

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF 2505243 ONTARIO LIMITED  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

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**Factum of Princes Gates GP Inc. Lowell Security Inc., The Small  
Winemakers Collections Inc., D.N.B. Media Group Inc., PR CC Plated  
Meals Inc. and Platinum Valet Hotel Cleaners Inc.**

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Date: September 28, 2020

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**TO: ATTACHED SERVICE LIST**

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## PART I – OVERVIEW OF THE MOTION

1. This Motion is to determine whether six (6) applicant creditors (the “**Applicants**”) of 2505243 Ontario Inc. o/a Bypeterandpauls.com (the “**Debtor**”) are stayed under section 69.(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) from continuing a bankruptcy application (the “**Bankruptcy Application**”) against the Debtor. On the eve of Bankruptcy Application’s hearing, the Debtor, acknowledging it is insolvent, filed a notice of intention to file a proposal (the “**NOI**” or as the context may require an “**NOI**”) and, in doing so, is taking the position that the Bankruptcy Application is now automatically stayed under subsection 69.(1) of the *BIA*.
2. It is established law that a bankruptcy application is not subject to the automatic stay provisions of the *BIA* as, among other things, a bankruptcy application is not a “claim provable in bankruptcy”, as required under the *BIA*. Furthermore, the Debtor will not be prejudiced if the Bankruptcy Application proceeds because the Debtor is authorized under the *BIA* to file an in-bankruptcy proposal. As discussed below, there are policy reasons that the automatic stay should not apply to a bankruptcy application. The Applicants submit the relief sought staying the Bankruptcy Application should be dismissed and a bankruptcy order against the Debtor should be issued.
3. In the event that this Court is uncertain if the Bankruptcy Application is automatically stayed under section 69.(1) of the *BIA*, the Applicants submit the Court ought to exercise its discretion and exempt the Bankruptcy Application from the stay and make a bankruptcy order against the Debtor to prevent further dissipation of assets of the admittedly insolvent Debtor.

## PART II – THE FACTS

### A. *The Parties*

4. The Applicants comprise six (6) creditors who supplied accommodation or hospitality related services to the Debtor. They are collectively owed \$2,039,599.75 (the “**Applicants’ Debt**”). The Applicants’ accounts vary in age, with some accounts having been outstanding since April 2019. Well before March 23, 2020 when restrictions were imposed on businesses because of the spread of COVID-19.

**Affidavit of Christopher Lambert sworn September 28, 2020 (the "Lambert Affidavit"), Responding Record of the Applicants dated September 25, 2020 (the "Responding Record"), Tab 1, Exhibit "M"**

5. The Debtor was an operating entity for restaurant and catering services provided to Hotel X pursuant to two commercial leasing agreements and a food and beverage agreement (collectively, the "**Agreements**").

**Affidavit of Peter Eliopoulos sworn September 25, 2020 (the "Eliopoulos Affidavit"), Motion Record of the Applicants dated September 25, 2020 (the "Motion Record"), Tab 2, at para. 6**

*B. The Parties' Business Relationship*

6. From the beginning of Hotel X and the Debtor's business relationship, there were problems with the Debtor. The Debtor did not provide the level of service and quality that was required for a premier hotel, such as Hotel X. In one instance, the Debtor was not paying its employees properly so Hotel X had to intervene and force the Debtor to pay its employees appropriate gratuities in accordance with industry standards.

**Lambert Affidavit, Responding Record, Tab 1 at paras. 12-14**

7. In May 2019, the Debtor stopped ceased paying additional rent under its lease agreements.

**Lambert Affidavit, Responding Record, Tab 1 at para. 15**

8. On February 13, 2020 and February 24, 2020, PnP sent letters to Hotel X indicating that it wished to dissolve its relationship with Hotel X as a result of the problems it was facing.

**Lambert Affidavit, Responding Record, Tab 1 at para. 16**

9. On April 7, 2020, the Debtor advised Hotel X that it would no longer be paying any rent, notwithstanding it had not paid any additional rent since May 2019. Thereafter, the Debtor advised Hotel X that it had business losses of \$2,000,000 in the two (2) years it had been operating at Hotel X.

**Lambert Affidavit, Responding Record, Tab 1 at paras. 18 – 19**

10. Ultimately, on July 2, 2020, Hotel X terminated the Agreements, with immediate effect, for cause.

Lambert Affidavit, Responding Record, Tab 1 at para. 21

C. *The Debtor Admits it is Insolvent and the Insolvency Proceedings*

11. As set out in the affidavit in support of the Debtor's motion, the Debtor hasn't been operating and has not generated any income since March 2020.

