



Bankruptcy and Insolvency Act (R.S., 1985, c. B-3)

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Act current to February 28th, 2007

Attention: See coming into force provision and notes, where applicable.

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Bankruptcy and Insolvency Act

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"
« *affidavit* »

"affidavit" includes statutory declaration and solemn affirmation;

"aircraft objects"
« *biens aéronautiques* »

"aircraft objects" has the same meaning as in subsection 2(1) of the *International Interests in Mobile Equipment (aircraft equipment) Act*,

"application" « *Version anglaise seulement* »

"application" , with respect to a bankruptcy application filed in a court in the Province of Quebec, means a motion;

"assignment"
« *cession* »

"assignment" means an assignment filed with the official receiver;

"bank"
« *banque* »

"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;

"bankrupt"
«*failli*»

"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;

"bankruptcy"
«*faillite*»

"bankruptcy" means the state of being bankrupt or the fact of becoming bankrupt;

"child" [Repealed, 2000, c. 12, s. 8]

"claim provable in bankruptcy", "provable claim" or "claim provable"
«*réclamation prouvable en matière de faillite*» ou
«*réclamation prouvable*»

"claim provable in bankruptcy", "provable claim" or "claim provable" includes any claim or liability provable in proceedings under this Act by a creditor;

"common-law partner"
«*conjoint de fait*»

"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;

"common-law partnership"
«*union de fait*»

"common-law partnership" means the relationship between two persons who are common-law partners of each other;

"corporation"
«*personne morale*»

"corporation" includes any company or legal person incorporated by or under an Act of Parliament or of any province, and any incorporated company, wherever incorporated, that is authorized to carry on business in Canada or that has an office or property in Canada, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, insurance companies, trust companies, loan companies or railway companies;

"court"
«*tribunal*»

"court", except in paragraphs 178(1)(a) and (a.1) and sections 204.1 to 204.3 and subject to subsection 243(1), means the court having jurisdiction in bankruptcy or a judge thereof, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act;

"creditor"
«*créancier*»

"creditor" means a person having a claim, unsecured, preferred by virtue of priority under section 136 or secured, provable as a claim under this Act;

"date of the initial bankruptcy event"
«*ouverture de la faillite*»

"date of the initial bankruptcy event", in respect of a person, means the earliest of the date of filing of or making of

(a) an assignment by or in respect of the person,

- (b) a proposal by or in respect of the person,
- (c) a notice of intention by the person,
- (d) the first application for a bankruptcy order against the person, in any case
 - (i) referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or
 - (ii) in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal, or
- (e) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d);

"debtor"
«*débiteur*»

"debtor" includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt;

"executing officer"
«*huissier- exécutant*»

"executing officer" includes a sheriff, a bailiff and any officer charged with the execution of a writ or other process under this Act or any other Act or proceeding with respect to any property of a debtor;

"General Rules"
«*Règles générales*»

"General Rules" means the General Rules referred to in section 209;

"insolvent person"
«*personne insolvable*»

"insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

"legal counsel"
«*conseiller juridique*»

"legal counsel" means any person qualified, in accordance with the laws of a province, to give legal advice;

"locality of a debtor"
«*localité d'un débiteur*»

"locality of a debtor" means the principal place

- (a) where the debtor has carried on business during the year immediately preceding his bankruptcy,
- (b) where the debtor has resided during the year immediately preceding his bankruptcy, or
- (c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated;

"Minister"
« *ministre* »

"Minister" means the Minister of Industry;

"official receiver"
« *séquestre officiel* »

"official receiver" means an officer appointed under subsection 12(2);

"person"
« *personne* »

"person" includes a partnership, an unincorporated association, a corporation, a cooperative society or an organization, the successors of a partnership, association, corporation, society or organization, and the heirs, executors, liquidators of the succession, administrators or other legal representative of a person, according to the law of that part of Canada to which the context extends;

"prescribed"
« *prescrit* »

"prescribed"

(a) in the case of the form of a document that is by this Act to be prescribed and the information to be given therein, means prescribed by directive issued by the Superintendent under paragraph 5(4)(e), and

(b) in any other case, means prescribed by the General Rules;

"property"
« *bien* »

"property" means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property;

"proposal"
« *proposition concordataire* » ou
« *proposition* »

"proposal" means

(a) in any provision of Division I of Part III, a proposal made under that Division, and

(b) in any other provision, a proposal made under Division I of Part III or a consumer proposal made under Division II of Part III

and includes a proposal or consumer proposal, as the case may be, for a composition, for an extension of time or for a scheme or arrangement;

"public utility"
« *entreprise de service public* »

"public utility" includes a person or body who supplies fuel, water or electricity, or supplies telecommunications, garbage collection, pollution control or postal services;

"resolution" or "ordinary resolution"
« *résolution* » ou
« *résolution ordinaire* »

"resolution" or "ordinary resolution" means a resolution carried in the manner provided by section 115;

"secured creditor"
« *créancier garanti* »

"secured creditor" means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

(a) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the *Civil Code of Québec* or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or

(b) any of

- (i) the vendor of any property sold to the debtor under a conditional or instalment sale,
- (ii) the purchaser of any property from the debtor subject to a right of redemption, or
- (iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person's rights is subject to the provisions of Book Six of the *Civil Code of Québec* entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights;

"settlement"
«*disposition*»

"settlement" includes a contract, covenant, transfer, gift and designation of beneficiary in an insurance contract, to the extent that the contract, covenant, transfer, gift or designation is gratuitous or made for merely nominal consideration;

"sheriff" [Repealed, 2004, c. 25, s. 7]

"special resolution"
«*résolution spéciale*»

"special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution;

"Superintendent"
«*surintendant*»

"Superintendent" means the Superintendent of Bankruptcy appointed under subsection 5(1);

"Superintendent of Financial Institutions"
«*surintendant des institutions financières*»

"Superintendent of Financial Institutions" means the Superintendent of Financial Institutions appointed under subsection 5(1) of the *Office of the Superintendent of Financial Institutions Act*;

"trustee" or "licensed trustee"
«*syndic*» ou
«*syndic autorisé*»

"trustee" or "licensed trustee" means a person who is licensed or appointed under this Act.

R.S., 1985, c. B-3, s. 2; R.S., 1985, c. 31 (1st Supp.), s. 69; 1992, c. 1, s. 145(F), c. 27, s. 3; 1995, c. 1, s. 62; 1997, c. 12, s. 1; 1999, c. 28, s. 146, c. 31, s. 17; 2000, c. 12, s. 8; 2001, c. 4, s. 25, c. 9, s. 572; 2004, c. 25, s. 7; 2005, c. 3, s. 11.

Time or date of bankruptcy

2.1 For the purposes of this Act, the bankruptcy or putting into bankruptcy of a person occurs at the time or date of

- (a) the granting of a bankruptcy order against the person;
- (b) the filing of an assignment by or in respect of the person; or

(c) the event that causes an assignment by the person to be deemed.

1997, c. 12, s. 2; 2004, c. 25, s. 8.

Superintendent's division office

2.2 Any notification, document or other information that is required by this Act to be given, forwarded, mailed, sent or otherwise provided to the Superintendent, other than an application for a licence under subsection 13 (1), shall be given, forwarded, mailed, sent or otherwise provided to the Superintendent at the Superintendent's division office as specified in directives of the Superintendent.

1997, c. 12, s. 2.

Reviewable transaction

3. (1) For the purposes of this Act, a person who has entered into a transaction with another person otherwise than at arm's length shall be deemed to have entered into a reviewable transaction.

Question of fact

(2) It is a question of fact whether persons not related to one another within the meaning of section 4 were at a particular time dealing with each other at arm's length.

Presumption

(3) Persons related to each other within the meaning of section 4 shall be deemed not to deal with each other at arm's length while so related.

R.S., 1985, c. B-3, s. 3; 1997, c. 12, s. 3(F).

Definitions

4. (1) In this section, "related group"
«*groupe lié* »

"related group" means a group of persons each member of which is related to every other member of the group;

"unrelated group"
«*groupe non lié* »

"unrelated group" means a group of persons that is not a related group.

Definition of "related persons"

(2) For the purposes of this Act, persons are related to each other and are "related persons" if they are

(a) individuals connected by blood relationship, marriage, common-law partnership or adoption;

(b) a corporation and

(i) a person who controls the corporation, if it is controlled by one person,

(ii) a person who is a member of a related group that controls the corporation, or

(iii) any person connected in the manner set out in paragraph (a) to a person described in subparagraph (i) or (ii); or

(c) two corporations

(i) controlled by the same person or group of persons,

(ii) each of which is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,

(iii) one of which is controlled by one person and that person is related to any member of a related group

that controls the other corporation,

(iv) one of which is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,

(v) one of which is controlled by a related group a member of which is related to each member of an unrelated group that controls the other corporation, or

(vi) one of which is controlled by an unrelated group each member of which is related to at least one member of an unrelated group that controls the other corporation.

Relationships

(3) For the purposes of this section,

(a) where two corporations are related to the same corporation within the meaning of subsection (2), they shall be deemed to be related to each other;

(b) where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by whom the corporation is in fact controlled;

(c) a person who has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares in a corporation, or to control the voting rights of shares in a corporation, shall, except where the contract provides that the right is not exercisable until the death of an individual designated therein, be deemed to have the same position in relation to the control of the corporation as if he owned the shares;

(d) where a person owns shares in two or more corporations, he shall, as shareholder of one of the corporations, be deemed to be related to himself as shareholder of each of the other corporations;

(e) persons are connected by blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other;

(f) persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship or adoption to the other;

(f.1) persons are connected by common-law partnership if one is in a common-law partnership with the other or with a person who is connected by blood relationship or adoption to the other; and

(g) persons are connected by adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is connected by blood relationship, otherwise than as a brother or sister, to the other.

R.S., 1985, c. B-3, s. 4; 2000, c. 12, s. 9; 2004, c. 25, s. 9(F).

HER MAJESTY

Binding on Her Majesty

4.1 This Act is binding on Her Majesty in right of Canada or a province.

1992, c. 27, s. 4.

PART I

ADMINISTRATIVE OFFICIALS

SUPERINTENDENT

Appointment

5. (1) The Governor in Council shall appoint a Superintendent of Bankruptcy to hold office during pleasure who shall be paid such salary as the Governor in Council may fix.

Extent of supervision

(2) The Superintendent shall supervise the administration of all estates and matters to which this Act applies.

Duties

(3) The Superintendent shall, without limiting the authority conferred by subsection (2),

(a) receive applications for licences to act as trustees under this Act and issue licences to persons whose applications have been approved;

(b) [Repealed, 1992, c. 27, s. 5]

(c) where not otherwise provided for, require the deposit of one or more continuing guaranty bonds or continuing suretyships as security for the due accounting of all property received by trustees and for the due and faithful performance by them of their duties in the administration of estates to which they are appointed, in any amount that the Superintendent may determine, which amount may be increased or decreased as the Superintendent may deem expedient, and the security shall be in a form satisfactory to the Superintendent and may be enforced by the Superintendent for the benefit of the creditors;

(d) [Repealed, 1992, c. 27, s. 5]

(e) from time to time make or cause to be made such inspection or investigation of estates or other matters to which this Act applies, including the conduct of a trustee or a trustee acting as a receiver or interim receiver, as the Superintendent may deem expedient and for the purpose of the inspection or investigation the Superintendent or any person appointed by the Superintendent for the purpose shall have access to and the right to examine and make copies of all books, records, data, including data in electronic form, documents and papers pertaining or relating to any estate or other matter to which this Act applies;

(f) receive and keep a record of all complaints from any creditor or other person interested in any estate and make such specific investigations with regard to such complaints as the Superintendent may determine; and

(g) examine trustees' accounts of receipts and disbursements and final statements.

Powers of Superintendent

(4) The Superintendent may

(a) intervene in any matter or proceeding in court, where the Superintendent considers it expedient to do so, as if the Superintendent were a party thereto;

(b) issue, to official receivers, trustees, administrators of consumer proposals made under Division II of Part III and persons who provide counselling pursuant to this Act, directives with respect to the administration of this Act and, without restricting the generality of the foregoing, directives requiring them

(i) to keep such records as the Superintendent may require, and

(ii) to provide the Superintendent with such information as the Superintendent may require;

(c) issue such directives as may be necessary to give effect to any decision made by the Superintendent pursuant to this Act or to facilitate the carrying out of the purposes and provisions of this Act and the General Rules, including, without limiting the generality of the foregoing, directives relating to the powers, duties and functions of trustees, of receivers and of administrators as defined in section 66.11;

(d) issue directives governing the criteria to be applied by the Superintendent in determining whether a trustee licence is to be issued to a person and governing the qualifications and activities of trustees; and

(e) issue directives prescribing the form of any document that is by this Act to be prescribed and the information to be given therein.

Compliance with directives

(5) Every person to whom a directive is issued by the Superintendent under paragraph (4)(b) or (c) shall comply with the directive in the manner and within the time specified therein.

Directives

(6) A directive issued by the Superintendent under this section shall be deemed not to be a statutory instrument within the meaning and for the purposes of the *Statutory Instruments Act*.

R.S., 1985, c. B-3, s. 5; 1992, c. 27, s. 5; 1997, c. 12, s. 4; 2001, c. 4, s. 26(E).

Outside investigations

6. (1) The Superintendent may engage such persons as the Superintendent may deem advisable to conduct any inspection or investigation or to take any other necessary action outside of the office of the Superintendent, and the cost and expenses thereof shall, when certified by the Superintendent, be payable out of the appropriation for the office of the Superintendent.

Superintendent may examine bank account

(2) The Superintendent, or any one duly authorized by him in writing on his behalf, is entitled to have access to and to examine and make copies of the banking accounts of a trustee in which estate funds may have been deposited, and, when required, all deposit slips, cancelled cheques or other documents relating thereto in the custody of the bank or the trustee shall be produced for examination.

Superintendent may examine records and documents

(3) The Superintendent, or anyone duly authorized in writing by or on behalf of the Superintendent, may with the leave of the court granted on an *ex parte* application examine the books, records, documents and deposit accounts of a trustee or any other person designated in the order granting that leave for the purpose of tracing or discovering the property or funds of an estate when there are reasonable grounds to believe or suspect that the property or funds of an estate have not been properly disclosed or dealt with and for that purpose may under a warrant from the court enter on and search any premises.

Court order re payments from accounts

(4) Where the Superintendent, on *ex parte* application, satisfies the court that it is necessary and in the public interest to do so, the court may issue an order directing a deposit-taking institution that holds a deposit account of a trustee or such other person as is designated in the order not to make payments out of the account until such time as the court otherwise directs.

R.S., 1985, c. B-3, s. 6; 1997, c. 12, s. 5.

7. and 8. [Repealed, 1992, c. 27, s. 6]

Appointment of employees

9. Such employees as are required to assist the Superintendent to perform his functions under this Act shall be appointed in accordance with the *Public Service Employment Act*.

R.S., c. B-3, s. 5.

Investigations or inquiries by Superintendent

10. (1) Where, on information supplied by an official receiver, trustee or other person, the Superintendent suspects, on reasonable grounds, that a person has, in connection with any estate or matter to which this Act applies, committed an offence under this Act or any other Act of Parliament, the Superintendent may, if it appears to the Superintendent that the alleged offence might not otherwise be investigated, make or cause to be made such inquiries or investigations as the Superintendent deems expedient with respect to the conduct, dealings and transactions of the debtor concerned, the causes of the bankruptcy or insolvency of the debtor and the disposition of the property of the debtor.

(2) [Repealed, 1992, c. 27, s. 7]

Examination

(3) If, on the application of the Superintendent or the Superintendent's authorized representative, a subpoena has been issued by the court, the Superintendent may, for the purpose of an investigation under subsection (1), examine or cause to be examined under oath before the registrar of the court or other authorized person, the debtor, any person who the Superintendent suspects, on reasonable grounds, has knowledge of the affairs of the debtor, or any person who is or has been an agent or a mandatary, or a clerk, a servant, an officer, a director or an employee of the debtor, with respect to the conduct, dealings and transactions of the debtor, the causes of the bankruptcy or insolvency of the debtor, and the disposition of the property of the debtor, and may order any person liable to be so examined to produce any books, records, papers or documents in the person's possession or under the control of the person relating to the debtor and the conduct, dealings and transactions of the debtor, the causes of the bankruptcy or insolvency of the debtor or the disposition of the debtor's property.

Questions

(4) A person being examined pursuant to this section is bound to answer all questions relating to the conduct, dealings and transactions of the debtor, the causes of the debtor's bankruptcy or insolvency and the disposition of the debtor's property.

Privilege of witness

(5) Where a person being examined pursuant to this section objects to answering any question on the ground that his answer may tend to criminate him or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person and if, but for this section or section 5 of the *Canada Evidence Act*, he would have been excused from answering that question, the answer so given shall not be used or admitted in evidence against him in any proceeding, civil or criminal, thereafter taking place other than a prosecution for perjury in the giving of that evidence.

Compliance

(6) No person shall hinder, molest or interfere with any person doing anything that he is authorized by or pursuant to this section to do, or prevent or attempt to prevent any person doing any such thing, and, notwithstanding any other Act or law, every person shall, unless he is unable to do so, do everything he is required by or pursuant to this section to do.

Copies

(7) Where any book, record, paper or other document is examined or produced in accordance with this section, the person by whom it is examined or to whom it is produced or the Superintendent may make or cause to be made one or more copies thereof, and a document purporting to be certified by the Superintendent or a person thereunto authorized by him to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if it were proven in the ordinary way.

R.S., 1985, c. B-3, s. 10; 1992, c. 27, s. 7; 2004, c. 25, s. 10.

Reporting offence to provincial authority

11. (1) Where after an investigation pursuant to section 10 or otherwise the Superintendent has obtained evidence of an offence having been committed in connection with an estate or matter to which this Act applies, the Superintendent shall report the alleged offence to the deputy attorney general of the province concerned or to such person as is duly designated by that deputy attorney general for that purpose.

Costs and expenses

(2) Notwithstanding section 136, a recovery made as the result of any inquiries or investigation made or caused to be made pursuant to section 10 shall be applied to the reimbursement of any costs and expenses incurred by the Superintendent thereon, not being ordinary costs or expenses of the office of the Superintendent, and the balance thereafter remaining in respect of the recovery shall be made available for the benefit of the creditors of the debtor.

R.S., 1985, c. B-3, s. 11; 1992, c. 27, s. 8; 2004, c. 25, s. 11(F).

PUBLIC RECORDS

Public records

11.1 (1) The Superintendent shall keep, or cause to be kept, in such form as the Superintendent deems appropriate and for the prescribed period, a public record of

(a) proposals,

(b) bankruptcies,

(c) licences issued to trustees by the Superintendent, and appointments or designations of administrators made by the Superintendent, and

(d) notices sent to the Superintendent by receivers pursuant to subsection 245(1)

and, on request therefor and on payment of such fee as may be prescribed, shall provide, or cause to be provided, any information contained in that public record.

Other records

(2) The Superintendent shall keep, or cause to be kept, in such form as the Superintendent deems appropriate and for the prescribed period, such other records relating to the administration of this Act as the Superintendent deems advisable.

1992, c. 27, s. 8.

OFFICIAL RECEIVERS

Bankruptcy districts and divisions

12. (1) Each of the provinces constitutes one bankruptcy district for the purposes of this Act but the Governor in Council may divide any bankruptcy district into two or more bankruptcy divisions and name or number them.

Official receivers

(2) The Governor in Council shall appoint one or more official receivers in each bankruptcy division who shall be deemed to be officers of the court and shall have and perform the duties and responsibilities specified by this Act and the General Rules.

Report to Superintendent

(3) The official receiver shall make a report to the Superintendent, in the prescribed form, of every bankruptcy originating in his division, and he shall also notify the Superintendent of any subsequent increase or decrease in the security filed by the trustee.

Registrar to act for official receiver

(4) In the absence or illness of the official receiver or pending the appointment of a successor when the office is vacant, the registrar of the court shall perform the duties of the official receiver.

R.S., c. B-3, s. 8.

TRUSTEES

Licensing of Trustees

Application for licence

13. (1) A person who wishes to obtain a licence to act as a trustee shall file with the Superintendent an application for a licence in the prescribed form.

Conditions of eligibility

(2) The Superintendent, after such investigation concerning an applicant for a licence to act as a trustee as the Superintendent considers necessary, may issue the licence if the Superintendent is satisfied, having regard to the criteria referred to in paragraph 5(4)(d), that the applicant is qualified to obtain the licence.

Non-eligibility

(3) The Superintendent may refuse to issue a licence to an applicant who is insolvent or has been convicted of an indictable offence.

R.S., 1985, c. B-3, s. 13; 1992, c. 27, s. 9; 1997, c. 12, s. 6.

Form of licence

13.1 A licence shall

(a) be in the prescribed form;

(b) specify the bankruptcy district or part thereof in which the trustee is entitled to act; and

(c) be subject to such conditions and limitations as the Superintendent considers appropriate and may specify therein.

1992, c. 27, s. 9; 1997, c. 12, s. 7.

Fees payable

13.2 (1) Prior to the issue of a licence, the applicant shall pay such fees as may be prescribed.

Idem

(2) On the December 31 following the day on which a licence is issued, and on December 31 in each year thereafter, the trustee shall pay such fees as may be prescribed.

When licence invalid

(3) A licence ceases to be valid on the failure of the trustee to pay a fee in accordance with subsection (2) or if the trustee becomes bankrupt.

Superintendent may reinstate licence

(4) Where a licence has ceased to be valid by reason of

(a) failure to pay fees, the Superintendent may reinstate it where the trustee pays the outstanding fees together with a prescribed penalty amount and provides a reasonable written explanation of the failure to pay them in accordance with subsection (2); or

(b) the trustee becoming bankrupt, the Superintendent may, on written representations made by the trustee, reinstate the licence subject to such conditions and limitations as the Superintendent considers appropriate and may specify therein.

Suspension or cancellation

(5) A licence may be suspended or cancelled by the Superintendent

(a) if the trustee is convicted of an indictable offence;

(b) if the trustee has failed to comply with any of the conditions or limitations to which the licence is subject;

(c) if the trustee has ceased to act as a trustee; or

(d) at the request of the trustee.

Notice of intended decision

(6) Notice of an intended decision under subsection (5) shall be in writing setting out the Superintendent's reasons therefor and shall be sent to the trustee at least ten days before the decision takes effect.

Conditions

(7) If a licence ceases to be valid by virtue of subsection (3) or is suspended or cancelled under subsection (5), the Superintendent may impose on the trustee any requirements that the Superintendent considers appropriate, including a requirement that the trustee provide security for the protection of an estate.

Non-application of procedure

(8) For greater certainty, section 14.02 does not apply in respect of a suspension or cancellation of a licence under subsection (5).

1992, c. 27, s. 9; 1997, c. 12, s. 8; 2004, c. 25, s. 12.

Conduct of Trustees

Where trustee is not qualified to act

13.3 (1) Except with the permission of the court and on such conditions as the court may impose, no trustee shall act as trustee in relation to the estate of a debtor

- (a) where the trustee is, or at any time during the two preceding years was,
 - (i) a director or officer of the debtor,
 - (ii) an employer or employee of the debtor or of a director or officer of the debtor,
 - (iii) related to the debtor or to any director or officer of the debtor, or
 - (iv) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the debtor; or
- (b) where the trustee is
 - (i) the trustee under a trust indenture issued by the debtor or any person related to the debtor, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Québec* that is granted by the debtor or any person related to the debtor, or
 - (ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Where disclosure required

- (2) No trustee shall act as a trustee in relation to the estate of a debtor where the trustee is already
- (a) the trustee in the bankruptcy of, or in a proposal concerning, any person related to the debtor, or
 - (b) the receiver or the liquidator of the property of any person related to the debtor,

without making, at the time of being appointed as trustee in relation to the estate of the debtor and at the first meeting of creditors, full disclosure of that fact and of the potential conflict of interest.

1992, c. 27, s. 9; 1997, c. 12, s. 9(F); 2004, c. 25, s. 13.

Trustee may act for secured creditor on certain conditions

13.4 (1) No trustee shall, while acting as the trustee of an estate, act for or assist a secured creditor of the estate to assert any claim against the estate or to realize or otherwise deal with the security that the secured creditor holds, unless the trustee has obtained a written opinion of a legal counsel who does not act for the secured creditor that the security is valid and enforceable as against the estate.

Notification by trustee

(1.1) Forthwith on commencing to act for or assist a secured creditor of the estate in the manner set out in subsection (1), a trustee shall notify the Superintendent and the creditors or the inspectors

- (a) that the trustee is acting for the secured creditor;
- (b) of the basis of any remuneration from the secured creditor; and
- (c) of the opinion referred to in subsection (1).

Trustee to provide opinion

(2) Within two days after receiving a request therefor, a trustee shall provide the Superintendent with a copy of the opinion referred to in subsection (1) and shall also provide a copy to each creditor who has made a request therefor.

1992, c. 27, s. 9; 1997, c. 12, s. 10; 2004, c. 25, s. 14(E).

Code of ethics

13.5 A trustee shall comply with such code of ethics respecting the conduct of trustees as may be prescribed.

1992, c. 27, s. 9.

Persons disqualified from working for trustee

13.6 A trustee shall not engage the services of a person whose trustee licence has been cancelled under paragraph 13.2(5)(a) or subsection 14.01(1).

1997, c. 12, s. 11.

Appointment and Substitution of Trustees

Appointment of trustee by creditors

14. The creditors may, at any meeting by special resolution, appoint or substitute another licensed trustee for the trustee named in an assignment, a bankruptcy order or a proposal, or otherwise appointed or substituted.

R.S., 1985, c. B-3, s. 14; 1992, c. 27, s. 9; 2004, c. 25, s. 15.

Decision affecting licence

14.01 (1) Where, after making or causing to be made an investigation into the conduct of a trustee, it appears to the Superintendent that

- (a) a trustee has not properly performed the duties of a trustee or has been guilty of any improper management of an estate,
- (b) a trustee has not fully complied with this Act, the General Rules, directives of the Superintendent or any law with regard to the proper administration of any estate, or
- (c) it is in the public interest to do so,

the Superintendent may do one or more of the following:

- (d) cancel or suspend the licence of the trustee;
- (e) place such conditions or limitations on the licence as the Superintendent considers appropriate including a requirement that the trustee successfully take an exam or enrol in a proficiency course, and

(f) require the trustee to make restitution to the estate of such amount of money as the estate has been deprived of as a result of the trustee's conduct.

Application to former trustees

(1.1) This section and section 14.02 apply, in so far as they are applicable, in respect of former trustees, with such modifications as the circumstances require.

Delegation

(2) The Superintendent may delegate by written instrument, on such terms and conditions as are therein specified, any or all of the Superintendent's powers, duties and functions under subsection (1), subsection 13.2 (5), (6) or (7) or section 14.02 or 14.03.

Notification to trustees

(3) Where the Superintendent delegates in accordance with subsection (2), the Superintendent or the delegate shall

(a) where there is a delegation in relation to trustees generally, give written notice of the delegation to all trustees; and

(b) whether or not paragraph (a) applies, give written notice of the delegation of a power to any trustee who may be affected by the exercise of that power, either before the power is exercised or at the time the power is exercised.

1992, c. 27, s. 9; 1997, c. 12, s. 12.

Notice of proposed decision to trustee

14.02 (1) Where the Superintendent intends to exercise any of the powers referred to in subsection 14.01(1), the Superintendent shall send the trustee written notice of the powers that the Superintendent intends to exercise and the reasons therefor and afford the trustee a reasonable opportunity for a hearing.

Procedure at hearing

(2) At a hearing referred to in subsection (1), the Superintendent

(a) has the power to administer oaths;

(b) is not bound by any legal or technical rules of evidence in conducting the hearing;

(c) shall deal with the matters set out in the notice of the hearing as informally and expeditiously as the circumstances and a consideration of fairness permit; and

(d) shall cause a summary of any oral evidence to be made in writing.

Record

(3) The notice referred to in subsection (1) and, where applicable, the summary of oral evidence referred to in paragraph (2)(d), together with such documentary evidence as the Superintendent receives in evidence, form the record of the hearing and the record and the hearing are public, unless the Superintendent is satisfied that personal or other matters that may be disclosed are of such a nature that the desirability of avoiding public disclosure of those matters, in the interest of a third party or in the public interest, outweighs the desirability of the access by the public to information about those matters.

Decision

(4) The decision of the Superintendent after a hearing referred to in subsection (1), together with the reasons therefor, shall be given in writing to the trustee not later than three months after the conclusion of the hearing, and is public.

Review by Federal Court

(5) A decision of the Superintendent given pursuant to subsection (4) is deemed to be a decision of a federal board, commission or other tribunal that may be reviewed and set aside pursuant to the *Federal Courts Act*.

1992, c. 27, s. 9; 1997, c. 12, s. 13; 2002, c. 8, s. 182.

Conservatory measures

14.03 (1) The Superintendent may, for the protection of an estate in the circumstances referred to in subsection (2),

- (a) direct a person to deal with property of the estate described in the direction in such manner as may be indicated in the direction, including the continuation of the administration of the estate;
- (b) direct any person to take such steps as the Superintendent considers necessary to preserve the books, records, data, including data in electronic form, and documents of the estate;
- (c) direct a bank or other depository not to pay out funds held to the credit of the estate except in accordance with the direction; and
- (d) direct the official receiver not to appoint the trustee in respect of any new estates until a decision is made under subsection 13.2(5) or 14.01(1).

Circumstances

(2) The circumstances in which the Superintendent is authorized to exercise the powers set out in subsection (1) are where

- (a) an estate is left without a trustee by the death, removal or incapacity of the trustee;
- (b) the Superintendent makes or causes to be made any investigation pursuant to paragraph 5(3)(e);
- (c) the Superintendent exercises any of the powers set out in section 14.01;
- (d) the fees referred to in subsection 13.2(2) have not been paid in respect of the trustee's licence;
- (e) a trustee becomes insolvent;
- (f) a trustee is convicted of an indictable offence or has failed to comply with any of the conditions or limitations to which the trustee's licence is subject; or
- (g) a circumstance referred to in paragraph 13.2(5)(c) or (d) exists and the Superintendent is considering cancelling the licence under subsection 13.2(5).

Contents and effect of direction

(3) A direction given pursuant to subsection (1)

- (a) shall state the statutory authority pursuant to which the direction is given;
- (b) is binding on the person to whom it is given; and
- (c) is, in favour of the person to whom it is given, conclusive proof of the facts set out therein.

Liability ceases on compliance

(4) A person who complies with a direction given pursuant to subsection (1) is not liable for any act done by the person only to comply with the direction.

1992, c. 27, s. 9; 1997, c. 12, s. 14; 1999, c. 31, s. 18(E).

Removal and appointment

14.04 The court, on the application of any interested person, may for cause remove a trustee and appoint another licensed trustee in the trustee's place.

1992, c. 27, s. 9.

Where there is no licensed trustee, etc.

14.05 Where a debtor resides or carries on business in a locality in which there is no licensed trustee, and no licensed trustee can be found who is willing to act as trustee, the court or the official receiver may appoint a responsible person residing in the locality of the debtor to administer the estate of the debtor, and that person, for that purpose, has all the powers of a licensed trustee under this Act, and the provisions of this Act apply to that person as if a licence had been issued to that person under paragraph 5(3)(a).

1992, c. 27, s. 9.

No trustee is bound to act

14.06 (1) No trustee is bound to assume the duties of trustee in matters relating to assignments, bankruptcy orders or proposals, but having accepted an appointment in relation to those matters the trustee shall, until discharged or another trustee is appointed in the trustee's stead, perform the duties required of a trustee under this Act.

Application

(1.1) In subsections (1.2) to (6), a reference to a trustee means a trustee in a bankruptcy or proposal and includes an interim receiver or a receiver within the meaning of subsection 243(2).

Non-liability in respect of certain matters

(1.2) Notwithstanding anything in any federal or provincial law, where a trustee carries on in that position the business of the debtor or continues the employment of the debtor's employees, the trustee is not by reason of that fact personally liable in respect of any claim against the debtor or related to a requirement imposed on the debtor to pay an amount where the claim arose before or upon the trustee's appointment.

Status of claim ranking

(1.3) A claim referred to in subsection (1.2) shall not rank as costs of administration.

Liability in respect of environmental matters

(2) Notwithstanding anything in any federal or provincial law, a trustee is not personally liable in that position for any environmental condition that arose or environmental damage that occurred

(a) before the trustee's appointment; or

(b) after the trustee's appointment unless it is established that the condition arose or the damage occurred as a result of the trustee's gross negligence or wilful misconduct or, in the Province of Quebec, the trustee's gross or intentional fault.

Reports, etc., still required

(3) Nothing in subsection (2) exempts a trustee from any duty to report or make disclosure imposed by a law referred to in that subsection.

Non-liability re certain orders

(4) Notwithstanding anything in any federal or provincial law but subject to subsection (2), where an order is made which has the effect of requiring a trustee to remedy any environmental condition or environmental damage affecting property involved in a bankruptcy, proposal or receivership, the trustee is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(a) if, within such time as is specified in the order, within ten days after the order is made if no time is so specified, within ten days after the appointment of the trustee, if the order is in effect when the trustee is

appointed, or during the period of the stay referred to in paragraph (b), the trustee

(i) complies with the order, or

(ii) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property, or any right in any immovable, affected by the condition or damage;

(b) during the period of a stay of the order granted, on application made within the time specified in the order referred to in paragraph (a), within ten days after the order is made or within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, by

(i) the court or body having jurisdiction under the law pursuant to which the order was made to enable the trustee to contest the order, or

(ii) the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(c) if the trustee had, before the order was made, abandoned or renounced or been divested of any interest in any real property, or any right in any immovable, affected by the condition or damage.

Stay may be granted

(5) The court may grant a stay of the order referred to in subsection (4) on such notice and for such period as the court deems necessary for the purpose of enabling the trustee to assess the economic viability of complying with the order.

Costs for remedying not costs of administration

(6) If the trustee has abandoned or renounced any interest in any real property, or any right in any immovable, affected by the environmental condition or environmental damage, claims for costs of remedying the condition or damage shall not rank as costs of administration.

Priority of claims

(7) Any claim by Her Majesty in right of Canada or a province against the debtor in a bankruptcy, proposal or receivership for costs of remedying any environmental condition or environmental damage affecting real property or an immovable of the debtor is secured by security on the real property or immovable affected by the environmental condition or environmental damage and on any other real property or immovable of the debtor that is contiguous with that real property or immovable and that is related to the activity that caused the environmental condition or environmental damage, and the security

(a) is enforceable in accordance with the law of the jurisdiction in which the real property or immovable is located, in the same way as a mortgage, hypothec or other security on real property or immovables; and

(b) ranks above any other claim, right, charge or security against the property, despite any other provision of this Act or anything in any other federal or provincial law.

Claim for clean-up costs

(8) Despite subsection 121(1), a claim against a debtor in a bankruptcy or proposal for the costs of remedying any environmental condition or environmental damage affecting real property or an immovable of the debtor shall be a provable claim, whether the condition arose or the damage occurred before or after the date of the filing of the proposal or the date of the bankruptcy.

1992, c. 27, s. 9; 1997, c. 12, s. 15; 2004, c. 25, s. 16.

Effect of defect or irregularity in appointment

14.07 No defect or irregularity in the appointment of a trustee vitiates any act done by the trustee in good faith.

1992, c. 27, s. 9.

Corporations as Trustees

Majority of officers and directors must hold licences

14.08 A body corporate may hold a licence as a trustee only if a majority of its directors and a majority of its officers hold licences as trustees.

1992, c. 27, s. 9.

Acts of body corporate

14.09 A body corporate that holds a licence as a trustee may perform the duties and exercise the powers of a trustee only through a director or officer of the body corporate who holds a licence as a trustee.

1992, c. 27, s. 9.

Not carrying on business of trust company

14.1 Every body corporate that is incorporated by or under an Act of Parliament and that holds a licence as a trustee may carry on the business of a trustee anywhere in Canada and shall not, in respect of its operations as a trustee, be construed to be carrying on the business of a trust company.

1992, c. 27, s. 9.

Official Name

Official name in bankruptcy and proposal proceedings

15. The official name of a trustee acting in bankruptcy proceedings is "The Trustee of the Estate of (*insert name of the bankrupt*), a bankrupt", and the official name of a trustee acting with respect to a proposal by an insolvent person is "The Trustee acting *in re* the proposal of (*insert the name of the debtor*)".

R.S., c. B-3, s. 11.

Status of Trustee

Declaration

15.1 A trustee is deemed to be a trustee for the purposes of the definition "trustee" in section 2 of the *Criminal Code*.

1997, c. 12, s. 16; 2004, c. 25, s. 17(F).

Duties and Powers of Trustees

Security to be given by trustee

16. (1) Every trustee duly appointed shall, as soon as they are appointed, give security in cash or by bond or suretyship of a guaranty company satisfactory to the official receiver for the due accounting for, the payment and the transfer of all property received by the trustee as trustee and for the due and faithful performance of the trustee's duties.

Security to be given by trustee

(2) The security required to be given under subsection (1) shall be given to the official receiver in favour of the creditors generally and may be enforced by any succeeding trustee or by any one of the creditors on behalf of all by direction of the court, and may be increased or reduced by the official receiver.

Trustee to take possession and make inventory

(3) The trustee shall, as soon as possible, take possession of the deeds, books, records and documents and all property of the bankrupt and make an inventory, and for the purpose of making an inventory the trustee is

entitled to enter, subject to subsection (3.1), on any premises on which the deeds, books, records, documents or property of the bankrupt may be, even if they are in the possession of an executing officer, a secured creditor or other claimant to them.

Warrant required to enter

(3.1) Where the premises referred to in subsection (3) are occupied by a person other than the bankrupt, the trustee may not enter the premises without the consent of that other person except under the authority of a warrant issued under section 189.

Trustee to be receiver

(4) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the court, and the court may on his application enforce the acquisition or retention accordingly.

Right of trustee to books of account, etc.

(5) No person is, as against the trustee, entitled to withhold possession of the books of account belonging to the bankrupt or any papers or documents, including material in electronic form, relating to the accounts or to any trade dealings of the bankrupt or to set up any lien or right of retention thereon.

R.S., 1985, c. B-3, s. 16; R.S., 1985, c. 31 (1st Supp.), s. 3; 1994, c. 26, s. 7; 1997, c. 12, s. 17; 2004, c. 25, s. 18.

Property to be delivered to trustee

17. (1) Where a person has in his possession or power any property of the bankrupt that he is not by law entitled to retain as against the bankrupt or the trustee, that person shall deliver the property to the trustee.

Power to act anywhere

(2) For the purpose of obtaining possession of and realizing on the property of the bankrupt, a trustee has power to act as such anywhere.

R.S., c. B-3, s. 12.

Conservatory measures

18. The trustee may when necessary in the interests of the estate of the bankrupt

(a) take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value; and

(b) carry on the business of the bankrupt until the date fixed for the first meeting of creditors.

R.S., c. B-3, s. 12.

Legal advice or action before first meeting

19. (1) The trustee may prior to the first meeting of creditors obtain such legal advice and take such court proceedings as he may consider necessary for the recovery or protection of the property of the bankrupt.

In case of emergency

(2) In the case of an emergency where the necessary authority cannot be obtained from the inspectors in time to take appropriate action, the trustee may obtain such legal advice and institute such legal proceedings and take such action as he may deem necessary in the interests of the estate of the bankrupt.

Verifying bankrupt's statement

(3) The trustee shall verify the bankrupt's statement of affairs.

R.S., 1985, c. B-3, s. 19; 2004, c. 25, s. 19(F).

