File No. BK 22-01-05989

THE QUEEN'S BENCH
WINNIPEG CENTRE
in Bankruptcy and Insolvency

IN THE MATTER OF: **THE BANKRUPTCY OF K-STONE CONSTRUCTION INC.**

FILED MAR 14 2022

MOTION BRIEF OF LAZER GRANT INC., TRUSTEE OF THE ESTATE OF K-STONE CONSTRUCTION INC., BANKRUPT

HEARING DATE: Wednesday, April 6, 2022 at 10:00 a.m.

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(File No. 40452/4)

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INDEX

PART I

AUTHORITIES TO BE RELIED UPON

1. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, ss. 2, 34(1), 85(1), 136 and 192;

2. Houlden & Morawetz, *Bankruptcy and Insolvency Law of Canada*, 4th Ed., C§74, F§190 and G§162;

3. *The Partnership Act*, C.C.S.M. c. P30, ss. 41, 47 and 60(3);

4. *Lum v. Jackson*, [1995] B.C.W.L.D. 1290 (BCCA); and

5. *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368.

PART II

DOCUMENTS TO BE RELIED UPON

Tab

1. Affidavit of Cathie Gowryluk affirmed February 10, 2022;
2. Affidavit of Collin LeGall affirmed February 10, 2022;
3. Affidavit of Faye Monaghan sworn February 14, 2022; and
4. Supplementary Affidavit of Collin LeGall affirmed March 9, 2022.

PART III

OVERVIEW

1. Lazer Grant Inc. (the "**Trustee**"), trustee of the estate of K-Stone Construction Inc., bankrupt ("**K-Stone**"), seeks the advice and directions of this Honourable Court regarding the Trustee's authority to liquidate the strip mall known as "Oak's Plaza", located at 449 Main Street in the Town of Oakbank, Manitoba ("**Oak's Plaza**"), which property is an asset of the estate of The Oaks Limited Partnership, bankrupt (the "**Partnership**").

2. In particular, the Trustee seeks the advice and directions of this Honourable Court on the following issue:

> Can the Trustee liquidate Oak's Plaza in accordance with the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "***BIA***"), notwithstanding that the Trustee has not been nominated to act as liquidating trustee by two-thirds of the limited partners of the Partnership pursuant to Article V of the Partnership Agreement dated May 4, 1990 (the "**Partnership Agreement**")?

3. For the reasons set out below, the Trustee submits that it is commercially reasonable, just and appropriate in the circumstances for this Honourable Court to direct the Trustee to liquidate Oak's Plaza notwithstanding that the Trustee has not been nominated to act as liquidating trustee pursuant to the Partnership Agreement.

PART IV

FACTS

Background

4. K-Stone is the general partner of the Partnership.[1]

5. The affairs of the Partnership are governed by the Partnership Agreement.[2]

6. In addition to K-Stone (as general partner), the Partnership consists of 25 limited partners (the "**Limited Partners**").[3]

7. Each of the Limited Partners made a capital contribution of $59,929.66 to the Partnership in or around 1990, at the time that the Partnership was established.[4]

K-Stone's Bankruptcy

8. On February 4, 2022, K-Stone filed an assignment in bankruptcy.[5]

9. Upon the bankruptcy of K-Stone (as general partner of the Partnership), the assets of the Partnership vested in the Trustee.[6]

The Assets and Liabilities of the Partnership

10. The Partnership is the beneficial owner of Oak's Plaza. The Partnership was formed for the explicit purpose of acquiring land in Oakbank, Manitoba and constructing the property that would eventually become Oak's Plaza (the "**Oak's Plaza Property**").[7]

11. With the exception of a caveat that was granted to Manitoba Hydro and Manitoba Telephone System in 1978, title to the Oak's Plaza Property is unencumbered.[8]

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[1] Affidavit of Collin LeGall affirmed February 10, 2022 (the "**LeGall Affidavit**"), para. 5.
[2] LeGall Affidavit, para. 9, Ex. D.
[3] LeGall Affidavit, para. 7.
[4] LeGall Affidavit, para. 8.
[5] LeGall Affidavit, para. 3, Ex. A.
[6] LeGall Affidavit, para. 5.
[7] LeGall Affidavit, para. 10.

12. Oak's Plaza is managed by Schinkel Properties under the direction of the Trustee.[9] It has 25 units, of which, 24 are currently leased.[10] The Trustee is taking steps to maximize occupancy by filling the vacancy and by subdividing a unit that was previously occupied by K-Stone and some related entities.[11]

13. As at the date of bankruptcy on February 4, 2022, Oaks' Plaza has an estimated value of $1,250,000. The Partnership's only other asset, as at the date of bankruptcy, is cash in the amount of $96,539.38.[12]

14. As at the date of bankruptcy on February 4, 2022, the Partnership's largest liability is its indebtedness to the Limited Partners, who, collectively, are owed the total sum of $1,569,341.62.[13] The Partnership's other liabilities are in the total sum of $500,193.46.[14]

15. As the Partnership did not generate sufficient revenue to fund necessary repairs and other expenses related to Oak's Plaza, it was required to borrow funds from third parties. The debts owing to those creditors were accruing prior to the date of bankruptcy, as there were no funds available to pay the amounts outstanding.[15] The third party lenders were not prepared to loan any more funds to the Partnership prior to the date of bankruptcy.[16]

The Agreed Procedure for Liquidation and Attempts Made to Contact the Limited Partners

16. Article V of the Partnership Agreement sets out a procedure for the liquidation of the Partnership's assets upon the dissolution of the Partnership. It can be summarized as follows:

a) the Partnership is automatically dissolved upon the bankruptcy of K-Stone;

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[8] LeGall Affidavit, para. 11, Ex. E.
[9] Supplementary Affidavit of Collin LeGall affirmed March 9, 2022 (the "**Supplementary LeGall Affidavit**"), para. 4.
[10] LeGall Affidavit, para. 12, Ex. F.
[11] Supplementary LeGall Affidavit, para. 7.
[12] LeGall Affidavit, Ex. H.
[13] LeGall Affidavit, para. 17, Ex. H.
[14] LeGall Affidavit, para. 20, Ex. H.
[15] LeGall Affidavit, para. 21.
[16] Supplementary LeGall Affidavit, paras. 9-10.

b) on the dissolution of the Partnership, a liquidating trustee shall sell the properties of the Partnership and, after paying or making provision for the payment of the debts of the Partnership, the remaining proceeds shall be distributed to the Limited Partners in proportion to their respective capital contributions to the Partnership; and

c) the liquidating trustee is to be nominated by two-thirds of the Limited Partners.[17]

17. In late June 2021, at the direction of K-Stone, Collin LeGall of Lazer Grant LLP ("**Mr. LeGall**"), with the assistance of Cathie Gowryluk, former manager of Oak's Plaza ("**Ms. Gowryluk**"), provided notice and a request for liquidation approval to each of the Limited Partners.[18] In particular, on June 28 and 29, 2021, Ms. Gowryluk sent a letter to each of the Limited Partners to the most recent addresses available in the records of the Partnership.[19] Enclosed with each of the 25 letters were two documents, namely: (i) a form entitled "Approval by Limited Partner of The Oaks Limited Partnership"; and (ii) a one-page excerpt (page 24) from the Partnership Agreement (collectively, the "**Notice and Approval Packages**").[20]

18. Of the 25 Notice and Approval Packages that were sent by Ms. Gowryluk to the Limited Partners, 20 were successfully delivered to the intended recipients, and five were returned as undeliverable.[21]

19. Of the 25 Limited Partners, only three have responded to Mr. LeGall to advise that they approve of the Trustee liquidating the assets of the Partnership.[22]

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[17] LeGall Affidavit, para. 22, Ex. D.
[18] LeGall Affidavit, para. 24.
[19] Affidavit of Cathie Gowryluk affirmed February 10, 2022 (the "**Gowryluk Affidavit**"), para. 13, Ex. F.
[20] Gowryluk Affidavit, para. 14, Ex. G.
[21] LeGall Affidavit, para. 25. Gowryluk Affidavit, paras. 15-20, Exs. H, I.
[22] LeGall Affidavit, para. 26, Ex. K.

20. The daughter of another of the Limited Partners, To Yun Keung, contacted Mr. LeGall by email on July 19, 2021 to advise that To Yun Keung passed away in 2014. Mr. LeGall has requested from To Yun Keung's daughter a copy of the Grant of Probate or similar government certificate confirming To Yun Keung's death but, to date, has not received the requested documentation.[23]

21. The Trustee is aware that at least one other of the Limited Partners (in addition to To Yun Keung) is deceased.[24]

22. No other Limited Partners have contacted Mr. LeGall in response to the letters that Ms. Gowryluk sent in June 2021.[25]

23. The Partnership has email addresses associated with only nine of the Limited Partners, specifically:

a) the three Limited Partners who have responded to Mr. LeGall to advise that they approve of the Trustee liquidating the assets of the Partnership;

b) the daughter of To Yun Keung (who passed away in 2014); and

c) five others, who have been in contact with Ms. Gowryluk by email (either directly or through a relative) during the past few years, but who have not responded to the Notice and Approval Packages.[26]

24. The chart found at Exhibit "J" to Mr. LeGall's Affidavit shows: (i) the status of the delivery of the letter that was addressed to each of the Limited Partners; (ii) the most recent contact information available for each of the Limited Partners; and (iii) an indication as to which of the Limited Partners has approved of the proposed liquidation.[27]

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[23] LeGall Affidavit, para. 28, Ex. L.
[24] Gowryluk Affidavit, para. 11.
[25] LeGall Affidavit, para. 29.
[26] Gowryluk Affidavit, paras. 10-12, 22-25.
[27] LeGall Affidavit, para. 25, Ex. J.

PART V

ARGUMENT

Application of the *BIA* to Limited Partnerships

25. The *BIA* applies to limited partnerships. Upon all of the general partners of a limited partnership becoming bankrupt, the property of the limited partnership vests in the trustee.

***BIA*, ss. 85(1) [TAB 1]**

26. The rights and liabilities of a limited partner in a limited partnership against which a bankruptcy order is made or which makes an assignment are governed by the law of the province where the partnership business has been carried on.

Houlden & Morawetz, *Bankruptcy and Insolvency Law of Canada*, 4th Ed., F§190 and G§162(3) [TAB 2]

27. In Manitoba, the dissolution of a limited partnership does not terminate all of the rights between the partners. Section 41 of *The Partnership Act*, C.C.S.M. c. P30 (the "**Partnership Act**"), provides as follows:

> **Continuing authority of partners for purposes of winding-up**
> **41(1)** Subject to subsection (2), after the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue, notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

***The Partnership Act*, C.C.S.M. c. P30, s. 41 [TAB 3]**

See also: *Lum v. Jackson*, [1995] B.C.W.L.D. 1290 (BCCA), paras. 9-10 [TAB 4]

28. It follows from the above that, notwithstanding the bankruptcy of K-Stone and the vesting of the Partnership's assets in the Trustee, the rights and obligations of the Limited Partners, as set out in Article V of the Partnership Agreement, continue to a limited extent. Accordingly, two-thirds of the Limited Partners must nominate the Trustee to act as liquidating trustee of the Partnership, unless this Honourable Court orders otherwise.

The Trustee's Application for Advice and Directions

29. The Trustee is prepared to liquidate Oak's Plaza in a commercially reasonable manner and in accordance with the *BIA*, to maximize recovery for all creditors of the Partnership, including the Limited Partners. However, in light of the provisions found at Article V of the Partnership Agreement, the Trustee requires advice and directions from this Honourable Court, as two-thirds of the Limited Partners have not provided approval to nominate the Trustee to liquidate the Partnership's assets.[28]

30. Subsection 34(1) of the *BIA* provides a licensed insolvency trustee with the ability to apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt. In response to a trustee's application for directions, the court shall give in writing such directions, if any, as to it appear proper in the circumstances.

BIA, ss. 34(1) [TAB 1]

31. Ordinarily, an application for directions is taken to a superior court judge.

Houlden & Morawetz, _supra_, C§74(2) [TAB 2]

BIA, ss. 2, 192 [TAB 1]

The Trustee's Attempts to Obtain Liquidation Approval

32. The names of the Limited Partners and their last-known addresses (as of June 2021) can be found at Exhibit "B" to the Affidavit affirmed by Ms. Gowryluk on February 10, 2022. According to the Partnership's records, 19 of the Limited Partners live in Canada (all in either British Columbia or Ontario) and six live overseas (in either Hong Kong or Taiwan).[29]

33. Since late June 2021, the Trustee has made efforts to obtain approval of the proposed liquidation from each of the Limited Partners. Through those efforts, the Trustee has determined the following:

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[28] LeGall Affidavit, para. 23.
[29] Gowryluk Affidavit, para. 8, Ex. B.

a) the last-known addresses for at least five of the Limited Partners are outdated and no longer accurate (five of the Notice and Approval Packages were undeliverable on the basis that they were unclaimed by the recipient or because the recipient had moved);[30]

b) at least two (and perhaps more) of the Limited Partners are deceased;

c) although 20 of the 25 Notice and Approval Packages were successfully delivered to the intended recipients, only five of the Limited Partners (or relatives thereof) have responded to the Trustee, namely:

i. three of the Limited Partners have approved of the proposed liquidation;[31]

ii. a daughter of one of the Limited Partners (To Yun Keung) has responded to advise that her father is deceased;[32] and

iii. one of the Limited Partners (Ju-Tien Chen) has been in recent contact with Ms. Gowryluk, but has neither expressed approval nor disapproval of the proposed liquidation.[33]

34. Since the time of sending the Notice and Approval Packages in late June 2021, the Trustee has obtained updated contact information for a number of the Limited Partners. A chart showing the up-to-date contact information for each of the Limited Partners is found at Exhibit "J" to the Affidavit affirmed by Mr. LeGall on February 10, 2022.[34]

Liquidation of the Oak's Plaza is Appropriate in the Circumstances

35. The Trustee's efforts to obtain liquidation approval from two-thirds of the Limited Partners have been unsuccessful. It would be highly unlikely, if not impossible, for the

[30] Affidavit of Faye Monaghan sworn February 14, 2022, para. 5.
[31] LeGall Affidavit, para. 26.
[32] LeGall Affidavit, para. 28.
[33] Gowryluk Affidavit, para. 25.
[34] LeGall Affidavit, para. 25, Ex. J.

Trustee to obtain a nomination to act as liquidating trustee in accordance with the terms of Article V of the Partnership Agreement, given that many of the Limited Partners have either: (i) not responded to the Notice and Approval Packages; (ii) passed away; or (iii) moved.

36. The Limited Partners have not expressed disapproval of the Trustee or its proposal to liquidate Oak's Plaza. Similarly, none of the Limited Partners have expressed a preference for a *different* trustee to act as liquidating trustee. Rather, the fact is that the vast majority of the Limited Partners have simply not responded to the Trustee's Notice and Approval Packages.

37. In the circumstances, the Trustee submits that it is commercially reasonable, just and appropriate for this Honourable Court to direct the Trustee to liquidate Oak's Plaza, upon such terms as the court may deem appropriate.

38. The Limited Partners will not suffer any prejudice in the event that the Trustee liquidates Oak's Plaza. To the contrary, the Limited Partners will *benefit* from the proposed liquidation by the Trustee, as the Trustee is an experienced and professional Licensed Insolvency Trustee, and is also an officer of the court. The Limited Partners and this Honourable Court can have confidence that the Trustee will maximize recovery for all creditors of the Partnership, including the Limited Partners, if granted approval to liquidate Oak's Plaza.

39. Moreover, allowing the Trustee to liquidate Oak's Plaza would be commercially reasonable, as doing so would free up the capital necessary to pay the Partnership's creditors, and would prevent further erosion of the financial interests of the Limited Partners. The monthly revenue that Oak's Plaza generates is not sufficient to cover the anticipated costs associated with the continued management of Oak's Plaza over the long term.[35]

[35] Supplementary LeGall Affidavit, para. 10.

40. The Limited Partners live in disparate areas of Canada and the globe, and it would be cost-prohibitive to locate them in an effort to obtain the required two-thirds approval for the Trustee to liquidate.

Distribution of the Net Sale Proceeds

41. In the event that this Honourable Court directs the Trustee to liquidate Oak's Plaza, the Trustee would distribute the net sale proceeds in accordance with the provisions of the *BIA* and the Partnership Act, the latter of which provides the method of distribution of a dissolved limited partnership. Under this distribution, the proceeds realized from the sale of the Partnership's assets would be applied in priority of payment as follows:

a) the costs of administration (including expenses and fees of the Trustee and legal costs);

b) amounts owing to the creditors of the Partnership;

c) amounts owing to the Limited Partners, to be paid on a *pro rata* basis; and

d) the surplus, if any, to be paid to the bankrupt estate of K-Stone.

BIA, ss. 136, 144 [TAB 1]

Houlden & Morawetz, _supra_, F§190 [TAB 2]

***The Partnership Act*, *supra*, ss. 47, 60(3) [TAB 3]**

Costs

42. Ordinarily, the trustee will be awarded its costs of an application for directions out of the assets of the bankrupt estate.

Houlden & Morawetz, _supra_, C§74(6) [TAB 2]

43. The Trustee seeks an Order directing that it and its counsel shall be paid their reasonable fees and disbursements in connection with the within application out of the

bankruptcy estate of K-Stone, or, in the alternative, out of the net sale proceeds arising from the sale of Oak's Plaza, in priority to the amounts owing to the creditors of the Partnership and the Limited Partners.

***BIA*, s. 136 [TAB 1]**

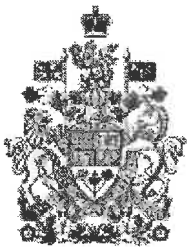
44. In the circumstances, the Trustee submits that it is reasonable and appropriate that it be awarded its costs of the within application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 14th day of March, 2022.

PITBLADO LLP

Per: _____

Catherine E. Howden / Eric N. Blouw
Lawyers for Lazer Grant Inc., Trustee of the Estate of K-Stone Construction Inc.



CANADA

CONSOLIDATION

CODIFICATION

Bankruptcy and Insolvency Act

Loi sur la faillite et l'insolvabilité

R.S.C., 1985, c. B-3

L.R.C. (1985), ch. B-3

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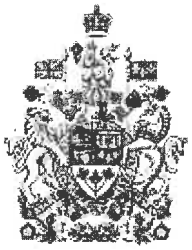

R.S.C., 1985, c. B-3

An Act respecting bankruptcy and insolvency

Short Title

Short title

1 This Act may be cited as the *Bankruptcy and Insolvency Act*.

R.S., 1985, c. B-3, s. 1; 1992, c. 27, s. 2.

Interpretation

Definitions

2 In this Act,

affidavit includes statutory declaration and solemn affirmation; (*affidavit*)

aircraft objects [Repealed, 2012, c. 31, s. 414]

application, with respect to a bankruptcy application filed in a court in the Province of Quebec, means a motion; (*Version anglaise seulement*)

assignment means an assignment filed with the official receiver; (*cession*)

bank means

(a) every bank and every authorized foreign bank within the meaning of section 2 of the *Bank Act*,

(b) every other member of the Canadian Payments Association established by the *Canadian Payments Act*, and

(c) every local cooperative credit society, as defined in subsection 2(1) of the Act referred to in paragraph (b), that is a member of a central cooperative credit society, as defined in that subsection, that is a member of that Association; (*banque*)

L.R.C., 1985, ch. B-3

Loi concernant la faillite et l'insolvabilité

Titre abrégé

Titre abrégé

1 *Loi sur la faillite et l'insolvabilité.*

L.R. (1985), ch. B-3, art. 1; 1992, ch. 27, art. 2.

