

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° 500-11-048114-157

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE
OR ARRANGEMENT OF:

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP**

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises en cause

-and-

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND
& LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

**THE ATTORNEY GENERAL OF CANADA,
ACTING ON BEHALF OF THE OFFICE OF THE
SUPERINTENDENT OF FINANCIAL
INSTITUTIONS**

**MICHAEL KEEPER, TERENCE WATT, DAMIEN
LEBEL AND NEIL JOHNSON**

**UNITED STEEL WORKERS, LOCALS 6254 AND
6285**

RÉGIE DES RENTES DU QUÉBEC

**MORNEAU SHEPELL LTD., IN TIS CAPACITY
AS REPLACEMENT PENSION PLAN
ADMINISTRATOR**

Mis en cause

REPRÉSENTATIONS DU PROCUREUR GÉNÉRAL DU CANADA RELATIVEMENT À
LA COMPÉTENCE DE CETTE COUR DE SE PRONONCER SUR LE *PENSION
BENEFITS ACT* DE LA PROVINCE DE TERRE-NEUVE/LABRADOR

À L'HONORABLE JUGE STEPHEN W. HAMILTON SIÉGEANT EN CHAMBRE COMMERCIALE, DISTRICT DE MONTRÉAL, LE PROCUREUR GÉNÉRAL DU CANADA, AGISSANT POUR LE BUREAU DU SURINTENDANT DES INSTITUTIONS FINANCIÈRES À TITRE DE MIS EN CAUSE, EXPOSE CE QUI SUIT :

1. Le Bureau du surintendant des institutions financières, ci-après « **BSIF** », entend faire de brèves représentations quant à juridiction de cette Cour qui est saisie des procédures entreprises par les débitrices en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* « LACC » de statuer sur la portée de la fiducie réputée créée par le *Pension Benefits Act* de la province de Terre-Neuve/Labrador;
2. Le BSIF est d'avis que cette Cour a, dans le cadre des procédures entreprises par les débitrices en vertu de la « LACC », compétence pour statuer sur la portée de la fiducie réputée créée par le *Pension Benefits Act* de la province de Terre-Neuve/Labrador;
3. Par ailleurs, le BSIF est également d'avis que cette Cour pourrait, en vertu des dispositions de l'article 17 de la LACC, solliciter l'aide du Tribunal de Terre-Neuve/Labrador et lui demander de statuer quant à la portée de la fiducie réputée créée par l'article 32 du *Pension Benefits Act* de cette province;
4. Les auteurs Houlden & Morawetz, relativement à l'article 17 de la LACC, nous réfèrent à leurs commentaires sous l'article 188(2) de la LFI :

Where the issue to be decided involves an interpretation of the law of another province, it is much more convenient to have the issue dealt with by a court of that province and s. 188(2) is particularly adapted for such cases: *Re Fairweathers Ltd.*¹

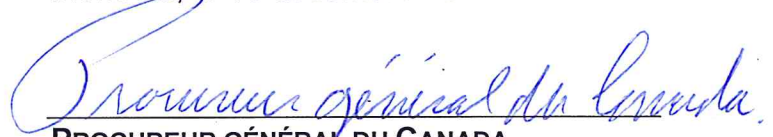
5. Il est également utile de mentionner que dans un contexte similaire, le juge

¹ *Fairweathers Ltd. (Re)* [1921] O.J. No. 35

Morawetz, dans l'affaire *Timminco Ltd.*², avait demandé à la Cour supérieure du Québec de statuer quant à la portée de fiducie réputée créée par l'article 49 de la *Loi sur les régimes complémentaires de retraite*, LRQ c. R-15.1

6. Le BSIF soumet donc que ce Tribunal a juridiction pour entendre et décider des questions relatives au *Pension Benefits Act* de la province de Terre-Neuve/Labrador;
7. Le Tribunal de Terre-Neuve/Labrador pourrait également se saisir de ces questions si le présent Tribunal lui en fait la demande comme cela le fut d'ailleurs dans l'affaire *Timminco Ltd.*
8. Le BSIF s'en remet cependant à la décision du Tribunal sur cette question.

