NOT “INCOME” UNDER BIA

In *Re: Duffney* [2007] N.B.J. No. 125 (N.B.Q.B.) the bankruptcy Court considered whether danger pay received by a member of the Canadian Military stationed in Afghanistan was “income” within the definition of paragraph 68(2)(a) of the BIA which reads “total income ... includes ... all revenues of a bankrupt of whatever nature or source”.

In doing so the Court recognized that there was a public policy issue to be considered stating “the Act must be interpreted and administered in a matter which engenders public respect for the efficacy and fairness of the process which seeks to balance the right of an insolvent person to financial rehabilitation with the right of creditors to receive payment to the extent possible”.

The Court noted that the BIA defined “total income” very broadly; encompassing all wages, taxable or otherwise, or any other revenues. This is the case as a Bankrupt will bear the burden of repayment of creditors as far as possible. However, a risk allowance (or danger pay) results from a recognition by the Government of an exemplary and unusually onerous service intended for the benefit of the public. As a result the Court concluded that danger pay is not an expected step in the financial rehabilitation process, and in recognition of balance and fairness, should not be included in the calculations of surplus income.

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