Divesting property by trustee

20. (1) The trustee may, with the permission of the inspectors, divest all or any part of the trustee's right, title or interest in any real property or immovable of the bankrupt by a notice of quit claim or renunciation by the trustee, and the official in charge of the land titles or registry office, as the case may be, where title to the real property or immovable is registered shall accept and register in the land register the notice when tendered for registration.

Registration of notice

(2) Registration of a notice under subsection (1) operates as a discharge or release of any documents previously registered in the land register by or on behalf of the trustee with respect to the property referred to in the notice.

R.S., 1985, c. B-3, s. 20; 1997, c. 12, s. 18; 2004, c. 25, s. 20.

Initiating criminal proceedings

21. The trustee may initiate such criminal proceedings as may be authorized by the creditors, the inspectors or the court against any person believed to have committed an offence under this Act.

R.S., c. B-3, s. 12.

Duties regarding returns

22. The trustee is not liable to make any return that the bankrupt was required to make more than one year prior to the commencement of the calendar year, or the fiscal year of the bankrupt where that is different from the calendar year, in which he became a bankrupt.

R.S., c. B-3, s. 12.

Trustee to permit inspection of records

23. The trustee shall at all reasonable times permit any authorized person to inspect the books and papers of the bankrupt in order to prepare or verify returns that the bankrupt is by statute required to file.

R.S., c. B-3, s. 12.

Insuring property

24. (1) The trustee shall forthwith temporarily insure and keep insured in his official name all the insurable property of the bankrupt, for such amount and against such hazards as he may deem advisable until the inspectors are appointed, whereupon the inspectors shall determine the amount for which and the hazards against which the bankrupt's property shall be insured by the trustee.

Losses payable to trustee

(2) All insurance covering property of the bankrupt in force at the date of the bankruptcy shall in the event of loss suffered, without any notice to the insurer or other action on the part of the trustee and notwithstanding any statute or rule of law or contract or provision to a contrary effect, become payable immediately to the trustee as if the name of the trustee were written in the policy or contract of insurance as that of the insured or as if no change of title or ownership had come about and the trustee were the insured.

R.S., c. B-3, s. 13.

Trust account

25. (1) Subject to subsections (1.1) and (1.2), a trustee shall forthwith deposit in a bank all moneys received for an estate in a separate trust account for each estate.

Other banks must be insured

(1.1) The trustee may deposit moneys pursuant to subsection (1) in a deposit-taking institution, other than a bank as defined in section 2, only if deposits held by that institution are insured or guaranteed under a provincial or federal enactment that provides depositors with protection against the loss of money on deposit with that institution.

Foreign moneys

(1.2) Where moneys referred to in subsection (1) are situated in a country other than Canada, the trustee may, where authorized by the Superintendent, deposit the moneys in a financial institution in that country that is similar to a bank.

Permission needed for certain acts

(1.3) The trustee shall not withdraw any money from the trust account of an estate without the permission in writing of the inspectors or, on application, the court, except for the payment of dividends and charges incidental to the administration of the estate.

Payment by cheque

(2) All payments made by a trustee under subsection (1) shall be made by cheque drawn on the estate account or in such manner as is specified in directives of the Superintendent.

Not in private account

(3) The trustee shall not deposit any sums received by the trustee in the trustee's official capacity as a trustee in any banking account kept by the trustee for the trustee's personal use.

R.S., 1985, c. B-3, s. 25; 1992, c. 27, s. 10; 1997, c. 12, s. 19.

Books to be kept by trustee

26. (1) The trustee shall keep proper books and records of the administration of each estate to which he is appointed, in which shall be entered a record of all moneys received or disbursed by him, a list of all creditors filing claims, the amount and disposition of those claims, a copy of all notices sent out, the original signed copy of all minutes, proceedings had, and resolutions passed at any meeting of creditors or inspectors, court orders and all such other matters or proceedings as may be necessary to give a complete account of his administration of the estate.

Trustee's records to be property of estate

(2) The estate books, records and documents relating to the administration of an estate are deemed to be the property of the estate, and, in the event of any change of trustee, shall forthwith be delivered to the substituted trustee.

Records may be inspected

(3) The trustee shall permit the books, records and documents referred to in subsection (2) to be inspected and copies of them made by the Superintendent, the bankrupt or any creditor or their representative at any reasonable time.

R.S., 1985, c. B-3, s. 26; 1997, c. 12, s. 20; 2004, c. 25, s. 21.

Reports by trustee

- 27.** (1) The trustee shall from time to time report,
- (a) when required by the inspectors, to every creditor,
 - (b) when required by any specific creditor, to the creditor, and
 - (c) when required by the Superintendent, to the Superintendent or the creditors,

showing the condition of the bankrupt's estate, the moneys on hand, if any, and particulars of any property remaining unsold.

Disbursements

(2) The trustee is entitled to charge against the estate of the bankrupt, for the preparation and delivery of any report referred to in subsection (1), only his actual disbursements.

R.S., c. B-3, s. 13.

Documents to be forwarded to Superintendent

28. (1) The trustee shall, forthwith after their receipt or preparation, mail to the Superintendent true copies of the documents referred to in section 155 and a true copy of

- (a) the notice referred to in section 102,
- (b) the statement referred to in paragraph 158(d),
- (c) the trustee's final statement of receipts and disbursements and the dividend sheet, and
- (d) every order made by the court on the application for discharge of a bankrupt or annulling any bankruptcy,

and file a copy of the documents referred to in paragraphs (b) and (c) in the court.

Notices, etc., to be forwarded to Superintendent

(2) The trustee shall forward promptly to the Superintendent copies of all notices, reports and statements sent by him to the creditors and, when required, copies of such other documents as the Superintendent may specify.

R.S., 1985, c. B-3, s. 28; 1992, c. 1, s. 12, c. 27, s. 11.

Duty of trustee on expiration of licence or removal

29. (1) Where

- (a) the licence of a trustee has been cancelled or suspended, or has ceased to be valid by reason of failure to pay fees,
- (b) a trustee has been removed from continuing the administration of an estate, or
- (c) a trustee dies or becomes incapacitated,

the trustee or the legal representative of the trustee shall, within such time as is fixed by the Superintendent, prepare and forward to the Superintendent a detailed financial statement of the receipts and disbursements together with a list of and report on the unadministered property of every estate under the trustee's administration for which the trustee has not been discharged, and shall forward to such other trustee as may be appointed in the trustee's stead or, pending the appointment of the other trustee, to the official receiver all the remaining property of every estate under the trustee's administration together with all the books, records and documents relating thereto.

Report to be filed before discharge

(2) Every trustee before proceeding to his discharge shall, unless he has already done so, prepare and file the reports referred to in sections 170 and 171 and forward a copy of each to the Superintendent.

R.S., 1985, c. B-3, s. 29; 1997, c. 12, s. 21.

Powers exercisable by trustee with permission of inspectors

30. (1) The trustee may, with the permission of the inspectors, do all or any of the following things:

- (a) sell or otherwise dispose of for such price or other consideration as the inspectors may approve all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or

growing due to the bankrupt, by tender, public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(b) lease any real property or immovable;

(c) carry on the business of the bankrupt, in so far as may be necessary for the beneficial administration of the estate of the bankrupt;

(d) bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt;

(e) employ a barrister or solicitor or, in the Province of Quebec, an advocate, or employ any other representative, to take any proceedings or do any business that may be sanctioned by the inspectors;

(f) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the inspectors think fit;

(g) incur obligations, borrow money and give security on any property of the bankrupt by mortgage, hypothec, charge, lien, assignment, pledge or otherwise, such obligations and money borrowed to be discharged or repaid with interest out of the property of the bankrupt in priority to the claims of the creditors;

(h) compromise and settle any debts owing to the bankrupt;

(i) compromise any claim made by or against the estate;

(j) divide in its existing form among the creditors, according to its estimated value, any property that from its peculiar nature or other special circumstances cannot be readily or advantageously sold;

(k) elect to retain for the whole part of its unexpired term, or to assign, surrender, disclaim or resiliate any lease of, or other temporary interest or right in, any property of the bankrupt; and

(l) appoint the bankrupt to aid in administering the estate of the bankrupt in such manner and on such terms as the inspectors may direct.

Permission limited to particular thing or class

(2) The permission given for the purposes of subsection (1) is not a general permission to do all or any of the things mentioned in that subsection, but is only a permission to do the particular thing or things or class of thing or things that the permission specifies.

R.S., 1985, c. B-3, s. 30; 1997, c. 12, s. 22(F); 2004, c. 25, s. 22.

Borrowing powers with permission of court

31. (1) With the permission of the court, an interim receiver or a trustee, prior to the appointment of inspectors, may make necessary or advisable advances, incur obligations, borrow money and give security on the property of the debtor in such amounts, on such terms and on such property as may be authorized by the court and those advances, obligations and money borrowed shall be repaid out of the property of the debtor in priority to the claims of the creditors.

Security under *Bank Act*

(2) For the purpose of giving security under section 427 of the *Bank Act*, the trustee or interim receiver if authorized to carry on the business of the bankrupt is deemed to be a person engaged in the class of business previously carried on by the bankrupt.

Limit of obligations and carrying on of business

(3) The creditors or inspectors may by resolution limit the amount of the obligations that may be incurred, the advances that may be made or moneys that may be borrowed by the trustee and may limit the period of time during which the business of the bankrupt may be carried on by the trustee.

Debts deemed to be debts of estate

(4) All debts incurred and credit received in carrying on the business of a bankrupt are deemed to be debts incurred and credit received by the estate of the bankrupt.

R.S., 1985, c. B-3, s. 31; 1991, c. 46, s. 584.

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.

Reimbursement of trustee's advances

33. (1) 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 therefrom shall be used for the purpose of reimbursing the trustee in respect of any costs that may be owing to him or of any moneys he may have advanced for the benefit of the estate.

Court may vest property in trustee

(2) If no bid is received for the assets of the estate of the bankrupt sufficient to reimburse the trustee, the court may make an order vesting in the trustee personally all assets of the estate and on the making of the order the rights and interests of the creditors and of the bankrupt to the assets shall be determined and ended.

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

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.

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.

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

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

(b) a copy of the trustee's certificate of appointment,

request that any mail addressed to a bankrupt that is directed to any place referred to in the notice be redirected or sent by the Canada Post Corporation to the trustee or to such other person as the trustee may designate and when Canada Post Corporation receives those documents, it shall so redirect or send that mail.

Permission for residence

(2) A notice referred to in subsection (1) may refer to a bankrupt's residence only where the trustee has, on application, obtained permission from the court.

Limitation of time

(3) Where a bankrupt is an individual, a notice referred to in subsection (1) is operative only during the three month period immediately following the date of bankruptcy unless the court, on application, extends that period

on such terms as the court considers fit.

R.S., 1985, c. B-3, s. 35; 1992, c. 27, s. 13; 1997, c. 12, s. 23.

Duty of former trustee on substitution

36. (1) On the appointment of a substituted trustee, the former trustee shall forthwith pass his accounts before the court and deliver to the substituted trustee all the property of the estate, together with all books, records and documents of the bankrupt and of the administration.

Duty of substituted trustee

(2) A substituted trustee shall

(a) [Repealed, 1992, c. 27, s. 14]

(b) if appointed by the creditors, file with the court a copy of the minutes of the meeting signed by the chairman;

(c) notify the Superintendent of his appointment;

(d) if required by the inspectors, register a notice of the appointment in the land register of any land titles or registry office where the assignment or bankruptcy order has been registered; and

(e) as soon as funds are available, pay to the former trustee his remuneration and disbursements as approved by the court.

R.S., 1985, c. B-3, s. 36; 1992, c. 27, s. 14; 1997, c. 12, s. 24; 2004, c. 25, s. 23.

Appeal to court against trustee

37. Where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

R.S., c. B-3, s. 19.

Proceeding by creditor when trustee refuses to act

38. (1) Where a creditor requests the trustee to take any proceeding that in his opinion would be for the benefit of the estate of a bankrupt and the trustee refuses or neglects to take the proceeding, the creditor may obtain from the court an order authorizing him to take the proceeding in his own name and at his own expense and risk, on notice being given the other creditors of the contemplated proceeding, and on such other terms and conditions as the court may direct.

Transfer to creditor

(2) On an order under subsection (1) being made, the trustee shall assign and transfer to the creditor all his right, title and interest in the chose in action or subject-matter of the proceeding, including any document in support thereof.

Benefits belong to creditor

(3) Any benefit derived from a proceeding taken pursuant to subsection (1), to the extent of his claim and the costs, belongs exclusively to the creditor instituting the proceeding, and the surplus, if any, belongs to the estate.

Trustee may institute proceeding

(4) Where, before an order is made under subsection (1), the trustee, with the permission of the inspectors, signifies to the court his readiness to institute the proceeding for the benefit of the creditors, the order shall fix the time within which he shall do so, and in that case the benefit derived from the proceeding, if instituted within the time so fixed, belongs to the estate.

Remuneration of Trustee

To be voted by creditors

39. (1) The remuneration of the trustee shall be such as is voted to the trustee by ordinary resolution at any meeting of creditors.

Not to exceed 7½ per cent

(2) Where the remuneration of the trustee has not been fixed under subsection (1), the trustee may insert in his final statement and retain as his remuneration, subject to increase or reduction as hereinafter provided, a sum not exceeding seven and one-half per cent of the amount remaining out of the realization of the property of the debtor after the claims of the secured creditors have been paid or satisfied.

For carrying on debtor's business or in case of a proposal

(3) Where the business of the debtor has been carried on by the trustee or under his supervision, he may be allowed such special remuneration for such services as the creditors or the inspectors may by resolution authorize, and, in the case of a proposal, such special remuneration as may be agreed to by the debtor, or in the absence of agreement with the debtor such amount as may be approved by the court.

Successive trustees

(4) In the case of two or more trustees acting in succession, the remuneration shall be apportioned between the trustees in accordance with the services rendered by each, and in the absence of agreement between the trustees the court shall determine the amount payable to each.

Court may increase or reduce

(5) On application by the trustee, a creditor or the debtor and on notice to such parties as the court may direct, the court may make an order increasing or reducing the remuneration.

R.S., c. B-3, s. 21.

Discharge of Trustee

Disposal of unrealizable property

40. (1) With the permission of the inspectors, any property of a bankrupt found incapable of realization shall be returned to the bankrupt prior to the trustee's application for discharge.

Final disposition of property

(2) Where a trustee is unable to dispose of any property as provided in this section, the court may make such order as it may consider necessary.

R.S., c. B-3, s. 22.

Application to court

41. (1) When a trustee has completed the duties required of him with respect to the administration of the property of a bankrupt, he shall apply to the court for a discharge.

Discharge of trustee

(2) The court may discharge a trustee with respect to any estate on full administration thereof or, for sufficient cause, before full administration.

When another trustee has been appointed

(3) A trustee when replaced by another trustee is entitled to be discharged if he has accounted to the satisfaction of the inspectors and the court for all property that came to his hands, and a period of three months has elapsed after the date of the replacement without any undisposed of claim or objection having been made

by the bankrupt or any creditor.

When estate deemed fully administered

(4) When a trustee's accounts have been approved by the inspectors and taxed by the court and all objections, applications, oppositions, motions and appeals have been settled or disposed of and all dividends have been paid, the estate is deemed to have been fully administered.

Objections to be filed with court and trustee

(5) Any interested person desiring to object to the discharge of a trustee shall, at least five days prior to the date of the hearing, file notice of objection with the registrar of the court setting out the reasons for the objection and serve a copy of the notice on the trustee.

Court may grant discharge

(6) The court shall consider the objection filed under subsection (5) and may grant or withhold a discharge accordingly or give such directions as it may deem proper in the circumstances.

Fraud or breach of trust

(7) Nothing in or done under authority of this section relieves or discharges or shall be deemed to relieve or discharge a trustee from the results of any fraud.

Effect of discharge of trustee

(8) The discharge of a trustee discharges him from all liability

(a) in respect of any act done or default made by him in the administration of the property of the bankrupt, and

(b) in relation to his conduct as trustee,

but any discharge may be revoked by the court on proof that it was obtained by fraud or by suppression or concealment of any material fact.

Investigation not precluded

(8.1) Nothing in subsection (8) shall be construed to prevent an investigation or a proceeding in respect of a trustee under subsection 14.01(1).

Security released

(9) The discharge of a trustee under this section operates as a release of the security provided pursuant to subsection 16(1).

Trustee remains

(10) Notwithstanding his discharge, the trustee remains the trustee of the estate for the performance of such duties as may be incidental to the full administration of the estate.

Appointment of trustee by court to complete administration

(11) The court, on being satisfied that there are assets that have not been realized or distributed, may, on the application of any interested person, appoint a trustee to complete the administration of the estate of the bankrupt, and the trustee shall be governed by the provisions of this Act, in so far as they are applicable.

R.S., 1985, c. B-3, s. 41; 1997, c. 12, s. 25; 2004, c. 25, s. 25.

PART II

BANKRUPTCY ORDERS AND ASSIGNMENTS

ACTS OF BANKRUPTCY

Acts of bankruptcy

42. (1) A debtor commits an act of bankruptcy in each of the following cases:

- (a) if in Canada or elsewhere he makes an assignment of his property to a trustee for the benefit of his creditors generally, whether it is an assignment authorized by this Act or not;
- (b) if in Canada or elsewhere the debtor makes a fraudulent gift, delivery or transfer of the debtor's property or of any part of it;
- (c) if in Canada or elsewhere the debtor makes any transfer of the debtor's property or any part of it, or creates any charge on it, that would under this Act be void or, in the Province of Quebec, null as a fraudulent preference;
- (d) if, with intent to defeat or delay his creditors, he departs out of Canada, or, being out of Canada, remains out of Canada, or departs from his dwelling-house or otherwise absents himself;
- (e) if the debtor permits any execution or other process issued against the debtor under which any of the debtor's property is seized, levied on or taken in execution to remain unsatisfied until within five days after the time fixed by the executing officer for the sale of the property or for fifteen days after the seizure, levy or taking in execution, or if any of the debtor's property has been sold by the executing officer, or if the execution or other process has been held by the executing officer for a period of fifteen days after written demand for payment without seizure, levy or taking in execution or satisfaction by payment, or if it is returned endorsed to the effect that the executing officer can find no property on which to levy or to seize or take, but if interpleader or opposition proceedings have been instituted with respect to the property seized, the time elapsing between the date at which the proceedings were instituted and the date at which the proceedings are finally disposed of, settled or abandoned shall not be taken into account in calculating the period of fifteen days;
- (f) if he exhibits to any meeting of his creditors any statement of his assets and liabilities that shows that he is insolvent, or presents or causes to be presented to any such meeting a written admission of his inability to pay his debts;
- (g) if he assigns, removes, secretes or disposes of or attempts or is about to assign, remove, secrete or dispose of any of his property with intent to defraud, defeat or delay his creditors or any of them;
- (h) if he gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts;
- (i) if he defaults in any proposal made under this Act; and
- (j) if he ceases to meet his liabilities generally as they become due.

Unauthorized assignments are void or null

(2) Every assignment of an insolvent debtor's property other than an assignment authorized by this Act, made by an insolvent debtor for the general benefit of their creditors, is void or, in the Province of Quebec, null.

R.S., 1985, c. B-3, s. 42; 1997, c. 12, s. 26; 2004, c. 25, s. 27.

APPLICATION FOR BANKRUPTCY ORDER

Bankruptcy application

43. (1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that

- (a) the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and
- (b) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

If applicant creditor is a secured creditor

(2) If the applicant creditor referred to in subsection (1) is a secured creditor, they shall in their application either state that they are willing to give up their security for the benefit of the creditors, in the event of a bankruptcy order being made against the debtor, or give an estimate of the value of the applicant creditor's security, and in the latter case they may be admitted as an applicant creditor to the extent of the balance of the debt due to them after deducting the value so estimated, in the same manner as if they were an unsecured creditor.

Affidavit

(3) The application shall be verified by affidavit of the applicant or by someone duly authorized on their behalf having personal knowledge of the facts alleged in the application.

Consolidation of applications

(4) If two or more applications are filed against the same debtor or against joint debtors, the court may consolidate the proceedings or any of them on any terms that the court thinks fit.

Place of filing

(5) The application shall be filed in the court having jurisdiction in the judicial district of the locality of the debtor.

Proof of facts, etc.

(6) At the hearing of the application, the court shall require proof of the facts alleged in the application and of the service of the application, and, if satisfied with the proof, may make a bankruptcy order.

Dismissal of application

(7) If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

Dismissal with respect to some respondents only

(8) If there are more respondents than one to an application, the court may dismiss the application with respect to one or more of them, without prejudice to the effect of the application as against the other or others of them.

Appointment of trustee

(9) On a bankruptcy order being made, the court shall appoint a licensed trustee as trustee of the property of the bankrupt, having regard, as far as the court considers just, to the wishes of the creditors.

Stay of proceedings if facts denied

(10) If the debtor appears at the hearing of the application and denies the truth of the facts alleged in the application, the court may, instead of dismissing the application, stay all proceedings on the application on any terms that it may see fit to impose on the applicant as to costs or on the debtor to prevent alienation of the debtor's property and for any period of time that may be required for trial of the issue relating to the disputed facts.

Stay of proceedings for other reasons

(11) The court may for other sufficient reason make an order staying the proceedings under an application, either altogether or for a limited time, on any terms and subject to any conditions that the court may think just.

Security for costs

(12) Applicants who are resident out of Canada may be ordered to give security for costs to the debtor, and proceedings under the application may be stayed until the security is furnished.

Bankruptcy order on another application

(13) If proceedings on an application have been stayed or have not been prosecuted with due diligence and effect, the court may, if by reason of the delay or for any other cause it is considered just, substitute or add as applicant any other creditor to whom the debtor may be indebted in the amount required by this Act and make a bankruptcy order on the application of the other creditor, and shall, immediately after making the order, dismiss on any terms that it may consider just the application in the stayed or non-prosecuted proceedings.

Withdrawing application

(14) An application shall not be withdrawn without the leave of the court.

Application against one partner

(15) Any creditor whose claim against a partnership is sufficient to entitle the creditor to present a bankruptcy application may present an application against any one or more partners of the firm without including the others.

Court may consolidate proceedings

(16) If a bankruptcy order has been made against one member of a partnership, any other application against a member of the same partnership shall be filed in or transferred to the same court, and the court may give any directions for consolidating the proceedings under the applications that it thinks just.

Continuance of proceedings on death of debtor

(17) If a debtor against whom an application has been filed dies, the proceedings shall, unless the court otherwise orders, be continued as if the debtor were alive.

R.S., 1985, c. B-3, s. 43; 1992, c. 27, s. 15; 2004, c. 25, s. 28.

Application against estate or succession

44. (1) Subject to section 43, an application for a bankruptcy order may be filed against the estate or succession of a deceased debtor.

Personal liability

(2) After service of an application for a bankruptcy order on the executor or administrator of the estate of a deceased debtor, or liquidator of the succession of a deceased debtor, the person on whom the order was served shall not make payment of any moneys or transfer any property of the deceased debtor, except as required for payment of the proper funeral and testamentary expenses, until the application is disposed of; otherwise, in addition to any penalties to which the person may be subject, the person is personally liable for the payment or transfer.

Act done in good faith

(3) Nothing in this section invalidates any payment or transfer of property made or any act or thing done, in good faith, by the executor, administrator of the estate or liquidator of the succession before the service of an application referred to in subsection (2).

R.S., 1985, c. B-3, s. 44; 2004, c. 25, s. 28.

Costs of application

45. (1) If a bankruptcy order is made, the costs of the applicant shall be taxed and be payable out of the estate, unless the court otherwise orders.

Insufficient proceeds

(2) If the proceeds of the estate are not sufficient for the payment of any costs incurred by the trustee, the court may order the costs to be paid by the applicant.

R.S., 1985, c. B-3, s. 45; 1992, c. 1, s. 14; 2004, c. 25, s. 28.

INTERIM RECEIVER

Appointment of interim receiver

46. (1) The court may, if it is shown to be necessary for the protection of the estate of a debtor, at any time after the filing of an application for a bankruptcy order and before a bankruptcy order is made, appoint a licensed trustee as interim receiver of the property or any part of the property of the debtor and direct the interim receiver to take immediate possession of the property or any part of it on an undertaking being given by the applicant that the court may impose with respect to interference with the debtor's legal rights and with respect to damages in the event of the application being dismissed.

Powers of interim receiver

(2) The interim receiver appointed under subsection (1) may, under the direction of the court, take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value and exercise such control over the business of the debtor as the court deems advisable, but the interim receiver shall not unduly interfere with the debtor in the carrying on of his business except as may be necessary for conservatory purposes or to comply with the order of the court.

R.S., 1985, c. B-3, s. 46; 1997, c. 12, s. 27(F); 2004, c. 25, s. 29.

Appointment of interim receiver

47. (1) Where the court is satisfied that a notice is about to be sent or has been sent under subsection 244 (1), the court may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor's property that is subject to the security to which the notice relates, for such term as the court may determine.

Directions to interim receiver

(2) The court may direct an interim receiver appointed under subsection (1) to do any or all of the following:

(a) take possession of all or part of the debtor's property mentioned in the appointment;

(b) exercise such control over that property, and over the debtor's business, as the court considers advisable; and

(c) take such other action as the court considers advisable.

When appointment may be made

(3) An appointment of an interim receiver may be made under subsection (1) only if it is shown to the court to be necessary for the protection of

(a) the debtor's estate; or

(b) the interests of the creditor who sent the notice under subsection 244(1).

R.S., 1985, c. B-3, s. 47; 1992, c. 27, s. 16.

Appointment of interim receiver

47.1 (1) Where a notice of intention has been filed under section 50.4 or a proposal has been filed under subsection 62(1), the court may at any time thereafter, subject to subsection (3), appoint as interim receiver of all or any part of the debtor's property, for such term as the court may determine,

(a) the trustee under the notice of intention or proposal;

(b) another trustee; or

(c) the trustee under the notice of intention or proposal and another trustee jointly.

Directions to interim receiver

(2) The court may direct an interim receiver appointed under subsection (1) to do any or all of the following:

(a) carry out the duties set out in subsection 50(10) or 50.4(7), in substitution for the trustee referred to in

that subsection or jointly with that trustee;

(b) take possession of all or part of the debtor's property mentioned in the order of the court;

(c) exercise such control over that property, and over the debtor's business, as the court considers advisable; and

(d) take such other action as the court considers advisable.

When appointment may be made

(3) An appointment of an interim receiver may be made under subsection (1) only if it is shown to the court to be necessary for the protection of

(a) the debtor's estate; or

(b) the interests of one or more creditors, or of the creditors generally.

1992, c. 27, s. 16.

Orders respecting fees and expenses

47.2 (1) If an appointment of an interim receiver is made under section 47 or 47.1, the court may make any order respecting the payment of fees and disbursements of the interim receiver that it considers proper, including an order giving the interim receiver security, ranking ahead of any or all secured creditors, over any or all of the assets of the debtor in respect of the interim receiver's claim for fees or disbursements, but the court shall not make such an order unless it is satisfied that all secured creditors who would be materially affected by the order were given reasonable advance notification and an opportunity to make representations to the court.

Meaning of disbursements

(2) In subsection (1), "disbursements" do not include payments made in operating a business of the debtor.

Accounts, discharge of interim receivers

(3) With respect to interim receivers appointed under section 46, 47 or 47.1,

(a) the form and content of their accounts,

(b) the procedure for the preparation and taxation of those accounts, and

(c) the procedure for the discharge of the interim receiver

shall be as prescribed.

1992, c. 27, s. 16; 2004, c. 25, s. 30.

Application of sections 43 to 46

48. Sections 43 to 46 do not apply to individuals whose principal occupation and means of livelihood is fishing, farming or the tillage of the soil or to any individual who works for wages, salary, commission or hire at a rate of compensation not exceeding twenty-five hundred dollars per year and does not on their own account carry on business.

R.S., 1985, c. B-3, s. 48; 1997, c. 12, s. 28.

ASSIGNMENTS

Assignment for general benefit of creditors

49. (1) An insolvent person or, if deceased, the executor or administrator of their estate or the liquidator of the succession, with the leave of the court, may make an assignment of all the insolvent person's property for the general benefit of the insolvent person's creditors.

Sworn statement

(2) The assignment made under subsection (1) shall be accompanied by a sworn statement in the prescribed form showing the property of the debtor divisible among his creditors, the names and addresses of all his creditors and the amounts of their respective claims and the nature of each, whether secured, preferred or unsecured.

Filing of assignment

(3) The assignment made under subsection (1) shall be offered to the official receiver in the locality of the debtor, and it is inoperative until filed with that official receiver, who shall refuse to file the assignment unless it is in the prescribed form or to the like effect and accompanied by the sworn statement required by subsection (2).

Appointment of trustee

(4) Where the official receiver files the assignment made under subsection (1), he shall appoint as trustee a licensed trustee whom he shall, as far as possible, select by reference to the wishes of the most interested creditors if ascertainable at the time, and the official receiver shall complete the assignment by inserting therein as grantee the name of the trustee.

Cancellation of assignment

(5) Where the official receiver is unable to find a licensed trustee who is willing to act, the official receiver shall, after giving the bankrupt five days notice, cancel the assignment.

Procedure in small estates

(6) Where the bankrupt is not a corporation and in the opinion of the official receiver the realizable assets of the bankrupt, after the claims of secured creditors are deducted, will not exceed five thousand dollars or such other amount as is prescribed, the provisions of this Act relating to the summary administration of estates shall apply.

Future property not to be considered

(7) In the determination of the realizable assets of a bankrupt for the purposes of subsection (6), no regard shall be had to any property that may be acquired by the bankrupt or devolve on the bankrupt before the bankrupt's discharge.

Where subsection (6) ceases to apply

(8) The official receiver may direct that subsection (6) shall cease to apply in respect of the bankrupt where the official receiver determines that

(a) the realizable assets of the bankrupt, after the claims of secured creditors are deducted, exceed five thousand dollars or the amount prescribed, as the case may be, or

(b) the costs of realization of the assets of the bankrupt are a significant proportion of the realizable value of the assets,

and the official receiver considers that such a direction is appropriate.

R.S., 1985, c. B-3, s. 49; 1992, c. 1, s. 15, c. 27, s. 17; 1997, c. 12, s. 29; 2004, c. 25, s. 31(E).

PART III

PROPOSALS

DIVISION I

GENERAL SCHEME FOR PROPOSALS

Who may make a proposal

- 50.** (1) Subject to subsection (1.1), a proposal may be made by
- (a) an insolvent person;
 - (b) a receiver, within the meaning of subsection 243(2), but only in relation to an insolvent person;
 - (c) a liquidator of an insolvent person's property;
 - (d) a bankrupt; and
 - (e) a trustee of the estate of a bankrupt.

Where proposal may not be made

(1.1) A proposal may not be made under this Division with respect to a debtor in respect of whom a consumer proposal has been filed under Division II until the administrator under the consumer proposal has been discharged.

To whom proposal made

(1.2) A proposal must be made to the creditors generally, either as a mass or separated into classes as provided in the proposal, and may also be made to secured creditors in respect of any class or classes of secured claim, subject to subsection (1.3).

Idem

(1.3) Where a proposal is made to one or more secured creditors in respect of secured claims of a particular class, the proposal must be made to all secured creditors in respect of secured claims of that class.

Classes of secured claims

(1.4) Secured claims may be included in the same class if the interests or rights of the creditors holding those claims are sufficiently similar to give them a commonality of interest, taking into account

- (a) the nature of the debts giving rise to the claims;
- (b) the nature and rank of the security in respect of the claims;
- (c) the remedies available to the creditors in the absence of the proposal, and the extent to which the creditors would recover their claims by exercising those remedies;
- (d) the treatment of the claims under the proposal, and the extent to which the claims would be paid under the proposal; and
- (e) such further criteria, consistent with those set out in paragraphs (a) to (d), as are prescribed.

Court may determine classes

(1.5) The court may, on application made at any time after a notice of intention or a proposal is filed, determine, in accordance with subsection (1.4), the classes of secured claims appropriate to a proposal, and the class into which any particular secured claim falls.

Creditors' response

(1.6) Subject to section 50.1 as regards included secured creditors, any creditor may respond to the proposal as made to the creditors generally, by filing with the trustee a proof of claim in the manner provided for in

(a) sections 124 to 126, in the case of unsecured creditors; or

(b) sections 124 to 134, in the case of secured creditors.

Effect of filing proof of claim

(1.7) Hereinafter in this Division, a reference to an unsecured creditor shall be deemed to include a secured creditor who has filed a proof of claim under subsection (1.6), and a reference to an unsecured claim shall be deemed to include that secured creditor's claim.

Voting

(1.8) All questions relating to a proposal, except the question of accepting or refusing the proposal, shall be decided by ordinary resolution of the creditors to whom the proposal was made.

Documents to be lodged

(2) Subject to section 50.4, proceedings for a proposal shall be commenced in the case of an insolvent person by lodging with a licensed trustee, and in the case of a bankrupt by lodging with the trustee of the estate, a copy of the proposal in writing setting out the terms of the proposal and the particulars of any securities or sureties proposed, signed by the person making the proposal and the proposed sureties if any, and

(a) if the person in respect of whom the proposal is made is bankrupt, the statement of affairs referred to in section 158; or

(b) if the person in respect of whom the proposal is made is not bankrupt, a statement showing the financial position of the person at the date of the proposal, verified by affidavit as being correct to the belief and knowledge of the person making the proposal.

Approval of inspectors

(3) A proposal made in respect of a bankrupt shall be approved by the inspectors before any further action is taken thereon.

Proposal, etc., not to be withdrawn

(4) No proposal or any security, guarantee or suretyship tendered with the proposal may be withdrawn pending the decision of the creditors and the court.

Assignment not prevented

(4.1) Subsection (4) shall not be construed as preventing an insolvent person in respect of whom a proposal has been made from subsequently making an assignment.

Duties of trustee

(5) The trustee shall make or cause to be made such an appraisal and investigation of the affairs and property of the debtor as to enable the trustee to estimate with reasonable accuracy the financial situation of the debtor and the cause of the debtor's financial difficulties or insolvency and report the result thereof to the meeting of the creditors.

Trustee to file cash-flow statement

(6) The trustee shall, when filing a proposal under subsection 62(1) in respect of an insolvent person, file with the proposal

(a) a statement indicating the projected cash-flow of the insolvent person (in this section referred to as the "cash-flow statement"), or a revised cash-flow statement where a cash-flow statement had previously been filed under subsection 50.4(2) in respect of that insolvent person, prepared by the person making the proposal, reviewed for its reasonableness by the trustee and signed by the trustee and the person making the proposal;

(b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and

(c) a report containing prescribed representations by the person making the proposal regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the person making the proposal.

Creditors may obtain statement

(7) Subject to subsection (8), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

Exception

(8) The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (7) where it is satisfied that

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

Trustee protected

(9) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, he is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

Trustee to monitor and report

(10) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a proposal in respect of an insolvent person shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the proposal until the proposal is approved by the court or the insolvent person becomes bankrupt, and shall

- (a) file a report on the state of the insolvent person's business and financial affairs, containing any prescribed information,
 - (i) with the official receiver forthwith after ascertaining any material adverse change in the insolvent person's projected cash-flow or financial circumstances, and
 - (ii) with the court at such other times as the court may order; and

(b) send a report on the state of the insolvent person's business and financial affairs, containing any prescribed information, to the creditors and the official receiver, in the prescribed manner, at least ten days before the meeting of creditors referred to in subsection 51(1).

Report to creditors

(11) An interim receiver who has been directed under subsection 47.1(2) to carry out the duties set out in subsection (10) in substitution for the trustee shall deliver a report on the state of the insolvent person's business and financial affairs, containing any prescribed information, to the trustee at least fifteen days before the meeting of creditors referred to in subsection 51(1), and the trustee shall send the report to the creditors and the official receiver, in the prescribed manner, at least ten days before the meeting of creditors referred to in that subsection.

Court may declare proposal as deemed refused by creditors

(12) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1 or a creditor, at any time before the meeting of creditors, declare that the proposal is deemed to have been refused by the creditors if the court is satisfied that

- (a) the debtor has not acted, or is not acting, in good faith and with due diligence;
- (b) the proposal will not likely be accepted by the creditors; or
- (c) the creditors as a whole would be materially prejudiced if the application under this subsection is rejected.

Claims against directors — compromise

(13) A proposal made in respect of a corporation may include in its terms provision for the compromise of claims against directors of the corporation that arose before the commencement of proceedings under this Act and that relate to the obligations of the corporation where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(14) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors arising from contracts with one or more directors; or

(b) are based on allegations of misrepresentation made by directors to creditors or of wrongful or oppressive conduct by directors.

Powers of court

(15) The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be just and equitable in the circumstances.

Application of other provisions

(16) Subsection 62(2) and section 122 apply, with such modifications as the circumstances require, in respect of claims against directors compromised under a proposal of a debtor corporation.

Determination of classes of claims

(17) The court, on application made at any time after a proposal is filed, may determine the classes of claims of claimants against directors and the class into which any particular claimant's claim falls.

Resignation or removal of directors

(18) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the corporation shall be deemed to be a director for the purposes of this section.

R.S., 1985, c. B-3, s. 50; 1992, c. 27, s. 18; 1997, c. 12, s. 30; 2001, c. 4, s. 27(E); 2004, c. 25, s. 32.

Secured creditor may file proof of secured claim

50.1 (1) Subject to subsections (2) to (4), a secured creditor to whom a proposal has been made in respect of a particular secured claim may respond to the proposal by filing with the trustee a proof of secured claim in the prescribed form, and may vote, on all questions relating to the proposal, in respect of that entire claim, and sections 124 to 126 apply, in so far as they are applicable, with such modifications as the circumstances require, to proofs of secured claim.

Proposed assessed value

(2) Where a proposal made to a secured creditor in respect of a claim includes a proposed assessed value of the security in respect of the claim, the secured creditor may file with the trustee a proof of secured claim in the prescribed form, and may vote as a secured creditor on all questions relating to the proposal in respect of an amount equal to the lesser of

(a) the amount of the claim, and

(b) the proposed assessed value of the security.

Idem

(3) Where the proposed assessed value is less than the amount of the secured creditor's claim, the secured creditor may file with the trustee a proof of claim in the prescribed form, and may vote as an unsecured creditor on all questions relating to the proposal in respect of an amount equal to the difference between the amount of the claim and the proposed assessed value.

Idem

(4) Where a secured creditor is dissatisfied with the proposed assessed value of his security, the secured creditor may apply to the court, within fifteen days after the proposal is sent to the creditors, to have the proposed assessed value revised, and the court may revise the proposed assessed value, in which case the revised value henceforth applies for the purposes of this Part.

Where no secured creditor in a class takes action

(5) Where no secured creditor having a secured claim of a particular class files a proof of secured claim at or before the meeting of creditors, the secured creditors having claims of that class shall be deemed to have voted for the refusal of the proposal.

1992, c. 27, s. 19; 1997, c. 12, s. 31(F).

Excluded secured creditor

50.2 A secured creditor to whom a proposal has not been made in respect of a particular secured claim may not file a proof of secured claim in respect of that claim.

1992, c. 27, s. 19.

Rights in bankruptcy

50.3 On the bankruptcy of an insolvent person who made a proposal to one or more secured creditors in respect of secured claims, any proof of secured claim filed pursuant to section 50.1 ceases to be valid or effective, and sections 112 and 127 to 134 apply in respect of a proof of claim filed by any secured creditor in the bankruptcy.

1992, c. 27, s. 19.