Montréal, le 15 décembre 2016



PROCUREUR GÉNÉRAL DU CANADA

(Code d'impliqué : BC 0565)

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² *Timminco Limited (Re)*, 2012 ONSC 5959

LISTE DES AUTORITÉS

Onglet

JURISPRUDENCE

Fairweathers Ltd. (Re) [1921] O.J. No. 35..... 1

Timminco Limited (Re), 2012 ONSC 5959 2

DOCTRINE

HOULDEN L. W. et G.B. MORAWETZ, *Bankruptcy and Insolvency Law of Canada*, Fourth Edition revised, Volume 3, Carswell 3

HOULDEN L. W. et G.B. MORAWETZ, *Bankruptcy and Insolvency Law of Canada*, Fourth Edition revised, Volume 4, Carswell 4

ONGLET 1

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

THE HONOURABLE)
)
JUSTICE MORAWETZ)

THURSDAY *15th*
~~WEDNESDAY~~, THE 10th DAY OF
OCTOBER 2012



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT-OF
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.

Applicants

ORDER
(Approval of Priority Claim Adjudication Protocol)

This Motion, made by Investissement Québec for an order approving the Priority Claim Adjudication Protocol and referring the adjudication of the BSI Pension Reimbursement Claims to the Superior Court of Québec (Commercial Division) was heard this day at 330 University Avenue, Toronto, ON.

On the consent of counsel for Timminco Limited and Bécancour Silicon Inc., FTI Consulting Canada Inc., in its capacity as court-appointed Monitor of the Timminco entities, Investissement Québec, Mercer Canada, the administrator of the Haley Pension Plan, The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") and BSI Union and Non-Union employee Pension Committees:

1. **THIS COURT ORDERS** that the Priority Claim Adjudication Protocol, attached hereto as Schedule "A", be and the same is hereby authorized and approved.
2. **THIS COURT ORDERS** that the adjudication of whether the BSI Pension Reimbursement Claims are Priority Claims, all as defined in the attached Priority Claim Adjudication Protocol, be and the same is hereby referred exclusively to the Superior Court of Québec (Commercial Division) to be determined in accordance with the Priority Claim Adjudication Protocol.
3. **THIS COURT HEREBY REQUESTS** the aid and recognition of the Superior Court of Québec (Commercial Division) to give effect to this order and to adjudicate whether the BSI Pension Reimbursement Claims constitute Priority Claims in accordance with the terms of the Priority Claims Adjudication Protocol.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

[Signature]

OCT 19 2012

SCHEDULE "A"

Court File No. CV-12-9539-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
TIMMINCO LIMITED AND BÉCANCOUR SILICON INC.**

Applicants

PRIORITY CLAIM ADJUDICATION PROTOCOL

A. OVERVIEW

1. In accordance with the Reimbursement Agreement (the "**Reimbursement Agreement**") among Investissement Québec ("**IQ**"), FTI Consulting Canada Inc., as court-appointed Monitor, and Bécancour Silicon Inc., dated August 28, 2012 and the August 28, 2012 Interim Distribution Order (the "**Interim Distribution Order**")¹, two (2) sets of claims have been designated as Reimbursement Claims, namely:

- (i) a claim on behalf of Mercer Canada ("**Mercer**"), as administrator of the Haley Pension Plan, and on behalf of the beneficiaries of that plan (the "**Mercer Reimbursement Claim**"), which claim is supported by The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("**USW**"); and
- (ii) a claim by Le Comité de retraite du Régime de rentes pour les employés non-syndiqués de Silicium Bécancour Inc. and a claim by Le Comité de retraite du Régime de rentes pour les employés syndiqués de Silicium Bécancour Inc. (collectively the "**BSI Pension Committees**") (the "**BSI Pension Reimbursement Claims**").

2. ~~IQ disputes that the above Reimbursement Claims have priority over the IQ Security and the parties do not anticipate the dispute will be resolved through the consented resolution process~~

¹ Unless otherwise indicated, any capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Reimbursement Agreement and the Interim Distribution Order.

provided for in the Interim Distribution Order. Accordingly, an adjudication is required to determine whether such Reimbursement Claims constitute Priority Claims.

The following is the protocol for the adjudication of whether the Reimbursement Claims constitute Priority Claims.

B. THE MERCER REIMBURSEMENT CLAIM

1. The Mercer Reimbursement Claim shall be adjudicated by way of a motion before this Court wherein Mercer and USW will be the moving parties and IQ will be the respondent. If at any time Mercer shall cease the prosecution of the Mercer Reimbursement Claim, the USW shall be entitled to prosecute the Mercer Reimbursement Claim in the place and stead of Mercer.