Eliopoulos Affidavit, Motion Record, Tab 2 at para. 26

12. As further set out in the affidavit in support of the Debtor's motion, the Debtor has outstanding trade creditor debt of approximately \$2,000,000 and an additional \$4,000,000 in liabilities on account of investments made in the Debtor (hereinafter collectively referred to as the "**Debtor's Debt Estimate**"). Additionally, the Ministry of Labour is currently investigating termination and severance claims that may be owed by the Debtor to its employees.

Eliopoulos Affidavit, Motion Record, Tab 2 at para. 26

13. It is not clear how much, if any, of the Applicants' Debt is included in the Debtor's Debt Estimate; however, if all of the debt has been included then the Applicants comprise approximately 33.9% of the estimate and 25.3% if none of the Applicants' Debt has been included. In either scenario, and in any scenario in between, the Applicants' Debt comprise a significant portion of the Debtor's outstanding debt.

14. On August 24, 2020, the Debtor advised certain Applicants that it fully acknowledged their debts but that it was unable to pay the same. It attributed its inability to action taken by Hotel X. The Debtor's statement that Hotel X's actions caused the Debtor to be unable to pay its debts is factually incorrect and not sustainable. The Debtor has outstanding debts with some of the Applicants and significant losses that predate any of Hotel X's actions to terminate the Agreements.

Lambert Affidavit, Responding Record, Tab 1 at para. 30 and Exhibit "J"

15. On September 9, 2020, Princes Gates GP Inc. ("**Hotel X**"), Lowell Security Inc., The Small Winemakers Collections Inc., D.N.B. Media Group Inc., PR CC Plated Meals Inc., Platinum Valet Hotel Cleaners Inc. (as hereinbefore collectively defined, the "**Applicants**") commenced the Bankruptcy Application under section 43.(1) of the *BIA* for a bankruptcy

order (the “**Order**”) against the Debtor. In requesting the Order, the Applicants allege that the Debtor has committed the following acts of bankruptcy:

- (i) ceasing to meet its liabilities as they generally become due; and
- (ii) presenting at a meeting of its creditors a written admission of its inability to pay its debts.

**Lambert Affidavit, Responding Record, Tab 1, Exhibit “M”**

16. Three days before the hearing of the Bankruptcy Application, acknowledging that it is insolvent, the Debtor filed the NOI. The Debtor admits that it filed the NOI in direct response to the Bankruptcy Application.

**Eliopoulos Affidavit, Motion Record, Tab 2 at para. 24**

**Notice of Motion dated September 25, 2020, Motion Record, Tab 1 at para. 8**

17. The Debtor has commenced an action against Hotel X. In Hotel X’s view the litigation is unmeritorious. The action is complex and will be expensive to pursue. Currently the Debtor has proposed a motion for an injunction reinstating it at Hotel X. The Debtor has served a Motion to obtain a Certificate of Pending Litigation against the entire Hotel X. Hotel X has indicated it will be bringing a motion to stay the action for the purposes of arbitration. There are numerous other motions which will probably occur including a motion for security for costs. These interlocutory motions alone may cost hundreds of thousands of dollars before pleadings are even finalized.

### **PART III – THE ISSUES**

18. The issues on the Motion are:

- (i) whether the Bankruptcy Application is automatically stayed under section 69.(1) of the *BIA* and, if so, should the Court exercise its discretion and allow the Bankruptcy Application to proceed; and
- (ii) should the Court make a bankruptcy order against the Debtor.

19. The Applicants submit:

- (i) the Application is not automatically stayed under section 69.(1) of the *BIA* and if it is, the Court should exercise its discretion under section 69.4 and make an order that the stay does not operate in respect of the application; and
- (ii) the Court ought to make the Order.