Définitions et interprétation

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

accord de transfert de titres pour obtention de crédit Accord aux termes duquel une personne insolvable ou un failli transfère la propriété d'un bien en vue de garantir le paiement d'une somme ou l'exécution d'une obligation relativement à un contrat financier admissible. (*title transfer credit support agreement*)

actif à court terme Sommes en espèces, équivalents de trésorerie — notamment les effets négociables et dépôts à vue —, inventaire, comptes à recevoir ou produit de toute opération relative à ces actifs. (*current assets*)

actionnaire S'agissant d'une personne morale ou d'une fiducie de revenu assujetties à la présente loi, est assimilée à l'actionnaire la personne ayant un intérêt dans cette personne morale ou détenant des parts de cette fiducie. (*shareholder*)

administrateur S'agissant d'une personne morale autre qu'une fiducie de revenu, toute personne exerçant les fonctions d'administrateur, indépendamment de son titre, et, s'agissant d'une fiducie de revenu, toute personne exerçant les fonctions de fiduciaire, indépendamment de son titre. (*director*)

bankrupt means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person; (*failli*)

bankruptcy means the state of being bankrupt or the fact of becoming bankrupt; (*faillite*)

bargaining agent means any trade union that has entered into a collective agreement on behalf of the employees of a person; (*agent négociateur*)

child [Repealed, 2000, c. 12, s. 8]

claim provable in bankruptcy, ***provable claim*** or ***claim provable*** includes any claim or liability provable in proceedings under this Act by a creditor; (*réclamation prouvable en matière de faillite* ou *réclamation prouvable*)

collective agreement, in relation to an insolvent person, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the insolvent person and a bargaining agent; (*convention collective*)

common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year; (*conjoint de fait*)

common-law partnership means the relationship between two persons who are common-law partners of each other; (*union de fait*)

corporation means a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated, that is authorized to carry on business in Canada or has an office or property in Canada or an income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, insurance companies, trust companies or loan companies; (*personne morale*)

court, except in paragraphs 178(1)(a) and (a.1) and sections 204.1 to 204.3, means a court referred to in subsection 183(1) or (1.1) or a judge of that court, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act; (*tribunal*)

creditor means a person having a claim provable as a claim under this Act; (*créancier*)

affidavit Sont assimilées à un affidavit une déclaration et une affirmation solennelles. (*affidavit*)

agent négociateur Syndicat ayant conclu une convention collective pour le compte des employés d'une personne. (*bargaining agent*)

banque

a) Les banques et les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*;

b) les membres de l'Association canadienne des paiements créée par la *Loi canadienne sur les paiements*;

c) les sociétés coopératives de crédit locales définies au paragraphe 2(1) de la loi mentionnée à l'alinéa b) et affiliées à une centrale — au sens du même paragraphe — qui est elle-même membre de cette association. (*bank*)

bien Bien de toute nature, qu'il soit situé au Canada ou ailleurs. Sont compris parmi les biens les biens personnels et réels, en droit ou en equity, les sommes d'argent, marchandises, choses non possessoires et terres, ainsi que les obligations, servitudes et toute espèce de domaines, d'intérêts ou de profits, présents ou futurs, acquis ou éventuels, sur des biens, ou en provenant ou s'y rattachant. (*property*)

biens [Abrogée, 2004, ch. 25, art. 7]

biens aéronautiques [Abrogée, 2012, ch. 31, art. 414]

cession Cession déposée chez le séquestre officiel. (*assignment*)

conjoint de fait La personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an. (*common-law partner*)

conseiller juridique Toute personne qualifiée, en vertu du droit de la province, pour donner des avis juridiques. (*legal counsel*)

contrat financier admissible Contrat d'une catégorie prescrite. (*eligible financial contract*)

convention collective S'agissant d'une personne insolvable, s'entend au sens donné à ce terme par les règles de droit applicables aux négociations collectives entre elle et l'agent négociateur. (*collective agreement*)

créancier Personne titulaire d'une réclamation prouvable à ce titre sous le régime de la présente loi. (*creditor*)

Trustee not obliged to carry on business

32 The trustee is not under obligation to carry on the business of the bankrupt where in his opinion the realizable value of the property of the bankrupt is insufficient to protect him fully against possible loss occasioned by so doing and the creditors or inspectors, on demand made by the trustee, neglect or refuse to secure him against such possible loss.

R.S., c. B-3, s. 15.

Le syndic n'est pas tenu de poursuivre le commerce

32 Le syndic n'est pas tenu de continuer le commerce du failli s'il est d'avis que la valeur réalisable des biens est insuffisante pour le protéger complètement contre la possibilité de pertes occasionnées par la continuation du commerce, et si les créanciers ou les inspecteurs, sur demande faite par le syndic, négligent ou refusent de lui donner des garanties contre la possibilité de pareilles pertes.

S.R., ch. B-3, art. 15.

Reimbursement only of trustee's disbursement advances

33 The court may make an order providing for the sale of any or all of the assets of the estate of the bankrupt, either by tender, private sale or public auction, setting out the terms and conditions of the sale and directing that the proceeds from the sale are to be used for the purpose of reimbursing the trustee in respect of any costs that may be owing to the trustee or of any moneys the trustee may have advanced as disbursements for the benefit of the estate.

R.S., 1985, c. B-3, s. 33; 2005, c. 47, s. 25.

Remboursement des avances du syndic

33 Le tribunal peut rendre une ordonnance visant la vente de la totalité ou d'une partie des avoirs de l'actif du failli, soit par soumission, vente de gré à gré ou enchère publique. Cette ordonnance énonce les conditions de la vente et prescrit que le produit de celle-ci soit utilisé afin de rembourser le syndic de tous frais qui peuvent lui être dus ou de toutes sommes d'argent qu'il peut avoir avancées à titre de débours dans l'intérêt de l'actif.

L.R. (1985), ch. B-3, art. 33; 2005, ch. 47, art. 25.

Trustee may apply to court for directions

34 (1) A trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the court shall give in writing such directions, if any, as to it appear proper in the circumstances.

Le syndic peut demander des instructions au tribunal

34 (1) Un syndic peut demander au tribunal des instructions relativement à toute question touchant l'administration de l'actif d'un failli, et le tribunal donne par écrit les instructions, s'il en est, qui peuvent être appropriées aux circonstances.

To report to court after three years

(2) Where an estate has not been fully administered within three years after the bankruptcy, the trustee shall, if requested to do so by the Superintendent, report that fact to the court as soon as practicable thereafter, and the court shall make such order as it considers fit to expedite the administration.

Rapport au tribunal après trois ans

(2) Lorsque l'administration d'un actif n'est pas terminée dans les trois ans qui suivent la faillite, le syndic, si le surintendant lui en fait la demande, présente au tribunal dans les meilleurs délais un rapport à cet effet, et le tribunal rend l'ordonnance qu'il juge opportune aux fins de hâter la liquidation.

Notice to Superintendent's division office

(3) The trustee must send notice to the Superintendent's division office of the day and time when any application for directions made under subsection (1) is to be heard and of the day and time when the trustee intends to report to the court as required by the Superintendent under subsection (2).

R.S., 1985, c. B-3, s. 34; 1992, c. 27, s. 12; 2005, c. 47, s. 26.

Envoi au bureau de la division

(3) Le syndic envoie au bureau de la division un avis de la date et de l'heure de l'audition de la demande d'instructions visée au paragraphe (1) et de la présentation du rapport visé au paragraphe (2).

L.R. (1985), ch. B-3, art. 34; 1992, ch. 27, art. 12; 2005, ch. 47, art. 26.

Redirection of mail

35 (1) Subject to subsection (2), the trustee may, by sending to the Canada Post Corporation

(a) a notice in the prescribed form, and

Réexpédition du courrier

35 (1) Sous réserve du paragraphe (2), le syndic peut, par avis donné à la Société canadienne des postes en la forme prescrite et remise d'une copie du certificat de nomination du syndic, demander qu'on fasse parvenir à lui-même ou à toute personne qu'il désigne le courrier

(b) to prevent a member of the Canadian Payments Association from ceasing to act as a clearing agent or group clearer for an insolvent person in accordance with the *Canadian Payments Act* and the by-laws and rules of that Association.

groupe conformément à la *Loi canadienne sur les paiements* et aux règles et règlements administratifs de l'association.

Permitted actions

(8) Despite section 69.3, the following actions are permitted in respect of an eligible financial contract that is entered into before the time of the bankruptcy, and is terminated on or after that time, but only in accordance with the provisions of that contract:

(a) the netting or setting off or compensation of obligations between the individual bankrupt and the other parties to the eligible financial contract; and

(b) any dealing with financial collateral including

(i) the sale or foreclosure or, in the Province of Quebec, the surrender of financial collateral, and

(ii) the setting off or compensation of financial collateral or the application of the proceeds or value of financial collateral.

Opérations permises

(8) Malgré l'article 69.3, si le contrat financier admissible conclu avant le moment de la faillite est résilié au moment de celle-ci ou par la suite, il est permis d'effectuer les opérations ci-après en conformité avec le contrat :

a) la compensation des obligations entre le failli qui est une personne physique et les autres parties au contrat;

b) toute opération à l'égard de la garantie financière afférente, notamment :

(i) la vente, la demande en forclusion ou, dans la province de Québec, la demande en délaissement,

(ii) la compensation, ou l'affectation de son produit ou de sa valeur.

Net termination values

(9) If net termination values determined in accordance with an eligible financial contract referred to in subsection (8) are owed by the individual bankrupt to another party to the eligible financial contract, that other party is deemed, for the purposes of paragraphs 69(1)(a) and 69.1(1)(a), to be a creditor of the individual bankrupt with a claim provable in bankruptcy in respect of those net termination values.

2005, c. 47, s. 68; 2007, c. 29, s. 98; 2009, c. 31, s. 64.

Valeurs nettes dues à la date de résiliation

(9) Si, aux termes du contrat financier admissible visé au paragraphe (8), des sommes sont dues par le failli qui est une personne physique à une autre partie au contrat au titre de valeurs nettes dues à la date de résiliation, cette autre partie est réputée, pour l'application des alinéas 69(1)a) et 69.1(1)a), être un créancier du failli et avoir une réclamation prouvable en matière de faillite relativement à ces sommes.

2005, ch. 47, art. 68; 2007, ch. 29, art. 98; 2009, ch. 31, art. 64.

Partnership Property

Application to limited partnerships

85 (1) This Act applies to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners of a limited partnership becoming bankrupt, the property of the limited partnership vests in the trustee.

Actions by trustee and bankrupt's partner

(2) If a member of a partnership becomes bankrupt, the court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner, and any release by the partner of the debt or demand to which the action relates is void or, in the Province of Quebec, null.

Biens de sociétés de personnes

Application aux sociétés de personnes en commandite

85 (1) La présente loi s'applique aux sociétés de personnes en commandite de la même manière que si elles étaient des sociétés en nom collectif; et, lorsque tous les membres d'une telle société deviennent en faillite, les biens de celle-ci sont dévolus au syndic.

Actions par le syndic et l'associé du failli

(2) Lorsqu'un membre d'une société de personnes fait faillite, le tribunal peut autoriser le syndic à intenter et à poursuivre une action au nom du syndic et de l'associé du failli; et toute remise, par cet associé, de la dette ou revendication à laquelle se rapporte l'action, est nulle.

Notice to partner

(3) Notice of the application for authority to commence an action under subsection (2) shall be given to the bankrupt's partner, who may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the court directs.

R.S., 1985, c. B-3, s. 85; 2004, c. 25, s. 52.

Crown Interests

Status of Crown claims

86 (1) In relation to a bankruptcy or proposal, all provable claims, including secured claims, of Her Majesty in right of Canada or a province or of any body under an Act respecting workers' compensation, in this section and in section 87 called a "workers' compensation body", rank as unsecured claims.

Exceptions

(2) Subsection (1) does not apply

(a) to claims that are secured by a security or charge of a kind that can be obtained by persons other than Her Majesty or a workers' compensation body

(i) pursuant to any law, or

(ii) pursuant to provisions of federal or provincial legislation, where those provisions do not have as their sole or principal purpose the establishment of a means of securing claims of Her Majesty or of a workers' compensation body; and

(b) to the extent provided in subsection 87(2), to claims that are secured by a security referred to in subsection 87(1), if the security is registered in accordance with that subsection.

Exceptions

(3) Subsection (1) does not affect the operation of

(a) subsections 224(1.2) and (1.3) of the *Income Tax Act*;

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that

Avis à l'associé

(3) Avis de la demande d'autorisation d'intenter l'action est donné à l'associé du failli, et l'associé peut exposer les motifs qu'il a de s'opposer à cette action, et, à sa demande, le tribunal peut, s'il l'estime utile, enjoindre qu'il reçoive sa juste part du produit de l'action; et, s'il ne réclame aucun profit de cette action, il est indemnisé de tous frais à cet égard, suivant que le tribunal l'ordonne.

L.R. (1985), ch. B-3, art. 85; 2004, ch. 25, art. 52.

Droits de la Couronne

Réclamations de la Couronne

86 (1) Dans le cadre d'une faillite ou d'une proposition, les réclamations prouvables — y compris les réclamations garanties — de Sa Majesté du chef du Canada ou d'une province ou d'un organisme compétent au titre d'une loi sur les accidents du travail prennent rang comme réclamations non garanties.

Exceptions

(2) Sont soustraites à l'application du paragraphe (1) :

a) les réclamations garanties par un type de charge ou de sûreté dont toute personne, et non seulement Sa Majesté ou l'organisme, peut se prévaloir au titre de dispositions législatives fédérales ou provinciales n'ayant pas pour seul ou principal objet l'établissement de mécanismes garantissant les réclamations de Sa Majesté ou de l'organisme, ou au titre de toute autre règle de droit;

b) les réclamations garanties aux termes de l'article 87, dans la mesure prévue à cet article.

Effet

(3) Le paragraphe (1) n'a pas pour effet de porter atteinte à l'application des dispositions suivantes :

a) les paragraphes 224(1.2) et (1.3) de la *Loi de l'impôt sur le revenu*;

b) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de

Determination of provable claims

(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

Disallowance by trustee

(2) The trustee may disallow, in whole or in part,

(a) any claim;

(b) any right to a priority under the applicable order of priority set out in this Act; or

(c) any security.

Notice of determination or disallowance

(3) Where the trustee makes a determination under subsection (1.1) or, pursuant to subsection (2), disallows, in whole or in part, any claim, any right to a priority or any security, the trustee shall forthwith provide, in the prescribed manner, to the person whose claim was subject to a determination under subsection (1.1) or whose claim, right to a priority or security was disallowed under subsection (2), a notice in the prescribed form setting out the reasons for the determination or disallowance.

Determination or disallowance final and conclusive

(4) A determination under subsection (1.1) or a disallowance referred to in subsection (2) is final and conclusive unless, within a thirty day period after the service of the notice referred to in subsection (3) or such further time as the court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the General Rules.

Expunge or reduce a proof

(5) The court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

R.S., 1985, c. B-3, s. 135; 1992, c. 1, s. 20, c. 27, s. 53; 1997, c. 12, s. 89.

Réclamations éventuelles et non liquidées

(1.1) Le syndic décide si une réclamation éventuelle ou non liquidée est une réclamation prouvable et, le cas échéant, il l'évalue; sous réserve des autres dispositions du présent article, la réclamation est dès lors réputée prouvée pour le montant de l'évaluation.

Rejet par le syndic

(2) Le syndic peut rejeter, en tout ou en partie, toute réclamation, tout droit à un rang prioritaire dans l'ordre de collocation applicable prévu par la présente loi ou toute garantie.

Avis de la décision

(3) S'il décide qu'une réclamation est prouvable ou s'il rejette, en tout ou en partie, une réclamation, un droit à un rang prioritaire ou une garantie, le syndic en donne sans délai, de la manière prescrite, un avis motivé, en la forme prescrite, à l'intéressé.

Effet de la décision

(4) La décision et le rejet sont définitifs et péremptoires, à moins que, dans les trente jours suivant la signification de l'avis, ou dans tel autre délai que le tribunal peut accorder, sur demande présentée dans les mêmes trente jours, le destinataire de l'avis n'interjette appel devant le tribunal, conformément aux Règles générales, de la décision du syndic.

Rejet total ou partiel d'une preuve

(5) Le tribunal peut rayer ou réduire une preuve de réclamation ou de garantie à la demande d'un créancier ou du débiteur, si le syndic refuse d'intervenir dans l'affaire.

L.R. (1985), ch. B-3, art. 135; 1992, ch. 1, art. 20, ch. 27, art. 53; 1997, ch. 12, art. 89.