As issues to be adjudicated regarding the Mercer Reimbursement Claim (such as, by way of example, substantive consolidation) may impact on other stakeholders of BSI or Timminco, the motion material hereafter described shall be served on the service list herein. Any creditor of the Timminco Entities or the Monitor, or the Timminco Entities themselves ("**Interested Stakeholders**") shall have the right to file material and participate in the motion proceedings in accordance with the following timetable:

- (i) Mercer and USW, if so advised, will deliver moving party motion material by October 29, 2012;
- (ii) IQ and Interested Stakeholders, if any, shall deliver responding material by November 30, 2012;
- (iii) Mercer and USW will deliver reply material, if so advised, by December 17, 2012;
- (iv) cross-examinations on filed affidavits, if required, will be conducted during the week of January 13, 2012. During this period, the examination of Peter Kalins, (a former officer and director of Timminco and BSI) as a witness to the motion, shall be conducted if consented to by Peter Kalins or if an appropriate court order has been obtained;
- (v) Mercer and USW, if so advised, will deliver moving party's facts by January 25, 2013;
- (vi) IQ and any Interested Stakeholders will deliver responding facts by February 13, 2013;
- (vii) Mercer and USW will deliver reply facts by February 20, 2013, if so advised; and
- (viii) the hearing of the motion will take place during the week of February 25, 2013.

2. In determining whether the Mercer Reimbursement Claim constitutes a Priority Claim, the determination of the quantum of such Priority Claim shall be postponed until after the determination of the nature of the claim and will be determined in accordance with the Claims Procedure Order or further order of the Court.

C. THE BSI PENSION REIMBURSEMENT CLAIMS

1. The adjudication of whether the BSI Reimbursement Claims constitute Priority Claims shall be referred exclusively to the Superior Court of Québec (Commercial Division) wherein the BSI Pension Committees will be the moving parties and IQ will be the respondent in accordance with the following timetable:

- (i) the BSI Pension Committees shall deliver their motion to institute proceedings within 60 days after the Order is made referring this matter to the Superior Court of Québec (Commercial Division);
- (ii) IQ and any Interested Stakeholders shall deliver their Statement of Defence within 30 days after receipt of the motion to institute proceedings;
- (iii) the BSI Pension Committees shall have up to 30 days after receipt of the IQ defence to deliver their response, if any;
- (iv) examinations, if necessary, are to be conducted by January 11, 2013;
- (v) written arguments and joint books of procedure and exhibits shall be delivered at least 2 weeks before the hearing of the motion; and
- (vi) the hearing of the motion is to be scheduled between February 18, 2013 and March 15, 2013 based upon a 1-2 day hearing.

For greater certainty, any appeal from an order of the Superior Court of Québec (Commercial Division) herein shall be to the Court of Appeal of Québec.

2. In determining whether the BSI Reimbursement Claims constitute Priority Claims, the determination of the quantum of such Priority Claims shall be postponed until after the determination of the nature of the claim and will be determined in accordance with the Claims Procedure Order or further order of the Court.

D. MONITOR'S REPORT

1. The Monitor, if it deems it necessary and appropriate to do so, may file a report with the court in connection with adjudication of either Reimbursement Claim.

In the matter of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36, As Amended

And in the Matter of a Plan of Compromise or Arrangement
of Timminco Limited and Bécancour Silicon Inc.

Applicants

Court File No. CV-12-9539-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List**

Proceedings commenced at
TORONTO

ORDER

(Approval of Priority Claim Adjudication Protocol)

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CITATION: Timminco Limited (Re), 2012 ONSC 5959
COURT FILE NO.: CV-12-9539-00CL
DATE: 20121018

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985 c. C-36, AS AMENDED**

**RE: IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF TIMMINCO LIMITED AND BÉCANCOUR SILICON INC., Applicants**

BEFORE: MORAWETZ J.

**COUNSEL: S. J. Weisz, for FTI Consulting Canada Inc., in its capacity as court-
appointed Monitor of the Timminco Entities**

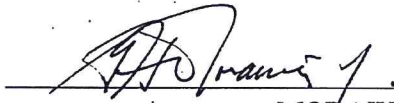
HEARD: OCTOBER 18, 2012

ENDORSEMENT

[1] On consent of Timminco Limited and Bécancour Silicon Inc., FIT Consulting Canada Inc., in its capacity as court-appointed Monitor of the Timminco Entities, Investissement Québec, Mercer Canada, the Administrator of the Haley Pension Plan, The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“USW”) and BSI Union and Non-Union Employee Pension Committees, the Priority Claim Adjudication Protocol is approved. The adjudication of whether the BSI Pension Reimbursement Claims are Priority Claims is referred to the Superior Court of Québec (Commercial Division) to be determined in accordance with the terms of the Priority Claims Adjudication Protocol.