Notice of intention

50.4 (1) Before lodging a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

(a) the insolvent person's intention to make a proposal,

(b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and

(c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

Certain things to be filed

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

(a) a statement indicating the projected cash-flow of the insolvent person (in this section referred to as the "cash-flow statement"), prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention, and signed by the trustee and the insolvent person;

(b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and

(c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

Creditors may obtain statement

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

Exception

(4) The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

Trustee protected

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

Trustee to notify creditors

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named therein shall send to every known creditor, in the prescribed manner, a copy thereof.

Trustee to monitor and report

(7) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

- (a) shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt; and
- (b) shall file a report on the state of the insolvent person's business and financial affairs, containing any prescribed information,
 - (i) with the official receiver forthwith after ascertaining any material adverse change in the insolvent person's projected cash-flow or financial circumstances, and
 - (ii) with the court at or before the hearing by the court of any application under subsection (9) and at such other times as the court may order.

Where assignment deemed to have been made

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

- (a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;
- (b) the trustee shall forthwith file a report thereof in the prescribed form with the official receiver, who shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 49; and
- (c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

(9) The insolvent person may, before the expiration of the thirty day period mentioned in subsection (8) or any extension thereof granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court may grant such extensions, not exceeding forty-five days for any individual extension and not exceeding in the aggregate five months after the expiration of the thirty day period mentioned in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Court may not extend time

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

Court may terminate period for making proposal

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- (c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

1992, c. 27, s. 19; 1997, c. 12, s. 32; 2004, c. 25, s. 33(F).

Trustee to help prepare proposal

50.5 The trustee under a notice of intention shall, between the filing of the notice of intention and the filing of a proposal, advise on and participate in the preparation of the proposal, including negotiations thereon.

1992, c. 27, s. 19.

Calling of meeting of creditors

51. (1) The trustee shall call a meeting of the creditors, to be held within twenty-one days after the filing of the proposal with the official receiver under subsection 62(1), by sending in the prescribed manner to every known creditor and to the official receiver, at least ten days before the meeting,

- (a) a notice of the date, time and place of the meeting;
- (b) a condensed statement of the assets and liabilities;
- (c) a list of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books;
- (d) a copy of the proposal;

- (e) the prescribed forms, in blank, of
 - (i) proof of claim,
 - (ii) in the case of a secured creditor to whom the proposal was made, proof of secured claim, and
 - (iii) proxy,if not already sent; and
- (f) a voting letter as prescribed.

In case of a prior meeting

(2) Where a meeting of his creditors at which a statement or list of the debtor's assets, liabilities and creditors was presented was held before the trustee is required by this section to convene a meeting to consider the proposal and at the time when the debtor requires the convening of the meeting the condition of the debtor's estate remains substantially the same as at the time of the former meeting, the trustee may omit observance of the provisions of paragraphs (1)(b) and (c).

Chairman of first meeting

(3) The official receiver, or the nominee thereof, shall be the chairman of the meeting referred to in subsection (1) and shall decide any questions or disputes arising at the meeting, and any creditor may appeal any such decision to the court.

R.S., 1985, c. B-3, s. 51; 1992, c. 1, s. 20, c. 27, s. 20; 1999, c. 31, s. 19(F).

Adjournment of meeting for further investigation and examination

52. Where the creditors by ordinary resolution at the meeting at which a proposal is being considered so require, the meeting shall be adjourned to such time and place as may be fixed by the chairman

- (a) to enable a further appraisal and investigation of the affairs and property of the debtor to be made; or
- (b) for the examination under oath of the debtor or of such other person as may be believed to have knowledge of the affairs or property of the debtor, and the testimony of the debtor or such other person, if transcribed, shall be placed before the adjourned meeting or may be read in court on the application for the approval of the proposal.

R.S., c. B-3, s. 34.

Creditor may assent or dissent

53. Any creditor who has proved a claim, whether secured or unsecured, may indicate assent to or dissent from the proposal in the prescribed manner to the trustee prior to the meeting, and any assent or dissent, if received by the trustee at or prior to the meeting, has effect as if the creditor had been present and had voted at the meeting.

R.S., 1985, c. B-3, s. 53; 1992, c. 1, s. 20, c. 27, s. 21.

Vote on proposal by creditors

54. (1) The creditors may, in accordance with this section, resolve to accept or may refuse the proposal as made or as altered at the meeting or any adjournment thereof.

Voting system

- (2) For the purpose of subsection (1),
 - (a) the following creditors with proven claims are entitled to vote:
 - (i) all unsecured creditors, and
 - (ii) those secured creditors in respect of whose secured claims the proposal was made;

(b) the creditors shall vote by class, according to the class of their respective claims, and for that purpose

(i) all unsecured claims constitute one class, unless the proposal provides for more than one class of unsecured claim, and

(ii) the classes of secured claims shall be determined as provided by subsection 50(1.4);

(c) the votes of the secured creditors do not count for the purpose of this section, but are relevant only for the purpose of subsection 62(2); and

(d) the proposal shall be deemed to be accepted by the creditors if, and only if, all classes of unsecured creditors vote for the acceptance of the proposal by a majority in number and two thirds in value of the unsecured creditors of each class present, personally or by proxy, at the meeting and voting on the resolution.

Certain Crown claims

(2.1) For greater certainty, subsection 224(1.2) of the *Income Tax Act* shall not be construed as classifying as secured claims, for the purpose of subsection (2), claims of Her Majesty in right of Canada or a province for amounts that could be subject to a demand under

(a) subsection 224(1.2) 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*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

Where no quorum in a class

(2.2) Where there is no quorum of secured creditors in respect of a particular class of secured claims, the secured creditors having claims of that class shall be deemed to have voted for the refusal of the proposal.

Related creditor

(3) A creditor who is related to the debtor may vote against but not for the acceptance of the proposal.

Voting by trustee

(4) The trustee, as a creditor, may not vote on the proposal.

R.S., 1985, c. B-3, s. 54; 1992, c. 27, s. 22; 2000, c. 30, s. 143.

Creditors may provide for supervision of debtor's affairs

55. At a meeting to consider a proposal, the creditors, with the consent of the debtor, may include such provisions or terms in the proposal with respect to the supervision of the affairs of the debtor as they may deem advisable.

R.S., c. B-3, s. 37.

Appointment of inspectors

56. The creditors may appoint one or more, but not exceeding five, inspectors of the estate of the debtor, who shall have the powers of an inspector under this Act, subject to any extension or restriction of those powers by the terms of the proposal.

R.S., c. B-3, s. 38.

Result of refusal of proposal

57. Where the creditors refuse a proposal in respect of an insolvent person,

(a) the insolvent person is deemed to have thereupon made an assignment;

(b) the trustee shall forthwith file a report thereof in the prescribed form with the official receiver, who shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 49; and

(c) the trustee shall either

(i) forthwith call a meeting of creditors present at that time, which meeting shall be deemed to be a meeting called under section 102, or

(ii) if no quorum exists for the purpose of subparagraph (i), send notice, within five days after the day the certificate mentioned in paragraph (b) is issued, of the meeting of creditors under section 102,

and at either meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

R.S., 1985, c. B-3, s. 57; 1992, c. 27, s. 23; 1997, c. 12, s. 33.

Appointment of new trustee

57.1 Where a declaration has been made under subsection 50(12) or 50.4(11), the court may, if it is satisfied that it would be in the best interests of the creditors to do so, appoint a trustee in lieu of the trustee appointed under the notice of intention or proposal that was filed.

1997, c. 12, s. 34.

Application for court approval

58. On acceptance of a proposal by the creditors, the trustee shall

(a) within five days after the acceptance, apply to the court for an appointment for a hearing of the application for the court's approval of the proposal;

(b) send a notice of the hearing of the application, in the prescribed manner and at least fifteen days before the date of the hearing, to the debtor, to every creditor who has proved a claim, whether secured or unsecured, to the person making the proposal and to the official receiver;

(c) forward a copy of the report referred to in paragraph (d) to the official receiver at least ten days before the date of the hearing; and

(d) at least two days before the date of the hearing, file with the court, in the prescribed form, a report on the proposal.

R.S., 1985, c. B-3, s. 58; 1992, c. 1, s. 20, c. 27, s. 23; 1997, c. 12, s. 35.

Court to hear report of trustee, etc.

59. (1) The court shall, before approving the proposal, hear a report of the trustee in the prescribed form respecting the terms thereof and the conduct of the debtor, and, in addition, shall hear the trustee, the debtor,

the person making the proposal, any opposing, objecting or dissenting creditor and such further evidence as the court may require.

Court may refuse to approve the proposal

(2) Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in sections 198 to 200.

Reasonable security

(3) Where any of the facts mentioned in section 173 are proved against the debtor, the court shall refuse to approve the proposal unless it provides reasonable security for the payment of not less than fifty cents on the dollar on all the unsecured claims provable against the debtor's estate or such percentage thereof as the court may direct.

R.S., 1985, c. B-3, s. 59; 1997, c. 12, s. 36; 2000, c. 12, s. 10.

Priority of claims

60. (1) No proposal shall be approved by the court that does not provide for the payment in priority to other claims of all claims directed to be so paid in the distribution of the property of a debtor and for the payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal or in the bankruptcy.

Certain Crown claims

(1.1) Unless Her Majesty consents, no proposal shall be approved by the court that does not provide for the payment in full to Her Majesty in right of Canada or a province, within six months after court approval of the proposal, of all amounts that were outstanding at the time of the filing of the notice of intention or of the proposal, if no notice of intention was filed, and are of a kind that could be subject to a demand under

(a) subsection 224(1.2) 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*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

Idem

(1.2) No proposal shall be approved by the court if, at the time the court hears the application for approval, Her Majesty in right of Canada or a province satisfies the court that the debtor is in default on any remittance of an amount referred to in subsection (1.1) that became due after the filing

(a) of the notice of intention; or

(b) of the proposal, if no notice of intention was filed.

Proposals by employers

(1.3) No proposal in respect of an employer shall be approved by the court unless

(a) it provides for payment to the employees and former employees, immediately after court approval of the

proposal, of amounts equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice of intention was filed, as well as wages, salaries, commissions or compensation for services rendered after that date and before the court approval of the proposal, together with, in the case of travelling salesmen, disbursements properly incurred by those salesmen in and about the bankrupt's business during the same period; and

(b) the court is satisfied that the employer can and will make the payments as required under paragraph (a).

Voting on proposal

(1.4) For the purpose of voting on any question relating to a proposal in respect of an employer, no person has a claim for an amount referred to in paragraph (1.3)(a).

(1.5) [Repealed, 1997, c. 12, s. 37]

Payment to trustee

(2) All moneys payable under the proposal shall be paid to the trustee and, after payment of all proper fees and expenses mentioned in subsection (1), shall be distributed by him to the creditors.

Distribution of promissory notes, stock, etc., of debtor

(3) Where the proposal provides for the distribution of property in the nature of promissory notes or other evidence of obligations by or on behalf of the debtor or, when the debtor is a corporation, shares in the capital stock of the corporation, the property shall be dealt with in the manner prescribed in subsection (2) as nearly as may be.

Section 147 applies

(4) Section 147 applies to all distributions made to the creditors by the trustee pursuant to subsection (2) or (3).

Power of court

(5) Subject to subsections (1) to (1.5), the court may either approve or refuse to approve the proposal.

R.S., 1985, c. B-3, s. 60; 1992, c. 27, s. 24; 1997, c. 12, s. 37; 2000, c. 30, s. 144.

Annulment of bankruptcy

61. (1) The approval by the court of a proposal made after bankruptcy operates to annul the bankruptcy and to revest in the debtor, or in such other person as the court may approve, all the right, title and interest of the trustee in the property of the debtor, unless the terms of the proposal otherwise provide.

Non-approval of proposal by court

(2) Where the court refuses to approve a proposal in respect of an insolvent person a copy of which has been filed under section 62,

(a) the insolvent person is deemed to have thereupon made an assignment;

(b) the trustee shall forthwith file a report thereof in the prescribed form with the official receiver, who shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

(3) [Repealed, 1992, c. 27, s. 25]

Costs when proposal refused

(4) No costs incurred by a debtor on or incidental to an application to approve a proposal, other than the costs incurred by the trustee, shall be allowed out of the estate of the debtor if the court refuses to approve the proposal.

R.S., 1985, c. B-3, s. 61; 1992, c. 27, s. 25; 1997, c. 12, s. 38.

Filing of proposal

62. (1) Where a proposal is made in respect of an insolvent person, the trustee shall file a copy thereof with the official receiver.

Determination of claims

(1.1) Except in respect of claims referred to in subsection 14.06(8), where a proposal is made in respect of an insolvent person, the time with respect to which the claims of creditors shall be determined is the time of the filing of

- (a) the notice of intention; or
- (b) the proposal, if no notice of intention was filed.

Determination of claims re bankrupt

(1.2) Except in respect of claims referred to in subsection 14.06(8), where a proposal is made in respect of a bankrupt, the time with respect to which the claims of creditors shall be determined is the date on which the bankrupt became bankrupt.

On whom approval binding

- (2) A proposal accepted by the creditors and approved by the court is binding on creditors in respect of
 - (a) all unsecured claims, and
 - (b) the secured claims in respect of which the proposal was made and that were in classes in which the secured creditors voted for the acceptance of the proposal by a majority in number and two thirds in value of the secured creditors present, personally or by proxy, at the meeting and voting on the resolution to accept the proposal,

but does not release the insolvent person from the debts and liabilities referred to in section 178, unless the creditor assents thereto.

Certain persons not released

(3) The acceptance of a proposal by a creditor does not release any person who would not be released under this Act by the discharge of the debtor.

R.S., 1985, c. B-3, s. 62; 1992, c. 27, s. 26; 1997, c. 12, s. 39.

Default in performance of proposal

62.1 Where

- (a) default is made in the performance of any provision in a proposal,
- (b) the default is not waived
 - (i) by the inspectors, or
 - (ii) if there are no inspectors, by the creditors, and
- (c) the default is not remedied by the insolvent person within the prescribed time,

the trustee shall, within such time and in such form and manner as are prescribed, so inform all the creditors

and the official receiver.

1992, c. 27, s. 27.

Receiving order on default, etc.

63. (1) Where default is made in the performance of any provision in a proposal, or where it appears to the court that the proposal cannot continue without injustice or undue delay or that the approval of the court was obtained by fraud, the court may, on application thereto, with such notice as the court may direct to the debtor, and, if applicable to the trustee and to the creditors, annul the proposal.

Validity of things done

(2) An order made under subsection (1) shall be made without prejudice to the validity of any sale, disposition of property or payment duly made, or anything duly done under or in pursuance of the proposal, and notwithstanding the annulment of the proposal, a guarantee given pursuant to the proposal remains in full force and effect in accordance with its terms.

Annulment for offence

(3) A proposal, although accepted or approved, may be annulled by order of the court at the request of the trustee or of any creditor whenever the debtor is afterwards convicted of any offence under this Act.

Effect of annulling order

(4) On the annulment of a proposal, the debtor shall be deemed to have thereupon made an assignment and the order annulling the proposal shall so state.

Meeting of creditors to be called

(5) Where an order annulling a proposal has been made, the trustee shall, within five days after the order is made, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Consequences of annulment

(6) Where an order annulling the proposal described in subsection (5) has been made, the trustee shall forthwith file a report thereof in the prescribed form with the official receiver, who shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 49.

R.S., 1985, c. B-3, s. 63; 1992, c. 27, s. 28; 2004, c. 25, s. 34(F).

64. [Repealed, 1999, c. 31, s. 20]

Where proposal is conditional on purchase of new securities

65. A proposal made conditional on the purchase of shares or securities or on any other payment or contribution by the creditors shall provide that the claim of any creditor who elects not to participate in the proposal shall be valued by the court and shall be paid in cash on approval of the proposal.

R.S., 1985, c. B-3, s. 65; 2004, c. 25, s. 35(F).

Certain rights limited

65.1 (1) If a notice of intention or a proposal has been filed in respect of an insolvent person, no person may terminate or amend any agreement with the insolvent person, or claim an accelerated payment, or a forfeiture of the term, under any agreement with the insolvent person, by reason only that

(a) the insolvent person is insolvent; or

(b) a notice of intention or a proposal has been filed in respect of the insolvent person.

Idem

(2) Where the agreement referred to in subsection (1) is a lease or a licensing agreement, subsection (1) shall be read as including the following paragraph:

"(c) the insolvent person has not paid rent or royalties, as the case may be, or other payments of a similar nature, in respect of a period preceding the filing of

- (i) the notice of intention, if one was filed, or
- (ii) the proposal, if no notice of intention was filed."

Idem

(3) Where a notice of intention or a proposal has been filed in respect of an insolvent person, no public utility may discontinue service to that insolvent person by reason only that

- (a) the insolvent person is insolvent;
- (b) a notice of intention or a proposal has been filed in respect of the insolvent person; or
- (c) the insolvent person has not paid for services rendered, or material provided, before the filing of
 - (i) the notice of intention, if one was filed, or
 - (ii) the proposal, if no notice of intention was filed.

Certain acts not prevented

(4) Nothing in subsections (1) to (3) shall be construed

(a) as prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the filing of

- (i) the notice of intention, if one was filed, or
- (ii) the proposal, if no notice of intention was filed; or

(b) as requiring the further advance of money or credit.

Provisions of section override agreement

(5) Any provision in an agreement that has the effect of providing for, or permitting, anything that, in substance, is contrary to subsections (1) to (3) is of no force or effect.

Powers of court

(6) The court may, on application by a party to an agreement or by a public utility, declare that subsections (1) to (3) do not apply, or apply only to the extent declared by the court, where the applicant satisfies the court that the operation of those subsections would likely cause it significant financial hardship.

Eligible financial contracts

(7) Subsection (1) does not apply

(a) in respect of an eligible financial contract; or

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

Definitions

(8) In subsections (7) and (9), "eligible financial contract"
«*contrat financier admissible*»

"eligible financial contract" means

- (a) a currency or interest rate swap agreement,
- (b) a basis swap agreement,
- (c) a spot, future, forward or other foreign exchange agreement,
- (d) a cap, collar or floor transaction,
- (e) a commodity swap,
- (f) a forward rate agreement,
- (g) a repurchase or reverse repurchase agreement,
- (h) a spot, future, forward or other commodity contract,
- (i) an agreement to buy, sell, borrow or lend securities, to clear or settle securities transactions or to act as a depository for securities,
- (j) any derivative, combination or option in respect of, or agreement similar to, an agreement or contract referred to in paragraphs (a) to (i),
- (k) any master agreement in respect of any agreement or contract referred to in paragraphs (a) to (j),
- (k.1) any master agreement in respect of a master agreement referred to in paragraph (k),
- (l) a guarantee of the liabilities under an agreement or contract referred to in paragraphs (a) to (k.1), or
- (m) any agreement of a kind prescribed;

"net termination value"

«valeurs nettes dues à la date de résiliation»

"net termination value" means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions.

Application of paragraphs 69(1)(a) and 69.1(1)(a)

(9) For greater certainty, where an eligible financial contract entered into before the filing in respect of an insolvent person of

- (a) a notice of intention, or
- (b) a proposal, where no notice of intention was filed,

is terminated on or after that filing, the setting off of obligations between the insolvent person and the other parties to the eligible financial contract, in accordance with its provisions, shall be permitted, and if net termination values determined in accordance with the eligible financial contract are owed by the insolvent person to another party to the eligible financial contract, that other party shall be deemed, for the purposes of paragraphs 69(1)(a) and 69.1(1)(a), to be a creditor of the insolvent person with a claim provable in bankruptcy in respect of those net termination values.

1992, c. 27, s. 30; 1997, c. 12, s. 41; 2001, c. 9, s. 573; 2004, c. 25, s. 36(E).

Insolvent person may disclaim or resiliate commercial lease

65.2 (1) At any time between the filing of a notice of intention and the filing of a proposal, or on the filing of a proposal, in respect of an insolvent person who is a commercial lessee under a lease of real property or an immovable, the insolvent person may disclaim or resiliate the lease on giving thirty days notice to the lessor in the prescribed manner, subject to subsection (2).

Lessor may challenge

(2) Within fifteen days after being given notice of the disclaimer or resiliation of a lease under subsection (1), the lessor may apply to the court for a declaration that subsection (1) does not apply in respect of that lease, and the court, on notice to any parties that it may direct, shall, subject to subsection (3), make that declaration.

Circumstances for not making declaration

(3) No declaration under subsection (2) shall be made if the court is satisfied that the insolvent person would not be able to make a viable proposal without the disclaimer or resiliation of the lease and all other leases that the lessee has disclaimed or resiliated under subsection (1).

Effects of disclaimer or resiliation

(4) If a lease is disclaimed or resiliated under subsection (1),

(a) the lessor has no claim for accelerated rent;

(b) the proposal must indicate whether the lessor may file a proof of claim for the actual losses resulting from the disclaimer or resiliation, or for an amount equal to the lesser of

(i) the aggregate of

(A) the rent provided for in the lease for the first year of the lease following the date on which the disclaimer or resiliation becomes effective, and

(B) fifteen per cent of the rent for the remainder of the term of the lease after that year, and

(ii) three years' rent; and

(c) the lessor may file a proof of claim as indicated in the proposal.

Classification of claim

(5) The lessor's claim shall be included in either

(a) a separate class of similar claims of lessors; or

(b) a class of unsecured claims that includes claims of creditors who are not lessors.

Lessor's vote on proposal

(6) The lessor is entitled to vote on the proposal in whichever class referred to in subsection (5) the lessor's claim is included, and for the amount of the claim as proven.

Determination of classes

(7) The court may, on application made at any time after the proposal is filed, determine the classes of claims of lessors and the class into which the claim of any of those particular lessors falls.

Section 146 not affected

(8) Nothing in subsections (1) to (7) affects the operation of section 146 in the event of bankruptcy.

1992, c. 27, s. 30; 1997, c. 12, s. 42; 2004, c. 25, s. 37.

Lease disclaimer or resiliation if lessee is a bankrupt

65.21 If, in respect of a proposal concerning a bankrupt person who is a commercial lessee under a lease of real property or an immovable, the lessee's lease has been surrendered, disclaimed or resiliated in the bankruptcy proceedings, subsections 65.2(3) to (7) apply in the same manner and to the same extent as if the person was not a bankrupt but was an insolvent person in respect of which a disclaimer or resiliation referred to in those subsections applies.

1997, c. 12, s. 43; 2004, c. 25, s. 38.

Bankruptcy after court approval

65.22 If an insolvent person who has disclaimed or resiliated a lease under subsection 65.2(1) becomes bankrupt after the court approval of the proposal and before the proposal is fully performed, any claim of the lessor in respect of losses resulting from the disclaimer or resiliation, including any claim for accelerated rent, shall be reduced by the amount of compensation paid under the proposal for losses resulting from the disclaimer or resiliation.

1997, c. 12, s. 43; 2004, c. 25, s. 39(E).

Certificate where proposal performed

65.3 Where a proposal is fully performed, the trustee shall give a certificate to that effect, in the prescribed form, to the debtor and to the official receiver.

1992, c. 27, s. 30.

Act to apply

66. (1) All the provisions of this Act, except Division II of this Part, in so far as they are applicable, apply, with such modifications as the circumstances require, to proposals made under this Division.

Effect of *Companies' Creditors Arrangement Act*

(2) Notwithstanding the *Companies' Creditors Arrangement Act*,

(a) proceedings commenced under that Act shall not be dealt with or continued under this Act; and

(b) proceedings shall not be commenced under Part III of this Act in respect of a company if a compromise or arrangement has been proposed in respect of the company under the *Companies' Creditors Arrangement Act* and the compromise or arrangement has not been agreed to by the creditors or sanctioned by the court under that Act.

R.S., 1985, c. B-3, s. 66; 1992, c. 27, s. 31; 1997, c. 12, s. 44.

DIVISION II CONSUMER PROPOSALS

Definitions

66.11 In this Division,

"administrator"
«*administrateur*»

"administrator" means

(a) a trustee, or

(b) a person appointed or designated by the Superintendent to administer consumer proposals;

"consumer debtor"
«*débiteur consommateur*»

"consumer debtor" means a natural person who is bankrupt or insolvent and whose aggregate debts, excluding any debts secured by the person's principal residence, do not exceed seventy-five thousand dollars or such other maximum as is prescribed;

"consumer proposal"
«*proposition de consommateur*»

"consumer proposal" means a proposal made under this Division.

1992, c. 27, s. 32; 1997, c. 12, s. 45.

Consumer proposal

66.12 (1) A consumer proposal may be made by a consumer debtor, subject to subsections (2) and 66.32 (1).

Dealing with certain consumer proposals together

(1.1) Two or more consumer proposals may, in such circumstances as are specified in directives of the Superintendent, be dealt with as one consumer proposal where they could reasonably be dealt with together because of the financial relationship of the consumer debtors involved.

Restriction

(2) A consumer debtor who has filed a notice of intention or lodged a proposal under Division I may not make a consumer proposal until the trustee appointed in respect of the notice of intention or proposal under Division I has been discharged.

To whom consumer proposal is made

(3) A consumer proposal shall be made to the creditors generally.

Creditors' response

(4) Any creditor may respond to a consumer proposal by filing with the administrator a proof of claim in the manner provided for in

(a) sections 124 to 126, in the case of unsecured creditors; or

(b) sections 124 to 134, in the case of secured creditors.

Term of consumer proposal

(5) A consumer proposal must provide that its performance is to be completed within five years.

Priority of claims, fees

(6) A consumer proposal must provide

(a) for the payment in priority to other claims of all claims directed to be so paid in the distribution of the property of the consumer debtor;

(b) for the payment of all prescribed fees and expenses

(i) of the administrator on and incidental to proceedings arising out of the consumer proposal, and

(ii) of any person in respect of counselling provided pursuant to paragraph 66.13(2)(b); and

(c) for the manner of distributing dividends.

1992, c. 27, s. 32; 1997, c. 12, s. 46.

Commencement of proceedings

- 66.13** (1) A consumer debtor who wishes to make a consumer proposal shall commence proceedings by
- (a) obtaining the assistance of an administrator in preparing the consumer proposal; and
 - (b) providing the administrator with the prescribed information on the consumer debtor's current financial situation.

Duties of administrator

- (2) An administrator who agrees to assist a consumer debtor shall
- (a) investigate, or cause to be investigated, the consumer debtor's property and financial affairs so as to be able to assess with reasonable accuracy the consumer debtor's financial situation and the cause of his insolvency;
 - (b) provide, or provide for, counselling in accordance with directives issued by the Superintendent pursuant to paragraph 5(4)(b);
 - (c) prepare a consumer proposal in the prescribed form; and
 - (d) subject to subsection (3), file a copy of the consumer proposal, signed by the consumer debtor, with the official receiver.

Where consumer proposal not to be filed

- (3) The administrator shall not file a consumer proposal under paragraph (2)(d) if he has reason to believe that
- (a) the debtor is not eligible to make a consumer proposal; or
 - (b) there has been non-compliance with anything required by this section or section 66.12.

Where consumer proposal wrongly filed

(4) Where the administrator determines, after filing a consumer proposal under paragraph (2)(d), that it should not have been filed because the debtor was not eligible to make a consumer proposal, the administrator shall forthwith so inform the creditors and the official receiver, but the consumer proposal is not invalid by reason only that the debtor was not eligible to make the consumer proposal.

1992, c. 27, s. 32; 1999, c. 31, s. 21(E).

Duties of administrator

- 66.14** The administrator shall, within ten days after filing a consumer proposal with the official receiver,
- (a) prepare and file with the official receiver a report in the prescribed form setting out
 - (i) the results of the investigation made under paragraph 66.13(2)(a),
 - (ii) the administrator's opinion as to whether the consumer proposal is reasonable and fair to the consumer debtor and the creditors, and whether the consumer debtor will be able to perform it,
 - (iii) a condensed statement of the consumer debtor's assets, liabilities, income and expenses, and
 - (iv) a list of the creditors whose claims exceed two hundred and fifty dollars; and
 - (b) send to every known creditor, in the prescribed form and manner,
 - (i) a copy of the consumer proposal,
 - (ii) a copy of the report referred to in paragraph (a),

(iii) a form of proof of claim as prescribed, and

(iv) a statement explaining that a meeting of creditors will be called only if required under section 66.15 and that a review of the consumer proposal by a court will be made only if it is requested in accordance with subsection 66.22(1).

1992, c. 27, s. 32; 1997, c. 12, s. 47.

Meeting of creditors

66.15 (1) The official receiver may, at any time within the forty-five day period following the filing of the consumer proposal, direct the administrator to call a meeting of creditors.

Idem

(2) The administrator shall call a meeting of creditors

(a) forthwith after being so directed by the official receiver under subsection (1), or

(b) at the expiration of the forty-five day period following the filing of the consumer proposal, if at that time creditors having in the aggregate at least twenty-five per cent in value of the proven claims have so requested,

and any meeting of creditors must be held within twenty-one days after being called.

Notice to be sent to creditors

(3) The administrator shall, at least ten days before a meeting called pursuant to this section, send to the consumer debtor, every known creditor and the official receiver, in the prescribed form and manner, a notice setting out

(a) the time and place of the meeting;

(b) a form of proxy as prescribed; and

(c) such other information and documentation as is prescribed.

1992, c. 27, s. 32; 1997, c. 12, s. 48.

Chairman of meeting

66.16 (1) The official receiver, or the nominee thereof, shall be the chairman of a meeting called pursuant to section 66.15 and subsection 66.37(1) and shall decide any questions or disputes arising at the meeting, and any creditor may appeal any such decision to the court.

Adjournment of meeting for further investigation and examination

(2) Where the creditors by ordinary resolution at the meeting so require, the meeting shall be adjourned to such time and place as may be fixed by the chairman

(a) to enable a further appraisal and investigation of the affairs and property of the consumer debtor to be made; or

(b) for the examination under oath of the consumer debtor or of such other person as may be believed to have knowledge of the affairs or property of the consumer debtor, and the testimony of the consumer debtor or such other person, if transcribed, shall be placed before the adjourned meeting or may be read in court on the application, if any, for the approval of the consumer proposal.

1992, c. 27, s. 32.

Creditor may indicate assent or dissent

66.17 (1) Any creditor who has proved a claim may indicate assent to or dissent from the consumer proposal in the prescribed manner to the administrator at or prior to a meeting of creditors, or prior to the expiration of the forty-five day period following the filing of the consumer proposal.

Effect

(2) Any dissent received by the administrator prior to the expiration of the forty-five day period mentioned in subsection (1) is deemed to be a request for a meeting of creditors for the purpose of paragraph 66.15(2)(b), and any assent or dissent received by the administrator at or prior to a meeting of creditors has effect as if the creditor had been present and had voted at the meeting.

1992, c. 27, s. 32; 1997, c. 12, s. 49.

Where consumer proposal deemed accepted

66.18 (1) Where, at the expiration of the forty-five day period following the filing of the consumer proposal, no obligation has arisen under subsection 66.15(2) to call a meeting of creditors, the consumer proposal is deemed to be accepted by the creditors.

Idem

(2) Where there is no quorum at a meeting of creditors, the consumer proposal shall be deemed to be accepted by the creditors.

1992, c. 27, s. 32; 1997, c. 12, s. 50.

Voting on consumer proposal

66.19 (1) At a meeting of creditors, the creditors may by ordinary resolution, voting all as one class, accept or refuse the consumer proposal as filed or as altered at the meeting or any adjournment thereof, subject to the rights of secured creditors.

Related creditor

(2) A creditor who is related to the consumer debtor may vote against but not for the acceptance of the consumer proposal.

Voting by administrator

(3) The administrator, as a creditor, may not vote on the consumer proposal.

1992, c. 27, s. 32.

Creditors may provide for supervision of consumer debtor's affairs

66.2 The creditors, with the consent of the consumer debtor, may include such provisions or terms in the consumer proposal with respect to the supervision of the affairs of the consumer debtor as they may deem advisable.

1992, c. 27, s. 32.

Appointment of inspectors

66.21 The creditors may appoint up to three inspectors of the estate of the consumer debtor, who shall have the powers of an inspector under this Act, subject to any extension or restriction of those powers by the terms of the consumer proposal.

1992, c. 27, s. 32.

Application to court

66.22 (1) Where a consumer proposal is accepted or deemed accepted by the creditors, the administrator shall, if requested by the official receiver or any other interested party within fifteen days after the day of

acceptance or deemed acceptance, forthwith apply to the court to have the consumer proposal reviewed.

Where consumer proposal deemed approved by court

(2) Where, at the expiration of the fifteenth day after the day of acceptance or deemed acceptance of the consumer proposal by the creditors, no obligation has arisen under subsection (1) to apply to the court, the consumer proposal is deemed to be approved by the court.

1992, c. 27, s. 32; 1997, c. 12, s. 51.

Procedure for application to court

66.23 Where the administrator applies to the court pursuant to subsection 66.22(1), the administrator shall

(a) send a notice of the hearing of the application, in the prescribed manner and at least fifteen days before the date of the hearing, to the consumer debtor, to every creditor who has proved a claim and to the official receiver;

(b) forward a copy of the report referred to in paragraph (c) to the official receiver at least ten days before the date of the hearing; and

(c) at least two days before the date of the hearing, file with the court a report in the prescribed form on the consumer proposal and the conduct of the consumer debtor.

1992, c. 27, s. 32; 1997, c. 12, s. 52.

Court to hear report of administrator, etc.

66.24 (1) The court shall, before approving the consumer proposal, hear the report mentioned in paragraph 66.23(c) and, in addition, shall hear the official receiver, the administrator, the consumer debtor, any opposing, objecting or dissenting creditor or other interested party, and such further evidence as the court may require.

Refusal to approve the consumer proposal

(2) Where the court is of the opinion that the terms of the consumer proposal are not reasonable or are not fair to the consumer debtor and the creditors, the court shall refuse to approve the consumer proposal, and the court may refuse to approve the consumer proposal whenever it is established that the consumer debtor

(a) has committed any one of the offences mentioned in sections 198 to 200; or

(b) was not eligible to make a consumer proposal when the consumer proposal was filed with the official receiver.

Proposal must comply with Act

(3) The court shall refuse to approve a consumer proposal if it does not comply with subsections 66.12(5) and (6).

Power of court

(4) Subject to subsections (1) to (3), the court may either approve or refuse to approve the consumer proposal.

1992, c. 27, s. 32.

Withdrawal of consumer proposal

66.25 A consumer debtor may withdraw a consumer proposal

(a) at any time before its deemed approval by the court by virtue of subsection 66.22(2), where no court review is requested; or

(b) where a court review is requested, at any time before its actual approval or refusal by the court pursuant to section 66.24.

1992, c. 27, s. 32.

Where periodic payments not provided for

66.251 Where a proposal is approved or deemed approved by the court and the terms of the proposal do not provide for the distribution of available moneys at least once every three months, the administrator shall forthwith, upon ascertaining any change in the consumer debtor's circumstances that leads the administrator to conclude, after consultation with the debtor where practicable, that such change could jeopardize the consumer debtor's ability to meet the terms of the proposal, in writing, notify the official receiver and every known creditor of the change.

1997, c. 12, s. 53.

Payments to administrator

66.26 (1) All moneys payable under the consumer proposal shall be paid to the administrator and, after payment of all fees and expenses mentioned in paragraph 66.12(6)(b), the administrator shall distribute available moneys to the creditors in accordance with the terms of the consumer proposal.

Deposit of moneys

(2) In such circumstances as are specified in directives of the Superintendent and with the approval of the Superintendent, the administrator may deposit all moneys relating to the administration of consumer proposals in a single trust account.

Section 147 applies

(3) Section 147 applies, with such modifications as the circumstances require, to all distributions made to the creditors by the administrator pursuant to subsection (1).

1992, c. 27, s. 32; 1997, c. 12, s. 54.

Notifications

66.27 The administrator shall, within five days after

- (a) the refusal of a consumer proposal by the creditors,
- (b) the refusal of a consumer proposal by the court, and
- (c) the withdrawal of a consumer proposal by the consumer debtor,

so notify in the prescribed form and manner the consumer debtor, every known creditor and the official receiver.

1992, c. 27, s. 32; 1997, c. 12, s. 55.

Time for determining claims

66.28 (1) The time with respect to which the claims of creditors shall be determined is the time of the filing of the consumer proposal.

On whom approval binding

(2) A consumer proposal accepted, or deemed accepted, by the creditors and approved, or deemed approved, by the court is binding on creditors in respect of

- (a) all unsecured claims, and

(b) secured claims for which proofs of claim have been filed in the manner provided for in sections 124 to 134,

but does not release the consumer debtor from the debts and liabilities referred to in section 178, unless the creditor assents thereto.

Certain persons not released

(3) The acceptance of a consumer proposal by a creditor does not release any person who would not be released under this Act by the discharge of the consumer debtor.

1992, c. 27, s. 32.

Administrator may issue certificate

66.29 (1) If a consumer proposal is approved or deemed approved by the court, the administrator may, if the administrator believes on reasonable grounds that the debtor owns land or other valuable property, issue a certificate in respect of the proposal, and may cause the certificate to be filed in any place where a certificate of judgment, writ of seizure and sale or other like document may be filed or where a legal hypothec of judgment creditors may be registered.

Effect of filing certificate

(2) A certificate filed under subsection (1) operates as a certificate of judgment, writ of execution or legal hypothec of judgment creditors until the proposal is fully performed.

1992, c. 27, s. 32; 2004, c. 25, s. 40.

Annulment of consumer proposal

66.3 (1) Where default is made in the performance of any provision in a consumer proposal, or where it appears to the court

- (a) that the debtor was not eligible to make a consumer proposal when the consumer proposal was filed,
- (b) that the consumer proposal cannot continue without injustice or undue delay, or
- (c) that the approval of the court was obtained by fraud,

the court may, on application, with such notice as the court may direct to the consumer debtor and, if applicable, to the administrator and to the creditors, annul the consumer proposal.

Validity of things done

(2) An order made under subsection (1) shall be made without prejudice to the validity of any sale, disposition of property or payment duly made, or anything duly done under or in pursuance of the consumer proposal, and notwithstanding the annulment of the consumer proposal, a guarantee given pursuant to the consumer proposal remains in full force and effect in accordance with its terms.

Annulment for offence

(3) A consumer proposal, although accepted or approved, may be annulled by order of the court at the request of the administrator or of any creditor whenever the consumer debtor is afterwards convicted of any offence under this Act.

Notification of annulment

(4) Where an order annulling the consumer proposal of a consumer debtor who is not a bankrupt has been made pursuant to this section, the administrator shall forthwith so inform the creditors and file a report thereof in the prescribed form with the official receiver.

Annulment effect

(5) Where a consumer proposal made by a bankrupt is annulled,

(a) the consumer debtor is deemed on the annulment to have made an assignment and the order annulling the proposal shall so state;

(b) the trustee who is the administrator of the proposal shall, within five days after the order is made, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another trustee in lieu of that trustee; and

(c) the trustee shall forthwith file a report thereof in the prescribed form with the official receiver, who shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 49.

1992, c. 27, s. 32; 1997, c. 12, s. 56.

Where consumer proposal deemed annulled

66.31 (1) Independently of section 66.3,

(a) where payments under a consumer proposal are to be made monthly or more frequently and the consumer debtor is in default to the extent of three months payments, or

(b) where payments under a consumer proposal are to be made less frequently than monthly and the consumer debtor is in default for more than three months on any payment,

the consumer proposal shall thereupon be deemed to be annulled unless the court has previously ordered otherwise or unless an amendment to the consumer proposal has previously been filed, and the administrator shall forthwith so inform the creditors and file a report thereof in the prescribed form with the official receiver.

Idem

(2) Where an amendment to a consumer proposal filed before the deemed annulment of the consumer proposal by virtue of subsection (1) is withdrawn or refused by the creditors or the court, the consumer proposal shall thereupon be deemed to be annulled.

