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Bart Sarsh is a lawyer at SimpsonWigle LAW LLP who practices in the areas of bankruptcy/insolvency and commercial litigation. Bart acts for trustees, creditors, debtors, and other stakeholders in the insolvency and restructuring process. He also provides legal opinions on risk management and asset protection strategies to individual and corporate clients. Bart has trial and appellate-level experience, and regularly appears before the Ontario courts.

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What Happens When You Miss Three Payments in a Consumer Proposal?

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If you have made a consumer proposal under the Bankruptcy and Insolvency Act (the "BIA") and you miss 3 payments during the term of the consumer proposal (the "Proposal"), then the Proposal is automatically cancelled. The specific legal term under the BIA is "annulment". It does not matter when each of the payments was missed; as long as there have been 3 missed payments at any time during the term of the Proposal, it will be automatically annulled. Upon annulment, your creditors have the legal right to restart collection proceedings against you.

One option when faced with an automatic annulment of a Proposal is for the trustee to correct it. Within 30 days from the date that your Proposal was annulled, the trustee can take steps to automatically revive the Proposal by providing written notice (the "Notice") to all of your creditors and the Office of the Superintendent of Bankruptcy (the "OSB") that the Proposal will be automatically revived within 60 days from the date on which it was considered annulled. As long as none of your creditors or the OSB files a Notice of Objection to the Notice, your Proposal will be automatically revived.

If, however, the trustee is unable to provide the Notice of automatic revival because the 30 day period has already passed and the trustee is unable or unwilling to apply to the court on your behalf to revive the annulled Proposal, then you will need to go to court and request permission to file another Proposal. You are prevented from making another Proposal until court-ordered permission to make another Proposal is obtained. You should speak to a lawyer practicing in bankruptcy law before applying to the court for permission to make another Proposal because each person's situation is different.

The court takes into account the following two factors in evaluating whether or not to grant permission for you to file another Proposal:

1. A reasonable explanation for the missed payments is provided; and
2. It is likely that the creditors would accept another Proposal from you.

In the majority of cases, the court is concerned with the first factor. Regarding the second factor, the court considers the lack of creditor opposition to the application as meaning that the creditors would not likely oppose the making of a second Proposal.

The BIA has detailed rules that are sensitive to the realities of life, which includes missing payments on a Proposal due to unexpected events that have an impact on your monthly cash flow. While communicating with your trustee about your personal and financial circumstances is important, in some cases, it will be necessary for you to apply to the court and seek permission to file another Proposal if other options are not available. Do not be afraid to get advice and representation from a lawyer familiar with, and who practices, bankruptcy law when you have issues with your Proposal. Advice missed is time and money lost.



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