[2] This determination has been made pursuant to s. 17 of the CCAA, and I express my thanks, in advance, to the Superior Court of Québec.

[3] To the extent leave is required to proceed, such leave is granted.


MORAWETZ J.

Date: October 18, 2012

ONGLET 2

Indexed as:
Fairweathers Ltd. (Re)

Re Fairweathers Limited

[1921] O.J. No. 35

51 O.L.R. 235

67 D.L.R. 63

2 C.B.R. 133

Ontario Supreme Court - High Court Division
In Bankruptcy

Orde J. (In Chambers)

November 11, 1921

Bankruptcy -- Assignment by Insolvent Company to Authorised Trustee in Ontario -- Claim of City Corporation in Quebec for Water Rates and Business Taxes in Respect of Business Premises in City -- Claim to Priority over Ordinary Creditors -- Disallowance by Trustee -- Appeal by City Corporation -- Reference to Quebec Court -- Question of Quebec Law Involved -- Bankruptcy Act, secs. 51(6), 71(2) -- Effect of Removal of Goods of Company from Quebec Premises to Ontario after Assignment.

Once the Court of a Province is seised of a bankruptcy matter, no Court in any other Province will be permitted to intervene in the proceedings or to interfere with the administration of the insolvent estate, except under the order of the Court so seised.

Stewart v. Le Page (1916), 53 Can. S.C.R. 337, applied and followed.

An incorporated company, having its chief place of business in Ontario, made an authorised assignment under the Bankruptcy Act to a trustee in Ontario. It had a branch business and business premises in the city of M., in the Province of Quebec, and the corporation of that city filed with the trustee in Ontario proof of a claim against the company for a sum of money for water rates and business taxes in respect of those premises. The city corporation, under sec. 51(6) of the Act,

claimed priority over ordinary claims, and the trustee disallowed that claim. On appeal to the Judge in Bankruptcy from the disallowance, the city corporation asked for an order transferring the proceedings to a Bankruptcy Court in the Province of Quebec:

Held, that, as the appeal of the city corporation involved a question of Quebec law, an order should be made, under sec. 71(2) of the Act, referring the appeal to the Judge in Bankruptcy for the Province of Quebec exercising jurisdiction in the city of M., including the right to either party to appeal from his decision to the proper Court of that Province.

The decision in *Re F. E. West & Co.* (1921), 50 O.L.R. 631, did not necessarily govern the decision of the city corporation's claim to priority, for regard must be had to the local statutory provisions for the realisation of the rates and taxes imposed.

Semble, if the goods of the company upon the premises in M. had been removed by the trustee into Ontario, the removal should not be allowed prejudicially to affect preferential rights in existence at the time of the assignment even though such rights depended for their full enforcement upon the continuance upon the premises of the goods of the company until actual seizure.

1 MOTION by the Corporation of the City of Montreal by way of appeal from the ruling or decision of an authorised trustee under the Bankruptcy Act, to whom Fairweathers Limited, an insolvent company, had made an assignment.

2 November 5. The motion was heard by ORDE, J., in Chambers.

T. N. Phelan, for the Corporation of the City of Montreal.

R. S. Cassels, K.C., for the authorised trustee.

3 November 11. ORDE J.:-- The City of Montreal, in the Province of Quebec, through its treasurer, filed with the trustee proof of a claim against the insolvent company for \$2,900 for water rates and business taxes for 1921, in respect of the business premises at 487 St. Catherine street west, Montreal, which had been occupied by the Montreal branch of the insolvent company prior to its assignment under the Bankruptcy Act. Of the \$2,900, the sum of \$1,200 is for water rates and \$1,700 for business tax. The city claims priority over ordinary claims under sub-sec. 6 of sec. 51 of the Bankruptcy Act,* and the trustee has disallowed the claim to priority, on the ground that the movable goods of the insolvent had come into the hands of the trustee before any seizure was made.

4 From this disallowance the city now appeals, and also asks for an order transferring the

proceedings to the Bankruptcy Court in Montreal, in order that the questions involved may be determined there. The trustee opposes the application to transfer the matter to the Bankruptcy Court in Montreal, and urges that the issue can be determined more satisfactorily by the Bankruptcy Court in Ontario, which, by reason of the location of the head office of the company, and the making of the assignment, in this Province, is the Court primarily charged with jurisdiction over the insolvent estate.