Scheme of Distribution

Priority of claims

136 (1) Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:

(a) in the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the

Plan de répartition

Priorité des créances

136 (1) Sous réserve des droits des créanciers garantis, les montants réalisés provenant des biens d'un failli sont distribués d'après l'ordre de priorité de paiement suivant :

legal representative or, in the Province of Quebec, the successors or heirs of the deceased bankrupt;

(b) the costs of administration, in the following order,

(i) the expenses and fees of any person acting under a direction made under paragraph 14.03(1)(a),

(ii) the expenses and fees of the trustee, and

(iii) legal costs;

(c) the levy payable under section 147;

(d) the amount of any wages, salaries, commissions, compensation or disbursements referred to in sections 81.3 and 81.4 that was not paid;

(d.01) the amount equal to the difference a secured creditor would have received but for the operation of sections 81.3 and 81.4 and the amount actually received by the secured creditor;

(d.02) the amount equal to the difference a secured creditor would have received but for the operation of sections 81.5 and 81.6 and the amount actually received by the secured creditor;

(d.1) claims in respect of debts or liabilities referred to in paragraph 178(1)(b) or (c), if provable by virtue of subsection 121(4), for periodic amounts accrued in the year before the date of the bankruptcy that are payable, plus any lump sum amount that is payable;

(e) municipal taxes assessed or levied against the bankrupt, within the two years immediately preceding the bankruptcy, that do not constitute a secured claim against the real property or immovables of the bankrupt, but not exceeding the value of the interest or, in the Province of Quebec, the value of the right of the bankrupt in the property in respect of which the taxes were imposed as declared by the trustee;

(f) the lessor for arrears of rent for a period of three months immediately preceding the bankruptcy and accelerated rent for a period not exceeding three months following the bankruptcy if entitled to accelerated rent under the lease, but the total amount so payable shall not exceed the realization from the property on the premises under lease, and any payment made on account of accelerated rent shall be credited against the amount payable by the trustee for occupation rent;

(g) the fees and costs referred to in subsection 70(2) but only to the extent of the realization from the property exigible thereunder;

a) dans le cas d'un failli décédé, les frais de funérailles et dépenses testamentaires raisonnables, faits par le représentant légal ou, dans la province de Québec, les successibles ou héritiers du failli décédé;

b) les frais d'administration, dans l'ordre suivant :

(i) débours et honoraires de la personne visée à l'alinéa 14.03(1)a),

(ii) débours et honoraires du syndic,

(iii) frais légaux;

c) le prélèvement payable en vertu de l'article 147;

d) les gages, salaires, commissions, rémunérations ou sommes déboursées visés aux articles 81.3 et 81.4 qui n'ont pas été versés;

d.01) la différence entre la somme que le créancier garanti aurait reçue n'eut été l'application des articles 81.3 et 81.4 et celle qu'il reçoit effectivement;

d.02) la différence entre la somme que le créancier garanti aurait reçue n'eut été l'application des articles 81.5 et 81.6 et celle qu'il reçoit effectivement;

d.1) les réclamations pour les dettes ou obligations mentionnées aux alinéas 178(1)b) ou c), si elles constituent des réclamations prouvables en raison du paragraphe 121(4), pour le total des sommes payables périodiquement qui se sont accumulées au cours de l'année qui précède la date de la faillite et de toute somme forfaitaire payable;

e) les taxes municipales établies ou perçues à l'encontre du failli dans les deux années précédant sa faillite et qui ne constituent pas une créance garantie sur les immeubles ou les biens réels du failli, mais ne dépassant pas la valeur de l'intérêt ou, dans la province de Québec, la valeur du droit du failli sur les biens à l'égard desquels ont été imposées les taxes telles qu'elles ont été déclarées par le syndic;

f) le locateur quant aux arriérés de loyer pour une période de trois mois précédant la faillite, et, si une disposition du bail le prévoit, le loyer exigible par anticipation, pour une somme correspondant à trois mois de loyer au plus, mais le montant total ainsi payable ne peut dépasser la somme réalisée sur les biens se trouvant sur les lieux sous bail; tout paiement fait par le locataire au titre d'une telle disposition est porté au compte du montant payable par le syndic pour le loyer d'occupation;

(h) in the case of a bankrupt who became bankrupt before the prescribed date, all indebtedness of the bankrupt under any Act respecting workers' compensation, under any Act respecting unemployment insurance or under any provision of the *Income Tax Act* creating an obligation to pay to Her Majesty amounts that have been deducted or withheld, rateably;

(i) claims resulting from injuries to employees of the bankrupt in respect of which the provisions of any Act respecting workers' compensation do not apply, but only to the extent of moneys received from persons guaranteeing the bankrupt against damages resulting from those injuries; and

(j) in the case of a bankrupt who became bankrupt before the prescribed date, claims of the Crown not mentioned in paragraphs (a) to (i), in right of Canada or any province, rateably notwithstanding any statutory preference to the contrary.

g) les honoraires et droits mentionnés au paragraphe 70(2), mais jusqu'à concurrence seulement de la réalisation des biens exigibles en vertu de ce paragraphe;

h) dans le cas d'un failli qui est devenu un failli avant la date prescrite, toutes dettes contractées par le failli sous l'autorité d'une loi sur les accidents du travail, d'une loi sur l'assurance-chômage, d'une disposition de la *Loi de l'impôt sur le revenu* créant une obligation de rembourser à Sa Majesté des sommes qui ont été déduites ou retenues, au prorata;

i) les réclamations résultant de blessures subies par des employés du failli, que les dispositions d'une loi sur les accidents du travail ne visent pas, mais seulement jusqu'à concurrence des montants d'argent reçus des personnes garantissant le failli contre le préjudice résultant de ces blessures;

j) dans le cas d'un failli qui est devenu un failli avant la date prescrite, les réclamations, non mentionnées aux alinéas a) à i), de Sa Majesté du chef du Canada ou d'une province, au prorata, nonobstant tout privilège prévu par une loi à l'effet contraire.

Payment as funds available

(2) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, payment in accordance with subsection (1) shall be made as soon as funds are available for the purpose.

Balance of claim

(3) A creditor whose rights are restricted by this section is entitled to rank as an unsecured creditor for any balance of claim due him.

R.S., 1985, c. B-3, s. 136; 1992, c. 1, s. 143(E), c. 27, s. 54; 1997, c. 12, s. 90; 2001, c. 4, s. 31; 2004, c. 25, s. 70; 2005, c. 47, s. 88.

Postponement of claims — creditor not at arm's length

137 (1) A creditor who, at any time before the bankruptcy of a debtor, entered into a transaction with the debtor and who was not at arm's length with the debtor at that time is not entitled to claim a dividend in respect of a claim arising out of that transaction until all claims of the other creditors have been satisfied, unless the transaction was in the opinion of the trustee or of the court a proper transaction.

(2) [Repealed, 2007, c. 36, s. 47]

R.S., 1985, c. B-3, s. 137; 2000, c. 12, s. 15; 2005, c. 47, s. 89; 2007, c. 36, s. 47.

138 [Repealed, 2007, c. 36, s. 48]

À acquitter dès que les disponibilités le permettent

(2) Sauf la retenue des sommes qui peuvent être nécessaires pour les frais d'administration ou autrement, le paiement prévu au paragraphe (1) est fait dès qu'il se trouve des disponibilités à cette fin.

Solde de réclamation

(3) Tout créancier dont le présent article restreint les droits prend rang comme créancier non garanti, quant à tout solde de réclamation qui lui est dû.

L.R. (1985), ch. B-3, art. 136; 1992, ch. 1, art. 143(A), ch. 27, art. 54; 1997, ch. 12, art. 90; 2001, ch. 4, art. 31; 2004, ch. 25, art. 70; 2005, ch. 47, art. 88.

Ajournement de réclamations relatives à des transactions

137 (1) Le créancier qui, avant la faillite du débiteur, a conclu une transaction avec celui-ci alors qu'il existait un lien de dépendance entre eux n'a pas droit de réclamer un dividende relativement à une réclamation née de cette transaction jusqu'à ce que toutes les réclamations des autres créanciers aient été satisfaites, sauf si la transaction était, de l'avis du syndic ou du tribunal, une transaction régulière.

(2) [Abrogé, 2007, ch. 36, art. 47]

L.R. (1985), ch. B-3, art. 137; 2000, ch. 12, art. 15; 2005, ch. 47, art. 89; 2007, ch. 36, art. 47.

138 [Abrogé, 2007, ch. 36, art. 48]

Death of bankrupt, witness, etc.

191 In case of the death of the bankrupt or the spouse or common-law partner of a bankrupt or of a witness, whose evidence has been received by any court in any proceedings under this Act, the deposition of the deceased person, purporting to be sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

R.S., 1985, c. B-3, s. 191; R.S., 1985, c. 31 (1st Supp.), s. 76(E); 2000, c. 12, s. 19.

Powers of Registrar

Powers of registrar

192 (1) The registrars of the courts have power and jurisdiction, without limiting the powers otherwise conferred by this Act or the General Rules,

(a) to hear bankruptcy applications and to make bankruptcy orders if they are not opposed;

(b) to hold examinations of bankrupts or other persons;

(c) to grant orders of discharge;

(d) to approve proposals where they are not opposed;

(e) to make interim orders in cases of urgency;

(f) to hear and determine any unopposed or *ex parte* application;

(g) to summon and examine the bankrupt or any person known or suspected to have in his possession property of the bankrupt, or to be indebted to him, or capable of giving information respecting the bankrupt, his dealings or property;

(h) to hear and determine matters relating to proofs of claims whether or not opposed;

(i) to tax or fix costs and to pass accounts;

(j) to hear and determine any matter with the consent of all parties;

(k) to hear and determine any matter relating to practice and procedure in the courts;

(l) to settle and sign all orders and judgments of the courts not settled or signed by a judge and to issue all orders, judgments, warrants or other processes of the courts;

Décès du failli, d'un témoin, etc.

191 En cas de décès du failli, de l'époux ou conjoint de fait d'un failli ou d'un témoin dont la déposition a été reçue par un tribunal dans des procédures intentées sous le régime de la présente loi, la déposition de la personne ainsi décédée, paraissant avoir été scellée du sceau du tribunal, ou une copie de cette déposition paraissant avoir été ainsi scellée, est admissible comme preuve des dépositions qui y sont faites.

L.R. (1985), ch. B-3, art. 191; L.R. (1985), ch. 31 (1er suppl.), art. 76(A); 2000, ch. 12, art. 19.

Pouvoirs du registraire

Pouvoirs du registraire

192 (1) Les registraires des divers tribunaux possèdent les pouvoirs et la juridiction, sans restriction des pouvoirs que confèrent autrement la présente loi ou les Règles générales :

a) d'entendre des requêtes en faillite et de rendre des ordonnances de faillite, lorsqu'elles ne sont pas contestées;

b) d'interroger des faillis ou d'autres personnes;

c) de rendre les ordonnances de libération;

d) d'approuver des propositions concordataires, lorsqu'elles ne sont pas contestées;

e) de rendre des ordonnances provisoires dans les cas d'urgence;

f) d'entendre et de décider toute demande non contestée ou *ex parte*;

g) de sommer et d'interroger le failli ou toute personne connue comme ayant en sa possession ou soupçonnée d'avoir en sa possession des biens du failli ou de lui être endettée, ou d'être en état de donner des renseignements concernant le failli, ses opérations ou ses biens;

h) d'entendre et de décider les demandes relatives à des preuves de réclamations, qu'elles soient contestées ou non;

i) de taxer ou de fixer les frais, et d'approuver les comptes;

j) d'entendre et de décider une affaire avec le consentement de toutes les parties;

k) d'entendre et de décider toute question se rapportant à la pratique et à la procédure des tribunaux;

(m) to perform all necessary administrative duties relating to the practice and procedure in the courts; and

(n) to hear and determine appeals from the decision of a trustee allowing or disallowing a claim.

l) de régler et de signer toutes ordonnances et jugements des tribunaux qu'un juge n'a pas réglés ou signés, et d'émettre toutes ordonnances, tous jugements, mandats ou autres procédures des tribunaux;

m) d'exercer toutes les fonctions administratives nécessaires relativement à la pratique et à la procédure devant les tribunaux;

n) d'entendre et de décider les appels de la décision d'un syndic accordant ou refusant une réclamation.

May be exercised by judge

(2) The powers and jurisdiction conferred by this section or otherwise on a registrar may at any time be exercised by a judge.

Peuvent être exercés par un juge

(2) Les pouvoirs et la juridiction, conférés à un registraire par le présent article ou autrement, peuvent être exercés par un juge.

Registrar may not commit

(3) A registrar has no power to commit for contempt of court.

Mandat de dépôt

(3) Un registraire n'a pas le pouvoir de délivrer un mandat de dépôt pour outrage au tribunal.

Appeal from registrar

(4) A person dissatisfied with an order or decision of a registrar may appeal therefrom to a judge.

Appel du registraire

(4) Toute personne mécontente d'une ordonnance ou d'une décision du registraire peut en interjeter appel à un juge.

Order of registrar

(5) An order made or act done by a registrar in the exercise of his powers and jurisdiction shall be deemed the order or act of the court.

Ordonnance du registraire

(5) Toute ordonnance rendue ou tout acte fait par un registraire dans l'exercice de ses pouvoirs et de sa juridiction est réputé être une ordonnance ou un acte du tribunal.

Reference to judge

(6) A registrar may refer any matter ordinarily within his jurisdiction to a judge for disposition.

Renvoi à un juge par un registraire

(6) Un registraire peut renvoyer toute affaire qui relève ordinairement de sa compétence à un juge pour qu'il en dispose.

Judge may hear

(7) A judge may direct that any matter before a registrar be brought before the judge for hearing and determination.

Renvoi à un juge

(7) Un juge peut ordonner que toute affaire devant un registraire soit portée devant le juge pour audition et décision.

Registrars to act for each other

(8) Any registrar in bankruptcy may act for any other registrar.

R.S., 1985, c. B-3, s. 192; 1992, c. 27, s. 67; 2004, c. 25, s. 88.

Peuvent agir l'un pour l'autre

(8) Tout registraire en matière de faillite peut agir pour tout autre registraire.

L.R. (1985), ch. B-3, art. 192; 1992, ch. 27, art. 67; 2004, ch. 25, art. 88.

Appeals

Court of Appeal

193 Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

Appels

Cour d'appel

193 Sauf disposition expressément contraire, appel est recevable à la Cour d'appel de toute ordonnance ou décision d'un juge du tribunal dans les cas suivants :

HMANALY C§74
Houlden & Morawetz Analysis C§74

Bankruptcy and Insolvency Law of Canada, 4th Edition

THE BANKRUPTCY AND INSOLVENCY ACT

Administrative Officials (s. 34)
L.W. Houlden and Geoffrey B. Morawetz

C§74 — Application for Directions

C§74 — Application for Directions

See s. 34

(1) — *Generally*

The trustee may apply for directions in relation to any matter affecting the administration of the estate of the bankrupt: s. 34(1). Section 34(3) was added to ensure that the Superintendent has notice of any court proceedings where a trustee is seeking directions from the court. This section provides the Superintendent with an opportunity to intervene if it wishes to bring to the court's attention relevant information.

In *Re Canadian Steering Wheel Co.* (1921), 2 C.B.R. 47 (S.C.C.), it was pointed out that s. 34(1) is not intended to convert the court into a solicitor for trustees to whom they may resort for advice in an informal way whenever they happen to be in doubt as to what they should do. Rather it is intended to furnish a means for deciding questions in a summary way, such as is provided by the Ontario Rules of Civil Procedure. In spite of this dictum, it would seem that s. 34(1) has received a wider application and the bankruptcy court has been ready to assist trustees by giving advice in *bona fide* applications. Indeed, if the trustee is in doubt about the proper procedure to be followed in administering the estate, it should seek the advice of the court by means of a motion for directions: see, for example, *Re Minden's Ltd.* (1933), 14 C.B.R. 395, 1933 CarswellOnt 36 (Ont. S.C.); *Re Atlantic Felt Inc.* (1961), 3 C.B.R. (N.S.) 318 (Que. S.C.).

In *Royal Bank v. Schmidtke Millwork (1993) Ltd. (Receiver of)* (2000), 2000 MBQB 69, 17 C.B.R. (4th) 297, 2000 CarswellMan 270, 149 Man. R. (2d) 247 (Man. Q.B.), the court observed that s. 34(1) only permits the trustee to apply for directions, not for advice and directions. However, motions under s. 34(1) are usually brought for the advice and directions of the court.

Section 34 applies to an application by an administrator under a consumer proposal for directions: *Re Schrader* (1999), 13 C.B.R. (4th) 256, 1999 CarswellNS 330 (N.S.S.C.).

The right to apply for directions is given to the trustee *alone*. Accordingly, the trustee does not need the consent of the inspectors to make such an application: *Re Barnard* (1939), 20 C.B.R. 337, 1939 CarswellQue 5 (Que. S.C.); *Re Air Atlantic Ltd.* (1995), 34 C.B.R. (3d) 120, 1995 CarswellNfld 21 (Nfld. T.D.). The court gives advice to the trustee as to what it should do, not to third parties as to what they should do: *Re Lipson* (1924), 4 C.B.R. 432, 1924 CarswellOnt 7 (Ont. S.C.); *Re Air Atlantic Ltd., supra.* If, however, the trustee does not apply for directions in a situation where it should apply, and a third party brings the application, the court may *proprio motu* give directions to the trustee: *Re Atlantic Felt Inc.* (1961), 3 C.B.R. (N.S.) 318 (Que. S.C.). The court will not, however, on a motion for directions order a third party to take certain actions: *Re Pulford* (1999), 11 C.B.R. (4th) 283, 1999 CarswellBC 1342 (B.C. S.C.).

If an application for directions involves questions of mixed fact and law and there are facts in dispute, an application for directions is not the appropriate method of proceeding. In an application for directions, the matter should be put to the court

on the basis of admitted facts, and the advice and direction of the court should be sought on those facts: *Re Armcorp 4-18 Ltd.* (1997), 46 C.B.R. (3d) 81, 1997 CarswellAlta 285, 50 Alta. L.R. (3d) 247 (Q.B.), affirmed 10 C.B.R. (4th) 65, 1999 CarswellAlta 198, 232 A.R. 182, 195 W.A.C. 182, 99 G.T.C. 7107, [1999] G.S.T.C. 39 (C.A.). If matters are complex, a motion under s. 34(1) may not be appropriate: *Royal Bank v. Schmidtke Millwork (1993) Ltd. (Receiver of)* (2000), 2000 MBQB 69, 17 C.B.R. (4th) 297, 2000 CarswellMan 270, 149 Man. R. (2d) 247 (Man. Q.B.).

Directions may be requested in matters that involve the administration and realization of the estate of the bankrupt, or that involve a conflict of opinion between a trustee and the inspectors or between the inspectors themselves: *Re Barnard, supra; Re Lalonde* (1948), 29 C.B.R. 167 (Que.).

In an application under s. 34(1), the court must confine itself, in giving directions, to matters affecting the administration of the estate; it cannot resolve substantive matters in dispute between the trustee and a third party: *Re Lalonde, supra; Re Ward* (1987), 66 C.B.R. (N.S.) 164 (N.B. Q.B.); *Re Ireland,* [1962] Que. S.C. 686, 5 C.B.R. (N.S.) 91; *Re McArthur* (2000), 17 C.B.R. (4th) 245, 2000 CarswellNS 167, 185 N.S.R. (2d) 96, 575 A.P.R. 96 (N.S.S.C.). If a matter does not relate to the administration of the bankrupt estate, an application cannot be brought under s. 34(1). Whether a garnishee can issue against the wages of a discharged bankrupt does not relate to the administration of the bankrupt estate. Thus, in an application for directions, the court will not decide whether a third party is liable to the trustee for expenses incurred by the trustee in protecting the property of the third party: *Re Ward, supra.* Nor will it, on an application for directions, in effect, amend a proposal so that the trustee can withhold payment of a dividend to a creditor until civil litigation between the debtor and the creditor in the United States has been resolved: *Re Tecksol Inc.* (1994), 37 C.B.R. (3d) 16, 1994 CarswellQue 150 (C.S. Qué.). Nor will it decide an issue of whether or not the trustee has priority over a creditor that alleges it is the holder of valid security on the bankrupt's assets: *Re Woodland Windows Ltd.* (2003), 43 C.B.R. (4th) 300, 2003 CarswellBC 1267, 2003 BCSC 497 (B.C.S.C.).

If, on an application for directions, the rights of a third party are involved and the matter properly comes within the jurisdiction of the bankruptcy court, the court will not deal with the matter unless notice of the application has been given to the third party: *Re Canadian Steering Wheel Co.* (1921), 2 C.B.R. 47, 1921 CarswellOnt 20 (S.C.C.).

In *Re Geller Brothers* (1923), 4 C.B.R. 108, 1923 CarswellOnt 44 (Ont. S.C.), the trustee brought an application to determine whether certain goods belonged to the debtor under a proposal or to a third party. The court dismissed the application on the ground that in an application for directions by a trustee under a proposal, there was no power to determine the issue of ownership of property between the debtor and a third party. In a proposal, the property of the debtor does not ordinarily vest in the trustee, and in bringing the application, the trustee was not asking for directions as to a course of action it should take.