## **PART IV – LAW AND ARGUMENT**

### ***A. The Application is Not Stayed by Operation of Subsection 69(1) of the BIA***

- 20. The filing of an NOI does not automatically stay a bankruptcy application.
- 21. The Debtor relies on subsection 69.(1) of the *BIA* in taking the position that the Bankruptcy Application is stayed. This section automatically imposes a stay of proceedings in respect of claims asserted against a bankrupt or a bankrupt's property. It provides, in relevant part:

**69.(1) Stay of proceedings – notice of intention** – Subject to subsection (2) and (3) and sections 69.4, 69.5 and 69.6, 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,**

**(emphasis added)**

*Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, Subsection 69.(1)

- 22. This section makes clear that the only type of proceedings which are automatically stayed are those in which a creditor seeks to recover from a debtor a "claim provable in bankruptcy".
- 23. Contrary to the position taken by the Debtor in its factum, it is well established that a bankruptcy application is not a "claim provable in bankruptcy" and is therefore not subject to the automatic stay imposed under section 69.(1). Instead, a bankruptcy application is a proceeding for a bankruptcy itself, not a claim that will be made in the bankruptcy.

*Provincial Refining Company Limited v. Newfoundland Refining Company Limited*, 1977 CarswellNfld 6 at para. 22 (Nfld C.A.) ["Newfoundland Refining"], affirmed 2. S.C.R. 836 (SCC)



24. In *Newfoundland Refining*, the Newfoundland Court of Appeal considered whether a proposal filed by a debtor should have stayed a bankruptcy application. Morgan J.A., in delivering the Court's unanimous decision, held that a bankruptcy application is not a "claim provable in bankruptcy" and is not automatically stayed by the filing a proposal. At paragraph 22 of the decision Morgan J.A. explains:

[22] In my view, s. 49(1) is meant to prevent any creditor with a claim provable in bankruptcy from instituting or continuing any proceedings against a bankrupt or an insolvent who has filed a proposal which might otherwise gain him an advantage over other creditors without leave of the court. A petition is a proceeding for the benefit of all creditors. Furthermore, s. 25 of the Act deals specifically with stay of proceedings on a petition for a receiving order. The provisions of s. 49(1) are not in conflict with or in addition to s. 25 in this regard. They refer to cases in which a proposal has been filed or a debtor declared bankrupt and in which a creditor seeks to recover from the debtor a claim provable in bankruptcy. A petition for a receiving order is not such a claim, and it is governed by the provisions of s. 25.

*Note: ss. 49(1) and 25 of the then-governing Bankruptcy Act, R.S.C. 1970, c. B-3 are now ss. 69.2(1) and 43(10) in the BIA.*

On appeal, the Supreme Court of Canada confirmed the Court of Appeal's decision, which decision is binding on this Court.

***Provincial Refining Company Limited v. Newfoundland Refining Company Limited*,  
2. S.C.R. 836 at para. 1 (SCC)**

25. The Applicants will not gain a material advantage, or any advantage whatsoever, over the Debtor's creditors if the Bankruptcy Application is not stayed. It is therefore entirely consistent with the purpose of a stay provision, as explained in *Newfoundland Refining*, for the Court to allow the Bankruptcy Application to proceed.

**Newfoundland Refining at para. 22**

26. In contrast, a determination that the Bankruptcy Application is automatically stayed under section 69.(1) of the *BIA* would be entirely inconsistent with the purpose of that subsection. It would also have the effect of staying a proceeding that is meant to benefit all of the Debtor's creditors.

27. Last, and most importantly, the stay provisions relative to a bankruptcy application are expressly stated in subsection 43(11) of the *BIA* and, consequently, the automatic stay provisions in section 69.(1) have no application to the present case.

***Newfoundland Refining at para. 22***

28. If this is not the law, virtual every bankruptcy application would be met with an NOI filing, in an attempt not to make a proposal to creditors better than they would receive in a bankruptcy (as intended under the act) *but to delay and deny* the creditors their right pursue a bankruptcy order, fund such delay with estate assets that would otherwise be available to the creditors, and allow a debtor to “trustee shop” and install its preferred trustee over that chosen by the creditors.
29. Notwithstanding the foregoing, if for some reason this Court concludes that the Bankruptcy Application is automatically stayed then the Court should declare that the stay does not operate in respect of the Bankruptcy Application pursuant to section 69.4 of the *BIA*.
30. Section 69.4 of the *BIA* authorizes the Court to exempt a creditor from a stay of proceedings if the creditor is likely to be materially prejudiced by the stay or it is equitable on other grounds:

**69.4 Court may declare that stays, etc., cease** - 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.

**BIA, s. 69.4**

31. If the Bankruptcy Application is stayed and the NOI proceeds, the Debtor will incur what is undoubtedly going to be significant legal expense prosecuting its claim against Hotel X at a time when: (i) it has, by filing an NOI, admitted it is insolvent, (ii) it owes over \$6,000,000 in

liabilities, (iii) it has not operated since March 2020, (iv) it has not generated any income since March 2020, and (v) it only has \$28,000 in cash-on-hand. In these circumstances, it is equitable to permit the Bankruptcy Application to proceed.