5 That once the Courts of one Province are seised of the matter, no Court in any other Province will be permitted to intervene in the proceedings or to interfere with the administration of the insolvent estate, except under the order of the Court so seised, is clearly established by the judgment of the Supreme Court of Canada in *Stewart v. Lee Page* (1916), 53 Can. S.C.R. 337, 29 D.L.R. 607, a decision upon those provisions of the Dominion Winding-up Act, R.S.C. 1906, ch. 144, sec. 125, which correspond to sub-sec. 2 of sec. 71 of the Bankruptcy Act.** See also *Brewster v. Canada Iron Corporation* (1914), 7 O.W.N. 128. So that, except in the enforcement of a lien or charge upon property of the insolvent company still locally situate in the Province of Quebec, where the right to proceed independently of the administration in bankruptcy is preserved to the creditor by sub-sec. 1 of sec. 6, the Courts of the Province of Quebec have no power to entertain or adjudicate upon the claim of the City of Montreal in this case, without an order of this Court obtained under sec. 71(2).

6 It therefore becomes a question whether or not, in the exercise of my judicial discretion, it will be more reasonable, in view of all the circumstances, that I should attempt to try the question here or remit it to the Quebec Court for that purpose.

7 It was urged by Mr. Cassels that my judgment in *Re F. E. West & Co.* (1921), 50 O.L.R. 631, in which, inter alia, I held that, in the existing state of the legislation of this Province, the City of Toronto was not entitled to any preference or priority under sub-sec. 6 of sec. 51 for business taxes, rendered it unnecessary to refer the matter to the Quebec Court, or to deal with the appeal otherwise than on the footing of that case. But this contention overlooks the fact that my judgment was based upon the omission, as I regarded it, from the legislation of this Province of any provision which, by virtue of sub-sec. 6, gave to a municipality any preference for business taxes which could be enforced after the bankruptcy had intervened. But the expression "business tax" may mean entirely different things in different Provinces, and my decision was not intended to mean, and cannot be interpreted as meaning, that the mere appellation of "business tax" to some particular form of impost excludes it from the operation of sub-sec. 6 in every Province, and without regard to the local statutory provisions for its realisation.

8 In the present case the goods of the insolvent upon the premises in question are admitted to have been sufficient to answer the liability for the taxes claimed, had a seizure been made by the city before the insolvent company assigned to the trustee. And the city contends that under the law of the Province of Quebec it was entitled nevertheless to collect the water rates and the business tax in question, either in spite of or by virtue of sub-sec. 6 of sec. 51. This necessarily involves a question of Quebec law; and, if the circumstances were such that the duty of dealing with that

question were cast upon me, I should be obliged to deal with it in the ordinary way, by hearing evidence as to the law of Quebec and dealing with such evidence as a matter of fact rather than of law. This procedure, at all times unsatisfactory, would be particularly so where the question is to some extent a technical one, involving the consideration possibly of the Civil and Municipal Codes of the Province of Quebec and the charter of the City of Montreal. In such a case it will clearly be much more satisfactory to have the application of the law of Quebec to the question in issue dealt with by the Courts of that Province, rather than by the unsatisfactory method, which for lack of a better one, the Courts of one country are forced to adopt when dealing with the laws of another. In my judgment, sub-sec. 2 of sec. 71 is particularly adapted for just such cases as this, and it would be difficult to suggest a more appropriate occasion for resorting to the benefit of its provisions than the present one.

9 It was not made quite clear to me whether or not, after the assignment, the goods of the insolvent upon the premises in question had been removed by the trustee from the Province of Quebec into the Province of Ontario. If so, the trustee may desire to contend that, assuming that in spite of the assignment the city still had the right by law to seize goods found upon the premises in question, the removal from the premises or from the Province before seizure has affected the city's preferential claim. While that question might, perhaps, be reserved for myself to deal with, yet, inasmuch as the question, if raised, may involve some consideration of Quebec law, I think it preferable that my order should not in any way hamper or interfere with the freedom of the Bankruptcy Judge in Montreal to deal with the whole matter involved in the appeal. It may not be amiss to say that it would seem to me to be highly improper that any act of an authorised trustee, such as the removal by him of goods from one Province to another, should be allowed prejudicially to affect preferential rights in existence at the time of the assignment, even though such rights depended for their full enforcement upon the continuance upon the premises in question of the goods of the insolvent until actual seizure. But the question is not yet ripe for any considered judgment of mine upon that point.