Validity of things done

(3) A deemed annulment of a consumer proposal by virtue of subsection (1) or (2) does not prejudice the validity of any sale, disposition of property or payment duly made, or anything duly done under or in pursuance of the consumer proposal, and notwithstanding the deemed annulment of the consumer proposal, a guarantee given pursuant to the consumer proposal remains in full force and effect in accordance with its terms.

1992, c. 27, s. 32.

Effects of annulment

66.32 (1) Unless the court otherwise orders, where a consumer proposal is annulled or deemed annulled, the consumer debtor

(a) may not make another consumer proposal, and

(b) is not entitled to any relief provided by sections 69 to 69.2

until all claims for which proofs of claim were filed and accepted are either paid in full or are extinguished by the operation of subsection 178(2).

Idem

(2) Where a consumer proposal is annulled or deemed annulled, the rights of the creditors are revived for the amount of their claims less any dividends received.

1992, c. 27, s. 32.

Assignment pending approval of consumer proposal

66.33 Where a consumer debtor in respect of whom a consumer proposal has been filed makes an assignment at any time before the court has approved or deemed to have approved the consumer proposal, the date of the assignment shall be deemed to be the earlier of

- (a) the day on which the consumer proposal was filed, and
- (b) the day on which the first application, if any, for a bankruptcy order in respect of that consumer debtor was filed.

1992, c. 27, s. 32; 2004, c. 25, s. 41.

Certain rights limited

66.34 (1) If a consumer proposal has been filed in respect of a consumer debtor, no person may terminate or amend any agreement with the consumer debtor, or claim an accelerated payment, or a forfeiture of the term, under any agreement with the consumer debtor, by reason only that

- (a) the consumer debtor is insolvent, or
- (b) a consumer proposal has been filed in respect of the consumer debtor

until the consumer proposal has been withdrawn, refused by the creditors or the court, annulled or deemed annulled.

Idem

(2) Where the agreement referred to in subsection (1) is a lease, subsection (1) shall be read as including the following paragraph:

"(c) the consumer debtor has not paid rent in respect of a period preceding the filing of the consumer proposal."

Idem

(3) Where a consumer proposal has been filed in respect of a consumer debtor, no public utility may discontinue service to that consumer debtor by reason only that

- (a) the consumer debtor is insolvent,
- (b) a consumer proposal has been filed in respect of the consumer debtor, or
- (c) the consumer debtor has not paid for services rendered, or material provided, before the filing of the consumer proposal

until the consumer proposal has been withdrawn, refused by the creditors or the court, annulled or deemed annulled.

Certain acts not prevented

(4) Nothing in subsections (1) to (3) shall be construed

- (a) as prohibiting a person from requiring payments to be made in cash for goods, services, use of leased property or other valuable consideration provided after the filing of the consumer proposal; or
- (b) as requiring the further advance of money or credit.

Provisions of section override agreement

(5) Any provision in an agreement that has the effect of providing for, or permitting, anything that, in substance, is contrary to subsections (1) to (3) is of no force or effect.

Powers of court

(6) The court may, on application by a party to an agreement or by a public utility, declare that this section does not apply, or applies only to the extent declared by the court, where the applicant satisfies the court that the operation of this section would likely cause it significant financial hardship.

1992, c. 27, s. 32; 2004, c. 25, s. 42(E).

Assignment of wages

66.35 (1) An assignment of existing or future wages made by a consumer debtor before the filing of a consumer proposal is of no effect in respect of wages earned after the filing of the consumer proposal.

Assignment of debts at request of administrator

(2) In order to ensure compliance with the terms of a consumer proposal, the administrator may, at any time after the consumer proposal is filed, require of, and take from, the consumer debtor an assignment of any amount payable to the consumer debtor, including wages, that may become payable in the future, but no such assignment can, unless the consumer debtor agrees, be for an amount greater than is due and payable pursuant to the terms of the consumer proposal.

Third parties protected

(3) An assignment made pursuant to subsection (2) is of no effect against a person owing the amount payable until a notice of the assignment is served on that person.

When section ceases to apply

(4) This section ceases to apply where the consumer proposal is refused by the creditors or by the court, or is withdrawn, annulled or deemed annulled.

1992, c. 27, s. 32; 1997, c. 12, s. 57.

No dismissal, etc., of employee

66.36 No employer shall dismiss, suspend, lay off or otherwise discipline a consumer debtor on the sole ground that a consumer proposal has been filed in respect of that consumer debtor.

1992, c. 27, s. 32.

Amendment to consumer proposal

66.37 (1) Where an administrator files an amendment to a consumer proposal

(a) before the withdrawal, refusal, approval or deemed approval by the court of the consumer proposal, or

(b) after the approval or deemed approval by the court of the consumer proposal and before it has been fully performed or annulled or deemed annulled,

the administrator shall call a meeting of creditors to be held within twenty-one days after the amendment is filed, to consider the consumer proposal as amended.

Application of Division

(2) With respect to an amendment to a consumer proposal and the amended consumer proposal,

(a) the provisions of this Division, except subsections 66.15(1) and (2), apply, with such modifications as the circumstances require; and

(b) the definition "consumer debtor" in section 66.11 shall be read as follows:

""consumer debtor" means an insolvent natural person;".

1992, c. 27, s. 32.

Certificate where consumer proposal performed

66.38 Where a consumer proposal is fully performed, the administrator shall give a certificate to that effect, in the prescribed form, to the consumer debtor and to the official receiver.

1992, c. 27, s. 32.

Administrator's accounts, discharge

66.39 The form and content of the administrator's accounts, the procedure for the preparation and taxation of those accounts and the procedure for the discharge of the administrator shall be as prescribed.

1992, c. 27, s. 32.

Act to apply

66.4 (1) All the provisions of this Act, except Division I of this Part, in so far as they are applicable, apply, with such modifications as the circumstances require, to consumer proposals.

Where consumer debtor is bankrupt

(2) Where a consumer proposal is made by a consumer debtor who is a bankrupt,

(a) the consumer proposal must be approved by the inspectors, if any, before any further action is taken thereon;

(b) the consumer debtor must have obtained the assistance of a trustee who shall act as administrator of the proposal in the preparation and execution thereof;

(c) the time with respect to which the claims of creditors shall be determined is the time at which the consumer debtor became bankrupt; and

(d) the approval or deemed approval by the court of the consumer proposal operates to annul the bankruptcy and to revert in the consumer debtor, or in such other person as the court may approve, all the right, title and interest of the trustee in the property of the consumer debtor, unless the terms of the consumer proposal otherwise provide.

1992, c. 27, s. 32; 1997, c. 12, s. 58.

PART IV

PROPERTY OF THE BANKRUPT

Property of bankrupt

67. (1) The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person,

(b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides, or

(b.1) such goods and services tax credit payments and prescribed payments relating to the essential needs of an individual as are made in prescribed circumstances and are not property referred to in paragraph (a) or (b),

but it shall comprise

(c) all property wherever situated of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on him before his discharge, and

(d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.

Deemed trusts

(2) Subject to subsection (3), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(a) unless it would be so regarded in the absence of that statutory provision.

Exceptions

(3) Subsection (2) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a "federal provision") nor in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where

(a) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or

(b) the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a "provincial pension plan" as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

R.S., 1985, c. B-3, s. 67; 1992, c. 27, s. 33; 1996, c. 23, s. 168; 1997, c. 12, s. 59; 1998, c. 19, s. 250.

Directives re standard of living factors

68. (1) The Superintendent shall, by directive, establish in respect of the provinces or one or more bankruptcy districts or parts of bankruptcy districts, the standards for determining the portion of the total income of an individual bankrupt that exceeds that which is necessary to enable the bankrupt to maintain a reasonable standard of living.

Interpretation

(2) For the purposes of this section,

(a) "total income" referred to in subsection (1) includes, notwithstanding paragraphs 67(1)(b) and (b.1), all revenues of a bankrupt of whatever nature or source; and

(b) a requirement that a bankrupt pay an amount to the estate of the bankrupt is enforceable against all property of the bankrupt, other than property referred to in paragraphs 67(1)(b) and (b.1).

Trustee to fix amount to be paid

(3) The trustee shall

(a) having regard to the applicable standards established under subsection (1), and to the personal and family situation of the bankrupt, fix the amount that the bankrupt is required to pay to the estate of the bankrupt;

- (b) inform the official receiver in writing of the amount fixed under paragraph (a); and
- (c) take reasonable measures to ensure that the bankrupt complies with the requirement to pay.

Modification by trustee

- (4) The trustee may, at any time, amend an amount fixed under subsection (3) to take into account
 - (a) material changes that have occurred in the personal or family situation of the bankrupt; or
 - (b) a recommendation made by the official receiver under subsection (5).

Official receiver recommendation

(5) Where the official receiver determines that the amount required to be paid by the bankrupt under subsection (3) or (4) is substantially not in accordance with the applicable standards established under subsection (1), the official receiver shall recommend to the trustee and to the bankrupt an amount required to be paid that the official receiver determines is in accordance with the applicable standards.

Trustee may request mediation

(6) Where the trustee and the bankrupt are not in agreement with the amount that the bankrupt is required to pay under subsection (3) or (4), the trustee shall, forthwith, in the prescribed form, send to the official receiver a request that the matter be determined by mediation and send a copy of the request to the bankrupt.

Creditor may request mediation

(7) On the request in writing of a creditor made within thirty days after the date of bankruptcy or an amendment referred to in subsection (4), the trustee shall, within the five days following the thirty day period, send to the official receiver a request in the prescribed form that the matter of the amount the bankrupt is required to pay under subsection (3) or (4) be determined by mediation and send a copy of the request to the bankrupt and the creditor.

Mediation procedure

- (8) A mediation shall be in accordance with prescribed procedures.

File

(9) Documents contained in a file on the mediation of a matter under this section form part of the records referred to in subsection 11.1(2).

Court determination

- (10) Where
 - (a) the trustee has not implemented a recommendation made by the official receiver under subsection (5),
 - (b) the issue submitted to mediation requested under subsection (6) or (7) is not thereby resolved, or
 - (c) the bankrupt fails to comply with the requirement to pay as determined under this section,

the trustee may, or on the request of the inspectors, any of the creditors or the official receiver shall, apply to the court for the hearing of the matter, and the court may, on the hearing, in accordance with the standards established under subsection (1) and having regard to the personal and family situation of the bankrupt, by order, fix the amount that the bankrupt is required to pay to the estate of the bankrupt.

Fixing fair and reasonable remuneration in the case of related persons

- (11) The court may fix an amount that is fair and reasonable
 - (a) as salary, wages or other remuneration for the services being performed by a bankrupt for a person employing the bankrupt, or

(b) as payment for or commission in respect of any services being performed by a bankrupt for a person,

where the person is related to the bankrupt, and the court may, by order, determine the part of the salary, wages or other remuneration, or the part of the payment or commission, that shall be paid to the trustee on the basis of the amount so fixed by the court, unless it appears to the court that the services have been performed for the benefit of the bankrupt and are not of any substantial benefit to the person for whom they were performed.

Modification of order

(12) On the application of any interested person, the court may, at any time, amend an order made under this section to take into account material changes that have occurred in the personal or family situation of the bankrupt.

Default by other person

(13) An order of the court made under this section may be served on a person from whom the bankrupt is entitled to receive money and, in such case,

(a) the order binds the person to pay to the estate of the bankrupt the amount fixed by the order; and

(b) if the person fails to comply with the terms of the order, the court may, on the application of the trustee, order the person to pay the trustee the amount of money that the estate of the bankrupt would have received had the person complied with the terms of the order.

Application is a proceeding

(14) For the purposes of section 38, an application referred to in subsection (10) is deemed to be a proceeding for the benefit of the estate.

R.S., 1985, c. B-3, s. 68; 1992, c. 27, s. 34; 1997, c. 12, s. 60.

Assignment of wages

68.1 (1) An assignment of existing or future wages made by a debtor before the debtor became bankrupt is of no effect in respect of wages earned after the bankruptcy.

Assignment of book debts

(2) An assignment of existing or future amounts receivable as payment for or commission or professional fees in respect of services rendered made by a debtor who is a natural person before the debtor became bankrupt is of no effect in respect of such amounts earned or generated after the bankruptcy.

1992, c. 27, s. 35; 1997, c. 12, s. 61.

STAY OF PROCEEDINGS

Stay of proceedings — notice of intention

69. (1) Subject to subsections (2) and (3) and sections 69.4 and 69.5, on the filing of a notice of intention under section 50.4 by an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,

(b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on

(i) the insolvent person's insolvency,

(ii) the default by the insolvent person of an obligation under the security agreement, or

(iii) the filing by the insolvent person of a notice of intention under section 50.4,

the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as he would otherwise have, has any force or effect,

(c) Her Majesty in right of Canada may not exercise Her rights under

- (i) subsection 224(1.2) of the *Income Tax Act*, or
- (ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that

(A) refers to subsection 224(1.2) of the *Income Tax Act*, and

(B) provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts,

in respect of the insolvent person where the insolvent person is a tax debtor under that subsection or provision, and

(d) Her Majesty in right of a province may not exercise her rights under any provision of provincial legislation in respect of the insolvent person where the insolvent person is a debtor under the provincial legislation and the provision has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

- (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or
- (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

until the filing of a proposal under subsection 62(1) in respect of the insolvent person or the bankruptcy of the insolvent person.

Limitation

(2) The stays provided by subsection (1) do not apply

(a) to prevent a secured creditor who took possession of secured assets of the insolvent person for the purpose of realization before the notice of intention under section 50.4 was filed from dealing with those assets;

(b) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security against the insolvent person more than ten days before the notice of intention under section 50.4 was filed, from enforcing that security, unless the secured creditor consents to the stay;

(c) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security from enforcing the security if the insolvent person has, under subsection 244(2), consented to the enforcement action; or

(d) to prevent a creditor who holds security on aircraft objects — or who is a lessor of aircraft objects or a conditional seller of aircraft objects — under an agreement with the insolvent person from taking possession of the equipment

- (i) if, after the commencement of proceedings under this Act, the insolvent person defaults in protecting or maintaining the equipment in accordance with the agreement,
- (ii) sixty days after the commencement of proceedings under this Act unless, during that period, the insolvent person

(A) remedied the default of every other obligation under the agreement, other than a default constituted by the commencement of proceedings under this Act or the breach of a provision in the agreement relating to the insolvent person's financial condition,

(B) agreed to perform the obligations under the agreement, other than an obligation not to become insolvent or an obligation relating to the insolvent person's financial condition, until the day on which proceedings under this Act end, and

(C) agreed to perform all the obligations arising under the agreement after the proceedings under this Act end, or

(iii) if, during the period that begins on the expiry of the sixty-day period and ends on the day on which proceedings under this Act end, the insolvent person defaults in performing an obligation under the agreement, other than an obligation not to become insolvent or an obligation relating to the insolvent person's financial condition.

Limitation

(3) A stay provided by paragraph (1)(c) or (d) does not apply, or terminates, in respect of Her Majesty in right of Canada and every province if

(a) the insolvent person defaults on payment of any amount that becomes due to Her Majesty after the filing of the notice of intention and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) 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*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection; or

(b) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising Her rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) 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*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

R.S., 1985, c. B-3, s. 69; 1992, c. 27, s. 36; 1997, c. 12, s. 62; 2000, c. 30, s. 145; 2005, c. 3, s. 12.

Stay of proceedings — Division I proposals

69.1 (1) Subject to subsections (2) to (6) and sections 69.4 and 69.5, on the filing of a proposal under subsection 62(1) in respect of an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged or the insolvent person becomes bankrupt;

(b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on

(i) the insolvent person's insolvency,

(ii) the default by the insolvent person of an obligation under the security agreement, or

(iii) the filing of a notice of intention under section 50.4 or of a proposal under subsection 62(1) in respect of the insolvent person,

the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as the insolvent person would otherwise have, has any force or effect until the trustee has been discharged or the insolvent person becomes bankrupt;

(c) Her Majesty in right of Canada may not exercise Her rights under subsection 224(1.2) of the *Income Tax Act* or 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*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, in respect of the insolvent person where the insolvent person is a tax debtor under that subsection or provision, until

(i) the trustee has been discharged,

(ii) six months have elapsed following court approval of the proposal, or

(iii) the insolvent person becomes bankrupt; and

(d) Her Majesty in right of a province may not exercise Her rights under any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

in respect of the insolvent person where the insolvent person is a debtor under the provincial legislation, until

(iii) the trustee has been discharged,

(iv) six months have elapsed following court approval of the proposal, or

(v) the insolvent person becomes bankrupt.

Limitation

(2) The stays provided by subsection (1) do not apply

(a) to prevent a secured creditor who took possession of secured assets of the insolvent person for the purpose of realization before the proposal was filed from dealing with those assets;

(b) unless the secured creditor otherwise agrees, to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security against the insolvent person more than ten days before

(i) a notice of intention was filed in respect of the insolvent person under section 50.4, or

(ii) the proposal was filed, if no notice of intention under section 50.4 was filed

from enforcing that security;

(c) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security from enforcing the security if the insolvent person has, under subsection 244(2), consented to the enforcement action; or

(d) to prevent a creditor who holds security on aircraft objects — or who is a lessor of aircraft objects or a conditional seller of aircraft objects — under an agreement with the insolvent person from taking possession of the equipment

(i) if, after the commencement of proceedings under this Act, the insolvent person defaults in protecting or maintaining the equipment in accordance with the agreement,

(ii) sixty days after the commencement of proceedings under this Act unless, during that period, the insolvent person

(A) remedied the default of every other obligation under the agreement, other than a default constituted by the commencement of proceedings under this Act or the breach of a provision in the agreement relating to the insolvent person's financial condition,

(B) agreed to perform the obligations under the agreement, other than an obligation not to become insolvent or an obligation relating to the insolvent person's financial condition, until the day on which proceedings under this Act end, and

(C) agreed to perform all the obligations arising under the agreement after the proceedings under this Act end, or

(iii) if, during the period that begins on the expiry of the sixty-day period and ends on the day on which proceedings under this Act end, the insolvent person defaults in performing an obligation under the agreement, other than an obligation not to become insolvent or an obligation relating to the insolvent person's financial condition.

Limitation

(3) A stay provided by paragraph (1)(c) or (d) does not apply, or terminates, in respect of Her Majesty in right of Canada and every province if

(a) the insolvent person defaults on payment of any amount that becomes due to Her Majesty after the filing of the proposal and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) 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*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection; or

(b) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising Her rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) 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*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

Limitation

(4) If, by virtue of subsection 69(3), the stay provided by paragraph 69(1)(c) or (d) does not apply or terminates, the stay provided by paragraph (1)(c) or (d) of this section does not apply.

Secured creditors to whom proposal not made

(5) Subject to sections 79 and 127 to 135 and subsection 248(1), the filing of a proposal under subsection 62(1) does not prevent a secured creditor to whom the proposal has not been made in respect of a particular security from realizing or otherwise dealing with that security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Where secured creditors vote against proposal

(6) Subject to sections 79 and 127 to 135 and subsection 248(1), where secured creditors holding a particular class of secured claim vote for the refusal of a proposal, a secured creditor holding a secured claim of that class may henceforth realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

1992, c. 27, s. 36; 1994, c. 26, s. 8(E); 1997, c. 12, s. 63; 2000, c. 30, s. 146; 2005, c. 3, s. 13.

Stay of proceedings — consumer proposals

69.2 (1) Subject to subsections (2) to (4) and sections 69.4 and 69.5, on the filing of a consumer proposal under subsection 66.13(2) or of an amendment to a consumer proposal under subsection 66.37(1) in respect of a consumer debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy until

(a) the consumer proposal or the amended consumer proposal, as the case may be, has been withdrawn, refused, annulled or deemed annulled; or

(b) the administrator has been discharged.

Exception

(2) Subsection (1) does not apply where the consumer proposal, other than an amendment to a consumer proposal referred to in section 66.37, is filed within six months after the filing of a previous consumer proposal in respect of the same debtor.

Idem

(3) Subsection (1) does not apply where an amendment to a consumer proposal is filed within six months after the filing of a previous amendment to the same consumer proposal.

Secured creditors

(4) Subject to sections 79 and 127 to 135 and subsection 248(1), the filing of a consumer proposal under subsection 66.13(2) does not prevent a secured creditor from realizing or otherwise dealing with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed, unless the court otherwise orders, but in so ordering the court shall not postpone the right of the secured creditor to realize or otherwise deal with his security, except as follows:

(a) in the case of a security for a debt that is due at the date of the approval or deemed approval of the consumer proposal or that becomes due not later than six months thereafter, that right shall not be postponed for more than six months from that date; and

(b) in the case of a security for a debt that does not become due until more than six months after the date of the approval or deemed approval of the consumer proposal, that right shall not be postponed for more than six months from that date, unless all instalments of interest that are more than six months in arrears are paid and all other defaults of more than six months standing are cured, and then only so long as no instalment of interest remains in arrears or defaults remain uncured for more than six months, but, in any event, not beyond the date at which the debt secured by the security becomes payable under the instrument or act, or law, creating the security.

1992, c. 27, s. 36; 1997, c. 12, s. 64; 2004, c. 25, s. 43(E).

Stay of proceedings — bankruptcy

69.3 (1) Subject to subsections (2) and (3) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or may commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged.

Secured creditors

(2) Subject to sections 79 and 127 to 135 and subsection 248(1), the bankruptcy of a debtor does not prevent a secured creditor from realizing or otherwise dealing with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed, unless the court otherwise orders, but in so ordering the court shall not postpone the right of the secured creditor to realize or otherwise deal with his security, except as follows:

(a) in the case of a security for a debt that is due at the date the bankrupt became bankrupt or that becomes due not later than six months thereafter, that right shall not be postponed for more than six months from that date; and

(b) in the case of a security for a debt that does not become due until more than six months after the date the bankrupt became bankrupt, that right shall not be postponed for more than six months from that date, unless all instalments of interest that are more than six months in arrears are paid and all other defaults of more than six months standing are cured, and then only so long as no instalment of interest remains in arrears or defaults remain uncured for more than six months, but, in any event, not beyond the date at which the debt secured by the security becomes payable under the instrument or law creating the security.

Secured creditors — aircraft objects

(3) The bankruptcy of a debtor does not prevent a creditor who holds security on aircraft objects — or who is a lessor of aircraft objects or a conditional seller of aircraft objects — under an agreement with the bankrupt from taking possession of the equipment

(a) if, after the commencement of proceedings under this Act, the trustee defaults in protecting or maintaining the equipment in accordance with the agreement;

(b) sixty days after the commencement of proceedings under this Act unless, during that period, the trustee

(i) remedied the default of every other obligation under the agreement, other than a default constituted by the commencement of proceedings under this Act or the breach of a provision in the agreement relating to the bankrupt's financial condition,

(ii) agreed to perform the obligations under the agreement, other than an obligation not to become insolvent or an obligation relating to the bankrupt's financial condition, until the day on which proceedings under this Act end, and

(iii) agreed to perform all the obligations arising under the agreement after the proceedings under this Act end; or

(c) if, during the period that begins on the expiry of the sixty-day period and ends on the day on which proceedings under this Act end, the trustee defaults in performing an obligation under the agreement, other than an obligation not to become insolvent or an obligation relating to the bankrupt's financial condition.

1992, c. 27, s. 36; 2005, c. 3, s. 14.

Stay of proceedings — directors

69.31 (1) Where a notice of intention under subsection 50.4(1) has been filed or a proposal has been made by an insolvent corporation, no person may commence or continue any action against a director of the corporation on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the corporation where directors are under any law liable in their capacity as directors for the payment of such obligations, until the proposal, if one has been filed, is approved by the court or the corporation becomes bankrupt.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the corporation's obligations or an action seeking injunctive relief against a director in relation to the corporation.

Resignation or removal of directors

(3) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the corporation shall be deemed to be a director for the purposes of this section.

1997, c. 12, s. 65.

Court may declare that stays, etc., cease

69.4 A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied

- (a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or
- (b) that it is equitable on other grounds to make such a declaration.

1992, c. 27, s. 36; 1997, c. 12, s. 65.

Non-application of certain provisions

69.41 (1) Sections 69 to 69.31 do not apply in respect of a claim referred to in subsection 121(4).

No remedy, etc.

(2) Notwithstanding subsection (1), no creditor with a claim referred to in subsection 121(4) has any remedy, or shall commence or continue any action, execution or other proceeding, against

- (a) property of a bankrupt that has vested in the trustee; or
- (b) amounts that are payable to the estate of the bankrupt under section 68.

1997, c. 12, s. 65.

No stay, etc., in certain cases

69.42 Despite anything in this Act, no provision of this Act shall have the effect of staying or restraining, and no order may be made under this Act staying or restraining,

- (a) the exercise by the Minister of Finance or the Superintendent of Financial Institutions of any power, duty or function assigned to them by the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*,

(b) the exercise by the Governor in Council, the Minister of Finance or the Canada Deposit Insurance Corporation of any power, duty or function assigned to them by the *Canada Deposit Insurance Corporation Act*; or

(c) the exercise by the Attorney General of Canada of any power, assigned to him or her by the *Winding-up and Restructuring Act*.

2001, c. 9, s. 574.

Provincial legislation

69.5 Except for paragraphs 69(1)(c) and (d) and 69.1(1)(c) and (d), sections 69 to 69.3 do not affect the operation of any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(a) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(b) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

and for the purpose of this section, the provision is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in paragraph (a), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in paragraph (b), and in respect of any related interest, penalties or other amounts.

1992, c. 27, s. 36; 2000, c. 30, s. 147.

GENERAL PROVISIONS

Precedence of bankruptcy orders and assignments

70. (1) Every bankruptcy order and every assignment made under this Act takes precedence over all judicial or other attachments, garnishments, certificates having the effect of judgments, judgments, certificates of judgment, legal hypothecs of judgment creditors, executions or other process against the property of a bankrupt, except those that have been completely executed by payment to the creditor or the creditor's representative, and except the rights of a secured creditor.

Costs

(2) Despite subsection (1), one bill of costs of a barrister or solicitor or, in the Province of Quebec, an advocate, including the executing officer's fees and land registration fees, shall be payable to the creditor who has first attached by way of garnishment or lodged with the executing officer an attachment, execution or other process against the property of the bankrupt.

R.S., 1985, c. B-3, s. 70; 1992, c. 27, s. 37; 1997, c. 12, s. 66(F); 2004, c. 25, s. 44.

Vesting of property in trustee

71. On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any assignment or transfer.

R.S., 1985, c. B-3, s. 71; 1997, c. 12, s. 67; 2004, c. 25, s. 44.

Application of other substantive law

72. (1) The provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act, and the trustee is entitled to avail himself of all rights and remedies provided by that law or statute as supplementary to and in addition to the rights and remedies provided by this Act.

Operation of provincial law re documents executed under Act

(2) No bankruptcy order, assignment or other document made or executed under the authority of this Act shall, except as otherwise provided in this Act, be within the operation of any legislative enactment in force at any time in any province relating to deeds, mortgages, hypothecs, judgments, bills of sale, chattel mortgages, property or registration of documents affecting title to or liens or charges on real or personal property or immovables or movables.

R.S., 1985, c. B-3, s. 72; 1997, c. 12, s. 68(F); 2004, c. 25, s. 45.

Purchaser in good faith at sale protected

73. (1) An execution levied by seizure and sale of the property of a bankrupt is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the property in good faith under a sale by the executing officer acquires a good title to the property against the trustee.

Executing officer to deliver property of bankrupt to trustee

(2) If an assignment or a bankruptcy order has been made, the executing officer or other officer of any court or any other person having seized property of the bankrupt under execution or attachment or any other process shall, on receiving a copy of the assignment or the bankruptcy order certified by the trustee as a true copy, immediately deliver to the trustee all the property of the bankrupt in their hands.

In case of executing officer's sale

(3) If the executing officer has sold the property or any part of the property of a bankrupt, the executing officer shall deliver to the trustee the money so realized less the executing officer's fees and the costs referred to in subsection 70(2).

Effect of bankruptcy on seizure of property for rent or taxes

(4) Any property of a bankrupt under seizure for rent or taxes shall on production of a copy of the bankruptcy order or the assignment certified by the trustee as a true copy be delivered without delay to the trustee, but the costs of distress or, in the Province of Quebec, the costs of seizure are a security on the property ranking ahead of any other security on it, and, if the property or any part of it has been sold, the money realized from the sale less the costs of distress, or seizure, and sale shall be paid to the trustee.

R.S., 1985, c. B-3, s. 73; 1997, c. 12, s. 69(F); 2004, c. 25, s. 46.

Registration of bankruptcy order or assignment

74. (1) Every bankruptcy order, or a true copy certified by the registrar or other officer of the court that made it, and every assignment, or a true copy certified by the official receiver, may be registered by or on behalf of the trustee in respect of the whole or any part of any real property in which the bankrupt has any interest or estate, or in respect of the whole or any part of any immovable in which the bankrupt has any right, in the registry office in which, according to the law of the province in which the real property or immovable is situated, deeds or transfers of title and other documents relating to real property, an immovable or any interest or estate in real property or any right in an immovable may be registered.

Effect of registration

(2) If a bankrupt is the registered owner of any real property or immovable or the registered holder of any charge, the trustee, on registration of the documents referred to in subsection (1), is entitled to be registered as owner of the real property or immovable or holder of the charge free of all encumbrances or charges mentioned in subsection 70(1).

Caveat may be filed

(3) If a bankrupt owns any real property or immovable or holds any charge registered in a land registry office or has or is believed to have any interest, estate or right in any of them, and for any reason a copy of the bankruptcy order or assignment has not been registered as provided in subsection (1), a caveat or caution may

be lodged with the official in charge of the land registry by the trustee, and any registration made after the lodging of the caveat or caution in respect of the real property, immovable or charge is subject to the caveat or caution unless it has been removed or cancelled under the provisions of the Act under which the real property, immovable, charge, interest, estate or right is registered.

Duty of official

(4) Every official to whom a trustee tenders or causes to be tendered for registration any bankruptcy order, assignment or other document shall register it according to the ordinary procedure for registering within the official's office documents relating to real property or immovables.

R.S., 1985, c. B-3, s. 74; 1997, c. 12, s. 70; 2004, c. 25, s. 47.

Law of province to apply in favour of purchaser for value

75. Despite anything in this Act, a deed, transfer, agreement for sale, mortgage, charge or hypothec made to or in favour of a *bona fide* purchaser, mortgagee or hypothecary creditor for adequate valuable consideration and covering any real property or immovable affected by a bankruptcy order or an assignment under this Act is valid and effectual according to the tenor of the deed, transfer, agreement for sale, mortgage, charge or hypothec and according to the laws of the province in which the property is situated as fully and effectually and to all intents and purposes as if no bankruptcy order or assignment had been made under this Act, unless the bankruptcy order or assignment, or notice of the order or assignment, or caution, has been registered against the property in the proper office prior to the registration of the deed, transfer, agreement for sale, mortgage, charge or hypothec in accordance with the laws of the province in which the property is situated.

R.S., 1985, c. B-3, s. 75; 2001, c. 4, s. 28(F); 2004, c. 25, s. 47.

Property not to be removed from province

76. No property of a bankrupt shall be removed out of the province in which the property was at the date when the bankruptcy order or assignment was made, without the permission of the inspectors or an order of the court in which proceedings under this Act are being carried on or within the jurisdiction in which the property is situated.

R.S., 1985, c. B-3, s. 76; 2004, c. 25, s. 47.

Contributory shareholders

77. (1) Every shareholder or member of a bankrupt corporation is liable to contribute the amount unpaid on his shares of the capital or on his liability to the corporation, its members or creditors, as the case may be, under the Act, charter or instrument of incorporation of the company or otherwise.

Liability of contributory an asset

(2) The amount that the contributory is liable to contribute under subsection (1) shall be deemed an asset of the corporation and a debt payable to the trustee forthwith on the bankruptcy of the corporation.

R.S., 1985, c. B-3, s. 77; 1999, c. 31, s. 22(F).

Bank must notify trustee

78. Where a banker has ascertained that a person having an account with the banker is an undischarged bankrupt, it is his duty forthwith to inform the trustee of the existence of the account, and thereafter the banker shall not make any payments out of the account, except under an order of the court or in accordance with instructions from the trustee, unless on the expiration of one month from the date of giving the information no instructions have been received from the trustee.

R.S., c. B-3, s. 56.

Inspection of property held in pledge

79. Where property of a bankrupt is held as a pledge, hypothec, pawn or other security, the trustee may give notice in writing of the trustee's intention to inspect the property, and the person so notified is not thereafter

entitled to realize the security until the person has given the trustee a reasonable opportunity of inspecting the property and of exercising the trustee's right of redemption.

R.S., 1985, c. B-3, s. 79; 1997, c. 12, s. 71.

Protection of trustee

80. If the trustee has seized or disposed of property in the possession or on the premises of a bankrupt without notice of any claim in respect of the property and after the seizure or disposal it is made to appear that the property, at the date of the bankruptcy, was not the property of the bankrupt or was subject to an unregistered security or charge, the trustee is not personally liable for any loss or damage arising from the seizure or disposal sustained by any person claiming the property, interest in property or, in the Province of Quebec, a right in property, or for the costs of proceedings taken to establish a claim to that property, interest or right, unless the court is of opinion that the trustee has been negligent with respect to the trustee's duties in relation to the property.

R.S., 1985, c. B-3, s. 80; 1997, c. 12, s. 71; 2004, c. 25, s. 48.

Persons claiming property in possession of bankrupt

81. (1) Where a person claims any property, or interest therein, in the possession of a bankrupt at the time of the bankruptcy, he shall file with the trustee a proof of claim verified by affidavit giving the grounds on which the claim is based and sufficient particulars to enable the property to be identified.

How claim disposed of

(2) The trustee with whom a proof of claim is filed under subsection (1) shall within fifteen days thereafter or within fifteen days after the first meeting of creditors, whichever is the later, either admit the claim and deliver possession of the property to the claimant or give notice in writing to the claimant that the claim is disputed with his reasons therefor, and, unless the claimant appeals therefrom to the court within fifteen days after the mailing of the notice of dispute, he shall be deemed to have abandoned or relinquished all his right to or interest in the property to the trustee who thereupon may sell or dispose of the property free of any lien, right, title or interest of the claimant.

Onus on claimant

(3) The onus of establishing a claim to or in property under this section is on the claimant.

Require proof of claim

(4) The trustee may give notice in writing to any person to prove his claim to or in property under this section, and, unless that person files with the trustee a proof of claim in the prescribed form within fifteen days after the mailing of the notice, the trustee may thereupon with the leave of the court sell or dispose of the property free of any lien, right, title or interest of that person.

No other proceeding to be instituted

(5) No proceedings shall be instituted to establish a claim to, or to recover any right or interest in, any property in the possession of a bankrupt at the time of the bankruptcy, except as provided in this section.

Rights of others not extended

(6) Nothing in this section shall be construed as extending the rights of any person other than the trustee.

R.S., c. B-3, s. 59.

Right of unpaid supplier to repossess goods

81.1 (1) Subject to this section, where a person (in this section referred to as the "supplier") has sold and delivered goods to another person (in this section referred to as the "purchaser") for use in relation to the purchaser's business, and the purchaser has not fully paid for the goods, the supplier may have access to and repossess the goods at the supplier's own expense, and the purchaser, trustee or receiver shall release the goods, if

(a) the supplier presents a written demand for repossession to the purchaser, trustee or receiver, in

prescribed form and containing the details of the transaction, within a period of thirty days after the delivery of the goods to the purchaser;

(b) at the time when the demand referred to in paragraph (a) is presented,

- (i) the purchaser is bankrupt, or
- (ii) there is a receiver, within the meaning of subsection 243(2), in relation to the purchaser;

(c) at the time when the demand referred to in paragraph (a) is presented, the goods

- (i) are in the possession of the purchaser, trustee or receiver,
- (ii) are identifiable as the goods delivered by the supplier and not fully paid for,
- (iii) are in the same state as they were on delivery,
- (iv) have not been resold at arms' length, and
- (v) are not subject to any agreement for sale at arms' length; and

(d) the purchaser, trustee or receiver does not, forthwith after the demand referred to in paragraph (a) is presented, pay to the supplier the entire balance owing.

Where goods have been partly paid for

(2) Where, at the time when the demand referred to in paragraph (1)(a) is presented, the goods have been partly paid for, the supplier's right to repossess under subsection (1) shall be read as a right

(a) to repossess a portion of the goods proportional to the unpaid amount; or

(b) to repossess all of the goods on paying to the purchaser, trustee or receiver an amount equal to the partial payment previously made to the supplier.

(3) [Repealed, 1999, c. 31, s. 23]

Where notice of intention or proposal is filed

(4) Where a notice of intention under section 50.4 or a proposal was filed in respect of the purchaser after the delivery of the goods to the purchaser and before there was a receiver, within the meaning of subsection 243(2), in relation to the purchaser or the purchaser became bankrupt, the period between

(a) the earlier of the filing of the notice of intention or proposal, and

(b) the earlier of the first day there was a receiver, within the meaning of subsection 243(2), in relation to the purchaser or the day the purchaser became bankrupt

shall not be counted in determining the end of the thirty day period referred to in paragraph (1)(a).

Expiration of supplier's right

(5) A supplier's right to repossess goods pursuant to this section expires if not exercised within ten days after the purchaser, trustee or receiver presents the supplier with a written notice admitting that right, unless the ten day period is extended by mutual agreement.

Ranks above other claims

(6) Notwithstanding any other federal or provincial Act or law, a supplier's right to repossess goods pursuant to this section ranks above every other claim or right against the purchaser in respect of those goods, other than the right of a *bona fide* subsequent purchaser of the goods for value without notice that the supplier had demanded repossession of the goods.

Application to court for directions

(7) The purchaser, trustee or receiver may apply to the court for directions in relation to any matter relating to this section, and the court shall give, in writing, such directions, if any, as it considers proper in the

circumstances.

Supplier may appeal to court

(8) Where a supplier is aggrieved by any act, omission or decision of the purchaser, trustee or receiver, the supplier may apply to the court and the court may make such order as it considers proper in the circumstances.

Other rights saved

(9) Nothing in subsection (7) or (8) precludes a person from exercising any right that the person may have under subsection 34(1) or section 37.

No payment

(10) A supplier who repossesses goods pursuant to this section is not entitled to be paid for those goods.

Provincial rights saved

(11) Nothing in this section precludes a supplier from exercising any right that the supplier may have under the law of a province.

1992, c. 27, s. 38; 1999, c. 31, s. 23.

Special right for farmers, fishermen and aquaculturists

81.2 (1) Where

(a) a farmer has sold and delivered products of agriculture, a fisherman has sold and delivered products of the sea, lakes and rivers, or an aquaculturist has sold and delivered products of aquaculture, to another person (in this section referred to as the "purchaser") for use in relation to the purchaser's business,

(b) the products were delivered to the purchaser within the fifteen day period preceding

(i) the day on which the purchaser became bankrupt, or

(ii) the first day on which there was a receiver, within the meaning of subsection 243(2), in relation to the purchaser,

(c) as of the day referred to in subparagraph (b)(i) or (ii), the farmer, fisherman or aquaculturist has not been fully paid for the products, and

(d) the farmer, fisherman or aquaculturist files a proof of claim in the prescribed form in respect of the unpaid amount with the trustee or receiver, as the case may be, within thirty days after the day referred to in subparagraph (b)(i) or (ii),

the claim of the farmer, fisherman or aquaculturist for the unpaid amount in respect of the products is secured by security on all the inventory of or held by the purchaser as of the day referred to in subparagraph (b)(i) or (ii), and the security ranks above every other claim, right, charge or security against that inventory, regardless of when that other claim, right, charge or security arose, except a supplier's right, under section 81.1, to repossess goods, despite any other federal or provincial Act or law; and if the trustee or receiver, as the case may be, takes possession or in any way disposes of inventory covered by the security, the trustee or receiver is liable for the claim of the farmer, fisherman or aquaculturist to the extent of the net amount realized on the disposition of that inventory, after deducting the cost of realization, and is subrogated in and to all rights of the farmer, fisherman or aquaculturist to the extent of the amounts paid to them by the trustee or receiver.