**Eliopoulos Affidavit, Motion Record, Tab 2 at para. 26**

**First Report to Court of KSV Restructuring Inc. as Proposal Trustee of 2505243 Ontario Limited, dated September 28, 2020 (the "First Report"), page 3 at section 3.1.1.**

32. On the facts referenced in paragraph 31, the material prejudice to the Applicants is evident. The Debtor will be dissipating its limited capital - \$28,000 - to prosecute its purported claim against Hotel X. Indeed, this proposal trustee comments in the First Report that this was part of the purpose of the filing of an NOI, to prosecute its claim. If the Debtor doesn't achieve a positive result, there will be less, and most likely significantly less, property (as *that term is defined in the BIA*) available to satisfy the debts of the Applicants and the other creditors in a bankruptcy. In fact, in correspondence from the Debtor's counsel to the Applicant's counsel, the Debtor alludes to the fact that it intends to fund its proposal by obtaining judgment against Hotel X in the pending court action. The Debtor's counsel states:

With the assistance of the proposal trustee and the Court, it will ensure that all of 2505243 Ontario Ltd.'s creditors are able to ultimately benefit from the advancement of the Court Action against PGH.

**Eliopoulos Affidavit, Motion Record, Tab 2 at Exhibit "C"**

**First Report, page 3 at section 2.0.9 and 3.1.1**

33. Importantly, the benefit of the Debtor's claim, if any exist, is not lost in a bankruptcy. The trustee in bankruptcy may prosecute the claim on behalf of the estate and, if it doesn't, any creditor so desiring may seek a section 38 order to have the claim assigned to it. Furthermore, and in the circumstances more appropriately, the Debtor's creditors will have the opportunity to provide input on whether or not the estate, or itself through a section 38 order, ought to risk estate or their own funds to prosecute the claim. Conversely, the NOI will take that decision out of the creditors' hands and put estate assets at risk.

34. The administration charge sought by the Debtor also prejudices the Applicants and other creditors. The Administration Charge is for up to \$100,000 and will have priority to the interests of the Applicants and other creditors. In the event the Debtor is eventually

adjudged or deemed bankrupt, the Applicants will suffer up to \$100,000 in prejudice if the administration charge granted.

35. In light of the material prejudice to the Applicants and for equitable reasons, the Applicants submit that the Bankruptcy Application ought to be permitted to proceed in the event this Court finds, contrary to case law, it is automatically stayed by operation of subsection 69(1).

***B. The Court Should Not Exercise its Discretion and Stay the Bankruptcy Application***

36. Subsection 43(11) of the *BIA* authorizes the Court to order a stay of the bankruptcy application in circumstances where there is “other sufficient reason”. No such reason exists here, and this relief has not been requested by the Debtor.

**BIA, ss. 43(11)**

37. In its notice of motion, the Debtor’s only request for relief relative to the Bankruptcy Application is a request for a declaration and confirmatory order that the automatic stay in section 69.(1) of the *BIA* operates to stay the Bankruptcy Application. The notice of motion provides, in relevant part:

**THIS MOTION IF FOR AN ORDER:**

1. Declaring and confirming that the Bankruptcy Application commenced by, among others, Princes Gates GP Inc. on September 9, 2020, bearing Court File No. BK-20-00208450-OT31 is stayed pursuant to section 69(1) of the *Bankruptcy and Insolvency Act* (BIA);

**Notice of Motion, Motion Record, Tab 1 at para. 1**

38. The Debtor at paragraph 28 of its factum now seeks to modify the relief requested. It now requests that the Court make a discretionary order under subsections 43(10) and 43(11) and stay the Bankruptcy Application. The Applicants have not formally requested this relief and as such it should not be provided at this time.