10 There will be an order, under the authority given to me by sub-sec. 2 of sec. 71, referring the appeal of the City of Montreal from the trustee's decision, to the Judge in Bankruptcy for the Province of Quebec exercising jurisdiction in the City of Montreal, including the right to either party to appeal from his decision to the Appeal side of the Court of King's Bench of that Province.

11 The costs of this application will go to the party ultimately successful upon the issue involved. The trustee's costs will, of course, be payable out of the estate.

* (6) Nothing in this section shall interfere with the collection of any taxes, rates or assessments now or at any time hereafter payable by or levied or imposed upon the debtor or

upon any property of the debtor under any law of the Dominion, or of the Province wherein such property is situate, or in which the debtor resides, nor prejudice or affect any lien or charge in respect of such property created by any such laws.

** (2) All courts having jurisdiction in Bankruptcy in all Provinces of Canada and the officers of such courts respectively shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy and in proceedings under authorised assignments, and an order of the court seeking aid, with a request to another of the said courts, 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 which made the request or the court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.

ONGLET 3

CARSWELL

**BANKRUPTCY
AND INSOLVENCY
LAW OF CANADA**

FOURTH EDITION

REVISED

VOLUME 3

by
The Honourable
L. W. HOULDEN, B.A., LL.B.,
formerly a Judge of The Court of Appeal for Ontario

and
The Honourable
G. B. MORAWETZ, B.A., LL.B.
of the Superior Court of Justice

and
JANIS SARRA, B.A., M.A., LL.B., LL.M., S.J.D.
of UBC Faculty of Law and the Ontario Bar



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[Ss. 187-191] *BANKRUPTCY AND INSOLVENCY ACT*

ated Freezers of Canada Inc. (Trustee of) v. Retail, Wholesale Canada, Local 1015, supra and, *Kit-To-Kitchen 2000 Inc. v. Design Plus Ltée* (2003), 47 C.B.R. (4th) 33, 2003 CarswellNB 424, 265 N.B.R. (2d) 143, 695 A.P.R. 143, 2003 NBBR 352 (N.B.Q.B.), where the New Brunswick Court of Queen's Bench declined to stay an order for seizure and sale, or to vary or rescind the Québec judgment on which it was based, as against a New Brunswick corporation that had refused to acknowledge the validity of the Québec judgment that had been obtained by the trustee for the bankrupt Québec corporation.

In *Hebert v. Hebert* (1988), 71 C.B.R. (N.S.) 163, 17 R.F.L. (3d) 355, 88 N.S.R. (2d) 107, 225 A.P.R. 107 (T.D.), the Nova Scotia Supreme Court, the court in which the assignment in bankruptcy was filed, made an order declaring the trustee in bankruptcy to be the owner of certain real property in Prince Edward Island. The court noted that by virtue of s. 188(1) the order could be enforced by the Prince Edward Island court.

In *Re Mount Royal Lumber & Flooring Co.* (1926), 8 C.B.R. 240, the debtor company made an assignment in bankruptcy in Québec. A creditor resident in Ontario then took steps in Ohio to attach a debt owed to the debtor company by an Ohio company. The Québec Court of Appeal affirmed an order of the Québec bankruptcy judge restraining the Ontario creditor from taking any further steps to collect the debt and pointed out that the restraining order would under s. 188(1) be enforceable against the creditor in Ontario.

(2) *Courts Acting in Aid of Each Other*

By s. 188(2), if a bankruptcy court in one province cannot effectively deal with a matter because of territorial limitations, it can call in aid the courts of another province. While s. 188(2) does not amalgamate all the bankruptcy courts into one federal court, it does indicate an intention that they shall all work together in administering the Act: *Re Empire Timber, Lumber and Tie Co.* (1920), 1 C.B.R. 370 (Ont. S.C.).

Once the court of one province is seized with the administration of a bankruptcy, no court in any other province can intervene in the proceedings unless a request is made under s. 188(2): *Re Fairweathers Ltd.* (1921), 2 C.B.R. 133 (Ont. S.C.). If proceedings are taken in another province without a request, the courts in which the bankruptcy proceedings originated will treat the proceedings in the other province as a nullity: *Re Bryant Isard & Co.* (1923), 4 C.B.R. 317 (Ont. S.C.).