Definitions

(2) In this section, "aquaculture"
«*aquiculture*»

"aquaculture" means the cultivation of aquatic plants and animals;

"aquaculture operation"
«*exploitation aquicole*»

"aquaculture operation" means any premises or site where aquaculture is carried out;

"aquaculturist"
«*aquiculteur*»

"aquaculturist" includes the owner, occupier, lessor and lessee of an aquaculture operation;

"aquatic plants and animals"
«*organismes animaux et végétaux aquatiques*»

"aquatic plants and animals" means plants and animals that, at most stages of their development or life cycles, live in an aquatic environment;

"farm"
«*ferme*»

"farm" means land in Canada used for the purpose of farming, which term includes livestock raising, dairying, bee-keeping, fruit growing, the growing of trees and all tillage of the soil;

"farmer"
«*agriculteur*»

"farmer" includes the owner, occupier, lessor and lessee of a farm;

"fish"
«*poisson*»

"fish" includes shellfish, crustaceans and marine animals;

"fisherman"
«*pêcheur*»

"fisherman" means a person whose business consists in whole or in part of fishing;

"fishing"
«*pêche*»

"fishing" means fishing for or catching fish by any method;

"products of agriculture"
«*produits agricoles*»

"products of agriculture" includes

(a) grain, hay, roots, vegetables, fruits, other crops and all other direct products of the soil, and

(b) honey, livestock (whether alive or dead), dairy products, eggs and all other indirect products of the soil;

"products of aquaculture"
«*produits aquicoles*»

"products of aquaculture" includes all cultivated aquatic plants and animals;

"products of the sea, lakes and rivers"
«*produits aquatiques*»

"products of the sea, lakes and rivers" includes fish of all kinds, marine and freshwater organic and inorganic life and any substances extracted or derived from any water, but does not include products of aquaculture.

Interpretation—products and by-products

(3) For the purposes of this section, each thing included in the following terms as defined in subsection (2), namely,

(a) "products of agriculture",

(b) "products of aquaculture", and

(c) "products of the sea, lakes and rivers",

comprises that thing in any form or state and any part thereof and any product or by-product thereof or derived therefrom.

Section 81.1 applies

(4) For greater certainty, "goods" in section 81.1 includes products of agriculture, products of the sea, lakes and rivers, and products of aquaculture.

Other rights saved

(5) Nothing in this section precludes a farmer, fisherman or aquaculturist from exercising

(a) the right that that person may have under section 81.1 to repossess products of agriculture, products of the sea, lakes and rivers, or products of aquaculture; or

(b) any right that that person may have under the law of a province.

1992, c. 27, s. 38; 1997, c. 12, s. 72(F); 2004, c. 25, s. 49.

Trustee to have right to sell patented articles

82. (1) Where any property of a bankrupt vesting in a trustee consists of patented articles that were sold to the bankrupt subject to any restrictions or limitations, the trustee is not bound by the restrictions or limitations but may sell and dispose of the patented articles free and clear of the restrictions or limitations.

Right of manufacturer

(2) Where the manufacturer or vendor of the patented articles referred to in subsection (1) objects to the disposition of them by the trustee as provided by this section and gives to the trustee notice in writing of the objection before the sale or disposition thereof, that manufacturer or vendor has the right to purchase the patented articles at the invoice prices thereof, subject to any reasonable deduction for depreciation or deterioration.

R.S., 1985, c. B-3, s. 82; 1993, c. 34, s. 10(E).

Copyright and manuscript to revert to author

83. (1) Notwithstanding anything in this Act or in any other statute, the author's manuscripts and any copyright or any interest in a copyright in whole or in part assigned to a publisher, printer, firm or person becoming bankrupt shall,

(a) if the work covered by the copyright has not been published and put on the market at the time of the bankruptcy and no expense has been incurred in connection with that work, revert and be delivered to the author or their heirs, and any contract or agreement between the author or their heirs and the bankrupt shall then terminate and be void or, in the Province of Quebec, null;

(b) if the work covered by the copyright has in whole or in part been put into type and expenses have been incurred by the bankrupt, revert and be delivered to the author on payment of the expenses so incurred and the product of those expenses shall also be delivered to the author or their heirs and any contract or agreement between the author or their heirs and the bankrupt shall then terminate and be void or, in the Province of Quebec, null, but if the author does not exercise their rights under this paragraph within six months after the date of the bankruptcy, the trustee may carry out the original contract; or

(c) if the trustee at the end of the six-month period from the date of the bankruptcy decides not to carry out the contract, revert without expense to the author and any contract or agreement between the author or their heirs and the bankrupt shall then terminate and be void or, in the Province of Quebec, null.

If copies of the work are on the market

(2) Where, at the time of the bankruptcy referred to in subsection (1), the work was published and put on the

market, the trustee is entitled to sell, or authorize the sale or reproduction of, any copies of the published work, or to perform or authorize the performance of the work, but

(a) there shall be paid to the author or his heirs such sums by way of royalties or share of the profits as would have been payable by the bankrupt;

(b) the trustee is not, without the written consent of the author or his heirs, entitled to assign the copyright or transfer the interest or to grant any interest therein by licence or otherwise, except on terms that will guarantee to the author or his heirs payment by way of royalties or share of the profits at a rate not less than the rate the bankrupt was liable to pay; and

(c) any contract or agreement between the author or their heirs and the bankrupt shall then terminate and be void or, in the Province of Quebec, null, except with respect to the disposal, under this subsection, of copies of the work published and put on the market before the bankruptcy.

Marketable copies to be first offered for sale to the author

(3) The trustee shall offer in writing to the author or his heirs the right to purchase the manufactured or marketable copies of the copyright work comprised in the estate of the bankrupt at such price and on such terms and conditions as the trustee may deem fair and proper before disposing of the manufactured and marketable copies in the manner prescribed in this section.

R.S., 1985, c. B-3, s. 83; 2004, c. 25, s. 50.

Effect of sales by trustee

84. All sales of property made by a trustee vest in the purchaser all the legal and equitable estate of the bankrupt therein.

R.S., 1985, c. B-3, s. 84; 2004, c. 25, s. 51(F).

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.

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 privilege 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*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

and for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

R.S., 1985, c. B-3, s. 86; 1992, c. 27, s. 39; 1997, c. 12, s. 73; 2000, c. 30, s. 148.

Statutory Crown securities

87. (1) A security provided for in federal or provincial legislation for the sole or principal purpose of securing a claim of Her Majesty in right of Canada or a province or of a workers' compensation body is valid in relation to a bankruptcy or proposal only if the security is registered, before the earliest of

(a) the date an application is filed against the debtor,

(b) the date the debtor makes an assignment,

(c) the date the debtor files a notice of intention under section 50.4, and

(d) the date on which a proposal is filed,

pursuant to a prescribed system of registration.

Idem

(2) In relation to a bankruptcy or proposal, a security referred to in subsection (1) that is registered in accordance with that subsection

(a) is subordinate to securities in respect of which all steps necessary to make them effective against other creditors were taken before that registration; and

(b) is valid only in respect of amounts owing to Her Majesty or a workers' compensation body at the time of that registration, plus any interest subsequently accruing on those amounts.

R.S., 1985, c. B-3, s. 87; 1992, c. 27, s. 39; 1997, c. 12, s. 74; 2004, c. 25, s. 53.

88. to 90. [Repealed, 1992, c. 27, s. 39]

SETTLEMENTS AND PREFERENCES

Certain settlements ineffective

91. (1) Any settlement of property made within the period beginning on the day that is one year before the date of the initial bankruptcy event in respect of the settlor and ending on the date that the settlor became bankrupt, both dates included, is void as against, or in the Province of Quebec, may not be set up against, the trustee.

If bankrupt within five years

(2) Any settlement of property made within the period beginning on the day that is five years before the date of the initial bankruptcy event in respect of the settlor and ending on the date that the settlor became bankrupt, both dates included, is void as against, or in the Province of Quebec, may not be set up against, the trustee if the trustee can prove that the settlor was, at the time of making the settlement, unable to pay all the settlor's debts without the aid of the property that was the subject of the settlement or that the interest of the settlor in the property did not pass on the execution of the settlement.

Non-application of section

(3) This section does not extend to any settlement made in favour of a purchaser, incumbrancer or holder of a charge in good faith and for valuable consideration.

R.S., 1985, c. B-3, s. 91; R.S., 1985, c. 31 (1st Supp.), s. 70; 1992, c. 27, s. 40(F); 1997, c. 12, s. 75; 2000, c. 12, s. 11; 2004, c. 25, s. 54.

92. and 93. [Repealed, 2000, c. 12, s. 12]

General assignments of book debts ineffective

94. (1) If a person engaged in any trade or business makes an assignment of their existing or future book debts or any class or part of those debts and subsequently becomes bankrupt, the assignment of book debts is void as against, or in the Province of Quebec, may not be set up against, the trustee with respect to any book debts that have not been paid at the date of the bankruptcy.

Foregoing provisions not to apply in some cases

(2) This section does not apply to an assignment of book debts that is registered pursuant to any statute of any province providing for the registration thereof if the assignment is valid in accordance with the laws of the province.

Other cases

(3) Nothing in this section renders void or, in the Province of Quebec, null any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made in good faith and for adequate valuable consideration.

Definition of "assignment"

(4) For the purposes of this section, "assignment" includes assignment by way of security, hypothec and other charges on book debts.

R.S., 1985, c. B-3, s. 94; 2001, c. 4, s. 29; 2004, c. 25, s. 55(E).

Preferences

95. (1) Every transfer of property, every charge made on property, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any insolvent person in favour of any creditor or of any person in trust for any creditor with a view to giving that creditor a preference over the other creditors is, when it is made, given, incurred, taken or suffered within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date the insolvent person became bankrupt, both dates included, deemed fraudulent and void as against, or in the Province of Quebec, may not be set up against, the trustee in the bankruptcy.

When view to prefer presumed

(2) If any transfer, charge, payment, obligation or judicial proceeding mentioned in subsection (1) has the effect of giving any creditor a preference over other creditors, or over any one or more of them, it shall be presumed, in the absence of evidence to the contrary, to have been made, incurred, taken, paid or suffered with a view to giving the creditor a preference over other creditors, whether or not it was made voluntarily or under pressure and evidence of pressure shall not be admissible to support the transaction.

Exception

(2.1) Subsection (2) does not apply in respect of a margin deposit made by a clearing member with a clearing house.

Definitions

(3) In this section, "clearing house"
«*chambre de compensation*»

"clearing house" means a body that acts as an intermediary for its clearing members in effecting securities transactions;

"clearing member"
«*membre*»

"clearing member" means a person engaged in the business of effecting securities transactions who uses a clearing house as intermediary;

"creditor"
«*créancier*»

"creditor" includes a surety or guarantor for the debt due to the creditor;

"margin deposit"
«*dépôt de couverture*»

"margin deposit" means a payment, deposit or transfer to a clearing house under the rules of the clearing house to assure the performance of the obligations of a clearing member in connection with security transactions, including, without limiting the generality of the foregoing, transactions respecting futures, options or other derivatives or to fulfil any of those obligations.

R.S., 1985, c. B-3, s. 95; 1997, c. 12, s. 78; 2004, c. 25, s. 56.

Extended period

96. If the transfer, charge, payment, obligation or judicial proceeding mentioned in section 95 is in favour of a person related to the insolvent person, the period referred to in subsection 95(1) shall be one year instead of three months.

R.S., 1985, c. B-3, s. 96; 1997, c. 12, s. 79; 2004, c. 25, s. 57.

Protected transactions

97. (1) No payment, contract, dealing or transaction to, by or with a bankrupt made between the date of the initial bankruptcy event and the date of the bankruptcy is valid, except the following, which are valid if made in

good faith, subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution, attachment or other process against property, and subject to the provisions of this Act respecting settlements, preferences and reviewable transactions:

- (a) a payment by the bankrupt to any of the bankrupt's creditors;
- (b) a payment or delivery to the bankrupt;
- (c) a transfer by the bankrupt for adequate valuable consideration; and
- (d) a contract, dealing or transaction, including any giving of security, by or with the bankrupt for adequate valuable consideration.

Definition of "adequate valuable consideration"

(2) The expression "adequate valuable consideration" in paragraph (1)(c) means a consideration of fair and reasonable money value with relation to that of the property assigned or transferred, and in paragraph (1)(d) means a consideration of fair and reasonable money value with relation to the known or reasonably to be anticipated benefits of the contract, dealing or transaction.

Law of set-off or compensation

(3) The law of set-off or compensation applies to all claims made against the estate of the bankrupt and also to all actions instituted by the trustee for the recovery of debts due to the bankrupt in the same manner and to the same extent as if the bankrupt were plaintiff or defendant, as the case may be, except in so far as any claim for set-off or compensation is affected by the provisions of this Act respecting frauds or fraudulent preferences.

R.S., 1985, c. B-3, s. 97; 1992, c. 27, s. 41; 1997, c. 12, s. 80; 2004, c. 25, s. 58.

Recovering proceeds if transferred

98. (1) If a person has acquired property of a bankrupt under a transaction that is void or voidable and set aside or, in the Province of Quebec, null or annulable and set aside, and has sold, disposed of, realized or collected the property or any part of it, the money or other proceeds, whether further disposed of or not, shall be deemed the property of the trustee.

Trustee may recover

(2) The trustee may recover the property or the value thereof or the money or proceeds therefrom from the person who acquired it from the bankrupt or from any other person to whom he may have resold, transferred or paid over the proceeds of the property as fully and effectually as the trustee could have recovered the property if it had not been so sold, disposed of, realized or collected.

Operation of section

(3) Notwithstanding subsection (1), where any person to whom the property has been sold or disposed of has paid or given therefor in good faith adequate valuable consideration, he is not subject to the operation of this section but the trustee's recourse shall be solely against the person entering into the transaction with the bankrupt for recovery of the consideration so paid or given or the value thereof.

Trustee subrogated

(4) Where the consideration payable for or on any sale or resale of the property or any part thereof remains unsatisfied, the trustee is subrogated to the rights of the vendor to compel payment or satisfaction.

R.S., 1985, c. B-3, s. 98; 2004, c. 25, s. 59(E).

Dealings with undischarged bankrupt

99. (1) All transactions by a bankrupt with any person dealing with the bankrupt in good faith and for value in respect of property acquired by the bankrupt after the bankruptcy, if completed before any intervention by the trustee, are valid against the trustee, and any estate, or interest or right, in the property that by virtue of this Act is vested in the trustee shall determine and pass in any manner and to any extent that may be required for giving effect to any such transaction.

Receipt of money by banker

(2) For the purposes of this section, the receipt of any money, security or negotiable instrument from or by the order or direction of a bankrupt by his banker and any payment and any delivery of any security or negotiable instrument made to or by the order or direction of a bankrupt by his banker shall be deemed to be a transaction by the bankrupt with his banker dealing with him for value.

R.S., 1985, c. B-3, s. 99; 2004, c. 25, s. 60.

Examination of consideration in a reviewable transaction

100. (1) Where a bankrupt sold, purchased, leased, hired, supplied or received property or services in a reviewable transaction within the period beginning on the day that is one year before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, the court may, on the application of the trustee, inquire into whether the bankrupt gave or received, as the case may be, fair market value in consideration for the property or services concerned in the transaction.

Judgment for difference

(2) Where the court in proceedings under this section finds that the consideration given or received by the bankrupt in the reviewable transaction was conspicuously greater or less than the fair market value of the property or services concerned in the transaction, the court may give judgment to the trustee against the other party to the transaction, against any other person being privy to the transaction with the bankrupt or against all those persons for the difference between the actual consideration given or received by the bankrupt and the fair market value, as determined by the court, of the property or services concerned in the transaction.

Establishing values

(3) In making an application under this section, the trustee shall state what in his opinion was the fair market value of the property or services concerned in the transaction and what in his opinion was the value of the actual consideration given or received by the bankrupt in the transaction, and the values on which the court makes any finding pursuant to this section shall be the values so stated by the trustee unless other values are proven.

R.S., 1985, c. B-3, s. 100; 1997, c. 12, s. 81.

Inquiry into dividends and redemptions of shares

101. (1) Where a corporation that is bankrupt has paid a dividend, other than a stock dividend, or redeemed or purchased for cancellation any of the shares of the capital stock of the corporation within the period beginning on the day that is one year before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, the court may, on the application of the trustee, inquire into the transaction to ascertain whether it occurred at a time when the corporation was insolvent or whether it rendered the corporation insolvent.

Judgment against directors

(2) If a transaction referred to in subsection (1) has occurred, the court may give judgment to the trustee against the directors of the corporation, jointly and severally, or solidarily, in the amount of the dividend or redemption or purchase price, with interest on the amount, that has not been paid to the corporation if the court finds that

(a) the transaction occurred at a time when the corporation was insolvent or the transaction rendered the corporation insolvent; and

(b) the directors did not have reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or the transaction would not render the corporation insolvent.

Criteria

(2.1) In making a determination under paragraph (2)(b), the court shall consider whether the directors acted as prudent and diligent persons would have acted in the same circumstances and whether the directors in good faith relied on

(a) financial or other statements of the corporation represented to them by officers of the corporation or the

auditor of the corporation, as the case may be, or by written reports of the auditor to fairly reflect the financial condition of the corporation; or

(b) a report relating to the corporation's affairs prepared pursuant to a contract with the corporation by a lawyer, notary, accountant, engineer, appraiser or other person whose profession gave credibility to the statements made in the report.

Judgment against shareholders

(2.2) Where a transaction referred to in subsection (1) has occurred and the court makes a finding referred to in paragraph (2)(a), the court may give judgment to the trustee against a shareholder who is related to one or more directors or to the corporation or who is a director not liable by reason of paragraph (2)(b) or subsection (3), in the amount of the dividend or redemption or purchase price referred to in subsection (1) and the interest thereon, that was received by the shareholder and not repaid to the corporation.

Directors exonerated by law

(3) A judgment pursuant to subsection (2) shall not be entered against or be binding on a director who had, in accordance with any applicable law governing the operation of the corporation, protested against the payment of the dividend or the redemption or purchase for cancellation of the shares of the capital stock of the corporation and had thereby exonerated himself or herself under that law from any liability therefor.

Directors' right to recover

(4) Nothing in this section shall be construed to affect any right, under any applicable law governing the operation of the corporation, of the directors to recover from a shareholder the whole or any part of any dividend, or any redemption or purchase price, made or paid to the shareholder when the corporation was insolvent or that rendered the corporation insolvent.

Onus of proof — directors

(5) For the purposes of subsection (2), the onus of proving

(a) that the corporation was not insolvent at the time the transaction occurred and that the transaction did not render the corporation insolvent, or

(b) that the directors had reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or that the transaction would not render the corporation insolvent

lies on the directors.

Onus of proof — shareholder

(6) For the purposes of subsection (2.2), the onus of proving that the corporation was not insolvent at the time the transaction occurred and that the transaction did not render the corporation insolvent lies on the shareholder.

R.S., 1985, c. B-3, s. 101; 1997, c. 12, s. 82; 2004, c. 25, s. 61(E).

Application of sections

101.1 (1) Where a proposal is made under Division I of Part III, sections 91 to 101 apply to the proposal, with such modifications as the circumstances require, except where the proposal otherwise provides.

Interpretation

(2) For the purposes of subsection (1), any reference in sections 91 to 101 to "becomes bankrupt" shall be construed as a reference to "files a notice of intention" or "files a proposal", whichever filing was done first, and any reference in those sections to a bankrupt shall be construed as a reference to the debtor in respect of whom the proposal is filed.

1992, c. 27, s. 42.

Provisions to apply

101.2 Sections 91 to 101 apply as though the debtor became bankrupt on the date of the initial bankruptcy event if the proposal is annulled either by the court under subsection 63(1) or as a result of a bankruptcy order or assignment.

1992, c. 27, s. 42; 1997, c. 12, s. 83; 2004, c. 25, s. 62.

PART V

ADMINISTRATION OF ESTATES

MEETINGS OF CREDITORS

First meeting of creditors

102. (1) Subject to subsection (1.1), it is the duty of the trustee to inquire as to the names and addresses of the creditors of a bankrupt and, within five days after the date of the trustee's appointment, to send in the prescribed manner to the bankrupt, to every known creditor and to the Superintendent a notice in the prescribed form of the bankruptcy and of the first meeting of creditors, to be held within the twenty-one day period following the day of the trustee's appointment, at the office of the official receiver in the locality of the bankrupt, but the official receiver may, when the official receiver deems it expedient, authorize the meeting to be held at the office of any other official receiver or at such other place as the official receiver may fix.

Extension of days

(1.1) The official receiver in the locality of the bankrupt may extend the period during which the first meeting of creditors must be held

(a) by ten days, or

(b) where the official receiver is satisfied that special circumstances exist, by up to thirty days,

where the official receiver is satisfied that the extension will not be detrimental to the creditors and is in the general interests of the administration of the estate.

Documents to accompany notice

(2) The trustee shall include with the notice referred to in subsection (1) a list of the creditors with claims amounting to twenty-five dollars or more and the amounts of their claims together with a proof of claim and proxy in the prescribed form but no name shall be inserted in the proxy before it is so sent.

Information and notice

(3) In the case of the bankruptcy of an individual, the trustee shall

(a) set out in the notice, in the prescribed form, information concerning the financial situation of the bankrupt and the obligation of the bankrupt to make payments required under section 68 to the estate of the bankrupt; and

(b) forthwith advise the official receiver, and any creditors who have requested such information, of

(i) any material change relating to the financial situation of the bankrupt, and

(ii) any amendment made under subsection 68(4) to the amount that the bankrupt is required to pay to the estate of the bankrupt.

Publication in local paper by trustee

(4) A notice in the prescribed form shall, as soon as possible after the bankruptcy and not later than five days before the first meeting of creditors, be published in a local newspaper by the trustee.

Purpose of meeting

(5) The purpose of the first meeting of creditors shall be to consider the affairs of the bankrupt, to affirm the

appointment of the trustee or substitute another in place thereof, to appoint inspectors and to give such directions to the trustee as the creditors may see fit with reference to the administration of the estate.

R.S., 1985, c. B-3, s. 102; 1992, c. 1, s. 20, c. 27, s. 43; 1997, c. 12, s. 84.

Meetings during administration

103. (1) The trustee may at any time call a meeting of creditors and he shall do so when directed by the court and whenever requested in writing by a majority of the inspectors or by twenty-five per cent in number of the creditors holding twenty-five per cent in value of the proved claims.

Meetings convened by inspectors

(2) A meeting of the creditors may be convened by a majority of the inspectors at any time when a trustee is not available to call a meeting or has neglected or failed to do so when so directed by the inspectors.

R.S., c. B-3, s. 81.

Notice of subsequent meetings

104. (1) Meetings of creditors other than the first shall be called by sending a notice of the time and place thereof not less than five days before the time of each meeting to each creditor at the address given in the creditor's proof of claim.

Notice to creditors with proved claims

(2) After the first meeting of creditors, notice of any meeting or of any proceeding need not be given to any creditors other than those who have proved their claims.

R.S., 1985, c. B-3, s. 104; 1997, c. 12, s. 85.

PROCEDURE AT MEETINGS

Chairman of first meeting

105. (1) The official receiver or his nominee shall be the chairman at the first meeting of creditors and shall decide any questions or disputes arising at the meeting and from any such decision any creditor may appeal to the court.

Chairman of subsequent meetings

(2) At all meetings of creditors other than the first, the trustee shall be the chairman unless by resolution at the meeting some other person is appointed.

Casting vote

(3) The chairman of any meeting of creditors shall, in the case of a tie, have a second or casting vote.

Minutes of meeting

(4) The chairman of any meeting of creditors shall cause minutes of the proceedings at the meeting to be drawn up and entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

Non-receipt of notice by creditor

(5) Where a meeting of creditors is called, the proceedings had and resolutions passed at the meeting, unless the court otherwise orders, are valid, notwithstanding that some creditors had not received notice.

R.S., c. B-3, s. 83.

Quorum

106. (1) One creditor entitled to vote, or the representative of such a creditor, constitutes a quorum for a meeting of creditors.

Where no quorum

- (2) Where there is no quorum at the first meeting of creditors,
- (a) the appointment of the trustee shall be deemed to be confirmed; and
 - (b) the chairman shall adjourn the meeting
 - (i) to such time and place as the chairman fixes, or
 - (ii) without fixing a time or place for a future meeting.

Idem

(2.1) Where there is no quorum at any meeting of creditors other than the first meeting, the chairman shall adjourn the meeting to such time and place as the chairman fixes.

Adjournment with consent of meeting

(3) The chairman of any meeting of creditors may with the consent of the meeting adjourn the meeting from time to time.

R.S., 1985, c. B-3, s. 106; 1992, c. 27, s. 44.

How creditors shall vote

107. Every class of creditors may express its views and wishes separately from every other class and the effect to be given to those views and wishes shall, in case of any dispute and subject to this Act, be in the discretion of the court.

R.S., c. B-3, s. 85.

Chairman may admit or reject proof

108. (1) The chairman of any meeting of creditors has power to admit or reject a proof of claim for the purpose of voting but his decision is subject to appeal to the court.

Accept as proof

(2) Notwithstanding anything in this Act, the chairman may, for the purpose of voting, accept any letter or printed matter transmitted by any form or mode of telecommunication as proof of the claim of a creditor.

In case of doubt

(3) Where the chairman is in doubt as to whether a proof of claim should be admitted or rejected, he shall mark the proof as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

R.S., 1985, c. B-3, s. 108; 1992, c. 27, s. 45.

Right of creditor to vote

109. (1) A person is not entitled to vote as a creditor at any meeting of creditors unless he has duly proved a claim provable in bankruptcy and the proof of claim has been duly lodged with the trustee before the time appointed for the meeting.

Voting by proxy

- (2) A creditor may vote either in person or by proxy.

Form of proxy

(3) A proxy is not invalid merely because it is in the form of a letter or printed matter transmitted by any form or mode of telecommunication.

Debtor may not be proxyholder

(4) A debtor may not be appointed a proxyholder to vote at any meeting of the debtor's creditors.

Corporation

(5) A corporation may vote by an authorized proxyholder at meetings of creditors.

Creditor not dealing at arm's length

(6) Except as otherwise provided by this Act, a creditor is not entitled to vote at any meeting of creditors if the creditor did not, at all times within the period beginning on the day that is one year before the date of the initial bankruptcy event in respect of the debtor and ending on the date of the bankruptcy, both dates included, deal with the debtor at arm's length.

Exception

(7) A creditor who is not entitled to vote at a meeting of creditors by virtue of subsection (6) may with leave of the court vote at the meeting of creditors when all the creditors who have dealt with the debtor at arm's length do not together represent at least twenty per cent in value of the claims against the debtor.

R.S., 1985, c. B-3, s. 109; 1992, c. 27, s. 46; 1997, c. 12, s. 86; 1999, c. 31, s. 24(F); 2004, c. 25, s. 63.

Claims acquired after bankruptcy

110. (1) No person is entitled to vote on a claim acquired after the bankruptcy of a debtor unless the entire claim is acquired.

Exception

(2) Subsection (1) does not apply to persons acquiring notes, bills or other securities on which they are liable.

R.S., c. B-3, s. 88.

Creditor secured by bill or note

111. A creditor shall not vote in respect of any claim on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and who is not a bankrupt, as a security in his hands and to estimate the value thereof and for the purposes of voting, but not for the purposes of dividend, to deduct it from his claim.

R.S., c. B-3, s. 89.

Voting by secured creditor

112. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and he is entitled to vote only in respect of the balance, if any, due to him, after deducting the value of his security.

R.S., c. B-3, s. 90.

Trustee may vote

113. (1) Where the trustee is a creditor or a proxy for a creditor, he may vote as a creditor at any meeting of creditors.

Trustee may not vote on remuneration

(2) The vote of the trustee or of their partner, clerk, legal counsel or legal counsel's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

Persons not entitled to vote

(3) The following persons are not entitled to vote on the appointment of a trustee or inspectors:

(a) the father, mother, child, sister, brother, uncle or aunt, by blood, adoption, marriage or common-law partnership, or the spouse or common-law partner, of the bankrupt;

(b) where the bankrupt is a corporation, any officer, director or employee thereof; and

(c) where the bankrupt is a corporation, any wholly owned subsidiary corporation or any officer, director or employee thereof.

R.S., 1985, c. B-3, s. 113; R.S., 1985, c. 31 (1st Supp.), s. 73; 2000, c. 12, s. 13; 2004, c. 25, s. 64.

Evidence of proceedings at meetings of creditors

114. (1) A minute of proceedings at a meeting of creditors under this Act signed at the same or the next ensuing meeting by a person describing himself as or appearing to be chairman of the meeting at which the minute is signed shall be admitted in evidence without further proof.

Evidence of regularity

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been signed by the chairman shall be deemed to have been duly convened and held and all resolutions passed or proceedings thereat to have been duly convened and held and to have been duly passed or had.

R.S., c. B-3, s. 92.

Votes

115. Subject to this Act, all questions at meetings of creditors shall be decided by resolution carried by the majority of votes, and for that purpose the votes of a creditor shall be calculated by counting one vote for each dollar of every claim of the creditor that is not disallowed.

R.S., 1985, c. B-3, s. 115; 1992, c. 27, s. 47.

INSPECTORS

Appointment

116. (1) At the first or a subsequent meeting of creditors, the creditors shall appoint one or more, but not exceeding five, inspectors of the estate of the bankrupt.

Persons not eligible

(2) No person is eligible to be appointed or to act as an inspector who is a party to any contested action or proceedings by or against the estate of the bankrupt.

Powers

(3) The powers of the inspectors may be exercised by a majority of them.

Filling vacancy

(4) The creditors or inspectors at any meeting may fill any vacancy on the board of inspectors.

Revocation and replacement

(5) The creditors may at any meeting and the court may on the application of the trustee or any creditor revoke the appointment of any inspector and appoint another in his stead.

R.S., c. B-3, s. 94.

Meetings

117. (1) The trustee may call a meeting of inspectors when he deems it advisable and he shall do so when requested in writing by a majority of the inspectors.

Participation by telephone, etc.

(1.1) An inspector may, if all the other inspectors consent, participate in a meeting of inspectors by means of such telephone or other communication facilities as permit all persons participating in the meeting to communicate with each other, and an inspector participating in such a meeting by such means is deemed for the purpose of this Act to be present at that meeting.

Trustee votes in case of tie

(2) In the event of an equal division of opinion at a meeting of inspectors, the opinion of any absent inspector shall be sought in order to resolve the difference, and in the case of a difference that cannot be so resolved, it shall be resolved by the trustee, unless it concerns his personal conduct or interest in which case it shall be resolved by the creditors or the court.

R.S., 1985, c. B-3, s. 117; 1992, c. 27, s. 48.

If no inspectors appointed

118. Where there are no inspectors of the estate of the bankrupt or where the inspectors fail to exercise the powers conferred on them, the trustee shall call a meeting of the creditors for the purpose of appointing inspectors or substituting other inspectors, taking such action or giving such directions as may be necessary.

R.S., c. B-3, s. 94.

Creditors may override directions of inspectors

119. (1) Subject to this Act, the trustee shall in the administration of the property of the bankrupt and in the distribution thereof among his creditors have regard to any directions that may be given by resolution of the creditors at any general meeting or by the inspectors, and any directions so given by the creditors shall in case of conflict be deemed to override any directions given by the inspectors.

Decisions of inspectors subject to review by court

(2) The decisions and actions of the inspectors are subject to review by the court at the instance of the trustee or any interested person and the court may revoke or vary any act or decision of the inspectors and it may give such directions, permission or authority as it deems proper in substitution thereof or may refer any matter back to the inspectors for reconsideration.

R.S., c. B-3, s. 94.

Inspector may not acquire property

120. (1) No inspector is, directly or indirectly, capable of purchasing or acquiring for himself or for another any of the property of the estate for which he is an inspector, except with the prior approval of the court.

Formal defects

(2) No defect or irregularity in the appointment of an inspector vitiates any act done by him in good faith.

Duty of inspectors

(3) The inspectors shall from time to time verify the bank balance of the estate, examine the trustee's accounts and inquire into the adequacy of the security filed by the trustee and, subject to subsection (4), shall approve the trustee's final statement of receipts and disbursements, dividend sheet and disposition of unrealized property.

Approval of trustee's final statement by inspectors

(4) Before approving the final statement of receipts and disbursements of the trustee, the inspectors shall

satisfy themselves that all the property has been accounted for and that the administration of the estate has been completed as far as can reasonably be done and shall determine whether or not the disbursements and expenses incurred are proper and have been duly authorized, and the fees and remuneration just and reasonable in the circumstances.

Inspectors' expenses and fees

(5) Each inspector

(a) may be repaid actual and necessary travel expenses incurred in relation to the performance of the inspector's duties; and

(b) may be paid such fees per meeting as are prescribed.

Special services

(6) An inspector duly authorized by the creditors or by the other inspectors to perform special services for the estate may be allowed a special fee for those services, subject to approval of the court, which may vary that fee as it deems proper having regard to the nature of the services rendered in relation to the obligations of the inspector to the estate to act in good faith for the general interests of the administration of the estate.

R.S., 1985, c. B-3, s. 120; 1992, c. 27, s. 49; 2001, c. 4, s. 30; 2004, c. 25, s. 65(F).

CLAIMS PROVABLE

Claims provable

121. (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

Contingent and unliquidated claims

(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.

Debts payable at a future time

(3) A creditor may prove a debt not payable at the date of the bankruptcy and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Family support claims

(4) A claim in respect of a debt or liability referred to in paragraph 178(1)(b) or (c) payable under an order or agreement made before the date of the initial bankruptcy event in respect of the bankrupt and at a time when the spouse, former spouse, former common-law partner or child was living apart from the bankrupt, whether the order or agreement provides for periodic amounts or lump sum amounts, is a claim provable under this Act.

R.S., 1985, c. B-3, s. 121; 1992, c. 27, s. 50; 1997, c. 12, s. 87; 2000, c. 12, s. 14.

Claims provable in bankruptcy following proposal

122. (1) The claims of creditors under a proposal are, in the event of the debtor subsequently becoming bankrupt, provable in the bankruptcy for the full amount of the claims less any dividends paid thereon pursuant to the proposal.

Interest

(2) If interest on any debt or sum certain is provable under this Act but the rate of interest has not been agreed on, the creditor may prove interest at a rate not exceeding five per cent per annum to the date of the bankruptcy from the time the debt or sum was payable, if evidenced by a written document, or, if not so evidenced, from the time notice has been given the debtor of the interest claimed.

R.S., 1985, c. B-3, s. 122; 2004, c. 25, s. 66(E).

Proof in respect of distinct contracts

123. Where a bankrupt was, at the date of the bankruptcy, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof, in respect of the contracts, against the properties respectively liable on the contracts.

R.S., c. B-3, s. 96.

PROOF OF CLAIMS

Creditors shall prove claims

124. (1) Every creditor shall prove his claim, and a creditor who does not prove his claim is not entitled to share in any distribution that may be made.

Proof by delivery

(2) A claim shall be proved by delivering to the trustee a proof of claim in the prescribed form.

Who may make proof of claims

(3) The proof of claim may be made by the creditor himself or by a person authorized by him on behalf of the creditor, and, if made by a person so authorized, it shall state his authority and means of knowledge.

Shall refer to account

(4) The proof of claim shall contain or refer to a statement of account showing the particulars of the claim and any counter-claim that the bankrupt may have to the knowledge of the creditor and shall specify the vouchers or other evidence, if any, by which it can be substantiated.

Whether secured or preferred

(5) The proof of claim shall state whether the creditor is or is not a secured or preferred creditor.

R.S., c. B-3, s. 97.

Penalty for filing false claim

125. Where a creditor or other person in any proceedings under this Act files with the trustee a proof of claim containing any wilfully false statement or wilful misrepresentation, the court may, in addition to any other penalty provided in this Act, disallow the claim in whole or in part as the court in its discretion may see fit.

R.S., c. B-3, s. 97.

Who may examine proofs

126. (1) Every creditor who has lodged a proof of claim is entitled to see and examine the proofs of other creditors.

Worker's wage claims

(2) Proofs of claims for wages of workers and others employed by the bankrupt may be made in one proof by the bankrupt or someone on behalf of the bankrupt or by a representative of a federal or provincial ministry responsible for labour matters or a representative of a union representing workers and others employed by the bankrupt, by attaching thereto a schedule setting out the names and addresses of the workers and others and the amounts severally due to them, but that proof does not disentitle any worker or other wage-earner to file a separate proof on their own behalf.

R.S., 1985, c. B-3, s. 126; 1997, c. 12, s. 88.

PROOF BY SECURED CREDITORS

Proof by secured creditor

127. (1) Where a secured creditor realizes his security, he may prove the balance due to him after deducting the net amount realized.

May prove whole claim on surrender

(2) Where a secured creditor surrenders his security to the trustee for the general benefit of the creditors, he may prove his whole claim.

R.S., 1985, c. B-3, s. 127; 2004, c. 25, s. 67(F).

Proof may be requested

128. (1) Where the trustee has knowledge of property that may be subject to a security, the trustee may, by serving notice in the prescribed form and manner, require any person to file, in the prescribed form and manner, a proof of the security that gives full particulars of the security, including the date on which the security was given and the value at which that person assesses it.

Where reply not received

(1.1) Where the trustee serves a notice pursuant to subsection (1), and the person on whom the notice is served does not file a proof of security within thirty days after the day of service of the notice, the trustee may thereupon, with leave of the court, sell or dispose of any property that was subject to the security, free of that security.

Dividend on balance

(2) A creditor is entitled to receive a dividend in respect only of the balance due to him after deducting the assessed value of his security.

Trustee may redeem security

(3) The trustee may redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in the proof of security, by the secured creditor.

R.S., 1985, c. B-3, s. 128; 1992, c. 27, s. 51; 1999, c. 31, s. 25; 2004, c. 25, s. 68(F).

May order security to be sold

129. (1) Where the trustee is dissatisfied with the value at which a security is assessed, the trustee may require that the property the security comprises be offered for sale at such time and on such terms and conditions as may be agreed on between the creditor and the trustee or, in default of such an agreement, as the court may direct.

Sale by public auction

(2) Where a sale under subsection (1) is by public auction the creditor or the trustee on behalf of the estate may bid or purchase.

(3) [Repealed, 1992, c. 27, s. 52]

Costs of sale

(4) The costs and expenses of a sale made under this section are in the discretion of the court.

R.S., 1985, c. B-3, s. 129; 1992, c. 27, s. 52; 2004, c. 25, s. 69(F).

Creditor may require trustee to elect to exercise power

130. Notwithstanding subsection 128(3) and section 129, the creditor may, by notice in writing, require the trustee to elect whether he will exercise the power of redeeming the security or requiring it to be realized, and if

the trustee does not, within one month after receiving the notice or such further time or times as the court may allow, signify in writing to the creditor his election to exercise the power, he is not entitled to exercise it, and the equity of redemption or any other interest in the property comprised in the security that is vested in the trustee shall vest in the creditor, and the amount of his claim shall be reduced by the amount at which the security has been valued.

R.S., c. B-3, s. 101.

Amended valuation by creditor

131. Where a creditor after having valued his security subsequently realizes it, or it is realized under section 129, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

R.S., c. B-3, s. 102.