If the substantive matter that is raised in a motion for directions comes within the jurisdiction of the bankruptcy court, it can be raised on a motion for directions: see I§7 "Conflict between Ordinary Civil Courts and Courts Sitting in Bankruptcy". If the trustee in bankruptcy is alleging that a creditor is indebted to the bankrupt estate and the creditor is asserting a right of set-off, that issue can be determined on a motion for directions: *Re / Max Metro-City Realty Ltd. v. Baker (Trustee of)* (1993), 16 C.B.R. (3d) 308, 1993 CarswellOnt 180 (Ont. Bktcy.).

If the bankrupt estate has no interest in the assets in question, the court will not, on an application for directions, determine the priority of secured creditors in the assets: *Re Michel* (1962), 4 C.B.R. (N.S.) 22, 1962 CarswellQue 21 (Que. S.C.).

On an application for directions, the trustee may ask for court approval of things already done, as well as things yet to be done: *Re Salok Hotel Co.* (1967), 11 C.B.R. (N.S.) 95, 62 W.W.R. 268, 66 D.L.R. (2d) 5, affirmed (1967), 11 C.B.R. (N.S.) 158, 62 W.W.R. 705, 66 D.L.R. (2d) 14n (Man. C.A.); *Re Best,* 10 C.B.R. (4th) 79, [1999] 2 C.T.C. 257, 136 Man. R. (2d) 211, 47 R.F.L. (4th) 244 (Q.B.); *Re MacDonald* (2001), 24 C.B.R. (4th) 214, 2001 CarswellNS 136 (N.S.S.C.).

An appeal from a trustee's disallowance of a creditor's claim, where no formal proof of claim had been filed, was, on consent, turned into a motion for directions so that the court could determine the issue: *Re Catto* (1933), 15 C.B.R. 130 (Ont. S.C.).

The section in the pre-1949 *Bankruptcy Act* corresponding to s. 34(1) provided that the directions given by the court must be "proper according to the circumstances and not inconsistent with the Act". The words "not inconsistent with the Act" were

relied upon in the case of *Re Feldman* (1932), 13 C.B.R. 95 (Ont. S.C.), affirmed 13 C.B.R. 313 (Ont. C.A.), in arriving at the conclusion that the court could not instruct a trustee to sell in a manner that was contrary to the instructions of the inspectors, since under the Act, the trustee could only sell with the permission of the inspectors. At the time of the *Feldman* case, there was no section corresponding to the present s. 119(2) in the Act. It would seem that even though the words "not inconsistent with this Act" have been deleted from s. 34(1), they will still apply and that the directions given by the court could not conflict with the express provisions of the Act. However, in view of the addition of s. 119(2), there would seem to be no doubt that the court can now give instructions to the trustee in connection with the sale of assets, which are contrary to the instructions of the inspectors (see notes to s. 30(1)(a), *supra*); *Re Jacobson* (1927), 8 C.B.R. 258, 1927 CarswellNB 3 (N.B. S.C.); *Re Barnard* (1939), 20 C.B.R. 337, 1939 CarswellQue 5 (Que. S.C.).

If the inspectors are in a conflict of interest, it is proper for the trustee to seek advice and directions from the court pursuant to s. 34 of the *BIA*: *Re OSFC Holding Ltd.* (2004), 2004 CarswellOnt 4507, 5 C.B.R. (5th) 276 (Ont. S.C.J.).

The trustee in bankruptcy sought directions under s. 34 of the *BIA* as to how the Alberta 2005 Resource Rebate payment received by a bankrupt was to be treated in the bankruptcy. In late 2005, the Government of Alberta decided to pay a "non-taxable, one-time bonus to all Albertans in recognition of their role in building this province" through an amendment to the *Alberta Personal Income Tax Act,* R.S.A. 2000, c. A-30. Section 35.2 provided that individuals who met certain characteristics, which included almost all Alberta citizens, would be deemed to have made an overpayment on account of their 2005 income tax of $400 plus $400 for each of their dependants. Members of the Alberta Association of Insolvency and Restructuring Professionals, of which the trustee was one, were uncertain how the rebate payments should be treated in the administration of bankrupt estates. They randomly selected the bankrupt's estate, thought to be typical of 1500 to 2000 bankruptcies where the same question arose, to provide a vehicle for obtaining directions from the court. The Province had paid an estimated $800,000 to people in bankruptcy at the time, not including payments made to those bankrupts in respect of their dependents. The court held that the Alberta Resource Rebate was in the nature of a windfall to the bankrupt; it was not a receipt that is produced through the personal effort of the bankrupt or through the use of an asset and was not a receipt that an individual would ordinarily use to cover basic living expenses. The court held that it came within s. 67 of the *BIA* and by virtue of s. 67(1)(b), was exempt from distribution among the bankrupt's creditors. The court directed the trustee to treat the rebate as exempt property and not as income under *BIA* s. 68; and the bankrupt was entitled to keep the full amount of the rebate received: *Re Coates* (2006), 2006 CarswellAlta 324, 20 C.B.R. (5th) 270, 2006 ABQB 201 (Alta Q.B.).

The bankrupt had entered into two agreements of purchase and sale prior to bankruptcy. The trustee sought directions as to whether it had the authority to accept and close the second agreement. The other party to the first agreement brought a motion for leave to commence an action against the trustee and against the bankrupt. The Ontario Superior Court of Justice found that the first agreement was not enforceable because the other party was in breach. This same finding also undermined the basis for the action against the trustee as well as the bankrupt. The trustee was authorized to accept the second transaction and leave to commence the action against the trustee was denied as there was no foundation for the cause of action pleaded. The court also denied the motion to lift the stay against the bankrupt: *Hodgins v. Cormier* (2007), 2007 CarswellOnt 663, 30 C.B.R. (5th) 223 (Ont. S.C.J.).

The Québec Superior Court considered a motion brought to declare an assignment of a franchise agreement unenforceable as against the trustee. The motion was brought by the franchisee who had obtained authorization under s. 38 of the *BIA*. The court was not satisfied with the lack of investigation conducted by the trustee and raised the issue of whether the bankruptcy process was being used for improper purposes. The court adjourned the hearing and directed the trustee to provide a written report on the matter: *Re MBCo Associés inc.* (2011), 2011 CarswellQue 5676, 2011 QCCS 2621 (Que. S.C.).

The Ontario Superior Court of Justice found a garnishee and its principal liable for wrongful payments. Garnishment is a means to enforce a judgment for the payment of money. Under Rule 60.08 (1), "a creditor under an order for the payment or recovery of money may enforce it by garnishment of debts payable to the debtor by other persons." The notice of garnishment is binding on associated businesses carrying on business under a group name even though they are not individually named in the notice of garnishment. The court held that s. 7 of the *Wages Act* imposes a limit on the amount of a garnishment of wages. Eighty percent of an employee's net wages are exempt from execution, unless the debt claimed is for family support or maintenance, in which

case the exemption is reduced to 50%. Where the garnishee does not pay the amount set out in the notice of garnishment and does not serve and file a garnishee's statement, the creditor is entitled, on motion, to an order against the garnishee for payment of the amount that the court finds is payable. Disputes that arise in a garnishment proceeding are resolved by a garnishment hearing. Rule 60.08(16) provides a motion procedure to resolve disputes between a creditor and a garnishee. Garnishment is an equitable and discretionary remedy, and the court may make any order it deems just in the particular circumstances of any given case. If the garnishee makes payments to other than the sheriff after service of a notice of garnishment, then the creditor may obtain judgment against the garnishee for the monies that the garnishee ought to have paid to the sheriff. Here, Justice Perell found that the respondent company and the entities that comprised it ought to have paid the sheriff 20% of a bankrupt's salary ($42,000) pursuant to the garnishment of wages. In these circumstances, it was just and equitable to pierce the corporate veil and make the respondent company's principal personally liable for the garnishment of wages. In the result, judgment was granted for $42,000 plus interest and costs on a substantial indemnity basis against the respondent company and its principal: *Lawyers' Professional Indemnity Co. v. Nicol*, 2014 CarswellOnt 11118, 2014 ONSC 4748 (Ont. S.C.J.).

The Alberta Court of Appeal allowed an appeal, finding that the chambers judge had erred in granting a declaration stating that the receiver's disclaimer of the debtor's interest in certain properties was without prejudice to a lawsuit in which the debtor claimed that the defendant had constructively expropriated those same properties. The Court of Appeal held that an application for advice and directions was not an appropriate mechanism for the receiver to seek such relief. The Court noted that the ability of a receiver to disclaim property is grounded in common law and the receivership order. The receiver must exercise proper discretion in its decision to disclaim and must not act arbitrarily or inequitably. The Court of Appeal noted that, in this case, it was clear that the receiver had the ability to disclaim the debtor company's interest in the properties, and the propriety of its decision to do so was not challenged. The Court of Appeal noted that while the receiver could have sought approval from the court that its decision to disclaim was not arbitrary or inequitable, it made that decision unilaterally. Having decided to disclaim the property, it applied for a declaration to have the legal effect of the disclaimer summarily determined to be without prejudice to the litigation. The Court of Appeal noted that directions should not be provided when the receiver is effectively using the court as a legal advisor. An application for advice and direction should not be used to decide substantive law matters between the parties. The Court of Appeal also noted that the receiver clarified at the hearing that it was not merely seeking advice or direction of the court, it wanted a declaration that the receiver's proactive step in disclaiming the assets did not create a new defence for the Attorney General. The Court held that the chambers judge had erred in relying on the receivership order as authority to grant the declaration. The Court of Appeal saw no basis to conclude that the receiver was "entitled" to such a "remedy". Accordingly, the appeal was allowed and the declaration was quashed: *Canada (Attorney General) v. Ernst & Young Inc.* (2019), 2019 CarswellAlta 915, 2019 ABCA 180 (Alta. C.A.).

The trustee moved for directions with respect to equity in a property. The Nova Scotia Supreme Court determined that the trustee was estopped from claiming an interest in the property and further, that the rule in *ex Parte James* applied to require the trustee to repay certain funds. The Court held that insurance proceeds were payable to a third party, and the property in which equity increased as a result of that payment was one in which the trustee had expressly released its interest. It had not revisited that release of interest prior to the bankrupt's conditional discharge order. Gabriel J. was of the view that it was not obvious that a lay person such as the bankrupt ought to have characterized mortgage insurance in the event of his death as an asset distinct from the mortgage and the property, and the existence of life insurance to cover the mortgage balance in the event of the bankrupt's death was not information unavailable to the trustee at the time of the assignment. By characterizing the life insurance payout as an increase in the value of the property, Gabriel J. noted that it appeared that the trustee was seeking to revisit the valuation and claim the benefit of subsequent growth in equity (rather than in market value). Gabriel J. noted that the order created by the court at the discharge hearing is one in which the court considers the matter holistically, including the interest of the rehabilitation of the bankrupt, the interest of the creditors in being paid, and the integrity of the bankruptcy process and the public's perception of it. Justice Gabriel concluded that the bankrupt's interest in the insurance proceeds was not part of the property of the bankrupt under s. 67 of the *BIA* and was therefore not divisible among his creditors. Gabriel J. referenced the conditions the court is to consider in applying the rule in *ex Parte James*, the bankrupt estate must be enriched or could be enriched at the expense of the person making the claim; in most cases, the claimant must not be in a position to file a proof of claim in the bankruptcy; and to allow the trustee to retain the enrichment would be unfair and unjust. Gabriel J. concluded that the last day for the trustee to have dealt with the equity in the property was the date that the hearing that resulted in the bankrupt's conditional discharge,

and to allow the trustee to demand, and retain the funds paid by the spouse to the trustee pursuant to that demand, would be tantamount to allowing it to vary the conditional order of discharge, under the auspices of a motion for directions. The trustee was accordingly estopped from claiming an interest in the property and was required to reimburse the amount previously paid by the spouse: *Re Ross*, 2020 CarswellNS 62, 75 C.B.R. (6th) 289, 2020 NSSC 36 (N.S. S.C.).

The Newfoundland and Labrador Supreme Court annulled the bankruptcy of a deceased debtor with the result that the estate vested, once again, in the Canadian executrix and the U.S. executor: *Re Briggs*, 2020 CarswellNfld 341, 85 C.B.R. (6th) 126, 2020 NLSC 159 (N.L. S.C.). For a discussion of this judgment, see D§68(2) "Cases Where the Court has Annulled an Assignment".

(2) — *Who May Hear the Application*

Ordinarily, an application for directions is taken to the superior court judge. If the application is unopposed or on consent, the registrar may hear it: s. 192(1)(d) and (j). In *Re Cole* (2001), 2001 CarswellNS 149, 25 C.B.R. (4th) 225, 193 N.S.R. (2d) 242, 602 A.R. 242 (N.S. S.C.), the trustee brought an application for directions with respect to the proceeds of a personal injury claim being brought by the bankrupt. The bankrupt objected to the registrar hearing the application. The registrar held that it had jurisdiction as the application was *ex parte,* urgent and related to practice and procedure; but *quaere.*

(3) — *Matters That Have Been Determined on Applications for Directions*

Applications for directions have been made on a great variety of matters, *e.g.*, the procedure to be followed in accepting tenders: *Re Minden's Ltd.* (1933), 14 C.B.R. 395 (Ont. S.C.); *Re Asoyuf* (1931), 12 C.B.R. 425 (N.B. K.B.); as to the payment of land taxes: *Re Weatherwax* (1940), 22 C.B.R. 96 (Ont.); *Re Traymore Restaurants & Catering Ltd.* (1940), 22 C.B.R. 238 (Que.); *Re Bouvier Co.* (1933), 14 C.B.R. 446 (Ont. S.C.); *Re John Catto Co.* (1933), 15 C.B.R. 130 (Ont. S.C.); as to the validity of an assignment: *Re Canadian Steering Wheel Co.* (1921), 2 C.B.R. 47 (S.C.C.); as to the annulling of an assignment: *Barabé c. Namarre* (1941), 28 C.B.R. 171 (Que.); as to the disposal of shares and other matters in the bankruptcy of a stockbroker: *Re R.H. Clark & Co. (Vancouver) Ltd.* (1931), 13 C.B.R. 118 (B.C. S.C.); *Re Stobie Forlong & Co.* (1933), 14 C.B.R. 405 (Ont. S.C.); *Re Thompson Sons & Co.* (1927), 8 C.B.R. 202 (Man. C.A.); as to the preferential payment of wages: *Re Haun* (1931), 13 C.B.R. 1 (Ont. S.C.); as to termination of oil and gas leases: *Trustee of Publix Oil v. Hinds* (1937), 18 C.B.R. 379 (Alta. S.C.); as to payment of solicitor's costs: *Re Allard* (1931), 12 C.B.R. 380 (Que. S.C.); as to payment of the final dividend by the trustee: *Re Vibra-Lite (Western) Ltd.* (1942), 23 C.B.R. 332 (B.C. S.C.); as to payment of the Superintendent's levy: *Lavallée v. Lamarre* (1933), 15 C.B.R. 169 (Que. S.C.); as to the keeping of records and important documents: *Re Stobie Forlong & Co.* (1941), 22 C.B.R. 321 (Ont.); as to the necessity for re-appointing inspectors where the trustee is re-appointed: *Re Paquin Motors Ltd.* (1947), 28 C.B.R. 266 (Ont. H.C.); as to the right of an inspector to be accompanied by its solicitor at a meeting of inspectors: *Dumais v. Silica Products Ltd.* (1936), 19 C.B.R. 12 (Que. S.C.); as to the effect of bankruptcy on corporate powers: *Re Canadian Cereal & Flour Mills Co.* (1921), 2 C.B.R. 158 (Ont. S.C.); as to payment of claims incurred prior to bankruptcy by a creditor's committee: *Re Fairweathers Ltd.* (1922), 2 C.B.R. 458 (Ont. S.C.); as to the validity of a charge on personal property where there was no proper bill of sale or chattel mortgage: *Re Woodturning Products Ltd.* (1923), 3 C.B.R. 871 (Ont. S.C.); as to priority of claims: *Re Adams Shoe Co.* (1923), 4 C.B.R. 230, affirmed 4 C.B.R. 375 (Ont. S.C.); *Wright v. Schwalm* (1926), 7 C.B.R. 465 (Ont. S.C.); *Re D. Moore Co.* (1927), 8 C.B.R. 479 (Ont. C.A.); *Re Hotel Dunlop* (1926), 8 C.B.R. 190 (N.B. S.C.); *Re Grégoire* (1939), 20 C.B.R. 203 (Que. S.C.); as to whether or not the trustee was entitled to the proceeds of certain fire insurance policies: *Re Dickie* (1925), 5 C.B.R. 864 (N.S. T.D.); as to payment of creditor's claims on the bankruptcy of a partnership: *Re Engeland* (1926), 8 C.B.R. 1 (Ont. S.C.); as to whether or not a bulk sale is void as against a trustee: *Re Crouse* (1927), 8 C.B.R. 576 (N.S. T.D.); as to whether a fund is trust moneys: *Re McLeod* (1949), 29 C.B.R. 163 (Ont.); permission to proceed with an agreement approved by inspectors but objected to by a creditor: *Re Braich* (2003), 2003 CarswellBC 2957, 2003 BCSC 1789, 2 C.B.R. (5th) 75 (B.C. S.C. [In Chambers]).

Where a trustee brought a motion for directions pursuant to s. 34(1) of the *BIA* as to how a surplus pension payment payable to the bankrupt should be treated in the administration of an estate, the court held that a payment to a bankrupt relating to a surplus in a pension plan constitutes income of the bankrupt that is subject to s. 68 of the *BIA*: *Re Ruelland* (2005), 2005 CarswellNS 334, 2005 NSSC 207, 14 C.B.R. (5th) 101 (N.S. S.C.). For a full discussion, see F§36 "Property Exempt from Execution or Seizure".

(4) — *Secured Creditors*

If the trustee wishes to contest the validity of the security of a secured creditor, an application can be brought under s. 34(1) for directions or the trustee can disallow it using the procedure set out in s. 135. The ordinary rules of court in civil matters have no application. The court can, if it sees fit, give directions for the trial of an issue under s. 187(8): *Re St. Helen's (Vancouver) Ltd.* (1985), 59 C.B.R. (N.S.) 232 (B.C. S.C.).

(5) — *Trust Funds*

For applications for directions with respect to trust funds, see F§5 "Trust Property".

(6) — *Costs*

Ordinarily the trustee will be awarded its costs of an application for directions out of the assets of the bankrupt estate. If, however, the court finds that a motion for directions has been improperly brought, it may order the trustee to personally pay the costs of the motion: *Re Paquin Motors Ltd.* (1947), 28 C.B.R. 266 (Ont. H.C.); *Re Kenny* (1997), 149 D.L.R. (4th) 508, 37 C.B.R. (4th) 291, 1997 CarswellOnt 6031, 34 O.T.C. 321, additional reasons at (1997), 1 C.B.R. (4th) 34, 1997 CarswellOnt 5358 (Ont. Gen. Div. [Commercial List]). Similarly, if the court finds that the application for directions was unnecessary, the trustee will not be allowed the costs of the application out of the assets of the bankrupt estate: *Re Towson* (1996), 44 C.B.R. (3d) 146, 1996 CarswellBC 2626 (B.C.S.C.).