By s. 69.3(2), a secured creditor can take steps to enforce its security without leave and in that situation, the court of another province can adjudicate a claim without a request under s. 188(2), but with that exception, the courts of another province have no power to adjudicate upon the claims of creditors in the absence of a request: *Re Fairweathers Ltd., supra*.

Where the issue to be decided involves an interpretation of the law of another province, it is much more convenient to have the issue dealt with by a court of that province and s. 188(2) is particularly adapted for such cases: *Re Fairweathers Ltd., supra*.

In *Legace v. Lepinay* (1922), 3 C.B.R. 421 (Man.K.B.), a motion was

brought in Manitoba in the mistaken belief that a request had been made under s. 188(2) by a Québec court and an order was made. Subsequently, a request was made by the Québec court, and the Manitoba court confirmed its earlier order.

In *Re Fairweathers Ltd.*, *supra*, the Ontario bankruptcy judge referred an appeal from the disallowance of a claim of the City of Montreal for business tax to the bankruptcy judge in Montreal for determination. (For the form of such an order, see *Re Fairweathers Ltd.* (1922), 2 C.B.R. 342 (Que.S.C.)). Similarly, in *Re Komer* (1925), 5 C.B.R. 515, the Ontario registrar, acting under s. 188(2), stated a case for the opinion of the bankruptcy judge in Québec on the law concerning the dissolution of a sale of movables.

In *Canada (Minister of Indian Affairs and Northern Development) v. Curragh Inc.* (1994), 27 C.B.R. (3d) 148, 114 D.L.R. (4th) 176, 1994 CarswellOnt 294 (Ont. Gen. Div.), an interim receiver had been appointed in Ontario. Mechanics' liens had been filed against property of the debtor in the Yukon. The maximum realization of the debtor's assets required a speedy determination of the validity and extent of the liens. Pursuant to s. 188(2), the Ontario court requested the assistance of the Yukon courts in the enforcement of its order respecting the liens.

In *Re Caster Holdings Ltd.* (1995), 36 C.B.R. (3d) 199, 1995 CarswellQue 141 (Que. S.C.), a Québec trustee had retained the services of a legal firm in Alberta. A request was made under s. 188(2) to have the costs of the firm taxed in Alberta. The Québec Superior Court refused the request, holding that it was more economical for the costs to be taxed in Québec and that it was in the interests of justice and the general body of creditors that the taxation take place in Québec.

In *Knai v. Steen Contractors Ltd.* (2001), 22 C.B.R. (4th) 223, 2001 CarswellOnt 222 (Ont. S.C.J. [Commercial List]), two employees had, prior to bankruptcy, been employed in Montréal. They were employed under a single employment agreement with the bankrupt company, which went into bankruptcy in Ontario, and two related companies, which went into bankruptcy in Québec. Prior to the date of bankruptcy, the two employees had commenced actions in Québec against the three companies for breach of the employment agreement. The Ontario court was of the view that the proceedings could proceed with the least expense in Québec. Accordingly, it requested the Québec court to take jurisdiction of all proceedings with respect to the claims.

If a matter is referred to the courts of another province under s. 188 (2) for decision, an appeal from that decision lies to the court of appeal of that province, not to the court of appeal of the province requesting assistance: *Re Fairweathers Ltd.* (1921), 2 C.B.R. 133 (Ont. S.C.); *Genovese v. York Lambton Corp.* (1969), 67 W.W.R. 355 (Man. C.A.).

(3) *Calling in Aid Foreign Bankruptcy Courts and Foreign Courts Calling in Aid Canadian Courts*

Although s. 188(2) is restricted to Canadian bankruptcies, it is recognized as part of the comity of nations that, in certain circumstances, the bankruptcy courts of one country will assist the bankruptcy courts of

ONGLET 4

CARSWELL

**BANKRUPTCY
AND INSOLVENCY
LAW OF CANADA**

FOURTH EDITION

REVISED

VOLUME 4

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16. Every order made by the court in any province in the exercise of jurisdiction conferred by this Act in respect of any compromise or arrangement shall have full force and effect in all the other provinces and shall be enforced in the court of each of the other provinces in the same manner in all respects as if the order had been made by the court enforcing it.