Secured creditor may amend

132. (1) Where the trustee has not elected to acquire the security as provided in this Act, a creditor may at any time amend the valuation and proof on showing to the satisfaction of the trustee or the court that the valuation and proof were made in good faith on a mistaken estimate or that the security has diminished or increased in value since its previous valuation.

Amendment at cost of creditor

(2) An amendment pursuant to subsection (1) shall be made at the cost of the creditor and on such terms as the court orders, unless the trustee allows the amendment without application to the court.

Rights and liabilities of creditor where valuation amended

(3) Where a valuation has been amended pursuant to this section, the creditor

(a) shall forthwith repay any surplus dividend that he may have received in excess of that to which he would have been entitled on the amended valuation; or

(b) is entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend that he may have failed to receive by reason of the amount of the original valuation before that money is made applicable to the payment of any future dividend, but he is not entitled to disturb the distribution of any dividend declared before the amendment is filed with the trustee.

R.S., c. B-3, s. 103.

Exclusion for non-compliance

133. Where a secured creditor does not comply with sections 127 to 132, he shall be excluded from any dividend.

R.S., c. B-3, s. 104.

No creditor to receive more than 100 cents in dollar

134. Subject to section 130, a creditor shall in no case receive more than one hundred cents on the dollar and interest as provided by this Act.

R.S., c. B-3, s. 105.

ADMISSION AND DISALLOWANCE OF PROOFS OF CLAIM AND PROOFS OF SECURITY

Trustee shall examine proof

135. (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may

require further evidence in support of the claim or security.

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.

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 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) wages, salaries, commissions or compensation of any clerk, servant, travelling salesman, labourer or workman for services rendered during the six months immediately preceding the bankruptcy to the extent of two thousand dollars in each case, together with, in the case of a travelling salesman, disbursements properly incurred by that salesman in and about the bankrupt's business, to the extent of an additional one thousand dollars in each case, during the same period, and for the purposes of this paragraph commissions payable when goods are shipped, delivered or paid for, if shipped, delivered or paid for within the six month

period, shall be deemed to have been earned therein;

(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;

(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.

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.

Postponement of claims from reviewable transactions

137. (1) A creditor who entered into a reviewable transaction with a debtor at any time prior to the bankruptcy of the debtor 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.

Claim of present or former spouse or common-law partner

(2) A spouse or common-law partner, or former spouse or common-law partner, of a bankrupt is not entitled to claim a dividend in respect of wages, salary, commission or compensation for work done or services rendered in connection with the trade or business of the bankrupt until all claims of the other creditors have been satisfied.

R.S., 1985, c. B-3, s. 137; 2000, c. 12, s. 15.

Postponement of wage claims of relatives

138. A father, mother, child, brother, sister, uncle or aunt, by blood, adoption, marriage or common-law partnership, of a bankrupt is not entitled to have a claim preferred as provided by section 136, in respect of wages, salary, commission or compensation for work done or services rendered to the bankrupt.

R.S., 1985, c. B-3, s. 138; R.S., 1985, c. 31 (1st Supp.), s. 74; 2000, c. 12, s. 16.

Postponement of claims of silent partners

139. Where a lender advances money to a borrower engaged or about to engage in trade or business under a contract with the borrower that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the trade or business, and the borrower subsequently becomes bankrupt, the lender of the money is not entitled to recover anything in respect of the loan until the claims of all other creditors of the borrower have been satisfied.

R.S., c. B-3, s. 110.

Postponement of wage claims of officers and directors

140. Where a corporation becomes bankrupt, no officer or director thereof is entitled to have his claim preferred as provided by section 136 in respect of wages, salary, commission or compensation for work done or services rendered to the corporation in any capacity.

R.S., c. B-3, s. 111.

Claims generally payable rateably

141. Subject to this Act, all claims proved in a bankruptcy shall be paid rateably.

R.S., c. B-3, s. 112.

Partners and separate properties

142. (1) Where partners become bankrupt, their joint property shall be applicable in the first instance in payment of their joint debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.

Surplus of separate properties

(2) Where there is a surplus of the separate properties of the partners, it shall be dealt with as part of the joint property.

Surplus of joint properties

(3) Where there is a surplus of the joint property of the partners, it shall be dealt with as part of the respective separate properties in proportion to the right and interest of each partner in the joint property.

Different properties

(4) 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.

Costs out of joint and separate properties

(5) Where the joint property of any bankrupt partnership is insufficient to defray any costs properly incurred, the trustee may pay such costs as cannot be paid out of the joint property out of the separate property of the bankrupts or one or more of them in such proportion as he may determine, with the consent of the inspectors of the estates out of which the payment is intended to be made, or, if the inspectors withhold or refuse their consent, with the approval of the court.

R.S., c. B-3, s. 113.

Interest from date of bankruptcy

143. Where there is a surplus after payment of the claims as provided in sections 136 to 142, it shall be applied in payment of interest from the date of the bankruptcy at the rate of five per cent per annum on all claims proved in the bankruptcy and according to their priority.

R.S., c. B-3, s. 114.

Right of bankrupt to surplus

144. The bankrupt, or the legal personal representative or heirs of a deceased bankrupt, is entitled to any surplus remaining after payment in full of the bankrupt's creditors with interest as provided by this Act and of the costs, charges and expenses of the bankruptcy proceedings.

R.S., 1985, c. B-3, s. 144; 2004, c. 25, s. 71.

Proceeds of liability insurance policy on motor vehicles

145. Nothing in this Act affects the right afforded by provincial statute of any person who has a claim against the bankrupt for damages on account of injury to or death of any person, or injury to property, occasioned by a motor vehicle, or on account of injury to property being carried in or on a motor vehicle, to have the proceeds of any liability insurance policy applied in or toward the satisfaction of the claim.

R.S., c. B-3, s. 116.

Application of provincial law to lessors' rights

146. Subject to priority of ranking as provided by section 136 and subject to subsection 73(4), the rights of lessors shall be determined according to the laws of the province in which the leased premises are situated.

R.S., 1985, c. B-3, s. 146; 2004, c. 25, s. 72(E).

Levy payable out of dividends for supervision

147. (1) For the purpose of defraying the expenses of the supervision by the Superintendent, there shall be payable to the Superintendent for deposit with the Receiver General a levy on all payments, except the costs referred to in subsection 70(2), made by the trustee by way of dividend or otherwise on account of the claims of creditors, whether unsecured, preferred or secured creditors, and including Her Majesty in right of Canada or a province claiming in respect of taxes or otherwise.

Rate of levy

(2) The levy referred to in subsection (1) shall be at a rate to be fixed by the Governor in Council and shall be charged proportionately against all payments and deducted therefrom by the trustee before payment is made.

R.S., c. B-3, s. 118.

DIVIDENDS

Trustee to pay dividends as required

148. (1) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the trustee shall, from time to time as required by the inspectors, declare and distribute dividends among the unsecured creditors entitled thereto.

Disputed claims

(2) Where the validity of any claim has not been determined, the trustee shall retain sufficient funds to provide for payment thereof in the event that the claim is admitted.

No action for dividend

(3) No action for a dividend lies against the trustee, but, if the trustee refuses or fails to pay any dividend after having been directed to do so by the inspectors, the court may, on the application of any creditor, order him to pay it, and also to pay personally interest thereon for the time that it is withheld and the costs of the application.

R.S., c. B-3, s. 119.

Notice that final dividend will be made

149. (1) The trustee may, after the first meeting of the creditors, give notice by registered or certified mail to every person with a claim of which the trustee has notice or knowledge but whose claim has not been proved that if that person does not prove his claim within a period of thirty days after the mailing of the notice the trustee will proceed to declare a dividend or final dividend without regard to that person's claim.

Court may extend time

(2) Where a person notified under subsection (1) does not prove the claim within the time limit or within such further time as the court, on proof of merits and satisfactory explanation of the delay in making proof, may allow, the claim of that person shall, notwithstanding anything in this Act, be excluded from all share in any dividend, but a taxing authority may notify the trustee within the period referred to in subsection (1) that it proposes to file a claim as soon as the amount has been ascertained, and the time for filing the claim shall thereupon be extended to three months or such further time as the court may allow.

Federal income tax claims

(3) Notwithstanding subsection (2), a claim may be filed for an amount payable under the *Income Tax Act* within the time limit referred to in subsection (2) or within three months from the time the return of income or other evidence of the facts on which the claim is based is filed or comes to the attention of the Minister of National Revenue.

No dividend allowed

(4) Unless the trustee retains sufficient funds to provide for payment of any claims that may be filed under the *Income Tax Act*, no dividend shall be declared until the expiration of three months after the trustee has filed all returns that the trustee is required to file.

R.S., 1985, c. B-3, s. 149; 1992, c. 1, s. 20; 1997, c. 12, s. 91.

Right of creditor who has not proved claim before declaration of dividend

150. A creditor who has not proved his claim before the declaration of any dividend is entitled on proof of his claim to be paid, out of any money for the time being in the hands of the trustee, any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend, but he is not entitled to disturb the distribution of any dividend declared before his claim was proved for the reason that he has not participated therein, except on such terms and conditions as may be ordered by the court.

R.S., c. B-3, s. 121.

Final dividend and division of estate

151. When the trustee has realized all the property of the bankrupt or all thereof that can, in the joint opinion of himself and of the inspectors, be realized without needlessly protracting the administration, and settled or determined or caused to be settled or determined the claims of all creditors to rank against the estate of the bankrupt, he shall prepare a final statement of receipts and disbursements and dividend sheet and, subject to this Act, divide the property of the bankrupt among the creditors who have proved their claims.

R.S., c. B-3, s. 122.

Statement of receipts and disbursements

152. (1) The trustee's final statement of receipts and disbursements shall contain a complete account of all

moneys received by the trustee out of the property of the bankrupt or otherwise, the amount of interest received by the trustee, all moneys disbursed and expenses incurred and the remuneration claimed by the trustee, together with full particulars, description and value of all property of the bankrupt that has not been sold or realized, setting out the reason why the property has not been sold or realized and the disposition made thereof.

Prescribed form

(2) The statement referred to in subsection (1) shall be prepared in the prescribed form or as near thereto as the circumstances of the case will permit and together with the dividend sheet shall be submitted to the inspectors for their approval.

Copy to Superintendent

(3) The trustee shall forward a copy of the statement and dividend sheet to the Superintendent after they have been approved by the inspectors.

Superintendent may comment

(4) The Superintendent may comment as he sees fit and his comments shall be placed by the trustee before the taxing officer for his consideration on the taxation of the trustee's accounts.

Notice of final dividend, etc.

(5) After the Superintendent has commented on the taxation of the trustee's accounts or advised the trustee that the Superintendent has no comments to make and the trustee's accounts have been taxed, the trustee shall, in the prescribed manner, forward to every creditor whose claim has been proved, to the registrar, to the Superintendent and to the bankrupt

(a) a copy of the final statement of receipts and disbursements;

(b) a copy of the dividend sheet; and

(c) a notice in the prescribed form of his intention to pay a final dividend after the expiration of fifteen days from the mailing of the notice, statement and dividend sheet and to apply to the court for his discharge on a subsequent date not less than thirty days after the payment of the dividend.

Objections

(6) No interested person is entitled to object to the final statement and the dividend sheet unless, prior to the expiration of the fifteen days referred to in paragraph (5)(c), that person files notice of his objection with the registrar setting out his reasons therefor and serves a copy of the notice on the trustee.

R.S., 1985, c. B-3, s. 152; 1992, c. 1, s. 20, c. 27, s. 55.

Dividends on joint and separate properties

153. Where joint and separate properties are being administered, the dividends may be declared together, and the expenses thereof shall be apportioned by the trustee.

R.S., c. B-3, s. 124.

Unclaimed dividends and undistributed funds

154. (1) Before proceeding to discharge, the trustee shall forward to the Superintendent for deposit, according to the directives of the Superintendent, with the Receiver General the unclaimed dividends and undistributed funds that the trustee possesses, other than those exempted by the General Rules, and shall provide a list of the names and the post office addresses, in so far as known, of the creditors entitled to the unclaimed dividends, showing the amount payable to each creditor.

Receiver General to pay claims

(2) The Receiver General shall, after receiving the dividends and funds and the list referred to in subsection (1), on application, pay to any creditor his proper dividend as shown on that list, and such payment has effect as

if made by the trustee.

R.S., 1985, c. B-3, s. 154; 1992, c. 27, s. 56.

SUMMARY ADMINISTRATION

Summary administration

155. The following provisions apply to the summary administration of estates under this Act:

(a) all proceedings under this section shall be entitled "Summary Administration";

(b) the security to be deposited by a trustee under section 16 shall not be required unless directed by the official receiver;

(b.1) [Repealed, 1992, c. 1, s. 161]

(c) a notice of the bankruptcy shall not be published in a local newspaper unless such publication is deemed expedient by the trustee or ordered by the court;

(d) all notices, statements and other documents shall be sent by ordinary mail or by any prescribed manner;

(d.1) a first meeting of the creditors

(i) is required to be called by the trustee only if it is requested within thirty days after the date of the bankruptcy by the official receiver or by creditors who have in the aggregate at least twenty-five per cent in value of the proven claims,

(ii) must be called in the prescribed form and manner, and

(iii) must be held within twenty-one days after being called;

(e) there shall be no inspectors unless the creditors decide to appoint them, and if no inspectors are appointed, the trustee, in the absence of directions from the creditors, may do all things that may ordinarily be done by the trustee with the permission of the inspectors;

(f) in such circumstances as are specified in directives of the Superintendent, the estates of individuals who, because of their relationship, could reasonably be dealt with as one estate may be dealt with as one estate;

(g) in such circumstances as are specified in directives of the Superintendent and with the approval of the Superintendent, the trustee may deposit all moneys relating to the summary administration of estates in a single trust account;

(h) a notice of bankruptcy and

(i) a notice of impending automatic discharge of the bankrupt, or

(ii) an application for discharge of the bankrupt

may be given in a single notice in the prescribed form;

(i) notwithstanding section 152, the procedure respecting the trustee's accounts, including the taxation thereof shall be as prescribed; and

(j) notwithstanding subsections 41(1), (5) and (6), the procedure for the trustee's discharge shall be as prescribed.

R.S., 1985, c. B-3, s. 155; 1992, c. 1, ss. 16, 161, c. 27, s. 57; 1997, c. 12, s. 92; 1999, c. 31, s. 26.

Fees and disbursements of trustee

156. The trustee shall receive such fees and disbursements as may be prescribed.

R.S., c. B-3, s. 127.

All other provisions of Act to apply

157. Except as provided in section 155, all the provisions of this Act, in so far as they are applicable, apply with such modifications as the circumstances require to summary administration.

R.S., c. B-3, s. 128.

PART VI BANKRUPTS

COUNSELLING SERVICES

Counselling

157.1 (1) The trustee

(a) shall provide, or provide for, counselling for an individual bankrupt, and

(b) may provide, or provide for, counselling for a person who, as specified in directives of the Superintendent, is financially associated with an individual bankrupt,

in accordance with directives issued by the Superintendent pursuant to paragraph 5(4)(b), and the estate of the bankrupt shall pay the costs of the counselling, as costs of administration of the estate, according to the prescribed tariff.

Idem

(2) Where counselling is provided by a trustee to a debtor who is not a bankrupt, that counselling must be provided in accordance with directives issued by the Superintendent pursuant to paragraph 5(4)(b).

Effect on automatic discharge

(3) Paragraph 168.1(1)(f) does not apply to an individual bankrupt who has refused or neglected to receive counselling provided pursuant to subsection (1).

1992, c. 27, s. 58; 1997, c. 12, s. 93.

DUTIES OF BANKRUPTS

Duties of bankrupt

158. A bankrupt shall

(a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;

(a.1) in such circumstances as are specified in directives of the Superintendent, deliver to the trustee, for cancellation, all credit cards issued to and in the possession or control of the bankrupt;

(b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;

(c) at such time and place as may be fixed by the official receiver, attend before the official receiver or before any other official receiver delegated by the official receiver for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;

(d) within five days following the bankruptcy, unless the time is extended by the official receiver, prepare and submit to the trustee in quadruplicate a statement of the bankrupt's affairs in the prescribed form verified by affidavit and showing the particulars of the bankrupt's assets and liabilities, the names and addresses of the bankrupt's creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a proper statement of affairs, the official receiver may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement;

(e) make or give all the assistance within his power to the trustee in making an inventory of his assets;

(f) make disclosure to the trustee of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event or beginning on such other antecedent date as the court may direct, and ending on the date of the bankruptcy, both dates included, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

(g) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within the period beginning on the day that is five years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;

(h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereat to examination;

(i) when required, attend other meetings of his creditors or of the inspectors, or attend on the trustee;

(j) submit to such other examinations under oath with respect to his property or affairs as required;

(k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;

(l) execute any powers of attorney, transfers, deeds and instruments or acts that may be required;

(m) examine the correctness of all proofs of claims filed, if required by the trustee;

(n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;

(n.1) inform the trustee of any material change in the bankrupt's financial situation;

(o) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee, or may be prescribed by the General Rules, or may be directed by the court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested; and

(p) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all times of his place of residence or address.

R.S., 1985, c. B-3, s. 158; 1992, c. 27, s. 59; 1997, c. 12, s. 94; 2004, c. 25, s. 73.

Where bankrupt is a corporation

159. Where a bankrupt is a corporation, the officer executing the assignment, or such

(a) officer of the corporation, or

(b) person who has, or has had, directly or indirectly, control in fact of the corporation

as the official receiver may specify, shall attend before the official receiver for examination and shall perform all of the duties imposed on a bankrupt by section 158, and, in case of failure to do so, the officer or person is

punishable as though that officer or person were the bankrupt.

R.S., 1985, c. B-3, s. 159; 1992, c. 27, s. 60.

Performance of duties by imprisoned bankrupt

160. If a bankrupt is undergoing imprisonment, the court may, in order to enable the bankrupt to attend in court in bankruptcy proceedings at which the bankrupt's personal presence is required, to attend the first meeting of creditors or to perform the duties required of the bankrupt under this Act, direct that the bankrupt be produced in the protective custody of an executing officer or other duly authorized officer at any time and place that may be designated, or it may make any other order that it deems proper and requisite in the circumstances.

R.S., 1985, c. B-3, s. 160; 2004, c. 25, s. 74(E).

EXAMINATION OF BANKRUPTS AND OTHERS

Examination of bankrupt by official receiver

161. (1) Before a bankrupt's discharge, the official receiver shall, on the attendance of the bankrupt, examine the bankrupt under oath with respect to the bankrupt's conduct, the causes of the bankruptcy and the disposition of the bankrupt's property and shall put to the bankrupt the prescribed question or questions to the like effect and such other questions as the official receiver may see fit.

Report

(2) The official receiver shall make notes of an examination made under subsection (1) and shall forward a copy of the notes to the Superintendent, the trustee and the court for deposit therein.

Notes available to creditors on request

(2.1) Where the examination under subsection (1) is held

(a) before the first meeting of creditors, the notes shall be communicated to the creditors at the meeting; or

(b) after the first meeting of creditors, the notes shall be made available to any creditor who requests them.

Examination before another official receiver

(3) When the official receiver deems it expedient, the official receiver may authorize an examination to be held before any other official receiver.

Official receiver to report failure to attend

(4) Where a bankrupt fails to present himself for examination by the official receiver, the official receiver shall so report to the first meeting of creditors.

R.S., 1985, c. B-3, s. 161; 1997, c. 12, s. 95; 2004, c. 25, s. 75(F).

Inquiry by official receiver

162. (1) The official receiver may, and on the direction of the Superintendent shall, make or cause to be made any inquiry or investigation that may be deemed necessary in respect of the conduct of the bankrupt, the causes of his bankruptcy and the disposition of his property, and the official receiver shall report the findings on any such inquiry or investigation to the Superintendent, the trustee and the court.

Costs and expenses

(2) Where, pursuant to subsection (1), an inquiry or investigation is made by the official receiver on the direction of the Superintendent, the Superintendent shall, out of the moneys appropriated by Parliament to defray the expenses of the office of the Superintendent, reimburse the official receiver for such reasonable costs and expenses incurred by him in connection with the inquiry or investigation, not being ordinary costs or expenses of his office, as are approved by the Superintendent.

Application of section 164

(3) Section 164 applies in respect of an inquiry or investigation under subsection (1).

R.S., 1985, c. B-3, s. 162; 2004, c. 25, s. 76(F).

Examination of bankrupt and others by trustee

163. (1) The trustee, on ordinary resolution passed by the creditors or on the written request or resolution of a majority of the inspectors, may, without an order, examine under oath before the registrar of the court or other authorized person, the bankrupt, any person reasonably thought to have knowledge of the affairs of the bankrupt or any person who is or has been an agent or a mandatary, or a clerk, a servant, an officer, a director or an employee of the bankrupt, respecting the bankrupt or the bankrupt's dealings or property and may order any person liable to be so examined to produce any books, documents, correspondence or papers in that person's possession or power relating in all or in part to the bankrupt or the bankrupt's dealings or property.

Examination of bankrupt, trustee and others by a creditor

(2) On the application to the court by the Superintendent, any creditor or other interested person and on sufficient cause being shown, an order may be made for the examination under oath, before the registrar or other authorized person, of the trustee, the bankrupt, an inspector or a creditor, or any other person named in the order, for the purpose of investigating the administration of the estate of any bankrupt, and the court may further order any person liable to be so examined to produce any books, documents, correspondence or papers in the person's possession or power relating in all or in part to the bankrupt, the trustee or any creditor, the costs of the examination and investigation to be in the discretion of the court.

Examination to be filed

(3) The evidence of any person examined under this section shall, if transcribed, be filed in the court and may be read in any proceedings before the court under this Act to which the person examined is a party.

R.S., 1985, c. B-3, s. 163; 1997, c. 12, s. 96; 2004, c. 25, s. 77(E).

Trustee may require books and property of bankrupt to be produced

164. (1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

Examination on failure to produce

(2) Where a person fails to produce a book, document or paper or to deliver property as required by this section within five days after being required to do so, the trustee may, without an order, examine the person before the registrar of the court or other authorized person concerning the property, book, document or paper that the person is supposed to possess.

Compelling attendance

(3) Any person referred to in subsection (1) may be compelled to attend and testify, and to produce on his examination any book, document or paper that under this section he is liable to produce, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as would apply to a bankrupt.

R.S., 1985, c. B-3, s. 164; 1997, c. 12, s. 97; 2004, c. 25, s. 78(F).

Admission of debt

165. (1) Where a person on examination admits that he is indebted to the bankrupt, the court may, on the application of the trustee, order him to pay to the trustee, at such time and in such manner as to the court seems expedient, the amount admitted or any part thereof either in full discharge of the whole amount in question or not, as the court thinks fit, with or without costs of the examination.

Admission of having bankrupt's property

(2) Where any person on examination admits that he has in his possession any property belonging to the bankrupt, the court may, on the application of the trustee, order him to deliver to the trustee the property or any

part thereof at such time, in such manner and on such terms as to the court may seem just.

R.S., c. B-3, s. 135.

Penalty for failure to attend for examination

166. Where the bankrupt fails to present himself for examination before the official receiver as required by paragraph 158(c) or where he or any other person is served with an appointment or summons to attend for examination and is paid or tendered the proper conduct money and witness fees as fixed by the General Rules but refuses or neglects to attend as required by the appointment or summons, the court may, on the application of the trustee, by warrant cause the bankrupt or other person so in default to be apprehended and brought up for examination.

R.S., c. B-3, s. 136.

Questions must be answered

167. Any person being examined is bound to answer all questions relating to the business or property of the bankrupt, to the causes of his bankruptcy and the disposition of his property.

R.S., 1985, c. B-3, s. 167; 2004, c. 25, s. 79(F).

ARREST OF BANKRUPTS

Arrest of bankrupts under certain circumstances

168. (1) The court may by warrant cause a bankrupt to be arrested, and any books, papers and property in his possession to be seized, and the bankrupt, books, papers and property to be safely kept as directed until such time as the court may order, under the following circumstances:

- (a) if, after the filing of a bankruptcy application against the bankrupt, it appears to the court that there are grounds for believing that the bankrupt has absconded or is about to abscond from Canada with a view of avoiding payment of the debt in respect of which the bankruptcy application was filed, of avoiding appearance to the application, of avoiding examination in respect of their affairs or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against them;
- (b) if, after making an assignment, it appears to the court that there are grounds for believing that the bankrupt has absconded or is about to abscond from Canada with a view of avoiding payment of his debts or of avoiding examination in respect of his affairs;
- (c) if, after the filing of a bankruptcy application or an assignment, it appears to the court that there are reasonable grounds for believing that the bankrupt
 - (i) is about to remove their property with a view to preventing or delaying possession being taken of it by the trustee, or
 - (ii) has concealed or is about to conceal or destroy any of their property or any books, documents or writings that might be of use to the trustee or to the creditors of the bankrupt in the course of the bankruptcy proceedings;
- (d) if the bankrupt removes any property in their possession above the value of twenty-five dollars without leave of the court after service of a bankruptcy application, or without leave of the trustee after an assignment has been made; or
- (e) if, after the commencement of proceedings under this Act, he has failed to obey an order of the court.

Payments after arrest

(2) No payment or proposal made or security given after arrest made under this section is exempt from the provisions of this Act relating to fraudulent preferences.

R.S., 1985, c. B-3, s. 168; 2004, c. 25, s. 80.

DISCHARGE OF BANKRUPTS

First-time individual bankrupt

168.1 (1) Except as provided in subsection (2), the following provisions apply in respect of an individual bankrupt who has never before been bankrupt under the laws of Canada or of any prescribed jurisdiction:

(a) the trustee shall, before the end of the eight-month period immediately following the date on which a bankruptcy order is made against, or an assignment is made by, the individual bankrupt, file a report prepared under subsection 170(1) with the Superintendent and send a copy of the report to the bankrupt and to each creditor who requested a copy;

(a.1) the trustee shall, not less than fifteen days before the date of automatic discharge provided for in paragraph (f), give notice of the impending discharge, in the prescribed form, to the Superintendent, the bankrupt and every creditor who has proved a claim, at the creditor's latest known address;

(b) where the Superintendent intends to oppose the discharge of the bankrupt, the Superintendent shall give notice of the intended opposition, stating the grounds therefor, to the trustee and to the bankrupt at any time prior to the expiration of the nine month period immediately following the bankruptcy;

(c) where a creditor intends to oppose the discharge of the bankrupt, the creditor shall give notice of the intended opposition, stating the grounds therefor, to the Superintendent, to the trustee and to the bankrupt at any time prior to the expiration of the nine month period immediately following the bankruptcy;

(d) where the trustee intends to oppose the discharge of the bankrupt, the trustee shall give notice of the intended opposition in prescribed form and manner, stating the grounds therefor, to the bankrupt and the Superintendent at any time prior to the expiration of the nine month period immediately following the bankruptcy;

(e) where the Superintendent, the trustee or a creditor opposes the discharge of the bankrupt, the trustee shall, unless the matter is to be dealt with by mediation under section 170.1, forthwith apply to the court for an appointment for the hearing of the opposition in the manner referred to in sections 169 to 176, which hearing shall be held

(i) within thirty days after the day the appointment is made, or

(ii) at such later time as may be fixed by the court at the request of the bankrupt or the trustee; and

(f) where the Superintendent, the trustee or a creditor has not opposed the discharge of the bankrupt in the nine month period immediately following the bankruptcy, then, subject to subsection 157.1(3),

(i) on the expiration of that nine month period, the bankrupt is automatically discharged, and

(ii) forthwith after the expiration of that nine month period, the trustee shall issue a certificate to the discharged bankrupt, in the prescribed form, declaring that the bankrupt is discharged and is released from all debts except those matters referred to in subsection 178(1), and shall send a copy of the certificate to the Superintendent.

Application not precluded

(2) Nothing in subsection (1) precludes an individual bankrupt from applying to the court for discharge before the expiration of the nine month period immediately following the bankruptcy, and subsection (1) ceases to apply to an individual bankrupt who makes such an application before the expiration of that period.

Application of other provisions

(3) The provisions of this Act concerning the discharge of bankrupts apply in respect of an individual bankrupt who has never before been bankrupt under the laws of Canada or of any prescribed jurisdiction, to the extent that those provisions are not inconsistent with this section, whether or not the bankrupt applies to the court for a discharge referred to in subsection (2).

Effect of automatic discharge

(4) An automatic discharge by virtue of paragraph (1)(f) is deemed, for all purposes, to be an absolute and

immediate order of discharge.

1992, c. 27, s. 61; 1997, c. 12, s. 98; 2004, c. 25, s. 81.

Bankruptcy to operate as application for discharge

169. (1) Subject to section 168.1, the making of a bankruptcy order against, or an assignment by, any person except a corporation operates as an application for discharge, unless the bankrupt, by notice in writing, files in the court and serves on the trustee a waiver of application before being served by the trustee with a notice of the trustee's intention to apply to the court for an appointment for the hearing of the application as provided in this section.

Appointment to be obtained by trustee

(2) The trustee, before proceeding to the discharge and in any case not earlier than three months and not later than one year following the bankruptcy of any person who has not served a notice of waiver on the trustee, shall on five days notice to the bankrupt apply to the court for an appointment for a hearing of the application on a date not more than thirty days after the date of the appointment or at such other time as may be fixed by the court at the request of the bankrupt or trustee.

Application for discharge

(3) A bankrupt who has given a notice of waiver as provided in subsection (1) may, at any time at the bankrupt's own expense, apply for a discharge by obtaining from the court an appointment for a hearing, which shall be served on the trustee not less than twenty-one days before the date fixed for the hearing of the application, and the trustee on being served therewith shall proceed as provided in this section.

Bankrupt corporation

(4) A bankrupt corporation may not apply for a discharge unless it has satisfied the claims of its creditors in full.

Fees and disbursements of trustee

(5) The court may, before issuing an appointment for hearing on application for discharge, if requested by the trustee, require such funds to be deposited with, or such guarantee to be given to, the trustee, as it deems proper, for the payment of his fees and disbursements incurred in respect of the application.

Notice to creditors

(6) The trustee, on obtaining or being served with an appointment for hearing on application for discharge, shall, not less than fifteen days before the day appointed for the hearing of the application, send a notice thereof in the prescribed form to the Superintendent, the bankrupt and every creditor who has proved a claim, at the creditor's latest known address.

Procedure when trustee not available

(7) Where the trustee is not available to perform the duties required of a trustee on the application of a bankrupt for a discharge, the court may authorize any other person to perform such duties and may give such directions as it deems necessary to enable the application of the bankrupt to be brought before the court.

R.S., 1985, c. B-3, s. 169; 1992, c. 27, s. 62; 1997, c. 12, s. 99; 2004, c. 25, s. 82.

Trustee to prepare report

170. (1) The trustee shall prepare a report in the prescribed form with respect to

(a) the affairs of the bankrupt,

(b) the causes of his bankruptcy,

(c) the manner in which the bankrupt has performed the duties imposed on him under this Act or obeyed the orders of the court,

(d) the conduct of the bankrupt both before and after the date of the initial bankruptcy event,

(e) whether the bankrupt has been convicted of any offence under this Act, and

(f) any other fact, matter or circumstance that would justify the court in refusing an unconditional order of discharge,

and the report shall be accompanied by a resolution of the inspectors declaring whether or not they approve or disapprove of the report, and in the latter case the reasons of the disapproval shall be given.

Filing and service of report

(2) Where an application of a bankrupt for a discharge is pending, the trustee shall file the report prepared under subsection (1) in the court not less than two days, and forward a copy thereof to the Superintendent, to the bankrupt and to each creditor who requested a copy not less than ten days, before the day appointed for hearing the application, and in all other cases the trustee, before proceeding to the discharge, shall file the report in the court and forward a copy to the Superintendent.

Superintendent may file report

(3) The Superintendent may make such further or other report to the court as he deems expedient or as in his opinion ought to be before the court on the application referred to in subsection (2).

Representation by counsel

(4) The trustee or any creditor may attend the court and be heard in person or by counsel.

Evidence at hearing

(5) For the purposes of the application referred to in subsection (2), the report of the trustee is evidence of the statements therein contained.

Right of bankrupt to oppose statements in report

(6) Where a bankrupt intends to dispute any statement contained in the trustee's report prepared under subsection (1), the bankrupt shall at or before the time appointed for hearing the application for discharge give notice in writing to the trustee specifying the statements in the report that he proposes at the hearing to dispute.

Right of creditors to oppose

(7) A creditor who intends to oppose the discharge of a bankrupt on grounds other than those mentioned in the trustee's report shall give notice of the intended opposition, stating the grounds thereof to the trustee and to the bankrupt at or before the time appointed for the hearing of the application for discharge.

R.S., 1985, c. B-3, s. 170; 1997, c. 12, s. 100.

Recommendation

170.1 (1) The report prepared under subsection 170(1) shall include a recommendation as to whether or not the bankrupt should be discharged subject to conditions, having regard to the bankrupt's conduct and ability to make payments.

Factors to be considered

(2) The trustee shall consider the following matters in making a recommendation under subsection (1):

(a) whether the bankrupt has complied with a requirement imposed on the bankrupt under section 68;

(b) the total amount paid to the estate by the bankrupt, having regard to the bankrupt's indebtedness and financial resources; and

(c) whether the bankrupt, if the bankrupt could have made a viable proposal, chose to proceed to bankruptcy rather than to make a proposal as the means to resolve the indebtedness.

Presumption

(3) A recommendation that the bankrupt be discharged subject to conditions is deemed to be an opposition to the discharge of the bankrupt.

Request for mediation

(4) Where the bankrupt does not agree with the recommendation of the trustee, the bankrupt may, before the expiration of the ninth month after the date of the bankruptcy, send the trustee a request in writing to have the matter determined by mediation.

Mediation request to be sent to official receiver

(5) Where a request for mediation has been made under subsection (4) or the discharge of the bankrupt is opposed by a creditor or the trustee in whole or in part on a ground referred to in paragraph 173(1)(m) or (n), the trustee shall send an application for mediation in prescribed form to the official receiver within five days after the expiration of the nine month period referred to in subsection (4) or within such further time as the official receiver may allow.

Mediation procedure

(6) A mediation shall be in accordance with prescribed procedures.

Court hearing

(7) Where the issues submitted to mediation are not thereby resolved or the bankrupt has failed to comply with conditions that were established by the trustee or as a result of the mediation, the trustee shall forthwith apply to the court for an appointment for the hearing of the matter, which hearing shall be held

(a) within thirty days after the day the appointment is made, or

(b) at such later time as may be fixed by the court,

and the provisions of this Part relating to applications to the court in relation to the discharge of a bankrupt apply, with such modifications as the circumstances require, in respect of an application to the court under this subsection.

Certificate of discharge

(8) Where the bankrupt complies with the conditions imposed on the bankrupt by the trustee in relation to the discharge of the bankrupt or as a result of mediation referred to in this section, the trustee shall

(a) issue to the bankrupt a certificate of discharge in the prescribed form releasing the bankrupt from all debts other than a debt referred to in subsection 178(1); and

(b) send a copy of the certificate of discharge to the Superintendent.

File

(9) Documents contained in a file on the mediation of a matter under this section form part of the records referred to in subsection 11.1(2).

1997, c. 12, s. 101.

Trustee's report

171. (1) On a request therefor by the Superintendent the trustee shall, within two months after the trustee's appointment or within such longer period as the Superintendent may allow, prepare in the prescribed form and file with the Superintendent a report setting out the following information:

(a) the name of the debtor and, where the debtor is a corporation, the names and addresses of the directors and officers of the corporation and, when applicable, the names of the persons who in the opinion of the trustee actively controlled the day-to-day operations of the corporation or the business of the debtor or who in the opinion of the trustee were responsible for the greater proportion of the debtor's liabilities or under whose directions in the opinion of the trustee the greater proportion of the debtor's liabilities were incurred;

(b) whether in the opinion of the trustee the deficiency between the assets and the liabilities of the debtor

has been satisfactorily accounted for or, if not, whether there is evidence of a substantial disappearance of property that is not accounted for;

(c) a statement of opinion by the trustee with respect to the probable causes of the bankruptcy, arrived at after consultation with the inspectors and other persons, which shall be expressed as resulting from one or more of the probable causes in the following enumeration:

- (i) misfortune,
- (ii) inexperience,
- (iii) incompetence,
- (iv) carelessness,
- (v) over-expansion,
- (vi) unwarranted speculation,
- (vii) gross negligence,
- (viii) fraud, and
- (ix) other probable cause (to be specified); and

(d) a statement of the facts and information on which the trustee relied in arriving at the opinion expressed pursuant to paragraphs (b) and (c).

Report to persons concerned

(2) A separate report containing only the information to be given to the Superintendent pursuant to paragraphs (1)(a) and (b) shall be immediately prepared in the prescribed form by the trustee and a copy thereof shall be sent, by prepaid registered or certified mail in an envelope marked "private and confidential", to each of the persons named pursuant to paragraphs (1)(a) and (b) in the report to the Superintendent.

Report to official receiver

(3) After the expiration of two months from the date of filing the report with the Superintendent and not later than three months after that date, the trustee shall file with the official receiver the report prepared pursuant to subsection (2).

Application to court regarding report

(4) Notwithstanding subsection (3), where before he has filed his report with the official receiver pursuant to that subsection, the trustee is served with a copy of an application to the court, by any of the persons named pursuant to paragraphs (1)(a) and (b) in the report prepared pursuant to subsection (2), to have that report altered in any manner or to dispense with the requirements of subsection (3), the trustee shall not file the report under subsection (3) except as may be directed by the court.

Altering report to Superintendent

(5) Where the report to be filed under subsection (3) has been altered in any respect on the direction of the court, the trustee shall inform the Superintendent of any alteration so made, and the Superintendent shall alter the report made to him by the trustee accordingly.

Exoneration from liability

(6) The trustee is not liable for any statements made or opinions expressed by him in good faith and made or purporting to be made by him pursuant to this section, nor is any person liable for publishing, or referring to any matters contained in, the report of the trustee to the official receiver if the publication or reference is made after the filing of the report with the official receiver.

R.S., 1985, c. B-3, s. 171; 1992, c. 1, s. 20, c. 27, s. 63; 1997, c. 12, s. 102.

Court may grant or refuse discharge

172. (1) On the hearing of an application of a bankrupt for a discharge, the court may either grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time, or grant an order of discharge subject to any terms or conditions with respect to any earnings or income that may afterwards

become due to the bankrupt or with respect to his after-acquired property.

Powers of court to refuse or suspend discharge or grant conditional discharge

(2) The court shall on proof of any of the facts mentioned in section 173

(a) refuse the discharge of a bankrupt;

(b) suspend the discharge for such period as the court thinks proper; or

(c) require the bankrupt, as a condition of his discharge, to perform such acts, pay such moneys, consent to such judgments or comply with such other terms as the court may direct.

Court may modify after year

(3) Where at any time after the expiration of one year after the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of the order, the court may modify the terms of the order or of any substituted order, in such manner and on such conditions as it may think fit.

Power to suspend

(4) The powers of suspending and of attaching conditions to the discharge of a bankrupt may be exercised concurrently.

R.S., c. B-3, s. 142.