In *Re Barnard* (1939), 20 C.B.R. 337 (Que. S.C.), the trustee did not agree with the instructions of its inspectors and applied to the court for directions. In giving directions, the court awarded the trustee the costs of the motion out of the bankrupt estate. The Superintendent of Bankruptcy objected to these costs on the ground that the trustee should have followed the instructions of its inspectors. The court dismissed the objection and permitted the order for costs to stand.

In *Re Century 21 Brenmore Real Estate Ltd.* (1980), 33 C.B.R. (N.S.) 170, 28 O.R. (2d) 653, 6 E.T.R. 205, 111 D.L.R. (3d) 280, the Court of Appeal, on an appeal from an order made on a motion for directions, ordered the unsuccessful appellant to pay the costs of the trustee and of counsel appointed to represent ordinary creditors on a solicitor-and-client basis. This order seems to be correct because neither party had clients and the only way in which counsel could be adequately compensated was by an award of solicitor-and-client costs.

If the inspectors are in a conflict of interest, it is proper for the trustee to seek advice and directions from the court pursuant to s. 34 of the *BIA*. Where shareholders of a bankrupt company want a trustee in bankruptcy to appeal a decision which, if successful, would be to the detriment of the bankrupt's two major creditors but would benefit another creditor and the bankrupt's shareholders, the trustee should pursue such an appeal so long as the estate is indemnified for the cost of such appeal if unsuccessful: *Re OSFC Holding Ltd.* (2004), 2004 CarswellOnt 4507, 5 C.B.R. (5th) 276 (Ont. S.C.J.).

Substantial indemnity costs should not be awarded unless there is some form of reprehensible conduct either in the circumstances giving rise to the cause of action or in the proceedings themselves. In the circumstances, the court held that filing of misleading and incomplete information on an *ex parte* basis was sufficiently serious to warrant costs on a substantial indemnity basis: *Tegrad Windsor 1988 Inc. v. WW Lodging Inc.* (2009), 2009 CarswellOnt 3629, 55 C.B.R. (5th) 42, additional reasons (2009), 2009 CarswellOnt 4548, 56 C.B.R. (5th) 131 (Ont. S.C.J. [Commercial List]).

Special costs are available where the conduct of a party is found to be scandalous, outrageous, deserving of rebuke or reprehensible: *Royal Bank v. Brixton Developments Ltd.* (2009), 2009 CarswellBC 1453, 55 C.B.R. (5th) 102, 80 C.L.R. (3d) 232, 2009 BCSC 718 (B.C. S.C. [In Chambers]).

The Ontario Superior Court of Justice awarded costs to the administrator of a consumer proposal against a creditor. The creditor had filed an objection that required the administrator to bring a motion for court approval pursuant to s. 66.22(1) of the *BIA*. Justice Kershman noted that the amount being paid into the consumer proposal was approximately $9,900 over 60 months and total debts were in excess of $20,000. The objecting creditor's exposure was approximately $5,500. Kershman J. held that

the court's discretion in awarding costs is guided by the relevant factors set out in r. 57.01 of the *Rules of Civil Procedure*. Justice Kershman noted that, if not approved, in all likelihood the debtor would have gone bankrupt, which would have left the objecting creditor with increased exposure: *Re Bonneau*, 2020 CarswellOnt 9230, 2020 ONSC 3897 (Ont. S.C.J.).

(7) — *Effect of Court Order Made on an Application for Directions*

Directions given by the court to a trustee on an application for directions relating to the administration of the estate do not constitute a judgment, and hence do not have the authority of *res judicata: Re Grégoire* (1939), 20 C.B.R. 203 (Que. S.C.); *Re Bouchard* (1954), 34 C.B.R. 95 (Que. C.A.); *Gilmore v. R.* (1932), 13 C.B.R. 504 (Que. C.A.). In the *Gregoire* case, on an application for directions, the court decided the order of ranking of a claim for workers' compensation. When the trustee prepared its dividend sheet, the Workmen's Compensation Board objected to the ranking of its claim. It was held that, notwithstanding the order made on the application for directions, the Workmen's Compensation Board could still contest the dividend sheet and that the prior court order was not *res judicata* on this issue. If a motion for directions involves substantive rights, e.g., the validity of a chattel mortgage, the order of the court on the application for directions is *res judicata: Re Transportation and Power Corporation* (1940), 21 C.B.R. 209 (Que. C.A.); *Re Brosseau* (1947), 28 C.B.R. 250 (Que. K.B.).

The section of the pre-1949 *Bankruptcy Act* corresponding to s. 34(1) provided that the directions given should bind as well as justify the subsequent consonant action of the trustee. These words are no longer contained in the Act, and it was suggested by the Québec Court of Appeal in *Re Bouchard, supra* that, by reason of their omission, it is doubtful how far a trustee is bound by the directions that it receives. It is submitted that, notwithstanding the omission of these words, the directions of the court are binding on the trustee.

(8) — *Appeal from an Order on an Application for Directions*

If the requirements of s. 193 are met and substantive rights are decided on a motion for directions, there is an appeal from the decision of the bankruptcy judge: *Re Transportation and Power Corporation* (1940), 21 C.B.R. 209 (Que. C.A.); *Re Brosseau* (1947), 28 C.B.R. 250 (Que. C.A.). In the *Brosseau* case, it was said that if directions are given in matters relating to the administration of the bankrupt estate and nothing more, there is no appeal. However, s. 193 only refers to an "order or decision of a judge of the court". While an application for directions not involving substantive rights would not come within paras, *a* to *d* of s. 193, there seems no reason why a judge of the Court of Appeal could not give leave under s. 193(e).

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HMANALY F§190
Houlden & Morawetz Analysis F§190

Bankruptcy and Insolvency Law of Canada, 4th Edition

THE BANKRUPTCY AND INSOLVENCY ACT

Part IV (s. 85)
L.W. Houlden and Geoffrey B. Morawetz

F§190 — Partnership Property

F§190 — Partnership Property

See s. 85

The *Bankruptcy and Insolvency Act* applies to limited partnerships, and, if all general partners of a limited partnership become bankrupt, the property of the limited partnership vests in the trustee: s. 85(1).

In a limited partnership, the general partners are liable for all the debts and obligations of the firm, and limited partners, who contribute a stated amount of capital, are not liable beyond that amount. Limited partners cannot take any part in the management or control of the partnership: *Kucor Construction & Developments & Associates v. Canada Life Assurance Co.* (1998), 41 O.R. (3d) 577, 167 D.L.R. (4th) 272, 1998 CarswellOnt 4423, 114 O.A.C. 201, 21 R.P.R. (3d) 187 (C.A.). The insolvency of a limited partner does not effect a dissolution of the partnership.

The rights and liabilites of a limited partner in a limited partnership against which a bankruptcy order is made or which makes an assignment are governed by the law of the province where the partnership business has been carried on. See, for example, the *Limited Partnerships Act* of Ontario.

The provincial *Limited Partnerships Acts* provide the method of distribution of a dissolved limited partnership. Under this distribution, the creditors of the limited partnership are paid first and the limited partners then receive their contributions *pro rata* based on contributions, before payment is made to general partners. The limited partnership agreement can provide for a different scheme of distribution but an agreement that provided that remaining assets should be distributed in accordance with the interests of the partners was held not to be sufficient to change the statutory scheme of distribution so that distribution would be made on the percentage interests of the partners: *Byers v. CanEnerco Ltd.* (2001), 30 C.B.R. (4th) 195, 2001 CarswellOnt 4522 (Ont. S.C.J. [Commercial List]), affirmed (2002), 35 C.B.R. (4th) 18, 61 O.R. (3d) 467, 2002 CarswellOnt 1927, 159 O.A.C. 214 (Ont. C.A.).

On the bankruptcy of a member of the partnership, the court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner: s. 85(2). Notice of the application for authority to commence the action must be given to the bankrupt's partners: s. 85(3).

The bankruptcy court has no power to make a declaration that a person is a partner and is indebted to the bankrupt; an action for this kind of relief must be brought in the ordinary courts: *Re Reynolds*, 10 C.B.R. 127, 62 O.L.R. 271, [1928] 2 D.L.R. 520 (S.C.).

The Ontario Superior Court of Justice granted a motion for consolidation of two estates, a limited partnership and incorporated entity that were part of a group of for-profit and not-for-profit entities that provided air transport medical services in Ontario. Section 85(1) of the *BIA* provides that, "on all the general partners of a limited partnership becoming bankrupt, the property of the limited partnership vests in the trustee". Section 43(15) provides that a creditor, "may present an application against any one or more partners of the firm without including the others". Section 43(16) provides that "If a bankruptcy order has been

made against one member of a partnership ... the court may give any directions for consolidating the proceedings under the applications that it thinks just". Justice Morawetz held that by operation of law, the assets of the limited partnership vested in the trustee of the incorporated debtor on its bankruptcy; and that, in view of s. 85(1) of the *BIA*, it was unlikely that any creditor would be prejudiced through substantive consolidation. He concluded that substantial consolidation was appropriate in the circumstances. He also agreed that from a procedural standpoint, consolidation of the estates was also warranted. Although there was no express power to consolidate the administration of the bankrupt estates, he was satisfied that the inherent jurisdiction of the court permitted such an order to be made: *Re Ornge Global GP Inc.*, 2013 CarswellOnt 9770, 2013 ONSC 4518 (Ont. S.C.J.).

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HMANALY G§162
Houlden & Morawetz Analysis G§162

Bankruptcy and Insolvency Law of Canada, 4th Edition

THE BANKRUPTCY AND INSOLVENCY ACT

Part V (ss. 136-147)
L.W. Houlden and Geoffrey B. Morawetz

G§162 — Partnership: Joint and Separate Property

G§162 — Partnership: Joint and Separate Property

See ss. 136, 137, 138, 139, 140, 140.1, 141, 141, 143, 144, 145, 146, 147

(1) — *Generally*

For presenting an application for a bankruptcy order against a partnership, see *ante* D§3 "Who May Be Subject of an Application for a Bankruptcy Order — (8) Partnerships". For the making of an assignment by a partnership, see *ante* D§60 "Formalities for Filing an Assignment — (1)(i) Partnerships" and D§72 "Who May Assign — (2)(b) Partnerships".

Where all the partners of the firm are insolvent, the firm and the individual partners are treated in bankruptcy proceedings as separate entities. The creditors of the firm can, in the first instance, only prove against the joint estate and the separate creditors, in the first instance, only against the separate estate. Because of the separation of the joint estate and the separate estate of the individual partners, it is essential that the trustee keep separate, distinct accounts for each estate.

Section 142 sets out the rules to be followed in administering the estates of bankrupt partnerships. Where partners become bankrupt, their joint property is applicable in the first instance in payment of their joint debts, and the separate property of each partner is applicable in the first instance in payment of the separate debts of the partner: s. 142(1).

Subsections 2 and 3 of s. 142 deal with the situations where there is a surplus of the separate or joint property. Subsection 4 of s. 142 provides for the situation where a bankrupt owes debts individually and as a member of one or more partnerships.

Where the joint property of a bankrupt partnership is insufficient to pay the costs, subsection (5) of s. 142 permits a trustee, with the consent of the inspectors of the separate estates, to pay the costs out of the separate estates. If the inspectors refuse to consent, the court can override the decision of the inspectors and give such directions as it sees fit: s. 119(2), and see *ante* G§26 "Appeal from Decisions and Actions and Inspectors".

The Registrar of the Manitoba Court of Queen's Bench reviewed the *BIA* provisions relating to partners and separate properties. The matter involved the allocation and structuring of monetary realizations by the trustee from three related bankruptcies, one farm partnership and two individuals, involving consideration of s. 142 of the *BIA* as a result of the bankrupt's agri-business partnership with his wife. Section 142(4) specifies that where a bankrupt owes or owed debts both individually and as a member of one or more partnerships, the claims shall rank first on the property of the individual or partnership by which the debts they represent were contracted and shall only rank on the other estate or estates after all the creditors of the other estate or estates have been paid in full. Registrar Harrison held that a reading of s. 142 of the *BIA* reveals a rather well drafted methodology for segregating monetary realizations from partnerships and related individual estates. The 1992 enactment of the *BIA* followed an all inclusive effort to modernize the said legislation, the registrar referencing *Marzetti v. Marzetti*, 1994 CarswellAlta 346, 1994 CarswellAlta 942, [1994] 2 S.C.R. 765 (S.C.C.) where s. 68 of the *BIA* was found to be by the court to be a complete code for the application and interpretation of all matters concerning wages. Given the above referenced judicial guidance, Registrar

Harrison found that the position taken by the trustee was in direct conformance with s. 142(4) of the *BIA* and was correct. The trustee was therefore directed to complete its contemplated procedure regarding distribution of monetary realizations in the subject estates. Registrar Harrison noted that the trustee's position also fitted perfectly with s. 12 of the *Partnership Act*, which specifies that every partner of a firm is liable jointly and severally with the other partners, for all debts and obligations of the firm incurred while he or she is a partner; and after death, the estate is also severally liable in a due course of administration for the debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of his or her separate debts: *Barkman Estate (Trustee of) v. Canada (Attorney General)*, 2012 CarswellMan 536, 2012 MBQB 259 (Man. Q.B.).

By Rule 114, where a partnership is bankrupt, it shall submit a statement of affairs verified by one of the partners or by the manager in charge of the business, and each partner is required to submit a statement of his or her separate affairs.

(2) — *No Joint Estate*

The Registrar of the Manitoba Court of Queen's Bench reviewed the *BIA* provisions relating to partners and separate properties. The matter involved the allocation and structuring of monetary realizations by the trustee from three related bankruptcies, one farm partnership and two individuals, involving consideration of s. 142 of the *BIA* as a result of the bankrupt's agri-business partnership with his wife. Section 142(4) specifies that where a bankrupt owes or owed debts both individually and as a member of one or more partnerships, the claims shall rank first on the property of the individual or partnership by which the debts they represent were contracted and shall only rank on the other estate or estates after all the creditors of the other estate or estates have been paid in full. Registrar Harrison held that a reading of s. 142 of the *BIA* reveals a rather well drafted methodology for segregating monetary realizations from partnerships and related individual estates. The 1992 enactment of the *BIA* followed an all inclusive effort to modernize the said legislation, the registrar referencing *Marzetti v. Marzetti*, 1994 CarswellAlta 346, 1994 CarswellAlta 942, [1994] 2 S.C.R. 765 (S.C.C.) where s. 68 of the *BIA* was found to be by the court to be a complete code for the application and interpretation of all matters concerning wages. Given the above referenced judicial guidance, Registrar Harrison found that the position taken by the trustee was in direct conformance with s. 142(4) of the *BIA* and was correct. The trustee was therefore directed to complete its contemplated procedure regarding distribution of monetary realizations in the subject estates. Registrar Harrison noted that the trustee's position also fitted perfectly with s. 12 of the *Partnership Act*, which specifies that every partner of a firm is liable jointly and severally with the other partners, for all debts and obligations of the firm incurred while he or she is a partner; and after death, the estate is also severally liable in a due course of administration for the debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of his or her separate debts: *Barkman Estate (Trustee of) v. Canada (Attorney General)*, 2012 CarswellMan 536, 2012 MBQB 259 (Man. Q.B.).

(3) — *Limited Partnerships*

If all the general partners of a limited partnership become bankrupt, the property of the limited partnership vests in the trustee: s. 85(1). The rights and liabilities of a limited partner are governed by the laws of the province where the partnership business is carried. For a discussion of limited partnerships, see *ante* F§190 "Partnership Property".

(4) — *Effect of Bankruptcy of a Partnership*

If (as is usually the case), a firm and all the partners in the firm become bankrupt, all the partnership assets and the separate assets of the partners vest in the trustee in bankruptcy and will be distributed in accordance with s. 142(1): *Taylor v. Leveys*, 2 C.B.R. 390, 52 O.L.R. 201, [1923] 3 D.L.R. 1134 (Ont. S.C.).

(5) — *Effect of Bankruptcy of a Partner*

As a result of the bankruptcy of a partner, a partnership is dissolved: see, for example, the *Partnerships Act* of Ontario and *Brer Rabbit Printing Co. v. Bosiak* (2001), 14 B.L.R. (3d) 254, 2001 BCSC 382, 2001 CarswellBC 631 (B.C. S.C.). Any property acquired after bankruptcy by the individuals who were formerly partners constitutes separate property of the individuals and will be used for the payment of separate debts: *Re Sorrenti* (1964), 7 C.B.R. (N.S.) 9 (Ont. S.C.).

(6) — *Effect of Dissolution of Partnership Prior to Bankruptcy*

Section 142 only applies to the bankruptcy of an existing firm or the bankruptcy of an individual partner in an existing firm: *Re Merrick*, 14 C.B.R. 331, [1933] O.W.N. 295 (C.A.). If there has been a *bona fide* dissolution of a firm prior to the bankruptcy of a continuing partner, a liability by the partnership to a creditor ceases to be a joint liability and becomes an individual liability: *Re Merrick, supra; Re Randall* (1963), 6 C.B.R. (N.S.) 10, 43 W.W.R. 562, 40 D.L.R. (2d) 508 (Alta. T.D.); *Re Engeland*, 8 C.B.R. 1, [1926] 4 D.L.R. 1029, 31 O.W.N. 175 (S.C.); *Re Campbell*, 28 C.B.R. 61, [1947] O.W.N. 675, [1947] 4 D.L.R. 93 (H.C.). In these circumstances, a joint creditor becomes a separate creditor of each of the partners: *Re Merrick, supra.*

If former partners have given a covenant to indemnify a continuing partner against liabilities of the partnership, a trustee in bankruptcy of the continuing partner may take proceedings to enforce the covenant: *Re Randall, supra.*

Notwithstanding the bankruptcy of the continuing partner, creditors of the former partnership have the right to take proceedings against solvent former partners: *Moorehouse v. Bostwick* (1885), 11 O.A.R. 79.

(7) — *Partner Deemed to be a Partner after Dissolution*

If a partnership has been dissolved but the provisions of provincial law for the valid dissolution of a partnership have not been complied with, a person may be deemed to be still a partner and to be liable for partnership debts: *Re Walkeam*, 7 C.B.R. 4, 58 O.L.R. 141, [1926] 1 D.L.R. 274 (C.A.); *McCrie v. Gray* (1940), 22 C.B.R. 390 (Ont. S.C.); *Re McGinnis (No. 1)*, [1950] 1 W.W.R. 816, [1950] 1 D.L.R. 853, 30 C.B.R. 174 (B.C. S.C.). If such a person has a claim against the partnership or against the separate estate of the continuing partner, he or she cannot claim until the claims of all other creditors have been satisfied: *Re McGinnis (No. 1), supra.*

(8) — *Dissolution of a Partnership that Prejudices Creditors*

Partners are not permitted at a time when they know that the firm is insolvent, even if there is no actual intent to defraud, to enter into a dissolution of the partnership as a result of which assets are disposed of to the prejudice of creditors of the firm and to the advantage of separate creditors of one of the partners: *Assaf v. Dabous*, [1927] 1 D.L.R. 24, 7 C.B.R. 689, 31 O.W.N. 183 (S.C.).