Section 16

N§135 Effect of Order in Other Provinces

N§135 Effect of Order in Other Provinces

An order made under s. 11 is effective to bar proceedings in other provinces: *Gray v. Wentworth Canning Co.* (1950), 31 C.B.R. 182, 58 Man. R. 459, [1950] 2 W.W.R. 1285 (K.B.). For the purposes of s. 16, the Northwest Territories is to be considered as a province: *Ptarmigan Airways Ltd. v. Federated Mining Corp.*, [1973] 3 W.W.R. 723 (N.W.T. S.C.).

Where a CCAA order is made in Ontario, there is no need to apply to a court in British Columbia for the assistance of the British Columbia court to implement and carry out the Ontario order. By s. 16 of the CCAA, the Ontario order is binding and enforceable in other provinces, and if persons in other provinces refuse to obey it, the courts of another province can order the persons to obey it: *Re Canadian Red Cross Society/Société canadienne de la Croix-Rouge* (1998), 165 D.L.R. (4th) 365, 1998 CarswellBC 1936 (B.C. S.C.).

17. All courts that have jurisdiction under this Act and the officers of those courts shall act in aid of and be auxiliary to each other in all matters provided for in this Act, and an order of a 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 their respective jurisdictions.

Section 17

N§136 Courts Acting in Aid of Each Other

N§136 Courts Acting in Aid of Each Other

Section 17 is similar to s. 188(2) of the *Bankruptcy and Insolvency Act* and reference should be made to notes on that section, *supra*, under I§32 "Courts Acting in Aid of Each Other".

Since the *Act* is a federal *Act*, a stay order made under the *Act* in one province will be binding in other provinces: *Lehndorff United Properties (Canada) Ltd. v. Confederation Life Insurance Co.* (1993), 1993 CarswellMan 25, 17 C.B.R. (3d) 198, 82 Man. R. (2d) 286 (Man. Q.B.).

It is quite appropriate in a CCAA order to request the aid and assistance of any court, including any court of the United States (federal or state) to assist a Canadian court in carrying out a CCAA order: *Re Cadillac Fairview Inc.* (1995), 30 C.B.R. (3d) 17, 1995 CarswellOnt 35 (Ont. Gen. Div.).

The Ontario Court of Appeal affirmed recognition of a scheme of arrangement under the U.K. *Companies Act, 1985*, c. 6. and pursuant to Rule 73 of the Ontario Rules of Civil Procedure, granting a stay of proceedings pursuant to s. 106 of the Ontario *Courts of Justice Act*, as such recognition was consistent with the common law rules of private international law, including the court's inherent jurisdiction and principles of comity: *Re Cavell Insurance Co.* (2006), 2006 CarswellOnt 3070, 80 O.R. (3d) 500, 25 C.B.R. (5th) 7, [2006] I.L.R. 1-4510 (Ont. C.A.), additional reasons at (2006), 2006 CarswellOnt 5192 (Ont. C.A.). For a discussion see, I§32 "Courts Acting in Aid of Each Other".

18. (1) [Repealed 2005, c. 47, s. 131.]

Section 18

N§137 Rules

N§137 Rules

The Rules passed under the *Companies Creditors Arrangement Act* were repealed on June 19, 1999. See Jacob S. Ziegel, "Repeal of the Companies' Creditors Arrangement rule PC 1999-1072", 10 C.B.R. (4th) 220.

18.1 [Repealed 2005, c. 47, s. 131.]

Section 18.1

N§138 Set-Off (Pre-amendments)

N§138 Set-Off (Pre-amendments)

The previous provisions for set-off were under s. 18.1. The cases and commentary have been moved to N§147 as the set-off provisions were renumbered as s. 21 and s. 18.1 was repealed.

18.2 (1) If an order contains a provision authorized by subsection 11.4(1), unless Her Majesty consents, no compromise or arrangement shall be sanctioned by the court that does not provide for the payment in full to Her Majesty in right

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

**IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF :**

BLOOM LAKE GENERAL PARTNER LTD ET AL.

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP ET AL.**

Mises en cause

-and-

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND &
LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS,
THE ATTORNEY GENERAL OF CANADA, ACTING ON
BEHALF OF THE OFFICE OF THE SUPERINTENDENT OF
FINANCIAL INSTITUTIONS ET AL.**

Mis en cause

-and-

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**REPRÉSENTATIONS DU PROCUREUR GÉNÉRAL DU
CANADA RELATIVEMENT À**

**LA COMPÉTENCE DE CETTE COUR DE SE
PRONONCER SUR LE *PENSION BENEFITS ACT*
DE LA PROVINCE DE TERRE-NEUVE/LABRADOR
ET AUTORITÉS**

ORIGINAL

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