Facts for which discharge may be refused, suspended or granted conditionally

173. (1) The facts referred to in section 172 are:

(a) the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible;

(b) the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by the bankrupt and as sufficiently disclose the business transactions and financial position of the bankrupt within the period beginning on the day that is three years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;

(c) the bankrupt has continued to trade after becoming aware of being insolvent;

(d) the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities;

(e) the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt's business affairs;

(f) the bankrupt has put any of the bankrupt's creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against the bankrupt;

(g) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, incurred unjustifiable expense by bringing a frivolous or vexatious action;

(h) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, when unable to pay debts as they became due, given an undue preference to any of the bankrupt's creditors;

(i) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, incurred liabilities in order to make the bankrupt's assets equal to fifty cents on the dollar on the amount of the bankrupt's unsecured

liabilities;

(j) the bankrupt has on any previous occasion been bankrupt or made a proposal to creditors;

(k) the bankrupt has been guilty of any fraud or fraudulent breach of trust;

(l) the bankrupt has committed any offence under this Act or any other statute in connection with the bankrupt's property, the bankruptcy or the proceedings thereunder;

(m) the bankrupt has failed to comply with a requirement to pay imposed under section 68;

(n) the bankrupt, if the bankrupt could have made a viable proposal, chose bankruptcy rather than a proposal to creditors as the means to resolve the indebtedness; and

(o) the bankrupt has failed to perform the duties imposed on the bankrupt under this Act or to comply with any order of the court.

Application to farmers

(2) Paragraphs (1)(b) and (c) do not apply in the case of an application for discharge by a bankrupt whose principal occupation and means of livelihood on the date of the initial bankruptcy event was farming or the tillage of the soil.

R.S., 1985, c. B-3, s. 173; 1997, c. 12, s. 103.

Assets of bankrupt when deemed equal to fifty cents in dollar

174. For the purposes of section 173, the assets of a bankrupt shall be deemed of a value equal to fifty cents on the dollar on the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realized, is likely to realize or, with due care in realization, might have realized an amount equal to fifty cents on the dollar on his unsecured liabilities.

R.S., c. B-3, s. 144.

Court may grant certificates

175. (1) A statutory disqualification on account of bankruptcy ceases when the bankrupt obtains from the court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part.

Appeal

(2) The court may, if it thinks fit, grant a certificate mentioned in subsection (1), and a refusal to grant such a certificate is subject to appeal.

R.S., c. B-3, s. 145.

Duty of bankrupt on conditional discharge

176. (1) Where an order is granted on terms or conditions or on the bankrupt consenting to judgment, the bankrupt shall, until the terms, conditions or judgment is satisfied,

(a) give the trustee such information as he may require with respect to his earnings and after-acquired property and income, and

(b) not less than once a year, file in the court and with the trustee a statement verified under oath showing the particulars of any property or income he may have acquired subsequent to the order for his discharge,

and the trustee or any creditor may require the bankrupt to attend for examination under oath with respect to the facts contained in the statement or with respect to his earnings, income, after-acquired property or dealings.

Penalty for failure to comply

(2) Where the bankrupt fails to give information or to file a statement as required by subsection (1), to attend for examination when required to do so or to answer all questions fully and accurately with respect to his earnings, income, after-acquired property or dealings, the court may on the application of the trustee or of any creditor revoke the order of discharge.

Trustee to distribute funds payable under conditional discharge

(3) Where a conditional order of discharge of a bankrupt is made providing for payment of a further dividend or sum of money by the bankrupt, all payments on account thereof shall be made to the trustee for distribution to the creditors.

R.S., c. B-3, s. 146.

177. [Repealed, 2000, c. 12, s. 17]

Debts not released by order of discharge

178. (1) An order of discharge does not release the bankrupt from

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence, or any debt arising out of a recognizance or bail;

(a.1) any award of damages by a court in civil proceedings in respect of

- (i) bodily harm intentionally inflicted, or sexual assault, or
- (ii) wrongful death resulting therefrom;

(b) any debt or liability for alimony or alimentary pension;

(c) any debt or liability arising under a judicial decision establishing affiliation or respecting support or maintenance, or under an agreement for maintenance and support of a spouse, former spouse, former common-law partner or child living apart from the bankrupt;

(d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in the Province of Quebec, as a trustee or administrator of the property of others;

(e) any debt or liability for obtaining property by false pretences or fraudulent misrepresentation;

(f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;

(g) any debt or obligation in respect of a loan made under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or any enactment of a province that provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred

- (i) before the date on which the bankrupt ceased to be a full- or part-time student, as the case may be, under the applicable Act or enactment, or
- (ii) within ten years after the date on which the bankrupt ceased to be a full- or part-time student; or

(h) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (g).

Court may order non-application of subsection (1)

(1.1) At any time after ten years after a bankrupt who has a debt referred to in paragraph (1)(g) ceases to be a full- or part-time student, as the case may be, under the applicable Act or enactment, the court may, on application, order that subsection (1) does not apply to the debt if the court is satisfied that

(a) the bankrupt has acted in good faith in connection with the bankrupt's liabilities under the loan; and

(b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the liabilities under the loan.

Claims released

(2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

R.S., 1985, c. B-3, s. 178; R.S., 1985, c. 3 (2nd Supp.), s. 28; 1992, c. 27, s. 64; 1997, c. 12, s. 105; 1998, c. 21, s. 103; 2000, c. 12, s. 18; 2001, c. 4, s. 32; 2004, c. 25, s. 83.

Partner or co-trustee not released

179. An order of discharge does not release a person who at the date of the bankruptcy was a partner or co-trustee with the bankrupt or was jointly bound or had made a joint contract with him, or a person who was surety or in the nature of a surety for him.

R.S., 1985, c. B-3, s. 179; 2004, c. 25, s. 84(F).

Court may annul discharge

180. (1) Where a bankrupt after his discharge fails to perform the duties imposed on him by this Act, the court may, on application, annul his discharge.

Annulment of discharge obtained by fraud

(2) Where it appears to the court that the discharge of a bankrupt was obtained by fraud, the court may, on application, annul his discharge.

Effect of annulment of discharge

(3) An order revoking or annulling the discharge of a bankrupt does not prejudice the validity of a sale, disposition of property, payment made or thing duly done before the revocation or annulment of the discharge.

R.S., 1985, c. B-3, s. 180; 2004, c. 25, s. 85(F).

Power of court to annul bankruptcy

181. (1) If, in the opinion of the court, a bankruptcy order ought not to have been made or an assignment ought not to have been filed, the court may by order annul the bankruptcy.

Effect of annulment of bankruptcy

(2) If an order is made under subsection (1), all sales, dispositions of property, payments duly made and acts done before the making of the order by the trustee or other person acting under the trustee's authority, or by the court, are valid, but the property of the bankrupt shall vest in any person that the court may appoint, or, in default of any appointment, revert to the bankrupt for all the estate, or interest or right of the trustee in the estate, on any terms and subject to any conditions, if any, that the court may order.

R.S., 1985, c. B-3, s. 181; 2004, c. 25, s. 86.

Stay on issue of order

182. (1) An order of discharge or annulment shall be dated on the day on which it is made, but it shall not be issued or delivered until the expiration of the time allowed for an appeal, and, if an appeal is entered, not until the appeal has been finally disposed of.

(2) [Repealed, 1992, c. 27, s. 65]

R.S., 1985, c. B-3, s. 182; 1992, c. 27, s. 65.

PART VII

COURTS AND PROCEDURE

JURISDICTION OF COURTS

Courts vested with jurisdiction

183. (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

- (a) in the Province of Ontario, the Superior Court of Justice;
- (b) [Repealed, 2001, c. 4, s. 33]
- (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
- (d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
- (e) in the Province of Prince Edward Island, the Trial Division of the Supreme Court of the Province;
- (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
- (g) in the Province of Newfoundland, the Trial Division of the Supreme Court; and
- (h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

Superior Court jurisdiction in the Province of Quebec

(1.1) In the Province of Quebec, the Superior Court is invested with the jurisdiction that will enable it to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during its term, as it is now, or may be hereafter, held, and in vacation and in chambers.

Courts of appeal — common law provinces

(2) Subject to subsection (2.1), the courts of appeal throughout Canada, within their respective jurisdictions, are invested with power and jurisdiction at law and in equity, according to their ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the courts vested with original jurisdiction under this Act.

Court of Appeal of the Province of Quebec

(2.1) In the Province of Quebec, the Court of Appeal, within its jurisdiction, is invested with power and jurisdiction, according to its ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the Superior Court.

Supreme Court of Canada

(3) The Supreme Court of Canada has jurisdiction to hear and to decide according to its ordinary procedure any appeal so permitted and to award costs.

R.S., 1985, c. B-3, s. 183; R.S., 1985, c. 27 (2nd Supp.), s. 10; 1990, c. 17, s. 3; 1998, c. 30, s. 14; 1999, c. 3, s. 15; 2001, c. 4, s. 33; 2002, c. 7, s. 83.

Appointment of officers

184. Each of the following persons, namely,

- (a) the Chief Justice of the court,

(b) in Quebec, the Chief Justice or the Associate Chief Justice in the district to which the Chief Justice or Associate Chief Justice was appointed,

(c) in Yukon, the Commissioner of Yukon,

(d) in the Northwest Territories, the Commissioner of the Northwest Territories, and

(e) in Nunavut, the Commissioner of Nunavut,

shall appoint and assign such registrars, clerks and other officers in bankruptcy as deemed necessary for the transaction or disposal of matters in respect of which power or jurisdiction is given by this Act and may specify or limit the territorial jurisdiction of any such officer.

R.S., 1985, c. B-3, s. 184; 1993, c. 28, s. 78; 2002, c. 7, s. 84.

Assignment of judges to bankruptcy work by Chief Justice

185. (1) The Chief Justice of the court, and in the Province of Quebec the Chief Justice or the Associate Chief Justice in the district to which he was appointed, may, if in his opinion it is advisable or necessary for the good administration of this Act, nominate or assign one or more of the judges of the court to exercise the judicial powers and jurisdiction conferred by this Act that may be exercised by a single judge, and the judgment, decision or order of a judge so nominated or assigned shall be deemed to be the judgment, decision or order of the court, and a reference in this Act to the court applies to any judge exercising the powers and jurisdiction of the court.

No diminution of powers

(2) Nothing in this section diminishes or affects the powers or jurisdiction of the court or of any of the judges thereof not so specially nominated or assigned.

R.S., c. B-3, s. 155.

Exercise of power by judges of other courts on appointment by Minister

186. The Minister may, if in his opinion it is advisable or necessary for the proper administration of this Act, authorize any district, county or other judge to exercise any or all of the powers and jurisdiction of the court or of a judge or registrar thereof, subject to any limitation or condition, and any judge so authorized shall be deemed a judge or registrar, as the case may be, of the court having jurisdiction in bankruptcy, and references to the court, to the judge of the court or to the registrar apply to that district, county or other judge according to the terms of his authority.

R.S., c. B-3, s. 156.

AUTHORITY OF THE COURTS

Seal of court

187. (1) Every court shall have a seal describing the court, and judicial notice shall be taken of the seal and of the signature of the judge or registrar of the court in all legal proceedings.

Court not subject to be restrained

(2) The courts are not subject to be restrained in the execution of their powers under this Act by the order of any other court.

Power of judge in chambers

(3) Subject to this Act and to the General Rules, the judge of a court may exercise in chambers the whole or any part of his jurisdiction.

Periodical sittings

(4) Periodical sittings for the transaction of the business of courts shall be held at such times and places and at such intervals as the court directs.

Court may review, etc.

(5) Every court may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

Enforcement of orders

(6) Every order of a court may be enforced as if it were a judgment of the court.

Transfer of proceedings to another division

(7) The court, on satisfactory proof that the affairs of the bankrupt can be more economically administered within another bankruptcy district or division, or for other sufficient cause, may by order transfer any proceedings under this Act that are pending before it to another bankruptcy district or division.

Trial of issue, etc.

(8) The court may direct any issue to be tried or inquiry to be made by any judge or officer of any of the courts of the province, and the decision of that judge or officer is subject to appeal to a judge in bankruptcy, unless the judge is a judge of a superior court when the appeal shall, subject to section 193, be to the Court of Appeal.

Formal defect not to invalidate proceedings

(9) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court.

Proceedings taken in wrong court

(10) Nothing in this section invalidates any proceedings by reason of their having been commenced, taken or carried on in the wrong court, but the court may at any time transfer the proceedings to the proper court.

Court may extend time

(11) Where by this Act the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof on such terms, if any, as it thinks fit to impose.

Court may dispense with certain requirements respecting notices

(12) Where in the opinion of the court the cost of preparing statements, lists of creditors or other material required by this Act to be sent with notices to creditors, or the cost of sending the material or notices, is unjustified in the circumstances, the court may give leave to omit the material or any part thereof or to send the material or notices in such manner as the court may direct.

R.S., 1985, c. B-3, s. 187; 1992, c. 1, s. 20, c. 27, s. 66; 2004, c. 25, s. 87.

Enforcement of orders of other courts

188. (1) An order made by the court under this Act shall be enforced in the courts having jurisdiction in bankruptcy elsewhere in Canada in the same manner in all respects as if the order had been made by the court hereby required to enforce it.

Courts to be auxiliary to each other

(2) All courts and the officers of all courts shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of one court seeking aid, with a request to another court, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court that made the request or the court to which the request is made could exercise in regard to similar matters within its jurisdiction.

Enforcement of warrants

(3) Any warrant of a court may be enforced in any part of Canada in the same manner and subject to the same privileges as a warrant issued by a justice of the peace under or in pursuance of the *Criminal Code* may

be executed against a person charged with an indictable offence.

R.S., c. B-3, s. 158.

Search warrants

189. (1) Where on *ex parte* application by the trustee or interim receiver the court is satisfied by information on oath that there are reasonable grounds to believe there is in any place or premises any property of the bankrupt, the court may issue a warrant authorizing the trustee or interim receiver to enter and search that place or premises and to seize the property of the bankrupt, subject to such conditions as may be specified in the warrant.

Use of force

(1.1) In executing a warrant issued under subsection (1), the trustee or interim receiver shall not use force unless the trustee or interim receiver is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

Commitment to prison

(2) Where the court commits any person to prison, the commitment may be to such convenient prison as the court thinks expedient.

R.S., 1985, c. B-3, s. 189; R.S., 1985, c. 31 (1st Supp.), s. 28.

Evidence of proceedings in bankruptcy

190. (1) Any document made or used in the course of any bankruptcy proceedings or other proceedings had under this Act shall, if it appears to be sealed with the seal of any court having jurisdiction in bankruptcy, purports to be signed by any judge thereof or is certified as a true copy by any registrar thereof, be admissible in evidence in all legal proceedings.

Documentary evidence as proof

(2) The production of an original document relating to any bankruptcy proceeding or a copy certified by the person making it as a true copy thereof or by a successor in office of that person as a true copy of a document found among the records in his control or possession is evidence of the contents of those documents.

R.S., c. B-3, s. 160.

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;
- (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.

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.

Registrar may not commit

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

Appeal from registrar

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

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.

Reference to judge

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

Judge may hear

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

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.

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:

- (a) if the point at issue involves future rights;
- (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
- (c) if the property involved in the appeal exceeds in value ten thousand dollars;
- (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and
- (e) in any other case by leave of a judge of the Court of Appeal.

R.S., 1985, c. B-3, s. 193; 1992, c. 27, s. 68.

Appeal to Supreme Court

194. The decision of the Court of Appeal on any appeal is final and conclusive unless special leave to appeal therefrom to the Supreme Court of Canada is granted by that Court.

R.S., c. B-3, s. 164; R.S., c. 44(1st Supp.), s. 10.

Stay of proceedings on filing of appeal

195. Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper.

R.S., 1985, c. B-3, s. 195; 1992, c. 27, s. 69.

No stay of proceedings unless ordered

196. An appeal to the Supreme Court of Canada does not operate as a stay of proceedings, except to the extent ordered by that Court.

R.S., c. B-3, s. 166; R.S., c. 44(1st Supp.), s. 10.

LEGAL COSTS

Costs in discretion of court

197. (1) Subject to this Act and to the General Rules, the costs of and incidental to any proceedings in court under this Act are in the discretion of the court.

How costs awarded

(2) The court in awarding costs may direct that the costs shall be taxed and paid as between party and party or as between solicitor and client, or the court may fix a sum to be paid in lieu of taxation or of taxed costs, but in the absence of any express direction costs shall follow the event and shall be taxed as between party and party.

Personal liability of trustee for costs

(3) Where an action or proceeding is brought by or against a trustee, or where a trustee is made a party to any action or proceeding on his application or on the application of any other party thereto, he is not personally liable for costs unless the court otherwise directs.

When costs payable

(4) No costs shall be paid out of the estate of the bankrupt, excepting the costs of persons whose services have been authorized by the trustee in writing and such costs as have been awarded against the trustee or the estate of the bankrupt by the court.

Application of tariff

(5) Legal costs shall be paid according to the tariff provided by the General Rules or according to the item in the tariff most nearly analogous or comparable to the services rendered, or, where no provision may be found therein applicable to the particular services rendered or disbursements made, according to the tariff in effect in other civil matters.

Priority of payment of legal costs

(6) Legal costs shall be payable according to the following priorities:

(a) commissions on collections, which are a claim ranking above any other claim on any sums collected;

(b) when duly authorized by the court or approved by the creditors or the inspectors, costs incurred by the trustee after the bankruptcy and prior to the first meeting of creditors;

(c) the costs on an assignment or costs incurred by an applicant creditor up to the issue of a bankruptcy order;

(d) costs awarded against the trustee or the estate of the bankrupt; and

(e) costs for legal services otherwise rendered to the trustee or the estate of the bankrupt.

Costs where discharge opposed

(6.1) Where a creditor opposes the discharge of a bankrupt, the court may, if it grants the discharge on condition that the bankrupt pay an amount or consent to a judgment to pay an amount, award costs to the opposing creditor out of the estate in an amount not exceeding the amount realized by the estate under the conditional order, including any amount brought into the estate pursuant to the consent to judgment.

Limitation of costs

(7) Notwithstanding anything in this section, the total legal costs exclusive of disbursements for all legal services specified in paragraph (6)(e) shall not exceed ten per cent of the gross receipts less amounts paid to secured creditors, except with the approval of the inspectors and the court, and, where the amount thereby available or authorized for payment of the legal fees is insufficient, the fees shall be abated proportionately.

Limitation of costs in smaller estates

(8) Where the gross receipts, less amounts paid to secured creditors, are certified by the trustee to be not more than one thousand dollars, or more than one thousand dollars but not more than two thousand dollars, the legal costs payable, other than disbursements, shall be reduced by one-half and one-third, respectively.

R.S., 1985, c. B-3, s. 197; 1997, c. 12, s. 106; 2004, c. 25, s. 89.

PART VIII

OFFENCES

Bankruptcy offences

198. (1) Any bankrupt who

(a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event,

(b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act,

(c) makes a false entry or knowingly makes a material omission in a statement or accounting,

(d) after or within one year immediately preceding the date of the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,

(e) after or within one year immediately preceding the date of the initial bankruptcy event, obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge,

(f) after or within one year immediately preceding the date of the initial bankruptcy event, fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from the bankrupt, or

(g) after or within one year immediately preceding the date of the initial bankruptcy event, hypothecates, pawns, pledges or disposes of any property that the bankrupt has obtained on credit and has not paid for, unless in the case of a trader the hypothecation, pawning, pledging or disposing is in the ordinary way of trade and unless the bankrupt had no intent to defraud,

is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both, or on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

Failure to comply with duties

(2) A bankrupt who, without reasonable cause, fails to comply with an order of the court made under section 68 or to do any of the things required of the bankrupt under section 158 is guilty of an offence and is liable

(a) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or

(b) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

R.S., 1985, c. B-3, s. 198; 1992, c. 27, s. 71; 1997, c. 12, s. 107; 2004, c. 25, s. 90(F).

Failure to disclose fact of being undischarged

199. An undischarged bankrupt who

(a) engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt, or

(b) obtains credit to a total of five hundred dollars or more from any person or persons without informing such persons that the undischarged bankrupt is an undischarged bankrupt,

is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

R.S., 1985, c. B-3, s. 199; 1992, c. 27, s. 72.

Bankrupt failing to keep proper books of account

200. (1) Any person becoming bankrupt or making a proposal who has on any previous occasion been bankrupt or made a proposal to the person's creditors is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both, if

(a) being engaged in any trade or business, at any time within the period beginning on the day that is two years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, that person has not kept and preserved proper books of account; or

(b) within the period mentioned in paragraph (a), that person conceals, destroys, mutilates, falsifies or disposes of, or is privy to the concealment, destruction, mutilation, falsification or disposition of, any book or document affecting or relating to the person's property or affairs, unless the person had no intent to conceal the state of the person's affairs.

Proper books of account defined

(2) For the purposes of this section, a debtor shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual and other stock-takings.

R.S., 1985, c. B-3, s. 200; 1992, c. 27, s. 73; 1997, c. 12, s. 108; 2004, c. 25, s. 91(F).

False claim, etc.

201. (1) Where a creditor, or a person claiming to be a creditor, in any proceedings under this Act, wilfully and with intent to defraud makes any false claim or any proof, declaration or statement of account that is untrue in any material particular, the creditor or person is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both.

Inspectors accepting unlawful fee

(2) Where an inspector accepts from the bankrupt or from any person, firm or corporation acting on behalf of the bankrupt or from the trustee any fee, commission or emolument other than or in addition to the regular fees provided for by this Act, the inspector is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both.

Unlawful transactions

(3) Where the bankrupt enters into any transaction with any person for the purpose of obtaining a benefit or advantage to which either of them would not be entitled, the bankrupt is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both.

R.S., 1985, c. B-3, s. 201; 1992, c. 27, s. 74.

Other offences

202. (1) A person who

(a) not being a licensed trustee, does any act as, or represents himself to be, a licensed trustee,

(b) being a trustee, either before providing the security required by subsection 16(1) or after providing it but at any time while the security is not in force, acts as or exercises any of the powers of trustee,

(c) having been appointed a trustee, with intent to defraud, fails to observe or to comply with any of the provisions of this Act, or fails duly to do, observe or perform any act or duty that he may be ordered to do, observe or perform by the court pursuant to this Act,

(d) having been appointed a trustee, without reasonable excuse, fails to observe or to comply with any of the provisions of this Act, or fails duly to do, observe or perform any act or duty that he may be ordered to do, observe or perform by the court pursuant to this Act,

(e) having been appointed a trustee to any estate and another trustee having been appointed in his stead, does not deliver to the substituted trustee on demand all unadministered property of the estate, together with the books, records and documents of the estate and of his administration,

(f) directly or indirectly solicits or canvasses any person to make an assignment or a proposal under this Act, or to file an application for a bankruptcy order,

(g) being a trustee, directly or indirectly, solicits proxies to vote at a meeting of creditors, or

(h) being a trustee, makes any arrangement under any circumstances with the bankrupt, or any legal counsel, auctioneer or other person employed in connection with a bankruptcy, for any gift, remuneration or pecuniary or other consideration or benefit whatever beyond the remuneration payable out of the estate, or accepts any such consideration or benefit from any such person, or makes any arrangement for giving up, or gives up, any part of remuneration, either as a receiver or trustee, to the bankrupt or any legal counsel, auctioneer or other person employed in connection with the bankruptcy,

is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both.

Offence and punishment

(2) A person who fails to comply with or contravenes any provision of section 10 is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both.

Idem

(2.1) Every person who contravenes or fails to comply with an order made under section 204.1

(a) is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both; or

(b) is guilty of an indictable offence and is liable to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding three years, or to both.

Exception

(3) Nothing in paragraph (1)(h) shall be construed to apply to a sharing of trustee's fees among persons who together act as the trustee of the estate of a bankrupt or as joint trustee to a proposal.

Idem

(4) Subject to this Act, every person who contravenes or fails to comply with a provision of this Act, of the General Rules or of the regulations is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, or to both.

R.S., 1985, c. B-3, s. 202; 1992, c. 27, s. 75; 2004, c. 25, s. 92.

Punishment for removal of bankrupt's property without notice

203. A person, except the trustee, who, within thirty days after delivery to the trustee of the proof of claim mentioned in section 81, or who, in case no proof has been delivered, removes or attempts to remove the property or any part thereof mentioned in that section out of the charge or possession of the bankrupt, the trustee or other custodian of the property, except with the written permission of the trustee, is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both.

R.S., c. B-3, s. 174.

Acting while licence suspended or cancelled

203.1 Any trustee who exercises any of the powers or performs any of the duties of a trustee while the trustee's licence has ceased to be valid for failure to pay licence fees, after the trustee's licence has been suspended or cancelled under subsection 13.2(5) or after having been informed pursuant to subsection 14.02 (4) of the suspension or cancellation of the trustee's licence is guilty of an offence and is liable on summary conviction to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding two years, or to both.

1992, c. 27, s. 76; 1997, c. 12, s. 109.

Acting contrary to conditions or limitations

203.2 Where the Superintendent has placed conditions or limitations on the licence of a trustee and the trustee exercises any of the powers of a trustee other than the powers that the trustee is authorized to exercise, the trustee is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding two years, or to both.

1992, c. 27, s. 76.

Officers, etc., of corporations

204. If a corporation commits an offence under this Act, any officer or director, or agent or mandatary, of the corporation, or any person who has or has had, directly or indirectly, control in fact of the corporation, who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

R.S., 1985, c. B-3, s. 204; 1992, c. 27, s. 77; 2004, c. 25, s. 93(E).

Community service

204.1 Where a person has been convicted of an offence under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, and in addition to any other punishment that may be imposed under this Act, make an order directing the person to perform community service, subject to such reasonable conditions as may be specified in the order.

1992, c. 27, s. 77.

Variation of sanctions

204.2 (1) Subject to subsection (2), where a court has made an order under section 204.1 in respect of a person, the court may, on application by the person or the Attorney General of Canada, require the person to appear before it and, after hearing the person or the Attorney General of Canada, as the case may be, may vary the order in one or any combination of the following ways that is applicable and that, in the opinion of the court, is desirable because of a change in the circumstances of the person since the order was made:

(a) by making changes in the order or the conditions specified therein or extending the period for which the order is to remain in force for such period, not exceeding one year, as the court considers desirable; or

(b) by reducing the period for which the order is to remain in force or relieving the person, either absolutely or partially or for such period as the court considers desirable, of compliance with any condition that is specified in the order.

Notice

(2) Before varying an order under subsection (1), the court may direct that notice be given to such persons as the court considers to be interested, and may hear any such persons.

Limitation

(3) Where an application made under subsection (1) in respect of a person has been heard by the court, no other application may be made with respect to the person except with leave of the court.

1992, c. 27, s. 77.

Compensation for loss

204.3 (1) Where a person has been convicted of an offence under this Act and any other person has suffered loss or damage because of the commission of the offence, the court may, at the time sentence is imposed, order the person who has been convicted to pay to the person who has suffered loss or damage or to the trustee of the bankrupt an amount by way of satisfaction or compensation for loss of or damage to property

suffered by that person as a result of the commission of the offence.

Enforceability of order

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith, the person in favour of whom the order has been made may file the order in the superior court of the province in which the trial was held and that order is enforceable against the person who has been convicted in the same manner as if it were a judgment rendered against the person who has been convicted in that court in civil proceedings.

1992, c. 27, s. 77; 1997, c. 12, s. 110.

Report on offences to be made by trustee

205. (1) Whenever an official receiver or trustee has grounds to believe that an offence under this Act or under any other statute, whether of Canada or a province, has been committed with respect to any bankrupt estate in connection with which he has been acting under this Act, or that for any special reason an investigation should be had in connection with that estate, it is the duty of the official receiver or trustee to report the matter to the court, including in the report a statement of all the facts or circumstances of the case within his knowledge, the names of the witnesses who should in his opinion be examined and a statement respecting the offence or offences believed to have been committed, and to forward a copy of the report forthwith to the Superintendent.

Report by inspectors and others

(2) The Superintendent or a creditor, inspector or other interested person who believes on reasonable grounds that a person is guilty of an offence under this Act or under any other statute, whether of Canada or a province, in connection with a bankrupt, his property or his transactions, may file a report with the court of the facts on which that belief is based, or he may make such further representations supplementary to the report of the official receiver or trustee as he may deem proper.

Court may authorize criminal proceedings

(3) Whenever the court is satisfied, on the representation of the Superintendent or any one on his behalf, of the official receiver or trustee or of any creditor, inspector or other interested person, that there is ground to believe that any person is guilty of an offence under this Act or under any other statute, whether of Canada or a province, in connection with the bankrupt, his property or transactions, the court may authorize the trustee to initiate proceedings for the prosecution of that person for that offence.

Initiation of criminal proceedings by the trustee

(4) Where a trustee is authorized or directed by the creditors, the inspectors or the court to initiate proceedings against any person believed to have committed an offence, the trustee shall institute the proceedings and shall send or cause to be sent a copy of the resolution or order, duly certified as a true copy thereof, together with a copy of all reports or statements of the facts on which the order or resolution was based, to the Crown Attorney or the agent of the Crown duly authorized to represent the Crown in the prosecution of criminal offences in the district where the alleged offence was committed.

R.S., c. B-3, s. 176.

Report of offence

206. (1) Where the official receiver or trustee believes on reasonable grounds that an offence under this Act or the *Criminal Code* relating to the property of the bankrupt was committed either before or after the date of the initial bankruptcy event by the bankrupt or any other person, the official receiver or trustee shall make a report thereon to the Deputy Attorney General or other appropriate legal officer of the province concerned or to such person as is duly designated by that legal officer for that purpose.

Copy to Superintendent

(2) A copy of a report made under subsection (1) shall be sent by the official receiver or trustee to the Superintendent.

R.S., 1985, c. B-3, s. 206; 1997, c. 12, s. 111; 2004, c. 25, s. 94(F).

Substance of offence charged in indictment

207. In an information, complaint or indictment for an offence under this Act, it is sufficient to set out the substance of the offence charged in the words of this Act, specifying the offence or as near thereto as circumstances admit, without alleging or setting out any debt, act of bankruptcy, trading, adjudication or any proceedings in, or order, warrant or document of, any court acting under this Act.

R.S., c. B-3, s. 178.

Time within which prosecutions to be commenced

208. A prosecution by indictment under this Act shall be commenced within five years from the time of the commission of the offence and, in the case of an offence punishable on summary conviction, the complaint shall be made or the information laid within three years from the time when the subject-matter of the complaint or information arose.

R.S., c. B-3, s. 179.

PART IX

MISCELLANEOUS PROVISIONS

General Rules

209. (1) The Governor in Council may make, alter or revoke, and may delegate to the judges of the courts exercising bankruptcy jurisdiction under this Act the power to make, alter or revoke the General Rules for carrying into effect the object of this Act.

Rules to be tabled

(2) All the General Rules, as from time to time made, shall be laid before Parliament within three weeks after being made or, if Parliament is not then sitting, within three weeks after the beginning of the next session of Parliament.

(3) [Repealed, 1997, c. 12, s. 112]

To be judicially noticed

(4) The General Rules have effect as if enacted by this Act and shall be judicially noticed.

R.S., 1985, c. B-3, s. 209; 1997, c. 12, s. 112.

210. and 211. [Repealed, 1992, c. 27, s. 78]

Rights of banks, etc.

212. Nothing in this Act, other than sections 69 to 69.4 and 81 and 81.1, 81.2 and Part XI, interferes with or restricts the rights and privileges conferred on banks, authorized foreign banks within the meaning of section 2 of the *Bank Act* and banking corporations by that Act.

R.S., 1985, c. B-3, s. 212; 1992, c. 27, s. 79; 1999, c. 28, s. 147.

Winding-up and Restructuring Act not to apply

213. If an application for a bankruptcy order or an assignment has been filed under this Act in respect of a corporation, the *Winding-up and Restructuring Act* does not extend or apply to that corporation, despite anything contained in that Act, and any proceedings that are instituted under the *Winding-up and Restructuring Act* in respect of that corporation before the application or assignment is filed under this Act shall abate subject to any disposition of the costs of those proceedings to be made in the bankruptcy proceedings that the justice of the case may require.

R.S., 1985, c. B-3, s. 213; 1996, c. 6, s. 167; 2004, c. 25, s. 95.

Fees to officers of the court

214. The fees payable to officers of the court including official receivers shall be established by the General Rules, whether generally or for a particular province, and where so mentioned in the General Rules, shall belong to the Crown in right of the province.

R.S., 1985, c. B-3, s. 214; 1992, c. 27, s. 80; 1997, c. 12, s. 113.

No action against Superintendent, etc., without leave of court

215. Except by leave of the court, no action lies against the Superintendent, an official receiver, an interim receiver or a trustee with respect to any report made under, or any action taken pursuant to, this Act.

R.S., 1985, c. B-3, s. 215; 1992, c. 27, s. 80.

Review by Parliament

216. (1) This Act shall, on the expiration of five years after the coming into force of this section, stand referred to such committee of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established to review the administration and operation of this Act.

Report

(2) The committee shall, within one year after beginning the review or within such further time as the Senate, the House of Commons or both Houses of Parliament, as the case may be, may authorize, submit a report on the review to that House or both Houses, including a statement of any changes to this Act that the committee would recommend.

R.S., 1985, c. B-3, s. 216; 1992, c. 27, s. 80; 1997, c. 12, s. 114.

PART X

ORDERLY PAYMENT OF DEBTS

Definitions

217. In this Part,

"clerk"

« *greffier* »

"clerk" means a clerk of the court;

"court"

« *tribunal* »

"court" means

(a) in the Provinces of Manitoba and Alberta, the Court of Queen's Bench, and

(b) in any other province, such court as is designated by the regulations for the purposes of this Part;

"debtor"

« *débiteur* »

"debtor" means an insolvent debtor, but does not include a corporation;

"registered creditor"

« *créancier inscrit* »

"registered creditor" means a creditor who is named in a consolidation order.

R.S., c. B-3, s. 188; 1978-79, c. 11, s. 10; 1984, c. 41, s. 2.

Application

218. (1) This Part applies only to the following classes of debts:

- (a) a judgment for the payment of money where the amount of the judgment does not exceed one thousand dollars;
- (b) a judgment for the payment of money where the amount of the judgment is in excess of one thousand dollars if the judgment creditor consents to come under this Part;
- (c) a claim or demand for or in respect of money, debt, account, covenant or otherwise, not in excess of one thousand dollars; and
- (d) a claim or demand for or in respect of money, debt, account, covenant or otherwise, in excess of one thousand dollars if the creditor having the claim or demand consents to come under this Part.

Exception

(2) Notwithstanding subsection (1), this Part does not apply to the following classes of debts:

- (a) a debt due, owing or payable
 - (i) to Her Majesty in right of Canada or a province,
 - (ii) to a municipality in Canada, or
 - (iii) to a school district in Canada;
- (b) a debt relating to the public revenue or one that may be levied and collected in the form of taxes;
- (c) a covenant in a mortgage or charge on land or in an agreement for sale of land; or
- (d) a debt incurred by a trader or merchant in the ordinary course of his business.

Idem

(3) Notwithstanding subsection (1), this Part does not apply to the following classes of debts, unless the creditor consents to come under this Part:

- (a) in the Province of Manitoba,
 - (i) a claim for wages that may be heard before, or a judgment therefor by, a magistrate under *The Wages Recovery Act*, or
 - (ii) a claim for a mechanic's lien or a judgment thereon under *The Mechanics' Liens Act*,
- (b) in the Province of Alberta,
 - (i) a claim for wages that may be heard before, or a judgment therefor by, a magistrate under *The Masters and Servants Act*,
 - (ii) a claim for a lien or a judgment thereon under *The Mechanics' Lien Act* or *The Mechanics Lien Act, 1960*, or
 - (iii) a claim for a lien under *The Garagemen's Lien Act*; or
- (c) in any other province, any debt of a class designated by the regulations to be a class of debts to which this Part does not apply.

R.S., c. B-3, s. 189.

Application for consolidation order

219. (1) A debtor who resides in a province in which this Part is in force may apply to the clerk of the court having jurisdiction where he resides for a consolidation order.

Affidavit to be filed

(2) On an application pursuant to subsection (1), the debtor shall file an affidavit setting out the following:

(a) the names and addresses of the debtor's creditors and the amount the debtor owes to each creditor and, if any of them is related to the debtor, the relationship;

(b) a statement of the property the debtor owns or in which the debtor has any interest and of the value thereof;

(c) the amount of the debtor's income from all sources, naming them, and, where the debtor is married and cohabiting with the spouse, or is in a common-law partnership, the amount of the income of the debtor's spouse or common-law partner, as the case may be, from all sources, naming them;

(d) the debtor's business or occupation and, where the debtor is married and cohabiting with the spouse, or is in a common-law partnership, the business or occupation of the debtor's spouse or common-law partner, as the case may be;

(d.1) the name and address of the debtor's employer and, where the debtor is married and cohabiting with the spouse, or is in a common-law partnership, the name and address of the employer of the debtor's spouse or common-law partner, as the case may be;

(e) the number of persons dependent on the debtor, the name and relationship of each and particulars of the extent to which each is so dependent;

(f) the amount payable for board and lodging or for rent or as payment on home property, as the case may be; and

(g) whether any of the debtor's creditors' claims are secured and, if so, the nature and particulars of the security held by each creditor.

R.S., 1985, c. B-3, s. 219; R.S., 1985, c. 31 (1st Supp.), s. 77; 2000, c. 12, s. 20.

Duties of clerk

220. (1) The clerk shall

(a) file the affidavit referred to in subsection 219(2), giving it a number, and enter the particulars it contains in a register;

(b) on reading the affidavit and hearing the debtor,

(i) settle the amounts to be paid by the debtor into court and the times of payment thereof until all of the claims entered in the register are paid in full, and

(ii) enter in the register particulars of the amounts and times of payment so settled or, where applicable, enter in the register a statement that the present circumstances of the debtor do not warrant the immediate settling of any of those amounts or times; and

(c) fix a date for hearing any objections by creditors.

Notice to be given

(2) The clerk shall give notice of an application for a consolidation order to each creditor named in the affidavit filed in connection with the application, setting out in the notice

(a) the particulars of all entries made in the register with respect to the application, and

(b) the date fixed for hearing objections by the creditors to the application or to any of the entries made in the

register in respect thereof,

and the notice shall contain a statement that the creditor will, prior to the date fixed for hearing objections, be notified of any objections filed with the clerk pursuant to section 221 in connection with the application.

Idem

(3) The notice referred to in subsection (2) shall be served in the prescribed manner and the clerk shall enter in the register the date the notice was sent.

Register

(4) The register referred to in this section shall be separate from all other books and records kept by the clerk and shall be available to the public for inspection, free of charge, during the hours when the office of the clerk is open to the public.

R.S., 1985, c. B-3, s. 220; 1992, c. 1, s. 20, c. 27, s. 81.

Objection by creditor

221. (1) A creditor may, within a period of thirty days after the date of the sending of the notice of an application for a consolidation order pursuant to section 220, file with the clerk an objection with respect to any of the following matters:

- (a) the amount entered in the register as the amount owing to him or to any other creditor;
- (b) the amounts settled by the clerk as the amounts to be paid by the debtor into court, or the fact that no such amounts have been settled; or
- (c) the times of payment of any such amounts, where applicable.

Idem

(2) The clerk shall enter in the register a memorandum of the date of receipt of any objection filed with him.

Notice of objection

(3) Where an objection has been filed by a creditor, the clerk shall forthwith, in the prescribed manner, give notice of the objection and of the time and place appointed for the hearing thereof to the debtor and to each creditor named in the affidavit filed in connection with the application specifying, where applicable, the creditor whose claim has been objected to under subsection (1).

R.S., 1985, c. B-3, s. 221; 1992, c. 1, ss. 17, 20, c. 27, s. 82.

Adding additional creditors

222. At the time appointed for the hearing of any objection in connection with a consolidation order, the clerk may add to the register the name of any creditor of the debtor of whom he has notice and who is not disclosed in the affidavit of the debtor.

R.S., c. B-3, s. 193.