(9) — *Separate Creditors*

The separate property of each partner is applicable in the first instance in payment of the separate debts of the partner: s. 142(1), and if a bankrupt owes debts and is a member of a partnership, the debts rank first upon the estate (joint or several) by which they were contracted: s. 142(4). If there is a surplus in the joint estate, then any surplus becomes part of the estates of the separate partners in proportion to the interest of each separate partner in the joint estate: s. 142(3).

Although, if there is a surplus in the joint estate, separate creditors of a partnership have a claim against assets of the joint estate, this does not entitle them to vote as creditors at a meeting of creditors of the joint estate: *Re Vanwood Forest Products* (1983), 45 C.B.R. (N.S.) 254, 42 B.C.L.R. 265 (S.C.).

The realization from separate assets is to be used to pay the claims of separate creditors. If there is any surplus, it will be used to pay the claims of joint creditors. *Re Daum & Plaetzer*, 8 C.B.R. 446, [1927] 4 D.L.R. 744, 33 O.W.N. 75 (S.C.).

(10) — *Not All Partners Bankrupt*

If only one member of a partnership becomes bankrupt, the trustee in bankruptcy becomes tenant in common with the solvent partner of the assets of the firm: *Ex parte Stoveld* (1823), 1 Gl. & J. 303.

A solvent partner, unless he or she is under some disability, is entitled to the administration and liquidation of the partnership assets: *Ex parte Owen* (1884), 13 Q.B.D. 113, 53 L.J.Q.B. 863, 50 L.T. 514, 1 Morr. 93. A receiver of the partnership will not be appointed at the instance of the trustee in bankruptcy: *Ex parte Owen, supra.* A payment to the solvent partner is a good discharge of a debtor to the firm: *Ex parte Owen, supra.*

A provision in a partnership agreement that on the bankruptcy of a partner, his or her share shall vest in the other partner is void as a fraud on the bankruptcy law: *Whitmore v. Mason* (1861), 1 J. & H. 204, 31 L.J. Ch. 446, 44 L.J. Bank. 91, 32 L.T. 443.

(11) — *What Property is Joint and What is Separate?*

In determining whether an asset is joint property or separate property, the arrangement between the partners will ordinarily be determinative of the issue: *Ex parte Walker* (1862), 4 De. G.F. & J. 509, 31 L.J. Bank. 69; *Ex parte Peake* (1820), 1 Madd. 346.

If there is a doubt about whether an asset is the property of a partnership or an individual asset of a partner, an application can be made under s. 34 for directions: *Henderson v. Rudd Estate,* 13 C.B.R. 117, [1931] 3 W.W.R. 142 (Man. K.B.).

Where there was no evidence that property was acquired or held by a deceased bankrupt on behalf of a partnership with his surviving spouse, and no *caveat* was registered against the land until after bankruptcy, it was held that the land was not property of the partnership: *Re Wolf Estate* (2004), 2004 CarswellAlta 679, 4 C.B.R. (5th) 140, 2004 ABQB 392 (Alta. Q.B.).

(12) — *Joint and Separate Assets Inextricably Intertwined*

Where joint and separate assets are so inextricably intertwined as to make it impossible to separate them, the court may order that the estates be consolidated so that the realization of the assets will be treated as one fund and that joint and separate creditors will share rateably in the distribution of the fund: *Re Kriegel; Ex parte Trotman* (1893), 10 Morr. 99, 68 L.T. 588. An order for consolidation will not, however, be made simply because there are difficulties in determining whether proofs should be proofs of joint creditors or separate creditors: *Re Kriegel; Ex parte Trotman, supra.*

(13) — *What is a Joint Debt and What is a Separate Debt?*

Joint debts are those for which the partnership is liable, separate debts are those for which a partner individually is liable. It is the nature of the debt at the date of bankruptcy that must be determined.

(14) — *Proof Against Joint and Separate Estates*

Ordinarily, a creditor will have little difficulty in deciding whether he or she is a creditor of the joint estate or a creditor of the separate estate of one of the partners, and a creditor is not, subject to the exception created in s. 123, permitted to prove against both. However, if there are distinct contracts creating an obligation both by the joint estate and by the separate estate of a partner, a creditor may prove against both estates and receive a dividend from both estates: s. 123. The matter is discussed *ante* in G§46 "Proof in Respect of Distinct Contracts".

(15) — *Amount Owing to a Partner*

Where the joint estate of a firm or the separate estate of a partner is being administered in bankruptcy, no partner of the firm may prove a claim in competition with other creditors of the firm, nor may a partner claim against the separate estate of any other partner until all creditors have been paid in full: *Re General Fibre Board Syndicate* (1923), 4 C.B.R. 364, 25 O.W.N. 304 (S.C.); *Re Walkeam* (1925), 7 C.B.R. 4, 58 O.L.R. 141, [1926] 1 D.L.R. 274 (C.A.); *Re Engeland,* [1926] 4 D.L.R. 1029, 8 C.B.R. 1, 31 O.W.N. 175 (S.C.).

If a notice of dissolution has been properly given, a former partner may rank as a creditor for a debt due to him or her by the continuing partner: *Re Yates; Warrell v. Canadian Credit Men's Association Ltd.* (1926), 8 C.B.R. 43, 41 O.W.N. 165 (S.C.). However, in *Re Engeland, supra,* although a former partner was permitted to file a claim and to receive a dividend from the bankrupt estate of the continuing partner, the court directed the trustee to retain the dividend and to apply it in payment of partnership liabilities which the bankrupt estate was unable to satisfy.

(16) — *Claim of Joint Estate against Separate Estate and by Separate Estate against Joint Estate*

As a general rule, a joint estate cannot prove a claim against the separate estate of a partner in competition with the separate creditors, and, on the other hand, a separate estate cannot prove against the joint estate in competition with joint creditors. There is, however, an exception to the general rule. If a partner fraudulently takes money out of their assets for his or her own private purposes, a proof of claim may, if all the other partners are bankrupt, be filed by the joint estate against the separate estate of the fraudulent partner unless the co-partners have acquiesced in the actions of the fraudulent partner: *Reid v. Bailey* (1877), 3 App. Cas. 94.

(17) — *Administration of Bankrupt Estates of Partners*

When joint and several properties are being administered (which is the customary method of administration), the dividends in the estate may be declared together, and the expenses apportioned by the trustee between the joint and several estates: s. 153. The apportionment by the trustee will, of course, be subject to review on the application for approval of the trustee's final statement of receipts and disbursements.

Where the same partnership is carrying on two separate lines of business at different places under different trade names, the proceeds of the realization of the assets of both businesses are distributable by the trustee of the partnership among the creditors without regard to whether a credit was incurred in one business or the other: *Fordham & Co. v. Can. Permanent Trust Co.* (1922), 3 C.B.R. 413 (N.S. T.D.).

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MANITOBA

THE PARTNERSHIP ACT

C.C.S.M. c. P30

LOI SUR LES SOCIÉTÉS EN NOM COLLECTIF

c. P30 de la *C.P.L.M.*

As of 16 Feb 2022, this is the most current version available. It is current for the period set out in the footer below.

Le texte figurant ci-dessous constitue la codification la plus récente en date du 16 févr. 2022. Son contenu était à jour pendant la période indiquée en bas de page.

Rights of partners to notify dissolution

40 Where a partnership has been dissolved or a partner has retired, and where, if applicable, a declaration of the dissolution has been registered under *The Business Names Registration Act*, any partner may publicly give notice of the dissolution or retirement, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, that cannot be done without his or their concurrence.

Droit de l'associé de notifier la dissolution

40 Lorsque la société en nom collectif a été dissoute ou qu'un associé s'est retiré et que, s'il y a lieu, la déclaration de dissolution a été enregistrée conformément à la *Loi sur l'enregistrement des noms commerciaux*, l'associé peut notifier publiquement cette dissolution ou ce retrait, et requérir à cette fin le concours de ses coassociés dans l'accomplissement des actes pour lesquels ce concours est nécessaire, le cas échéant.

Continuing authority of partners for purposes of winding-up

41(1) Subject to subsection (2), after the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue, notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Capacité continuée aux fins de la liquidation

41(1) Sous réserve du paragraphe (2), après la dissolution de la société en nom collectif, le pouvoir de l'associé de lier la firme ainsi que ses droits et obligations subsistent malgré la dissolution, mais seulement pour accomplir ce qui est nécessaire pour la liquidation des affaires de la société et pour finaliser les opérations en cours au moment de la dissolution.

Bankrupt partner without authority

41(2) The firm is not bound by the acts of a partner who has become bankrupt; but this subsection does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

Absence de pouvoir de l'associé failli

41(2) La firme n'est pas liée par les actes de l'associé qui fait faillite; mais le présent paragraphe ne touche pas la responsabilité de la personne qui, après la faillite, se prétend ou laisse sciemment prétendre qu'elle est un associé du failli.

Rights of partners as to application of partnership property

42 On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after that payment applied in payment of what may be due to the partners respectively, after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm.

Droit des associés aux biens de la société

42 À la dissolution de la société en nom collectif, chaque associé a droit, concurremment aux autres associés eu égard à leur intérêt dans la firme et aux personnes réclamant en leur nom à l'égard de leur intérêt en tant qu'associé, de faire affecter les biens de la société à l'acquittement des dettes et engagements de la firme, et ensuite, de faire affecter l'excédent de l'actif au paiement de ce qui peut être dû à chacun des associés, déduction faite des dettes de ceux-ci envers la firme. À cette fin, l'associé ou son représentant peut, lors de la dissolution de la société, demander au tribunal de liquider les affaires de la firme.

Apportionment of premium where partnership prematurely dissolved

43 Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, upon

Dissolution prématurée

43 Lorsque l'associé a versé une prime à un coassocié au moment de la formation de la société en nom collectif établie pour une période déterminée, et que la société est dissoute avant l'expiration du terme autrement que par le décès d'un associé, le tribunal peut

Option to purchase interest

45(2) Where, by a contract creating a partnership an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner, assuming to act in exercise of the option, does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Retiring or deceased partner's share to be debt

46 Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner, in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death.

Rule for distribution of assets on final settlement of accounts

47 In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

(a) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits.

(b) The assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order:

(i) In paying the debts and liabilities of the firm to persons who are not partners therein.

(ii) In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital.

(iii) In paying to each partner rateably what is due from the firm to him in respect of capital.

Option d'achat

45(2) Lorsque le contrat de société en nom collectif prévoit que les associés qui restent peuvent acheter la part de l'associé décédé ou sortant, et que ce droit d'option est validement exercé, la succession de l'associé décédé, l'associé sortant ou sa succession, selon le cas, n'a pas le droit de continuer de recevoir une part des bénéfices. Cependant, l'associé qui prétend exercer le droit d'option mais qui n'en respecte pas les modalités de façon substantielle, est tenu de rendre compte aux termes du présent article.

Part de l'associé sortant ou décédé

46 Sous réserve de la convention entre les associés, le montant dû par les associés qui restent à l'associé sortant ou aux représentants de l'associé décédé relativement à la part de cet associé constitue une dette exigible à compter de la dissolution ou du décès.

Règles quant à la distribution de l'actif

47 Pour le règlement des comptes entre les associés lors de la dissolution de la société en nom collectif, les règles qui suivent, sous réserve des conventions existantes, doivent être observées :

a) les pertes, y compris les pertes et découverts du capital social, doivent être imputées d'abord aux bénéfices, ensuite au capital, et enfin, s'il y a lieu, à chacun des associés en proportion de la part des bénéfices auxquels il a droit;

b) l'actif de la firme, y compris les montants, le cas échéant, déboursés par les associés pour combler les pertes ou découverts du capital social, est affecté de la manière et selon l'ordre suivant :

(i) au paiement des dettes et engagements de la firme envers les personnes qui n'en sont pas des associés,

(ii) au paiement proportionnel à chaque associé de ce que la firme lui doit au titre d'avances considérées comme distinctes du capital social,

(iii) au paiement proportionnel à chaque associé de ce que la firme lui doit au titre du capital social,

(iv) The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

Allegations not controvertible against any party signing

48 The allegations made in a declaration under *The Business Names Registration Act* are not controvertible, as against any party, by any person who has signed it, or as against any party, not being a member of the partnership, by any person who has signed the declaration or who was in fact a member of the partnership therein mentioned at the time the declaration was made.

If declaration not filed, action may be brought

49(1) Subject to subsection (2), where any persons are, or have been, associated as partners for the purpose of carrying on business and so have carried on business in the province, and no declaration has been filed as aforesaid with regard to partnership, any action that might be brought against all the members of the partnership may also be brought against any one or more of them as carrying on, or as having carried on, business jointly with others in the province, without naming the others in the writ or pleading, under the name and style of their partnership, or firm; and, if judgment is recovered against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which the judgment has been recovered.

Action on instrument naming partners

49(2) Where any such action is founded on an obligation or instrument in writing in which all or any of the partners bound by it is named, all the partners named therein shall be made parties to the action.

Enforcement of judgments

50 Any judgment recovered under section 49 against any member of a partnership, for a partnership debt or liability, may be executed by process of execution against all partnership stock, property, assets and effects, in the same manner, and to the same extent, as if judgment had been recovered against all the members of the partnership in the usual way.

(iv) à la répartition du reliquat entre les associés, proportionnellement à leur participation aux bénéfices.

Effet de la déclaration

48 Les signataires d'une déclaration sous le régime de la *Loi sur l'enregistrement des noms commerciaux* ne peuvent contredire les allégations y mentionnées face à toute autre personne. En outre, les associés au moment où la déclaration a été faite, y compris les signataires, ne peuvent contredire les allégations face aux tiers.

Action personnelle en l'absence de déclaration

49(1) Sous réserve du paragraphe (2), lorsque des personnes sont ou ont été associées aux fins d'exploiter une entreprise dans la province et qu'aucune déclaration n'a été enregistrée quant à la société en nom collectif, l'action qui peut être intentée contre les membres de la société collectivement peut l'être aussi contre un ou plusieurs d'entre eux en tant que faisant, ou ayant fait, affaire avec d'autres dans la province, sous la raison sociale de la firme, sans qu'il soit nécessaire de nommer tous les associés dans le bref ou dans tout autre acte de procédure. Si jugement est obtenu contre les membres poursuivis, les autres associés peuvent être poursuivis conjointement et individuellement sur la base de la cause d'action pour laquelle le jugement a été obtenu.

Action fondée sur un écrit

49(2) Lorsque l'action est fondée sur une obligation constatée par écrit ou sur un instrument dans lesquels tous ou certains des associés qui s'obligent sont expressément nommés, ceux-ci doivent être constitués parties à l'action.

Exécution forcée du jugement

50 Le jugement obtenu en application de l'acticle 49 contre tout membre de la société en nom collectif pour une dette ou engagement de celle-ci, peut être exécuté par voie d'exécution forcée contre l'actif social dans la même mesure et de la même façon que si le jugement avait été obtenu contre tous les membres de la société en la manière ordinaire.

PART II

LIMITED PARTNERSHIPS

Application of Part II
51(1) This Part applies only to limited partnerships.

Limited partnership may be formed
51(2) A limited partnership for the transaction of business may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities, hereinafter mentioned; but no such partnership shall be formed for the purpose of banking or effecting insurance.

Same person as general and limited partner
51(3) A person may be a general partner and a limited partner at the same time in the same partnership.

Rights and liabilities
51(4) A person who is at the same time a general partner and a limited partner in the same partnership has the rights and powers and is subject to the restrictions and liabilities of a general partner, but in respect of his contribution as a limited partner he has the same rights against the other partners as a limited partner.

Constitution of limited partnership
52 A limited partnership may consist of one or more persons, who shall be called "general partners", and of one or more persons who contribute a specific or determinable amount, whether in cash, kind, specie, or money's worth or by any other means whatsoever, as capital of the partnership, who shall be called "limited partners".

PARTIE II

SOCIÉTÉ EN COMMANDITE

Application de la partie II
51(1) La présente partie ne s'applique qu'à la société en commandite.

Formation
51(2) La société en commandite pour l'opération d'une entreprise peut être constituée par plus d'une personne, et est dotée des droits et pouvoirs, sous réserve des conditions et engagements, établis ci-après. Toutefois, la société en commandite ne peut être formée pour agir comme banque ou comme assureur.

Qualités simultanées de commandité et de commanditaire
51(3) Une personne peut être à la fois commandité et commanditaire de la même société en commandite.

Droits et responsabilités
51(4) La personne qui est à la fois commandité et commanditaire de la même société en commandite possède les mêmes droits et pouvoirs qu'un commandité et se soumet aux mêmes restrictions et engagements. Toutefois, quant à sa contribution en tant que commanditaire, elle a les mêmes droits qu'un commanditaire envers les autres associés en commandite.

Membres de la société en commandite
52 La société en commandite peut être constituée de plus d'une personne, appelées « commandités », et aussi de plus d'une personne appelées « commanditaires » et qui contribuent pour une part déterminée ou à l'être, sous quelque forme que ce soit, notamment en espèces, en nature ou en valeurs, pour valoir comme capital de la société.

General and limited partners, liability of
53 Subject to section 63, general partners are jointly and severally responsible as general partners are by law; but limited partners are not liable for the debts of a limited partnership beyond the amounts by them respectively contributed to the capital of the limited partnership; except that where a limited partner has already paid into the capital of the limited partnership the amount of his contribution, he shall not be further liable for any of the debts of the partnership.

Responsabilité des membres
53 Sous réserve de l'article 63, les commandités sont conjointement et individuellement responsables au même titre que les associés en nom collectif en common law; les commanditaires ne sont pas responsables des dettes de la société en commandite au-delà du montant de leur apport de capital. Toutefois, lorsqu'un commanditaire a déjà payé sa part contributoire du capital, il est dégagé de sa responsabilité envers les dettes de la société.

General partners only to transact business, etc.
54(1) The general partners only are authorized to bind the partnership; but where a limited partner, to the knowledge of the general partners, takes part in the management of the partnership business, he has power to bind the partnership.

Opération de l'entreprise
54(1) Seul le commandité est autorisé à lier la firme, mais le commanditaire a aussi ce pouvoir lorsque, à la connaissance des commandités, il prend part à la gestion de l'entreprise.

Onus of proof
54(2) The onus of proof as to knowledge under subsection (1) is on the general partners.

Charge de la preuve
54(2) Le fardeau de la preuve, quant à la connaissance, aux termes du paragraphe (1), incombe aux commandités.

No limited liability without registration
55 A limited partner is not entitled to the limited liability afforded by this Act until a declaration has been made and registered as required under *The Business Names Registration Act*; and where a false statement is made in the declaration which has been relied on by a person who suffers injury or loss by reason of the false statement, all of the partners are liable to that person as general partners, for the loss or injury suffered by that person.

S.M. 2019, c. 25, s. 57.

Responsabilité limitée — enregistrement
55 Le commanditaire n'a pas droit à la responsabilité limitée accordée par la présente loi jusqu'à ce qu'une déclaration ait été faite et enregistrée conformément à la *Loi sur l'enregistrement des noms commerciaux*. Si la déclaration contient une fausseté à laquelle se fie une tierce personne qui en subit un préjudice ou une perte, tous les associés en commandite sont responsables à titre de commandités envers cette personne du montant de la perte ou du préjudice.