39. The Debtor requests that the Court exercise its discretion under subsections 43(10) and 43(11) of the *BIA* and stay the Bankruptcy Application amounts to an acknowledgement that the automatic stay does not apply to the Bankruptcy Application.
40. In the event the Court allows the Debtor's submissions on the discretionary stay, the discretionary stay should not be granted. The Debtor reasons that the Court should grant the discretionary stay because of the ongoing litigation and Hotel X. This argument ignores the fact that there are five (5) other applicants to the Bankruptcy Application and there is no bona fide dispute over their debts. It also ignores that Debtor has admitted its insolvency and admitted on the record to owing \$4,000,000 in trade debt. For these reasons, the Court should not exercise its discretion and stay the Bankruptcy Application.

***C. A Trial is Not Required and the Court Should Adjudge the Debtor Bankrupt***

41. The facts set out in the Bankruptcy have been proven and therefore the Court should make an order (as hereinbefore defined, the "**Order**") declaring the Debtor bankrupt. As pled in the Bankruptcy Application, the Debtor (i) has outstanding liabilities of at least \$1,000, and (ii) has committed the act of bankruptcy of ceasing to meet its liabilities generally as they become due. There is sufficient evidence on the record to confirm these material facts. In fact, the Debtor has admitted as much in its own evidence.
42. Peter Eliopoulos ("**Mr. Eliopoulos**"), the founder and president of the Debtor, in his affidavit sworn September 25, 2020 (the "**Eliopoulos Affidavit**") confirms that the Debtor has not been meeting its liabilities as they generally become due:
  - (i) at paragraph 24 of the Eliopoulos Affidavit, Mr. Eliopoulos gives evidence that the Debtor has trade creditor debt of \$4,000,000 and an additional \$2,000,000 of investment debt;
  - (ii) at paragraph 28 of the Eliopoulos Affidavit, Mr. Eliopoulos gives evidence that the Debtor owes \$150,000 on account of government remittances; and
  - (iii) at paragraph 22 of the Eliopoulos Affidavit, Mr. Eliopoulos acknowledges that only some of the Applicant Debt is disputed.

43. Even removing the Hotel X debt from the facts in support of the Bankruptcy Application, the Applicants' Debt far exceeds the threshold Applicant debt required to obtain a bankruptcy order under the *BIA* - \$1,000 - and the Debtor has committed an act of bankruptcy by ceasing to meet its obligations to its trade creditors, certain Applicants and the Minister of Finance as they have been generally becoming due.
44. Furthermore, the Debtor has admitted that it is insolvent by filing the NOI, as an NOI may only be filed by an "insolvent person".

**BIA, s. 50.4(1)**

45. Notably, there is no prejudice to the Debtor if the Court proceeds as requested by the Applicants. This is because the Debtor is expressly authorized to make an in-bankruptcy proposal. Subsection 50(1) of the *BIA* provides:

Subject to subsection (1.1), a proposal made 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.

**(emphasis added)**

46. In these circumstances, the Applicants submit that a trial of the bankruptcy application is not required and a bankruptcy order should be made against the Debtor.

**PART V – ORDER SOUGHT**

47. The Applicants request that:

- (i) the Court dismiss the Debtor's motion for an order declaring and confirming that the stay imposed under section 69(1) of the BIA operates to stay the Bankruptcy Application;
- (ii) the Court dismiss the Debtor's motion for an interim charge; and
- (iii) the Court make a bankruptcy order in respect of the Debtor.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**, this 28<sup>th</sup> day of September, 2020.



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## **SCHEDULE "A"**

### **LIST OF AUTHORITIES**

1. *289179 Ontario Ltd., Re, 1979 CarswellOnt 183 (Ont. Sup. Bk.)*
2. *Provincial Refining Company Limited v. Newfoundland Refining Company Limited, 1977 CarswellNfld 6 (Nfld C.A.)*
3. *Provincial Refining Company Limited v. Newfoundland Refining Company Limited, 2. S.C.R. 836, (SCC)*
4. *The 2020 Annotated Bankruptcy and Insolvency Act, D§39(10)*



**SCHEDULE "B"**  
**RELEVANT STATUES**

***Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3***

**Definitions**

2. In this Act,

....

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

**Acts of bankruptcy**

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

....

(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;

...

(j) if he ceases to meet his liabilities generally as they become due.

**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.

**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.

## 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.

## Notice of intention

- **50.4 (1)** Before filing 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).

## Stay of proceedings — notice of intention

- 69 (1)** Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, 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

## 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.

## 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.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**FACTUM OF Princes Gates GP Inc. Lowell  
Security Inc., The Small Winemakers  
Collections Inc., D.N.B. Media Group Inc.,  
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Hotel Cleaners Inc.**

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