Hearing of objections

223. (1) The clerk shall, at the time appointed for the hearing thereof, consider any objection in connection with a consolidation order that has been filed with him in accordance with this Part, and

- (a) if the objection is to the claim of a creditor and the parties are brought to agreement or if the creditor's claim is a judgment of a court and the only objection is to the amount paid thereon, he may dispose of the objection in a summary manner and determine the amount owing to the creditor;
- (b) if the objection is to the proposed terms or method of payment of the claims by the debtor or that terms of payment are not but should be fixed, he may dispose of the objection in a summary manner and determine,

as the circumstances require, the terms and method of payment of the claims, or that no terms be presently fixed; and

(c) in any case he may on notice of motion refer any objection to be disposed of by the court or as the court otherwise directs.

Issue of order

(2) After the conclusion of the hearing referred to in subsection (1), the clerk shall enter in the register his decision or the decision of the court, as the case may be, and issue a consolidation order.

R.S., c. B-3, s. 194.

Issue of consolidation order

224. Where no objection has been received within thirty days after the date of the sending of the notice of an application for a consolidation order pursuant to section 220, the clerk shall

(a) make an entry in the register to that effect; and

(b) issue the consolidation order.

R.S., 1985, c. B-3, s. 224; 1992, c. 1, s. 18, c. 27, s. 83.

Contents of consolidation order

225. (1) A consolidation order shall state the following:

(a) the name of and the amount owing to each creditor named in the register; and

(b) the amounts to be paid into court by the debtor and the times of payment thereof or, where applicable, that the present circumstances of the debtor do not warrant the immediate settling of any such amounts or times.

Effect of order

(2) A consolidation order

(a) is a judgment of the court in favour of each creditor named in the register for the amount stated therein to be owing to that creditor;

(b) is an order of the court for the payment by the debtor of the amounts stated therein and at the stated times; and

(c) bears interest at the rate which by law applies to a judgment debt arising from a judgment of the court that granted the order or at such other rate as may be prescribed by regulation.

R.S., 1985, c. B-3, s. 225; 1992, c. 27, s. 84.

Consolidation order not to be issued

226. (1) A consolidation order that does not provide for the payment in full of all the debts to which it refers within a period of three years shall not be issued unless

(a) all registered creditors consent thereto in writing; or

(b) the order is approved by the court.

Deemed consent

(1.1) Where a registered creditor does not give any response to a request for consent under paragraph (1) (a) within thirty days after receiving such a request, the creditor shall be deemed to have consented to the order.

Referral to court

(2) Any consolidation order referred to in subsection (1) shall be referred to the court for approval or otherwise by the clerk on notice of motion to any registered creditor who has not consented thereto in writing.

R.S., 1985, c. B-3, s. 226; 1992, c. 27, s. 85.

Review of consolidation order

227. (1) The court may, on application to review a consolidation order of the clerk made by notice of motion within fifteen days after the making of the order by any of the parties affected thereby, review the consolidation order and confirm or vary it or set it aside and make such disposition of the matter as the court sees fit.

Decision to be entered

(2) The clerk shall enter any decision made by the court under subsection (1) in the register and the decision takes effect in place of the order of the clerk.

R.S., 1985, c. B-3, s. 227; 1997, c. 12, s. 115.

Terms may be imposed on debtor

228. The court may, in deciding any matter brought before it, impose such terms on a debtor with respect to the custody of his property or any disposition thereof or of the proceeds thereof as it deems proper to protect the registered creditors and may give such directions for that purpose as the circumstances require.

R.S., c. B-3, s. 199.

Process stayed by consolidation order

229. On the making of a consolidation order, no process shall be issued out of any court in the province in which the debtor resides against the debtor at the instance of a creditor in respect of any debt to which this Part applies, except as permitted by this Part.

R.S., c. B-3, s. 200.

Assignments of debtor's property to clerk

230. (1) The clerk may, at any time after the making of a consolidation order, require of and take from the debtor an assignment to himself as clerk of the court of any moneys due, owing or payable or to become due, owing or payable to the debtor, or earned or to be earned by the debtor.

Notification

(2) Unless otherwise agreed on, the clerk shall forthwith notify the person owing or about to owe the moneys of the assignment referred to in subsection (1) and all moneys collected thereon shall be applied to the credit of the claims against the debtor under the consolidation order.

Writ of execution

(3) The clerk may issue a writ of execution or certificate of judgment in respect of a consolidation order and cause it to be filed in any place where the writ or certificate may bind or be a charge on land or chattels.

R.S., c. B-3, s. 201.

Adding creditors after order

231. (1) Where, at any time before the payment in full of the claims against a debtor under a consolidation order, the clerk is notified of a claim to which this Part applies that is not entered in the order, he shall, subject to subsection (2) and on notice to the debtor and creditor and to each registered creditor,

(a) settle the amount owing to the creditor;

(b) where he deems it necessary to do so, vary the amounts to be paid by the debtor into court and the times of payment thereof in order to provide for the new claim; and

(c) enter the matters referred to in paragraphs (a) and (b) in the register.

Court to decide

(2) Where the debtor or any registered creditor disputes the claim of a creditor described in subsection (1), the clerk shall on notice of motion refer the matter to the court and the decision of the court shall be entered in the register.

Notice

(3) The clerk shall make such amendments to the consolidation order as may be necessary to give effect to any entries in the register made pursuant to this section, and shall give notice thereof to the registered creditors.

Creditor to share

(4) On the entry of a claim in the register pursuant to this section, the creditor shall share with the other creditors in any further distribution of moneys paid into court by or on behalf of the debtor.

R.S., c. B-3, s. 202.

Secured claims

232. (1) A registered creditor holding security for a claim may, at any time, elect to rely on his security notwithstanding that the claim is included in a consolidation order.

Proceeds in excess

(2) Where the proceeds from the disposal of the security referred to in subsection (1) are in excess of the registered creditor's claim, the excess shall be paid into court and applied in payment of other judgments against the debtor.

Exemption

(3) Subsection (2) does not apply where the security is in the form of chattels exempt from seizure under any law in force in the province in which the consolidation order was issued.

Reduced claim

(4) Where the proceeds from the disposal of the security referred to in subsection (1) are less than the registered creditor's claim, the creditor remains entitled to the balance of his claim.

Exception

(5) Subsection (4) does not apply in a case where, under the law in force in the province in which the consolidation order was issued, a creditor

(a) who enforces his security by repossession or repossession and sale, or

(b) who seizes and sells the security under an execution issued pursuant to a judgment obtained against the debtor in respect of the claim so secured,

is limited in his recovery of the claim to the security so repossessed or the proceeds of the sale thereof.

R.S., c. B-3, s. 203.

Enforcement of order in default of debtor

233. (1) A registered creditor may apply by notice of motion to the court where

- (a) a debtor defaults in complying with any order or direction of the court;
- (b) any other proceeding for the recovery of money is brought against the debtor;
- (c) the debtor has, after the consolidation order was made, incurred further debts totalling in excess of five hundred dollars;
- (d) a judgment is recovered against the debtor larger in amount than a judgment to which this Part applies without the judgment creditor's consent, and the judgment creditor refuses to permit his name to be added to the register; or
- (e) the debtor has property or funds that should be made available for the satisfaction of the consolidation order.

Ex parte application

- (2) A registered creditor may apply *ex parte* to the court where a debtor
 - (a) is about to abscond or has absconded from the province in which the consolidation order was issued leaving personal property liable to seizure under execution; or
 - (b) with intent to defraud his creditors has attempted or is attempting to remove from the province in which the consolidation order was issued personal property liable to seizure under execution.

Proceedings authorized

- (3) On the application referred to in subsection (1) or (2), the court may
 - (a) authorize the registered creditor making the application to take on behalf of all the registered creditors such proceedings to enforce the consolidation order as the court deems advisable; or
 - (b) where it deems it advisable and on notice to all parties, make an order permitting all the registered creditors to proceed each independently of the others for the enforcement of their claims under the consolidation order.

Moneys applied to judgment

(4) All moneys recovered as a result of proceedings taken pursuant to paragraph (3)(a) after payment of costs incurred thereby shall be paid into the court and shall be applied to the credit of the judgments against the debtor appearing in the register.

Proceedings where continuing default

(5) Where a debtor defaults in making any payment into court required to be made under a consolidation order and the default continues for a period of three months, all the registered creditors are entitled to proceed forthwith, each independently of the others and without reference to the court, for the enforcement of their claims under the consolidation order, unless the court otherwise directs on being satisfied, on application by the debtor, that the circumstances giving rise to the default and to its continuation were beyond the control of the debtor.

Debtor not entitled to relief

(6) Where any order has been made under paragraph (3)(b) or any proceedings have been commenced under subsection (5), the debtor under the consolidation order is not, without the leave of the court, entitled to any further relief under this Part during the currency of any claim against him entered in the register.

R.S., 1985, c. B-3, s. 233; 1997, c. 12, s. 116.

Re-examination of debtor

234. (1) A debtor or any registered creditor may at any time apply *ex parte* to the clerk for a further examination and hearing of the debtor in respect of his financial circumstances.

Idem

(2) The further hearing referred to in subsection (1) may only be held

(a) with the leave of the clerk; or

(b) in the event of the refusal of the clerk, with leave of the court.

Notice of hearing

(3) The clerk shall give all parties to the consolidation order at least thirty days notice of the time appointed for the hearing referred to in subsection (1).

Clerk may vary order, etc.

(4) Where after considering the evidence presented at the further hearing referred to in subsection (1) the clerk is of the opinion that

(a) the terms of payment set out in the consolidation order, or

(b) the decision that the circumstances of the debtor do not warrant the immediate settling of any amounts or times of payment thereof,

should be changed because of a change in the circumstances of the debtor, he may

(c) vary the order with respect to the amounts to be paid by the debtor into court or the times of payment thereof, or

(d) on notice of motion refer the matter to the court for settlement.

Application of section 227

(5) Section 227 applies, with such modifications as the circumstances require, to a decision of the clerk under subsection (4).

R.S., 1985, c. B-3, s. 234; 1992, c. 1, s. 19.

Disposition of moneys paid into court

235. (1) Subject to subsection (3), the clerk shall distribute the moneys paid into court on account of the debts of a debtor at least once every three months.

Idem

(2) The clerk shall distribute the money paid under subsection (1) rateably, or as nearly so as is practicable, among the registered creditors.

Payments less than five dollars

(3) Except in the case of a final payment under a consolidation order, the clerk is not required to make a payment to any creditor if the amount thereof is less than five dollars.

R.S., c. B-3, s. 206.

Oaths

236. (1) The clerk may for the purposes of this Part examine any person under oath and may administer oaths.

Record

(2) The clerk shall make a written record in summary form of all evidence given at a hearing.

R.S., c. B-3, s. 207.

If assignment or bankruptcy order made

237. (1) If a debtor in respect of whom a consolidation order has been issued under this Part makes an assignment under section 49, or if a bankruptcy order is made against the debtor under section 43, or if a proposal by the debtor is approved by the court having jurisdiction in bankruptcy under sections 59 to 61, any moneys that have been paid into court as required by the consolidation order and that have not yet been distributed to the registered creditors shall, immediately after the making of the assignment or bankruptcy order or the approval of the proposal, be distributed among those creditors by the clerk in the proportions to which they are entitled under the consolidation order.

Proceedings may be taken under other Parts

(2) The fact that proceedings have been taken under this Part does not prevent the taking of proceedings by or against the debtor under the provisions of any other Part of this Act.

Idem

(3) None of the provisions of Parts I to IX of this Act applies to proceedings under this Part.

R.S., 1985, c. B-3, s. 237; 2004, c. 25, s. 96.

Appeal

238. A decision or order of the court under this Part is subject to appeal in the same manner as if it were a judgment of the court in a civil action.

R.S., c. B-3, s. 209.

Clerk to report

239. (1) On the issue of any consolidation order, the clerk shall forward a copy thereof to the Superintendent.

Idem

(2) The clerk shall give to the Superintendent all reports that the Superintendent may require for the administration of this Part.

R.S., 1985, c. B-3, s. 239; 1992, c. 27, s. 86.

No dismissal, etc., of employees

239.1 No employer shall dismiss, suspend, lay off or otherwise discipline a debtor by reason only that the debtor has applied for a consolidation order under this Part.

1992, c. 27, s. 87.

No discontinuance of public utilities

239.2 (1) No public utility shall discontinue service to a debtor by reason only that the debtor

(a) is insolvent;

(b) has applied for a consolidation order under this Part; or

(c) has not paid for service rendered before the consolidation order was applied for.

Cash payments

(2) Nothing in subsection (1) shall be construed as requiring further supply of service for other than payment

in cash.

1992, c. 27, s. 87.

Regulations

240. The Governor in Council may make regulations

- (a) prescribing the forms to be used under this Part;
- (b) respecting costs, fees and levies to be paid under this Part;
- (c) designating the "court" for the purpose of this Part in any province except Manitoba and Alberta;
- (d) adapting this Part to the court organization or other circumstances of a particular province;
- (e) varying, in respect of any province, the classes of debts and amounts thereof to which this Part applies;
- (f) changing or prescribing, in respect of any province, the classes of debts to which this Part does not apply;
- (f.1) respecting the transfer of proceedings to a province other than the province in which a consolidation order was originally issued; and
- (g) generally, for carrying into effect the purposes and provisions of this Part.

R.S., 1985, c. B-3, s. 240; 1992, c. 27, s. 88.

Audit of proceedings

241. The accounts of every clerk that relate to proceedings under this Part are subject to audit in the same manner as if the accounts were the accounts of a provincial officer.

R.S., c. B-3, s. 212.

Coming into force

242. This Part shall come into force in the Province of Ontario, Quebec, New Brunswick or Newfoundland or in Yukon only on the issue, at the request of the lieutenant governor in council of that Province or the Commissioner of Yukon, of a proclamation by the Governor in Council declaring it to be in force in that Province or territory.

R.S., 1985, c. B-3, s. 242; 2002, c. 7, s. 85.

PART XI

SECURED CREDITORS AND RECEIVERS

Definition of "court" in certain places

243. (1) In paragraphs (2)(b) and 250(2)(a) and (b), "court" means

- (a) any court other than a court as defined in section 2; and
- (b) a court as defined in section 2 when not exercising jurisdiction in bankruptcy.

Definition of "receiver"

(2) Subject to subsection (3), in this Part, "receiver" means a person who has been appointed to take, or has taken, possession or control, pursuant to

(a) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or

(b) an order of a court made under any law that provides for or authorizes the appointment of a receiver or receiver-manager,

of all or substantially all of

(c) the inventory,

(d) the accounts receivable, or

(e) the other property

of an insolvent person or a bankrupt that was acquired for, or is used in relation to, a business carried on by the insolvent person or bankrupt.

Idem

(3) For the purposes of subsection 248(2), the definition "receiver" in subsection (2) shall be read without reference to paragraph (b) thereof.

1992, c. 27, s. 89.

Advance notice

244. (1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

1992, c. 27, s. 89; 1994, c. 26, s. 9(E).

Receiver to give notice

245. (1) A receiver shall, as soon as possible and not later than ten days after becoming a receiver, by appointment or otherwise, in respect of property of an insolvent person or a bankrupt, send a notice of that fact, in the prescribed form and manner, to the Superintendent, accompanied by the prescribed fee, and

(a) in the case of a bankrupt, to the trustee; or

(b) in the case of an insolvent person, to the insolvent person and to all creditors of the insolvent person that the receiver, after making reasonable efforts, has ascertained.

Idem

(2) A receiver in respect of property of an insolvent person shall forthwith send notice of his becoming a receiver to any creditor whose name and address he ascertains after sending the notice referred to in subsection (1).

Names and addresses of creditors

(3) An insolvent person shall, forthwith after being notified that there is a receiver in respect of any of his property, provide the receiver with the names and addresses of all creditors.

1992, c. 27, s. 89.

Receiver's statement

246. (1) A receiver shall, forthwith after taking possession or control, whichever occurs first, of property of an insolvent person or a bankrupt, prepare a statement containing the prescribed information relating to the receivership, and shall forthwith provide a copy thereof to the Superintendent and

(a) to the insolvent person or the trustee (in the case of a bankrupt); and

(b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

Receiver's interim reports

(2) A receiver shall, in accordance with the General Rules, prepare further interim reports relating to the receivership, and shall provide copies thereof to the Superintendent and

(a) to the insolvent person or the trustee (in the case of a bankrupt); and

(b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

Receiver's final report and statement of accounts

(3) A receiver shall, forthwith after completion of duties as receiver, prepare a final report and a statement of accounts, in the prescribed form and containing the prescribed information relating to the receivership, and shall forthwith provide a copy thereof to the Superintendent and

(a) to the insolvent person or the trustee (in the case of a bankrupt); and

(b) to any creditor of the insolvent person or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

1992, c. 27, s. 89.

Good faith, etc.

247. A receiver shall

(a) act honestly and in good faith; and

(b) deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner.

1992, c. 27, s. 89.

Powers of court

248. (1) Where the court, on the application of the Superintendent, the insolvent person, the trustee (in the case of a bankrupt), a receiver or a creditor, is satisfied that the secured creditor, the receiver or the insolvent person is failing or has failed to carry out any duty imposed by sections 244 to 247, the court may make an order, on such terms as it considers proper,

(a) directing the secured creditor, receiver or insolvent person, as the case may be, to carry out that duty, or

(b) restraining the secured creditor or receiver, as the case may be, from realizing or otherwise dealing with the property of the insolvent person or bankrupt until that duty has been carried out,

or both.

Idem

(2) On the application of the Superintendent, the insolvent person, the trustee (in the case of a bankrupt) or a creditor, made within six months after the statement of accounts was provided to the Superintendent pursuant to subsection 246(3), the court may order the receiver to submit the statement of accounts to the court for review, and the court may adjust, in such manner and to such extent as it considers proper, the fees and charges of the receiver as set out in the statement of accounts.

1992, c. 27, s. 89.

Receiver may apply to court for directions

249. A receiver may apply to the court for directions in relation to any provision of this Part, and the court shall give, in writing, such directions, if any, as it considers proper in the circumstances.

1992, c. 27, s. 89.

Right to apply to court

250. (1) An application may be made under section 248 or 249 notwithstanding any order of a court as defined in subsection 243(1).

Where inconsistency

(2) Where there is any inconsistency between an order made under section 248, or a direction given under section 249, and

(a) the security agreement or court order under which the receiver acts or was appointed, or

(b) any other order of the court that appointed the receiver,

the order made under section 248 or the direction given under section 249, as the case may be, prevails to the extent of the inconsistency.

1992, c. 27, s. 89.

Protection of receivers

251. No action lies against a receiver for loss or damage arising from the sending or providing by the receiver of a notice pursuant to section 245 or a statement or report pursuant to section 246, if done in good faith in compliance or intended compliance with those sections.

1992, c. 27, s. 89; 1997, c. 12, s. 117(F).

Defence available

252. In any proceeding where it is alleged that a secured creditor or a receiver contravened or failed to comply with any provision of this Part, it is a defence if the secured creditor or the receiver, as the case may be, shows that, at the time of the alleged contravention or failure to comply, he had reasonable grounds to believe that the debtor was not insolvent.

1992, c. 27, s. 89.

PART XII SECURITIES FIRM BANKRUPTCIES

INTERPRETATION

Definitions

253. In this Part,

"customer"

« *client* »

"customer" includes

(a) a person with or for whom a securities firm deals as principal, or agent or mandatary, and who has a claim against the securities firm in respect of a security received, acquired or held by the securities firm in the ordinary course of business as a securities firm from or for a securities account of that person

- (i) for safekeeping or deposit or in segregation,
- (ii) with a view to sale,
- (iii) to cover a completed sale,
- (iv) pursuant to a purchase,
- (v) to secure performance of an obligation of that person, or
- (vi) for the purpose of effecting a transfer,

(b) a person who has a claim against the securities firm arising out of a sale or wrongful conversion by the securities firm of a security referred to in paragraph (a), and

(c) a person who has cash or other assets held in a securities account with the securities firm,

but does not include a person who has a claim against the securities firm for cash or securities that, by agreement or operation of law, is part of the capital of the securities firm or a claim that is subordinated to claims of creditors of the securities firm;

"customer compensation body"

« *organisme d'indemnisation des clients* »

"customer compensation body" means a prescribed body and includes, unless it is prescribed to be excluded from this definition, the Canadian Investor Protection Fund;

"customer name securities"

« *valeur mobilière immatriculée* »

"customer name securities" means securities that on the date of bankruptcy of a securities firm are held by or on behalf of the securities firm for the account of a customer and are registered in the name of the customer or are in the process of being so registered, but does not include securities registered in the name of the customer that, by endorsement or otherwise, are in negotiable form;

"deferred customer"
«*client responsable*»

"deferred customer" means a customer whose misconduct caused or materially contributed to the insolvency of a securities firm;

"eligible financial contract"
«*contrat financier admissible*»

"eligible financial contract" has the meaning assigned by subsection 65.1(8);

"net equity"
«*capitaux nets*»

"net equity" means, with respect to the securities account or accounts of a customer, maintained in one capacity, the net dollar value of the account or accounts, equal to the amount that would be owed by a securities firm to the customer as a result of the liquidation by sale or purchase at the close of business of the securities firm on the date of bankruptcy of the securities firm, of all security positions of the customer in each securities account, other than customer name securities reclaimed by the customer, including any amount in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, less any indebtedness of the customer to the securities firm on the date of bankruptcy including any amount owing in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, plus any payment of indebtedness made with the consent of the trustee after the date of bankruptcy;

"open contractual commitment"
«*contrat en cours*»

"open contractual commitment" means an enforceable contract of a securities firm to purchase or sell a security that was not completed by payment and delivery on the date of bankruptcy;

"securities firm"
«*courtier en valeurs mobilières*»

"securities firm" means a person who carries on the business of buying and selling securities from, to or for a customer, whether or not as a member of an exchange, as principal, or agent or mandatary, and includes any person required to be registered to enter into securities transactions with the public, but does not include a corporate entity that is not a corporation within the meaning of section 2;

"security"
«*valeur mobilière*» ou
«*titre*»

"security" means any document, instrument or written or electronic record that is commonly known as a security, and includes, without limiting the generality of the foregoing,

(a) a document, instrument or written or electronic record evidencing a share, participation right or other right or interest in property or in an enterprise, including an equity share or stock, or a mutual fund share or unit,

(b) a document, instrument or written or electronic record evidencing indebtedness, including a note, bond, debenture, mortgage, hypothec, certificate of deposit, commercial paper or mortgage-backed instrument,

(c) a document, instrument or written or electronic record evidencing a right or interest in respect of an option, warrant or subscription, or under a commodity future, financial future, or exchange or other forward contract, or other derivative instrument, including an eligible financial contract, and

(d) such other document, instrument or written or electronic record as is prescribed.

1997, c. 12, s. 118; 2004, c. 25, s. 97(E).

GENERAL

Application of other provisions

254. (1) All of the provisions of this Act apply, with such modifications as the circumstances require, in

respect of claims by customers for securities and customer name securities as if customers were creditors in respect of such claims.

Application of transaction provisions

(2) Sections 91 to 101 apply, with such modifications as the circumstances require, in respect of transactions of a customer with or through a securities firm relating to securities.

Non-application

(3) This Part does not apply to proceedings under Part III.

Termination, set-off or compensation

(4) Nothing in this Part affects the rights of a party to a contract, including an eligible financial contract within the meaning of subsection 65.1(8), with respect to termination, or set-off or compensation.

Secured creditors

(5) The operation of this Part is subject to the rights of secured creditors.

1997, c. 12, s. 118; 2004, c. 25, s. 98(E).

Conflicts

255. All the provisions of this Act, in so far as they are applicable, apply in respect of bankruptcies under this Part, but if a conflict arises between the application of the provisions of this Part and the other provisions of this Act, the provisions of this Part prevail.

1997, c. 12, s. 118.

Applications re securities firm

256. (1) In addition to any creditor who may file an application in accordance with sections 43 to 45, an application for a bankruptcy order against a securities firm may be filed by

(a) a securities commission established under an enactment of a province, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the application and while the securities firm was licensed or registered by the securities commission to carry on business in Canada, and

(ii) in the case in which the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the application is filed;

(b) a securities exchange recognized by a provincial securities commission, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the application and while the securities firm was a member of the securities exchange, and

(ii) in the case in which the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the application is filed;

(c) a customer compensation body, if

(i) the securities firm has committed an act of bankruptcy referred to in section 42 or subsection (2) of this section within the six months before the filing of the application and while the securities firm had customers whose securities accounts were protected, in whole or in part, by the customer compensation body, and

(ii) in the case in which the act of bankruptcy was that referred to in subsection (2), the suspension referred to in that subsection is in effect when the application is filed; and

(d) a person who, in respect of property of a securities firm, is a receiver, receiver-manager, liquidator or other person with similar functions appointed under a federal or provincial enactment relating to securities that provides for the appointment of that other person, if the securities firm has committed an act of

bankruptcy referred to in section 42 within the six months before the filing of the application.

Interpretation

(2) For the purposes of paragraphs (1)(a) to (c),

(a) the suspension by a securities commission referred to in paragraph (1)(a) of a securities firm's registration to trade in securities, or

(b) the suspension by a securities exchange referred to in paragraph (1)(b) of a securities firm's membership in that exchange

constitutes an act of bankruptcy if the suspension is due to the failure of the firm to meet capital adequacy requirements.

Service on securities commission

(3) If

(a) a securities exchange files an application under paragraph (1)(b), or

(b) a customer compensation body files an application under paragraph (1)(c),

a copy of the application must be served on the securities commission, if any, having jurisdiction in the locality of the securities firm where the application was filed, before

(c) any prescribed interval preceding the hearing of the application, or

(d) any shorter interval that may be fixed by the court and that precedes the hearing of the application.

1997, c. 12, s. 118; 2004, c. 25, s. 99.

Statement of customer account

257. The trustee of the estate of a securities firm shall send to customers a statement of customer accounts with the firm together with the notice under subsection 102(1).

1997, c. 12, s. 118.

Deferred customers

258. (1) Where the trustee is of the opinion that a customer should be treated as a deferred customer, the trustee shall apply to the court for a ruling on the matter and shall send the customer a copy of the application, together with a statement of the reasons why the customer should be so treated, and the court may, on such notice as it considers appropriate, make such order as it considers appropriate in the circumstances.

Application by customer compensation body

(2) Where securities accounts of customers are protected by a customer compensation body, the customer compensation body may apply to the court for a ruling as to whether a customer should be treated as a deferred customer and, in the case of such an application,

(a) the customer compensation body shall send the customer a copy of the application together with a statement setting out the reasons why the customer should be so treated; and

(b) the court may, on such notice as it considers appropriate, make such order as it considers appropriate in the circumstances.

1997, c. 12, s. 118.

Trustee powers

259. The trustee may, in respect of a bankruptcy under this Part, without the permission of inspectors until inspectors are appointed and thereafter with the permission of inspectors,

- (a) exercise a power of attorney in respect of and transfer any security vested in the trustee;
- (b) sell securities, other than customer name securities;
- (c) purchase securities;
- (d) discharge any security on securities vested in the trustee;
- (e) complete open contractual commitments;
- (f) maintain customers' securities accounts and meet margin calls;
- (g) distribute cash and securities to customers;
- (h) transfer securities accounts to another securities firm, to the extent practicable, comply with customer requests regarding the disposal of open contractual commitments and the transfer of open contractual commitments to another securities firm, and enter into agreements to indemnify the other securities firm against shortages of cash or securities in transferred accounts;
- (i) liquidate any securities account without notice; and
- (j) sell, without tender, assets of the securities firm essential to the carrying on of its business.

1997, c. 12, s. 118; 2004, c. 25, s. 100.

Determination of customer name securities

260. The trustee shall

- (a) determine which of the securities in customers' securities accounts are to be dealt with as customer name securities and those that are not to be dealt with as such; and
- (b) advise customers with securities determined to be customer name securities of the determination as soon as possible thereafter.

1997, c. 12, s. 118.

DISTRIBUTION OF ESTATE

Vesting of securities, etc., in trustee

261. (1) Where a securities firm becomes bankrupt, securities owned by the securities firm and securities and cash held by or for the account of the securities firm or a customer, other than customer name securities, vest in the trustee.

Establishment of a customer pool fund and a general fund

(2) Where a securities firm becomes bankrupt and property vests in a trustee under subsection (1) or under other provisions of this Act, the trustee shall establish

- (a) a fund, in this Part called the "customer pool fund", including therein
 - (i) securities, including those obtained after the date of the bankruptcy, but excluding customer name securities and excluding eligible financial contracts to which the firm is a party, that are held by or for the account of the firm

(A) for a securities account of a customer,

(B) for an account of a person who has entered into an eligible financial contract with the firm and has deposited the securities with the firm to assure the performance of the person's obligations under the contract, or

(C) for the firm's own account,

(ii) cash, including cash obtained after the date of the bankruptcy, and including

(A) dividends, interest and other income in respect of securities referred to in subparagraph (i),

(B) proceeds of disposal of securities referred to in subparagraph (i), and

(C) proceeds of policies of insurance covering claims of customers to securities referred to in subparagraph (i),

that is held by or for the account of the firm

(D) for a securities account of a customer,

(E) for an account of a person who has entered into an eligible financial contract with the firm and has deposited the cash with the firm to assure the performance of the person's obligations under the contract, or

(F) for the firm's own securities account, and

(iii) any investments of the securities firm in its subsidiaries that are not referred to in subparagraph (i) or (ii); and

(b) a fund, in this Part called the "general fund", including therein all of the remaining vested property.

1997, c. 12, s. 118; 2004, c. 25, s. 101(F).

Allocation and distribution of cash and securities in customer pool fund

262. (1) Cash and securities in the customer pool fund shall be allocated in the following priority:

(a) for costs of administration referred to in paragraph 136(1)(b), to the extent that sufficient funds are not available in the general fund to pay such costs;

(b) to customers, other than deferred customers, in proportion to their net equity; and

(c) to the general fund.

Where property deposited with securities firm under an EFC

(1.1) Where

(a) a person has, under the terms of an eligible financial contract with the securities firm, deposited property with the firm to assure the performance of the person's obligations under the contract, and

(b) that property is included in the customer pool fund pursuant to paragraph 261(2)(a),

that person shall share in the distribution of the customer pool fund as if the person were a customer of the firm with a claim for net equity equal to the net value of the property deposited that would have been returnable to the person after deducting any amount owing by the person under the contract.

Distribution

(2) To the extent that securities of a particular type are available in the customer pool fund, the trustee shall distribute them to customers with claims to such securities, in proportion to their claims to such securities, up to the appropriate portion of their net equity.

Compensation in kind

(2.1) Subject to subsection (2), the trustee may satisfy all or part of a customer's claim to securities of a particular type by delivering to the customer securities of that type to which the customer was entitled at the date of bankruptcy. For greater certainty, the trustee may, for that purpose, exercise the trustee's power to purchase securities in accordance with section 259.

Allocation of property in the general fund

(3) Property in the general fund shall be allocated in the following priority:

(a) to preferred creditors in the order set out in subsection 136(1);

(b) rateably

(i) to customers, other than deferred customers, having claims for net equity remaining after distribution of property from the customer pool fund and property provided by a customer compensation body, where applicable, in proportion to claims for net equity remaining,

(ii) where applicable, to a customer compensation body to the extent that it paid or compensated customers in respect of their net equity, and

(iii) to creditors in proportion to the values of their claims;

(c) rateably to creditors referred to in section 137; and

(d) to deferred customers, in proportion to their claims for net equity.

1997, c. 12, s. 118.

Delivery of customer name securities

263. (1) Where a customer is not indebted to a securities firm, the trustee shall deliver to the customer the customer name securities that belong to the customer.

Where customer indebted to securities firm

(2) Where a customer to whom customer name securities belong and who is indebted to the securities firm on account of customer name securities not fully paid for, or on another account, discharges their indebtedness in full, the trustee shall deliver to that customer the customer name securities that belong to the customer.

Where customer indebted to securities firm

(3) Where a customer to whom customer name securities belong and who is indebted to the securities firm on account of customer name securities not fully paid for, or on another account, does not discharge their indebtedness in full, the trustee may, on notice to the customer, sell sufficient customer name securities to discharge the indebtedness, which securities are thereupon free of any lien, right, title or interest of the customer. Where the trustee so discharges the customer's indebtedness, the trustee shall deliver any remaining customer name securities to the customer.

1997, c. 12, s. 118.

Trustee to consult customer compensation body

264. Where the accounts of customers of a securities firm are protected, in whole or in part, by a customer compensation body, the trustee shall consult the customer compensation body on the administration of the bankruptcy, and the customer compensation body may designate an inspector to act on its behalf.

1997, c. 12, s. 118.

Late claims

265. A customer may prove a claim after the distribution of cash and securities in the customer pool fund and is entitled to receive cash and securities in the hands of the trustee at the time the claim is proven up to the appropriate portion of the customer's net equity before further distribution is made to other customers, but no such claim shall affect the previous distribution of the customer pool fund or the general fund.

1997, c. 12, s. 118.

ACCOUNTING OF TRUSTEE

Statement of trustee required

266. In addition to any other statement or report required to be prepared under this Act, a trustee shall prepare

(a) a statement indicating

- (i) the distribution of property in the customer pool fund among customers who have proved their claims, and
- (ii) the disposal of customer name securities; or

(b) such other report relating to that distribution or disposal as the court may direct.

1997, c. 12, s. 118.

PART XIII

INTERNATIONAL INSOLVENCIES

INTERPRETATION

Definitions

267. In this Part,

"debtor"
«*débiteur*»

"debtor" means an insolvent person who has property in Canada, a bankrupt who has property in Canada or a person who has the status of a bankrupt under foreign law in a foreign proceeding and has property in Canada;

"foreign proceeding"
«*procédures intentées à l'étranger*»

"foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor, under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally;

"foreign representative"
«*représentant étranger*»

"foreign representative" means a person, other than a debtor, holding office under the law of a jurisdiction outside Canada who, irrespective of the person's designation, is assigned, under the laws of the jurisdiction outside Canada, functions in connection with a foreign proceeding that are similar to those performed by a trustee, liquidator, administrator or receiver appointed by the court.

1997, c. 12, s. 118.

GENERAL

Presumption of insolvency

268. (1) For the purposes of this Part, where a bankruptcy, insolvency or reorganization or like order has been made in respect of a debtor in a foreign proceeding, a certified or exemplified copy of the order is, in the absence of evidence to the contrary, proof that the debtor is insolvent and proof of the appointment of the foreign representative made by the order.

Limitation on trustee's authority

(2) If a foreign proceeding has been commenced and a bankruptcy order or assignment is made under this Act in respect of a debtor, the court may, on application and on any terms that it considers appropriate, limit the property to which the authority of the trustee extends to the property of the debtor situated in Canada and to any property of the debtor outside Canada that the court considers can be effectively administered by the trustee.

Powers of court

(3) The court may, in respect of a debtor, make such orders and grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a co-ordination of proceedings under this Act with any foreign proceeding.

Terms and conditions of orders

(4) An order of the court under this Part may be made on such terms and conditions as the court considers appropriate in the circumstances.

Court not prevented from applying certain rules

(5) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying such legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives as are not inconsistent with the provisions of this Act.

Court not compelled to give effect to certain orders

(6) Nothing in this Part requires the court to make any order that is not in compliance with the laws of Canada or to enforce any order made by a foreign court.

1997, c. 12, s. 118; 2004, c. 25, s. 102.

Foreign stays

269. A stay of proceedings that operates against creditors of a debtor in a foreign proceeding does not apply in respect of creditors who reside or carry on business in Canada with respect to property in Canada unless the stay of proceedings is the result of proceedings taken in Canada.

1997, c. 12, s. 118.

Commencement or continuation of proceedings

270. A foreign representative may commence and continue proceedings pursuant to sections 43 and 46 to 47.2 and subsections 50(1) and 50.4(1) in respect of a debtor as if the foreign representative were a creditor, trustee, liquidator or receiver of property of the debtor, or the debtor, as the case may be.

1997, c. 12, s. 118.

Court may seek assistance from foreign tribunal

271. (1) The court may seek the aid and assistance of a court, tribunal or other authority in a foreign proceeding by order or written request or otherwise as the court considers appropriate.

Applications for stays

(2) On application by a foreign representative in respect of a foreign proceeding commenced for the purpose of effecting a composition, an extension of time or a scheme of arrangement in respect of a debtor or in respect of the bankruptcy of a debtor, the court may grant a stay of proceedings against the debtor or the debtor's property in Canada on such terms and for such period as is consistent with the relief provided for under sections 69 to 69.5 in respect of a debtor in Canada who files a notice of intention or a proposal or who

becomes bankrupt in Canada, as the case may be.

Powers of court

(3) On application by a foreign representative in respect of a debtor, the court may, where it is satisfied that it is necessary for the protection of the debtor's estate or the interests of a creditor or creditors,

(a) appoint a trustee as interim receiver of all or any part of the debtor's property in Canada, for such term as the court considers appropriate; and

(b) direct the interim receiver to do all or any of the following:

(i) take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value,

(ii) take possession of all or part of the debtor's property mentioned in the appointment and exercise such control over the property and over the debtor's business as the court considers appropriate, and

(iii) take such other action as the court considers appropriate.

Application of fees and expenses provision

(4) Section 47.2 applies, with such modifications as the circumstances require, in respect of an interim receiver appointed under subsection (3).

Examination may be authorized

(5) On application of a foreign representative in respect of a debtor, the court may authorize the examination under oath by the foreign representative of the debtor or of any person in relation to the debtor who, if the debtor were a bankrupt referred to in subsection 163(1), would be a person who could be examined under that subsection.

1997, c. 12, s. 118.

Foreign representative status

272. An application to the court by a foreign representative under this Part does not submit the foreign representative to the jurisdiction of the court for any other purpose except with regard to the costs of the proceedings, but the court may make any order under this Part conditional on the compliance by the foreign representative with any other order of the court.

1997, c. 12, s. 118.

Foreign proceeding appeal

273. A foreign representative is not prevented from making an application to the court under this Part by reason only that proceedings by way of appeal or review have been taken in a foreign proceeding, and the court may, on an application where such proceedings have been taken, grant relief as if the proceedings had not been taken.

1997, c. 12, s. 118.

Credit for recovery in other jurisdictions

274. If any bankruptcy order, proposal or assignment is made in respect of a debtor under this Act,

(a) the amount that a creditor receives or is entitled to receive outside Canada by way of a dividend in a foreign proceeding in respect of the debtor, and

(b) the value of any property of the debtor that the creditor acquires outside Canada on account of a provable claim of the creditor or that the creditor acquires outside Canada by way of a transfer that, if it were subject to this Act, would be set aside or reviewed under sections 91 to 101.2,

shall be taken into account in the distribution of dividends to creditors of the debtor in Canada as if they were a

part of that distribution, and the creditor is not entitled to receive a dividend from the distribution in Canada until every other creditor who has a claim of equal rank in the order of priority established under this Act has received a dividend, the amount of which is the same percentage of that other creditor's claim as the aggregate of the amount referred to in paragraph (a) and the value referred to in paragraph (b) is of that creditor's claim.

1997, c. 12, s. 118; 2004, c. 25, s. 103.

Claims in foreign currency

275. A claim for a debt that is payable in a currency other than Canadian currency shall be converted to Canadian currency

(a) in the case of a proposal in respect of an insolvent person and unless otherwise provided in the proposal, where a notice of intention was filed under subsection 50.4(1), as of the day the notice was filed or, if no notice was filed, as of the day the proposal was filed with the official receiver under subsection 62(1);

(b) in the case of a proposal in respect of a bankrupt and unless otherwise provided in the proposal, as of the date of the bankruptcy; or

(c) in the case of a bankruptcy, as of the date of the bankruptcy.

1997, c. 12, s. 118.

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[Important Notices](#)