L.M. 2019, c. 25, art. 57.

Declaration of continuance
56(1) Where the declaration mentioned in section 55 shows that the partnership is for a fixed duration, any continuance beyond that duration shall be registered and published as required for the original formation of the partnership; and every partnership otherwise continued shall be deemed a general partnership.

Déclaration de continuation
56(1) Lorsque la déclaration mentionnée à l'article 55 précise que la société en commandite existe pour une durée déterminée, la continuation au-delà du terme doit être enregistrée et publiée comme pour la création de la société. La société en commandite continuée autrement est réputée être une société en nom collectif.

Failure to renew
56(2) Where the registration of a limited partnership has expired and the partnership continues to carry on business without renewing its registration as required under *The Business Names Registration Act*, it shall, for so long as it fails to renew the registration, be deemed a general partnership.

Effect of change without registration
57 A change or alteration in a limited partnership such as is mentioned in clause 4(1)(b) or (d) and in subsection 4(2) of *The Business Names Registration Act* has no effect until the registration requirements of that section are complied with.

Limited partnership name
58(1) The business of a limited partnership shall not be conducted under a name or firm in which the names of a limited partner, or some or one of them is used; and, if the name of any limited partner is used in such a name or firm with his privity, he shall be conclusively deemed to be a general partner.

Use of "Limited" in partnership name
58(2) Notwithstanding anything to the contrary in any other Act of the Legislature, a limited partnership heretofore or hereafter registered under *The Business Names Registration Act* may carry on business under a firm name containing the words "Limited Partnership", and shall be deemed always to have had the right to include those words in its name.

Liability of general partners as such
59 Actions or suits in relation to the limited partnership may be brought and conducted by and against the general partners in the same manner as if there were no limited partner.

Interest upon contribution of limited partner
60(1) A limited partner may annually receive lawful interest on the sum contributed by him to the capital of the partnership, if the payment of that interest does not reduce the original amount of the capital; and if after the payment of that interest, any profits remain to be divided, he may also receive his portion of those profits.

Défaut de renouvellement
56(2) Lorsque l'enregistrement de la société en commandite est expiré, la société qui continue d'exploiter l'entreprise sans renouveler son enregistrement conformément à la *Loi sur l'enregistrement des noms commerciaux*, est réputée être une société en nom collectif tant qu'elle n'a pas renouvelé son enregistrement.

Changement inopérant sans enregistrement
57 Le changement ou la modification de la société en commandite tel que mentionné aux aliénas 4(1)b) et d), ainsi qu'au paragraphe 4(2) de la *Loi sur l'enregistrement des noms commerciaux* est sans effet jusqu'à ce que les exigences d'enregistrement de cet article soient remplies.

Nom de la société en commandite
58(1) L'entreprise de la société en commandite n'utilise pas dans sa raison sociale le nom d'un de ses commanditaires. Le commanditaire qui laisse employer son nom dans la raison sociale de la société est péremptoirement réputé être un commandité.

Utilisation des mots « société en commandite »
58(2) Par dérogation aux dispositions contraires contenues dans les autres lois de la Législature, les sociétés en commandite enregistrées jusqu'à présent et pour l'avenir, conformément à la *Loi sur l'enregistrement des noms commerciaux*, peuvent exploiter leur entreprise sous une raison sociale contenant les mots « société en commandite »a. Elles sont péremptoirement réputées avoir toujours eu ce droit.

Responsabilité du commandité
59 Les actions ou poursuites engagées relativement à la société en commandite peuvent être intentées par ou contre les commandités, comme s'il n'y avait pas de commanditaires.

Intérêt sur la contribution du commanditaire
60(1) Le commanditaire peut recevoir l'intérêt annuel permis par la loi sur les montants qu'il a versés au capital de la société en commandite, si le paiement de cet intérêt ne réduit pas le montant initial du capital. S'il reste un bénéfice à partager après paiement de l'intérêt, il peut aussi en recevoir une part.

Return of contribution
60(2) A limited partner has the right to demand and receive the return of any part of his contribution,

(a) upon the dissolution of the limited partnership; or

(b) at the time, if any, specified in the partnership agreement for the return of the contribution; or

(c) after he has given six months notice in writing to all other partners, if no time is specified in the partnership agreement for the return of the contribution or for the dissolution of the limited partnership; or

(d) when all partners consent to the return of the contribution.

Restrictions on return of contribution
60(3) Notwithstanding subsection (2), a limited partner is not entitled to receive any part of his contribution out of the limited partnership assets or from a general partner until

(a) all liabilities of the limited partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remain sufficient limited partnership assets to pay them;

(b) the partnership agreement is terminated or so amended, if necessary, to set forth the withdrawal or reduction of the contribution; and

(c) a declaration has been made and registered as required under *The Business Names Registration Act*.

Form of returned contribution
60(4) A limited partner has, irrespective of the nature of his contribution, only the right to demand and receive money in return therefor, unless

(a) the partnership agreement provides otherwise; or

Remboursement de contribution
60(2) L'associé en commandite a le droit de réclamer et de recevoir le remboursement de toute partie de sa contribution, selon le cas :

a) à la dissolution de la société en commandite;

b) au moment prévu pour ce faire dans la convention de société en commandite, le cas échéant;

c) après qu'il ait donné six mois d'avis aux autres associés en commandite, dans le cas où la convention de société ne précise pas le moment du remboursement de la contribution ou celui de la dissolution de la société;

d) lorsque tous les associés en commandite consentent au remboursement de la contribution.

Restrictions quant au remboursement
60(3) Par dérogation au paragraphe (2), le commanditaire n'a droit au remboursement d'aucune partie de sa contribution sur l'actif de la société en commandite ou par un commandité jusqu'à ce que :

a) tous les engagements de la société, sauf les engagements envers les commandités et commanditaires relativement à leur contribution, aient été payés ou que la société dispose d'un montant suffisant pour les payer;

b) la convention de société en commandite soit terminée ou ait été amendée, si nécessaire, afin d'inclure des dispositions concernant le retrait ou la réduction de la contribution;

c) une déclaration à cet effet ait été faite et enregistrée en application de la *Loi sur l'enregistrement des noms commerciaux*.

Forme du remboursement
60(4) L'associé en commandite, sans égard à la nature de sa contribution, n'a que le droit de réclamer et de recevoir un montant d'argent en remboursement de celle-ci, sauf dans l'un ou l'autre des cas suivants :

a) la convention de société en commandite en dispose autrement;

(b) all the partners consent to another form in which to return the contribution.

b) tous les associés en commandite s'entendent quant à une autre manière de rembourser la contribution.

Dissolution of limited partnership
60(5) A limited partner is entitled to have the limited partnership dissolved and its affairs wound up where

(a) the limited partner is entitled under this Act to the return of all or part of his contribution but, upon demand, the contribution is not returned to him; or

(b) the other liabilities of the limited partnership have not been paid or the limited partnership assets are insufficient for their payment as required under clause (3)(a), and the limited partner seeking dissolution would otherwise be entitled under this Act to the return of all or part of his contribution.

Dissolution sur défaut de remboursement
60(5) Le commanditaire a droit à la dissolution de la société en commandite et à la liquidation de ses affaires lorsque :

a) il a droit, en application de la présente loi, au remboursement total ou partiel de sa contribution mais qu'à sa demande celle-ci ne lui est pas remboursée;

b) les autres engagements de la société n'ont pas été payés ou que ses actifs sont insuffisants pour le faire, conformément à l'alinéa (3)a), et que le commanditaire qui demande la dissolution aurait autrement droit, en application de la présente loi, au remboursement total ou partiel de sa contribution.

Continuing liability
60(6) Where a limited partner has received the return of all or part of his contribution, he is nevertheless liable to the limited partnership or, where the limited partnership is dissolved, to its creditors, for any amount, not in excess of the amount returned with interest, necessary to discharge the liabilities of the limited partnership to all creditors who extended credit or whose claims otherwise arose before the return of the contribution.

Responsabilité continue
60(6) Le commanditaire qui a reçu le remboursement total ou partiel de sa contribution reste néanmoins responsable, jusqu'à concurrence de ce remboursement plus les intérêts, envers la société en commandite ou si elle est dissoute, envers les créanciers de celle-ci, des montants nécessaires pour remplir les engagements de la société envers les créanciers ayant accordé du crédit ou dont les réclamations sont nées antérieurement au remboursement.

When liable to refund
61 Where by the payment of interests or profits to any limited partner, the original capital has been reduced, the partner receiving it shall restore it, or so much thereof as is necessary to make good his share of the deficit capital, with interest.

Cas où le remboursement réduit le capital
61 Lorsque le capital initial a été entamé par le paiement d'intérêts ou de bénéfices à un commanditaire, celui-ci doit les rendre, au complet ou jusqu'à concurrence de sa part du déficit de capital, avec les intérêts.

Privileges of limited partners
62 A limited partner may, by himself or his agent inspect the books of the firm and examine into the state and progress of the partnership business, and may advise as to its management.

Privilèges du commanditaire
62 Le commanditaire peut, lui-même ou par l'entremise de son agent, consulter les livres de la firme, étudier l'état ainsi que les progrès de l'entreprise de la société en commandite, et donner des conseils quant à sa gestion.

Loss of limited liability by a limited partner
63(1) Where a limited partner takes an active part in the business of the partnership, he is liable as if he were a general partner, to any person with whom he deals on behalf of the partnership and who does not know that he is a limited partner for all debts of the partnership.

Limitation
63(2) The liability of a limited partner to a person under subsection (1) extends only to liabilities incurred by the partnership to that person between the time that the limited partner first so dealt with the person and the time when the person first acquires actual knowledge that he was dealing with a limited partner.

When limited partnership not dissolved
63(3) A limited partnership is not dissolved by the death or bankruptcy of a limited partner, and the mental incompetence of a limited partner is not a ground for dissolution of the partnership by a court unless the mentally incompetent partner's share cannot be otherwise ascertained and realized.

Winding-up
63(4) In the event of the dissolution of a limited partnership, its affairs shall be wound up by the general partners unless a court otherwise orders.

Further characteristics of a limited partnership
63(5) Subject to any agreement express or implied between the partners,

(a) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;

(b) a limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment, the assignee becomes a limited partner with all the rights of the assignor;

(c) the other partners are not entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt;

Perte de la responsabilité limitée
63(1) Le commanditaire qui prend une part active à l'exploitation de l'entreprise devient responsable pour l'ensemble des dettes de la société en commandite, au même titre que le commandité à l'égard de la personne ignorant qu'il est commanditaire et avec qui il fait affaire au nom de la société en commandite.

Limite de responsabilité
63(2) La responsabilité du commanditaire envers la personne mentionnée au paragraphe (1) ne s'étend qu'aux engagements pris par la société envers elle entre le moment où le commanditaire a fait affaire avec elle pour la première fois et le moment où cette personne a pris connaissance qu'elle faisait affaire avec un commanditaire.

Mort, faillite ou incapacité du commanditaire
63(3) La société en commandite n'est pas dissoute par la mort ou la faillite d'un commanditaire; l'incapacité mentale du commanditaire n'est pas un motif de dissolution de la société par le tribunal, à moins que la part du commanditaire ne puisse être autrement déterminée et réalisée.

Liquidation
63(4) Advenant le cas où la société en commandite est dissoute, ses affaires sont liquidées par les commandités, à moins que le tribunal n'en décide autrement.

Autres caractéristiques de la société en commandite
63(5) Sous réserve d'une convention expresse ou implicite entre les associés en commandite :

a) les différends qui surgissent à propos de questions ordinaires relatives aux affaires de la société en commandite peuvent être tranchés à la majorité des commandités;

b) le commanditaire peut, avec le consentement des commandités, céder sa part dans la société, auquel cas le cessionnaire devient commanditaire pourvu des droits du cédant;

c) les associés en commandite n'ont pas droit à la dissolution de la société dans le cas où un commanditaire voit sa part grevée au paiement de ses dettes personnelles;

(d) a person may be introduced as a partner without the consent of the existing limited partners;

(e) a limited partner is not entitled to dissolve the partnership by notice.

S.M. 1993, c. 29, s. 196.

d) une personne peut être acceptée comme associé en commandite sans le consentement des commanditaires en place;

e) le commanditaire n'a pas le droit de donner un avis de dissolution de la société en commandite.

L.M. 1993, c. 29, art. 196.

General partners liable to account
64 The general partners of a limited partnership are liable to account, both at law and in equity, to each other and to the limited partners for their management of the concern, in like manner as other partners are liable.

Devoir de rendre compte des commandités
64 Les commandités de la société en commandite sont responsables, au même titre que des associés en nom collectif, de rendre compte de leur gestion, tant en common law qu'en Équité, aux autres commandités et aux commanditaires.

Creditors preferred to limited partners
65 In case of the insolvency or bankruptcy of a limited partnership, no partner shall, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the limited partnership have been satisfied.

Préférence des créanciers
65 En cas d'insolvabilité ou de faillite de la société en commandite, aucun associé ne peut, en quelque circonstance que ce soit, reclamer à titre de créancier, tant que les réclamations de tous les autres créanciers de la société n'ont pas été satisfaites.

No premature dissolution without notice
66 No dissolution of a limited partnership by the acts of the partners shall take place until a notice of the dissolution is registered and published as required under *The Business Names Registration Act*.

Avis en cas de dissolution prématurée
66 La société en commandite n'est pas dissoute par les actes des associés en commandite à moins qu'un avis ne soit enregistré et publié conformément à la *Loi sur l'enregistrement des noms commerciaux*.

Registration of extra-provincial limited partnership
66.1(1) A partnership may be registered as an extra-provincial limited partnership under *The Business Names Registration Act* if it

(a) is formed under the laws of another province or territory of Canada; and

(b) has the status of a limited partnership under the laws of that province or territory.

Enregistrement d'une société en commandite extraprovinciale
66.1(1) Toute société en nom collectif peut être enregistrée à titre de société en commandite extraprovinciale en vertu de la *Loi sur l'enregistrement des noms commerciaux* si elle remplit les conditions suivantes :

a) elle est constituée sous le régime des lois d'un territoire ou d'une province du Canada autre que le Manitoba;

b) elle a le statut de société en commandite en vertu des lois de ce territoire ou de cette province.

Effective date and period of status
66.1(2) The status of a partnership as an extra-provincial limited partnership takes effect on the day on which it is registered as an extra-provincial limited partnership under *The Business Names Registration Act* and continues so long as the registration is in force or deemed to be in force under that Act.

Prise d'effet
66.1(2) Elle devient une société en commandite extraprovinciale à compter de la date de son enregistrement et continue de l'être aussi longtemps que celui-ci demeure valide ou est réputé l'être en vertu de cette loi.

Applicable law
66.1(3) The laws of the jurisdiction under which a partnership registered as an extra-provincial limited partnership is formed govern

(a) its organization and internal affairs; and

(b) the limited liability of its limited partners.

Loi applicable
66.1(3) Elle tombe sous le coup des lois du ressort où elle est constituée pour ce qui est :

a) de son organisation et de ses affaires internes;

b) de la responsabilité limitée de ses commanditaires.

Liability of limited partners
66.1(4) Despite section 55 and subsection (2), a limited partner of a partnership eligible to be registered as an extra-provincial limited partnership is not liable as a general partner in Manitoba solely because the partnership carries on business in Manitoba without having complied with the registration requirements under *The Business Names Registration Act*.

Responsabilité des commanditaires
66.1(4) Malgré l'article 55 et le paragraphe (2), le commanditaire d'une société en nom collectif ayant le droit d'être enregistrée à titre de société en commandite extraprovinciale n'assume pas la responsabilité d'un commandité au Manitoba du seul fait que la société exploite son entreprise au Manitoba sans être enregistrée conformément à la *Loi sur l'enregistrement des noms commerciaux*.

Attorney for service
66.1(5) A partnership registered as an extra-provincial limited partnership must have an attorney for service in Manitoba, appointed in accordance with section 8.3 of *The Business Names Registration Act*, unless a general partner of the partnership is

(a) an individual residing in Manitoba; or

(b) a body corporate registered under *The Corporations Act*.

Fondé de pouvoir pour fin de signification
66.1(5) La société en nom collectif enregistrée à titre de société en commandite extraprovinciale est tenue d'avoir un fondé de pouvoir pour fin de signification au Manitoba, nommé conformément à l'article 8.3 de la *Loi sur l'enregistrement des noms commerciaux*, à moins qu'un commandité de la société ne soit une personne physique résidant au Manitoba ou une personne morale enregistrée en vertu de la *Loi sur les corporations*.

Service on attorney
66.1(6) If a partnership registered as an extra-provincial limited partnership has an attorney for service, any notice under an Act or regulation made under an Act, or any process or other document relating to an action or other proceeding against the partnership, may be served on the partnership by serving it on the attorney.

Signification au fondé de pouvoir
66.1(6) Lorsqu'une société en nom collectif enregistrée à titre de société en commandite extraprovinciale a un fondé de pouvoir pour fin de signification, tout avis nécessaire à l'application d'une loi ou d'un règlement pris en vertu d'une loi ou tout bref ou autre document lié à une action ou à une procédure contre la société peut lui être signifié par l'entremise du fondé de pouvoir.

List of limited partners
66.1(7) Subject to subsection (9), a partnership registered as an extra-provincial limited partnership must keep at its principal place of business in Manitoba, or at the address of its general partner in Manitoba, a list that sets out

(a) the names and last known addresses of all current and former limited partners; and

(b) for each current or former limited partner,

(i) the date they became or ceased to be a limited partner, and

(ii) the amount of capital they contributed to the partnership when they became a limited partner and any subsequent increases or decreases to that amount.

Liste des commanditaires
66.1(7) Sous réserve du paragraphe (9), la société en nom collectif enregistrée à titre de société en commandite extraprovinciale garde dans son lieu d'affaires principal au Manitoba ou à l'adresse de son commandité au Manitoba une liste sur laquelle figurent :

a) les noms et les dernières adresses connues des commanditaires, actuels et anciens;

b) pour chacun d'eux :

(i) la date à laquelle il est devenu commanditaire ou a cessé de l'être,

(ii) le montant de son apport à la société au moment où il est devenu commanditaire et toute augmentation ou diminution de ce montant.

Making partnership list available
66.1(8) A partnership registered as an extra-provincial limited partnership must provide the following information to any person who requests it without delay and without charge:

(a) the list referred to in subsection (7);

(b) for a date specified in the request, which must be after the partnership was registered under *The Business Names Registration Act*,

(i) a list of the persons who were limited partners on that date, and

(ii) for persons who were limited partners on that date, their last known address and the amount of capital contributed to the partnership by each of them as of that date.

Consultation de la liste
66.1(8) La société en nom collectif enregistrée à titre de société en commandite extraprovinciale fournit, sur demande, sans délai et gratuitement les renseignements suivants :

a) la liste visée par le paragraphe (7);

b) la liste en son état à la date précisée dans la demande, ultérieure à la date d'enregistrement de la société en vertu de la *Loi sur l'enregistrement des noms commerciaux*, avec la dernière adresse connue de chaque commanditaire et le montant de son apport à la société à compter de cette date.

List at attorney's office
66.1(9) If a partnership registered as an extra-provincial limited partnership does not have either a principal place of business in Manitoba or a general partner that meets the requirements of clause (5)(a) or (b), the partnership must ensure that

(a) the list referred to in subsection (7) is kept at the office of its attorney for service in Manitoba; and

Liste au bureau du fondé de pouvoir
66.1(9) La société en nom collectif enregistrée à titre de société en commandite extraprovinciale qui n'a ni lieu d'affaires principal au Manitoba ni commandité qui satisfasse aux exigences des alinéas (5)a) ou b) veille à ce que :

a) la liste visée par le paragraphe (7) soit gardée au bureau de son fondé de pouvoir pour fin de signification au Manitoba;

(b) the attorney for service provides the information referred to in subsection (8) to any person who requests it without delay and without charge.

S.M. 2019, c. 25, s. 58.

b) celui-ci fournisse sans délai et gratuitement les renseignements indiqués au paragraphe (8) à quiconque en fait la demande.

L.M. 2019, c. 25, art. 58.

1995 CarswellBC 1935
British Columbia Court of Appeal

Lum v. Jackson

1995 CarswellBC 1935, [1995] B.C.W.L.D. 1290, 55 A.C.W.S. (3d) 423

Chin Weng Lum, Plaintiff (Respondent) and Michael Jackson, Defendant (Appellant)

Hutcheon J.A., McEachern C.J.B.C., Wood J.A.

Judgment: March 21, 1995
Docket: CA018466

Counsel: *S.M. Mathiesen*, for Appellant.
M.M. MacKinnon, for Respondent.

Subject: Corporate and Commercial
Related Abridgment Classifications
Business associations
IV Powers, rights and liabilities
IV.5 Dissolution of partnership
IV.5.e Rights, duties and liabilities
IV.5.e.v Withdrawing partner
Headnote
Partnership --- Dissolution — Rights, duties and liabilities — Withdrawing partner

***McEachern, C.J.B.C.*:**

1 This is an appeal from a judgment pronounced at trial awarding damages against the defendant in the sum of $25,000.00 under an agreement to sell and purchase units in a partnership.

2 A company known as 996 Restaurants Ltd. was the general partner in a limited partnership which operated a restaurant known as "Dem Bones Restaurant". The partnership wished to raise some capital by selling partnership units. The plaintiff, Mr. Lum, became a purchaser of some units by a letter dated December 4, 1990, written and sent by his solicitors to the solicitors for the limited partnership. Mr. Lum agreed to purchase five units for a total consideration of $25,000.00, and made it clear that, pursuant to conversations that had been shared on his behalf with Mr. Jackson, one of the principles of the general partner, his subscription was conditional upon Mr. Jackson agreeing to repurchase these units within nine months if Mr. Lum was dissatisfied with the performance of the limited partnership.

3 Documents then passed between the parties, and the next day an agreement was signed in the form of a letter written by Mr. Jackson, the defendant, to Mr. Lum, the plaintiff, in the following terms:

> Dear Mr. Lum:
>
> Re: Purchase by Chin Weng Lum of Five (5) limited partnership units in Dem Bones-1990-Limited Partnership for $25,000
>
> I refer to the captioned purchase by you of five (5) limited partnership units.
>
> I confirm our agreement that on September 5th, 1991 and until and including September 12th, 1991, you will have an option to elect whether or not you will continue in the Dem Bones-1990-Limited Partnership. If you elect not to continue in

the Limited Partnership you must deliver to me, care of James P. Clarke, Barrister & Solicitor, at 1535-808 Nelson Street, Vancouver, B.C. V6Z 2H2, written notice of your election not to continue in the Limited Partnership.

Provided your written notice of election not to continue in the Limited Partnership is received at the offices of James P. Clarke during the election period, namely September 5, 1991 to and including September 12th, 1991, I agree that I will repurchase your five (5) limited partnership units in Dem Bones-1990-Limited Partnership for $25,000.00, (less any monies received by you by way of distribution of the profits of the Limited Partnership), within ninety days following the date of delivery of your written notice of election.

DATED this 5th day of December, 1990.

This letter, signed as I have said by Mr. Jackson, was delivered to the solicitors for Mr. Lum and created what I regard as a binding agreement between them.

4 Things did not go well in the restaurant operated by the partnership, and it was sold on October 23, 1991, which is of course within the ninety day period. The partners agreed to dissolve the partnership on December 1, 1991, which is also within the ninety day period. Mr. Mathieson argued that under s. 35(b) of the *Partnership Act* of this province, that sale constituted a dissolution of the partnership. With respect, I do not agree with that, and I shall explain why I reach that conclusion in a moment.

5 The next item that happened in this chronology is that on September 5th, 1991, within the nine months' period specified by the letter agreement, Mr. Lum wrote to Mr. Jackson and stated as follows:

PURCHASE BY CHIN WENG LUM OF FIVE (5) LIMITED PARTNERSHIP UNITS IN DEM BONES-1990-LIMITED PARTNERSHIP FOR $25,000.00

I refer to your letter of 5 December 1990, (copy attached) and now wish to confirm that I do not want to continue in the Dem Bones-1990-Limited Partnership.

I enclose herewith the share certificate for five (5) limited partnership units in Dem Bones-1990-Limited Partnership and look forward to receiving your payment of C$25,000.00 in due course.

6 The learned trial judge, who gave judgment for the plaintiff, seems to have concluded that the agreement between the parties comprised the two letters of December 4th and 5th, 1990. Reading those two documents together, he concluded that Mr. Jackson became immediately indebted to Mr. Lum on September 5th, 1991. Alternatively, if there was any ambiguity, he would have applied the *contra preferentem* principle to reach the same conclusion.

7 I do not find it necessary to say anything more about the reasons for judgment, except to say that I do not find it necessary to decide whether Mr. Jackson became indebted to pay Mr. Lum on September 5th, 1991, or within ninety days of that date. Further, I do not find it necessary to go outside the terms of the December 5th, 1990, letter agreement, because I think it is all that I need to look at in order to decide this appeal.

8 In my judgment, the obligation of Mr. Jackson to repurchase Mr. Lum's units and ultimately to pay $25,000.00 both arose on September 5th when he gave the notice provided for in the December 5th, 1990 letter agreement. Mr. Mathieson argued that intervening events within the partnership materially affected this obligation. With respect, I do not agree. It was argued by Ms. MacKinnon that neither the sale of the restaurant nor the dissolution of the partnership within the ninety day period changed the obligations existing between those two parties. As to the sale of the business, I note the partnership agreement does not define the particular restaurant as the undertaking of the partnership. I say this because one of the objects of the partnership was to operate a "Dem Bones Restaurant" not just this particular restaurant.

9 As to the notice of dissolution, I accept the submission of Ms. MacKinnon that dissolution of the partnership does not terminate all rights between the partners. She referred particularly to s. 42, 45, 62 and 73 of the *Partnership Act* as authority for the proposition that dissolution does not and the relationship between the partners. Mr. Mathieson concedes, for example, that partnership interests remain after dissolution and that those interests depend upon the number of units owned by each partner.

Thus, for example, if a partnership is dissolved leaving a surplus a person in the position of Mr. Jackson might insist on his right to acquire units he has a contractual right to purchase. Similarly, losses have some commercial value.

10 I know of no principle of law and certainly none in equity that would prevent parties contractually bound to buy or sell partnership interests or units to be defeated in the enforcement of those legal and equitable rights by unfortunate business reversals or deliberate business decisions to dissolve the partnership.

11 For those reasons, which are not entirely the same as those delivered by the learned trial judge, I would dismiss this appeal.

Wood, J.A.:

I agree.

Hutcheon, J.A.:

I agree.

McEachern, C.J.B.C.:

Thank you counsel. The appeal is dismissed.

End of Document

CANADA

CONSOLIDATION

CODIFICATION

Bankruptcy and Insolvency General Rules

Règles générales sur la faillite et l'insolvabilité

C.R.C., c. 368

C.R.C., ch. 368

Current to January 24, 2022

Last amended on March 25, 2011

À jour au 24 janvier 2022

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1.2 The MFDA Investor Protection Corporation is a prescribed body for the purposes of the definition ***customer compensation body*** in section 253 of the Act.

SOR/2011-94, s. 1.

1.2 La Corporation de protection des investisseurs de l'ACFM est une entité prescrite au sens de la définition de ***organisme d'indemnisation des clients*** prévue à l'article 253 de la Loi.

DORS/2011-94, art. 1.

General

2 Documents that by the Act are to be prescribed must be in the form prescribed, with any modifications that the circumstances require and subject to any deviations permitted by section 32 of the *Interpretation Act*, and must be used in proceedings under the Act.

SOR/92-579, s. 3; SOR/98-240, s. 1; SOR/2007-61, s. 2(E).

3 In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

SOR/98-240, s. 1.

4 If a period of less than six days is provided for the doing of an act or the initiating of a proceeding under the Act or these Rules, calculation of the period does not include Saturdays or holidays.

SOR/98-240, s. 1; SOR/2007-61, s. 63(E).

5 (1) Subject to subsection (2), a notice or other document that is received by a Division Office outside of its business hours is deemed to have been received

(a) on the next business day of that Division Office, if it was received

(i) between the end of business hours and midnight, local time, on a business day, or

(ii) on a Saturday or holiday; or

(b) at the beginning of business hours of that Division Office, if it was received between midnight and the beginning of business hours, local time, on a business day.

(2) Subsection (1) does not apply to documents related to proceedings under Part III of the Act that are filed by facsimile.

SOR/78-389, s. 1; SOR/92-579, s. 4; SOR/98-240, s. 1; SOR/2005-284, s. 1.

6 (1) Unless otherwise provided in the Act or these Rules, every notice or other document given or sent pursuant to the Act or these Rules must be served, delivered personally, or sent by mail, courier, facsimile or electronic transmission.

Dispositions générales

2 Les documents à prescrire au titre de la Loi sont en la forme prescrite, avec les adaptations nécessaires et les différences de présentation permises par l'article 32 de la *Loi d'interprétation*, et sont utilisés dans les procédures engagées sous le régime de la Loi.

DORS/92-579, art. 3; DORS/98-240, art. 1; DORS/2007-61, art. 2(A).

3 Dans les cas non prévus par la Loi ou les présentes règles, les tribunaux appliquent, dans les limites de leur compétence respective, leur procédure ordinaire dans la mesure où elle est compatible avec la Loi et les présentes règles.

DORS/98-240, art. 1.

4 Lorsqu'un délai de moins de six jours est prévu pour accomplir un acte ou intenter une procédure en vertu de la Loi ou des présentes règles, les samedis et les jours fériés n'entrent pas dans le calcul du délai.

DORS/98-240, art. 1; DORS/2007-61, art. 63(A).

5 (1) Sous réserve du paragraphe (2), les avis et autres documents que le bureau de division reçoit en dehors des heures d'ouverture sont réputés reçus :

a) le premier jour ouvrable suivant de ce bureau, s'ils sont reçus :

(i) après les heures d'ouverture et avant minuit, heure locale, un jour ouvrable,

(ii) le samedi ou un jour férié;

b) au début des heures d'ouverture de ce bureau, s'ils sont reçus entre minuit et le début des heures d'ouverture, heure locale, un jour ouvrable.

(2) Le paragraphe (1) ne s'applique pas aux documents concernant les procédures fondées sur la partie III de la Loi qui sont déposés par télécopieur.

DORS/78-389, art. 1; DORS/92-579, art. 4; DORS/98-240, art. 1; DORS/2005-284, art. 1.

6 (1) Sauf disposition contraire de la Loi ou des présentes règles, les avis et autres documents à remettre ou à envoyer sous le régime de la Loi ou des présentes règles sont signifiés, remis en mains propres ou envoyés par courrier, par service de messagerie, par télécopieur ou par transmission électronique.

(2) Unless otherwise provided in these Rules, every notice or other document given or sent pursuant to the Act or these Rules

(a) must be received by the addressee at least four days before the event to which it relates, if it is served, delivered personally, or sent by facsimile or electronic transmission; or

(b) must be sent to the addressee at least 10 days before the event to which it relates, if it is sent by mail or by courier.

(3) A trustee, receiver or administrator who gives or sends a notice or other document shall prepare an affidavit, or obtain proof, that it was given or sent, and shall retain the affidavit or proof in their files.

(4) The court may, on an *ex parte* application, exempt any person from the application of subsection (2) or order any terms and conditions that the court considers appropriate, including a change in the time limits.

SOR/98-240, s. 1; SOR/2007-61, ss. 3(E), 63(E).

7 An assignment, proposal or notice of intention that is respectively offered, lodged or filed pursuant to the Act must be offered, lodged or filed by service, personal delivery, mail, courier, facsimile or electronic transmission.

SOR/78-389, s. 1; SOR/98-240, s. 1.

8 An interim receiver, a trustee, an administrator of a consumer proposal, an official receiver or a representative of the Superintendent is not required to be represented by a barrister or solicitor or, in the Province of Quebec, an advocate when appearing before a registrar on any court proceeding under the Act.

SOR/98-240, s. 1; SOR/2007-61, s. 4(E).

Court Proceedings

9 (1) All proceedings used in court must be dated and entitled in the name of the court in which they are used, together with the words "in Bankruptcy and Insolvency".

(2) Every document used in the filing of a bankruptcy application or used after the filing of an assignment must be entitled "In the Matter of the Bankruptcy of ...".

(3) Every document used in the filing of a proposal before bankruptcy must be entitled "In the Matter of the Proposal of ...".

(2) Sauf disposition contraire des présentes règles, les avis et autres documents à remettre ou à envoyer sous le régime des présentes règles :

a) doivent être reçus par le destinataire au moins quatre jours avant l'événement auquel ils se rapportent, s'ils sont signifiés, remis en mains propres ou envoyés par télécopieur ou par transmission électronique;

b) doivent être envoyés au destinataire au moins 10 jours avant l'événement auquel ils se rapportent, s'ils sont envoyés par courrier ou par service de messagerie.

(3) Le syndic, le séquestre ou l'administrateur qui remet ou envoie un avis ou tout autre document doit remplir un affidavit ou obtenir une preuve à cet effet, et conserver l'affidavit ou la preuve dans ses dossiers.

(4) Le tribunal peut, sur demande *ex parte*, dispenser toute personne de l'application du paragraphe (2) ou ordonner les modalités d'application qu'il juge indiquées, notamment un délai différent.

DORS/98-240, art. 1; DORS/2007-61, art. 3(A) et 63(A).

7 La cession, la proposition ou l'avis d'intention à présenter ou à déposer sous le régime de la Loi sont soit signifiés, soit remis en mains propres, soit envoyés par courrier, par service de messagerie, par télécopieur ou par transmission électronique.

DORS/78-389, art. 1; DORS/98-240, art. 1.

8 Le séquestre intérimaire, le syndic, l'administrateur d'une proposition de consommateur, le séquestre officiel ou le représentant du surintendant n'ont pas à être représentés par un avocat lorsqu'ils comparaissent devant le registraire au sujet d'une procédure judiciaire engagée sous le régime de la Loi.

DORS/98-240, art. 1; DORS/2007-61, art. 4(A).

Procédure judiciaire

9 (1) Tous les actes de procédure présentés devant le tribunal sont datés et portent en titre le nom du tribunal visé et la mention « En matière de faillite et d'insolvabilité ».

(2) Les documents utilisés lors du dépôt d'une requête en faillite ou après le dépôt d'une cession portent le titre « Dans l'affaire de la faillite de ... ».

(3) Les documents utilisés lors du dépôt d'une proposition antérieure à la faillite portent le titre « Dans l'affaire de la proposition de ... ».

(4) Every document used in the course of a receivership must be entitled "In the Matter of the Receivership of ...".

(5) Unless the Chief Justice, Associate Chief Justice or Commissioner, as the case may be, referred to in section 184 of the Act otherwise directs, every document that is required to be filed in court must first be filed at the office of the registrar.

(6) If the court deems necessary that any notice be sent to the Superintendent in any proceeding before it, a copy of that notice shall be sent to the Division Office.

SOR/98-240, s. 1; SOR/2007-61, s. 63(E), 64.

10 If any proceedings are transferred from one court to another court under subsection 187(7) or (10) of the Act, the registrar of the former court shall send the file to the registrar of the latter court, with a copy of the order of transfer attached to it.

SOR/98-240, s. 1; SOR/2007-61, s. 63(E).

Motions

11 Subject to these Rules, every application to the court must be made by motion unless the court orders otherwise.

SOR/98-240, s. 1.

12 The Superintendent may intervene in any application to the court by filing a notice of intervention with the court.

SOR/98-240, s. 1.

13 Subject to any order of the court given in exigent circumstances, a party who makes a motion must, at least one day before the day set for the hearing of the motion, file with the court

(a) the original of the notice of motion, or the motion, as the case may be;

(b) every affidavit in support of the notice of motion or the motion, as the case may be; and

(c) proof of service, if any, of the documents described in paragraphs (a) and (b).

SOR/98-240, s. 1; SOR/2005-284, s. 2.

Witnesses and Depositions

14 (1) A party to any court proceedings may, with leave of the court, examine the other party or any other person and require them to produce documents.

(4) Les documents relatifs à une mise sous séquestre portent le titre « Dans l'affaire de la mise sous séquestre de ... ».

(5) À moins que le juge en chef, le juge en chef adjoint ou le commissaire, selon le cas, visé à l'article 184 de la Loi n'en ordonne autrement, les documents à déposer auprès du tribunal sont déposés au préalable au bureau du registraire.

(6) Si le tribunal juge qu'il est nécessaire, dans toute procédure dont il est saisi, d'envoyer un avis au surintendant, une copie de cet avis est envoyée au bureau de division.

DORS/98-240, art. 1; DORS/2007-61, art. 63(A) et 64.

10 En cas de renvoi des procédures d'un tribunal à un autre conformément aux paragraphes 187(7) ou (10) de la Loi, le registraire du premier tribunal fait parvenir le dossier au registraire du second tribunal en y joignant une copie de l'ordonnance de renvoi.

DORS/98-240, art. 1; DORS/2007-61, art. 63(A).

Requêtes et motions

11 Sous réserve des autres dispositions des présentes règles, toute demande au tribunal se fait par requête ou par motion, à moins que celui-ci n'en ordonne autrement.

DORS/98-240, art. 1.

12 Le surintendant peut intervenir dans une demande présentée au tribunal en déposant un avis d'intervention auprès de celui-ci.

DORS/98-240, art. 1.

13 Sous réserve d'une ordonnance du tribunal rendue en cas d'urgence, la partie qui présente une requête ou une motion dépose auprès du tribunal, au moins un jour avant la date fixée pour l'audition de celle-ci :

a) l'original de l'avis de requête ou de motion, ou de la requête ou de la motion, selon le cas;

b) les affidavits à l'appui de l'avis de requête ou de motion, ou de la requête ou de la motion, selon le cas;

c) une preuve de la signification, le cas échéant, des documents visés aux alinéas a) et b).

DORS/98-240, art. 1; DORS/2005-284, art. 2.

Témoins et dépositions

14 (1) Toute partie à une procédure judiciaire peut, avec l'autorisation du tribunal, interroger l'autre partie ou