

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY
ACT*, R.S.C. 1985, c. B-3, as amended

IN THE MATTER OF THE NOTICES OF INTENTION TO
MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND
YSL RESIDENCES INC. OF THE CITY OF TORONTO, IN THE
PROVINCE OF ONTARIO

APPLICANT'S MEMORANDUM OF ARGUMENT
(Pursuant to Rule 25 of the *Rules of the Supreme Court of Canada*)

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PART I - OVERVIEW AND FACTS

1. This appeal concerns the fundamental issue of what is a provable claim under the *Bankruptcy and Insolvency Act* (“**BIA**”).¹ In 2024, the number of business insolvencies in the country reached a 15-year high, representing a 68.2% increase over pre-pandemic volumes.² As tariffs and other obstacles create further economic uncertainty, the applicant, KSV Restructuring Inc. (the “**Proposal Trustee**” appointed under the *BIA*), requests this Court’s guidance to resolve a divergence between provincial Courts of Appeal about the meaning of “provable claims” and “equity claims”.

2. At the heart of Canadian insolvency law is the fundamental principle that debts enjoy priority over claims in the nature of “equity”. The decision below of the Court of Appeal for Ontario (“**ONCA**”) casts this principle in doubt.

3. At issue is a proof of claim for \$18 million submitted by Maria Athanasoulis in the underlying *BIA* proceeding initiated by the debtors, YG Limited Partnership and YSL Residences Inc. (“**YSL**”). YSL’s sole business was developing a 90-storey condominium tower in downtown Toronto (the “**YSL Project**”). Ms. Athanasoulis, the former Chief Operating Officer of parent entities of YSL known as the Cresford Group (“**Cresford**”), was constructively dismissed by Cresford in December 2019. At the time, the YSL Project had only just commenced excavation. Even the most optimistic construction forecasts did not project that the YSL Project would be completed, and potentially generate profits, for many years.

4. After YSL filed a proposal under the *BIA* in 2021, Ms. Athanasoulis filed a proof of claim for 20% of the *profits* that she claims Cresford would have earned from the YSL Project (the “**Profit-Share Claim**”). Ms. Athanasoulis relied on an oral profit-sharing agreement (the “**PSA**”) with the principal of Cresford, and claimed \$18 million from YSL’s estate.

5. The Proposal Trustee disallowed the Profit-Share Claim because: (i) a claim for profit is not a provable claim as it is in substance equity, and not a debt or liability of YSL; and (ii) it was too remote or speculative, given that it depended on the profitable completion of a project that

¹ [*Bankruptcy and Insolvency Act*](#), RSC 1985, c B-3 [**BIA**].

² Canadian Association of Insolvency and Restructuring Professionals, “[Q4 2024 Canadian Insolvency Statistics](#)”, July 9, 2024.

would never have transpired during Ms. Athanasoulis's period of reasonable notice of dismissal (the "**Disallowance**").

6. Ms. Athanasoulis appealed the Disallowance to the Ontario Superior Court of Justice ("**ONSC**"). The ONSC reversed the Disallowance and held that Ms. Athanasoulis had a provable claim because the definition of "equity claim" in section 2 of the *BIA* is exhaustive. Because Ms. Athanasoulis's claim did not meet that statutory definition, it must be a provable claim. The Ontario Court of Appeal ("**ONCA**") agreed. In so doing, the ONCA diverged from decades of jurisprudence.

7. This Court and various lower courts have directed trustees to consider the substance and context of a claim to properly determine its priority in insolvency proceedings.³ The ONCA decision calls into question this entire line of authority and suggests that claims in the nature of equity, and not a debt or liability, may now be entitled to participate in the distribution of assets from an insolvent estate, to the prejudice of existing creditors. Moreover, because the *Companies' Creditors Arrangement Act* ["**CCAA**"] defines the terms "equity claim" and "provable claim" the same as the *BIA*,⁴ the ONCA's decision will cascade across the entire Canadian insolvency landscape.

8. This application presents a critical opportunity for this Court to resolve for the first time this foundational question in Canada's insolvency regime: is a contractual claim for "profit" in substance a debt or liability, or alternatively are all claims that do not fall within the statutory definition of "equity claims" in section 2 of the *BIA* necessarily "provable claims" within the meaning of sections 121 and 135 of the *BIA*?

9. The answer to this question has profound implications for thousands of Canadian insolvency proceedings each year. As this case illustrates, if any claim that does not meet the statutory definition of "equity claim" must be a "provable claim", insiders asserting profit share claims will be able to recover from bankrupt estates alongside ordinary creditors. That would fundamentally alter Canadian insolvency law.

³ [*Canada Deposit Insurance Corp. v. Canadian Commercial Bank*](#), 1992 CanLII 49 (SCC), pp. 587-590 [*Canada Deposit Insurance Corp.*].

⁴ *BIA*, s. 2; [*Companies' Creditors Arrangement Act*](#), RSC 1985, c C-36, s. 2(1) [**CCAA**].

10. If there is to be such a sea change in insolvency law, it is a matter of national and public importance warranting the attention of this Court.

A. Background

11. YSL was established in 2016 for the purpose of developing the YSL Project, a mixed-use condominium tower at the corner of Yonge Street and Gerrard Street in downtown Toronto. Excavation of the site began in October 2019, and the construction schedule at the time planned for a 2025 completion date at the earliest.⁵

12. YSL was a partnership that was controlled by the general partner, Cresford. Cresford is a real estate development group. Cresford held its equity interest in YSL through partnership units that were subordinated to limited partnership units held by third party investors (the “LPs”). In other words, if YSL earned any profit, that profit would be paid to the third party investors before Cresford.

13. Ms. Athanasoulis was the COO of Cresford and its second highest ranking executive; she was not a shareholder of Cresford or YSL. In 2019, Cresford was developing three other condominium projects in Toronto in addition to the YSL Project. Cresford was in a precarious financial position and desperately required additional funding. Ms. Athanasoulis had a falling out with the principal of Cresford, Dan Casey, and was constructively dismissed in December 2019.⁶

14. Following her dismissal, Ms. Athanasoulis forged and sent two letters in the name of Cresford’s Chief Financial Officer to Cresford’s principal lenders in January 2020.⁷ These letters alleged that Mr. Casey was misleading lenders, and that Cresford’s projects were over-budget and on the brink of insolvency.⁸ Cresford’s lenders immediately withdrew their support, Ms.

⁵ YSL *Pro Forma* dated October 2019, p. 1 [Leave Record [LR], Vol. 1, Tab 3A, p. 112]; Athanasoulis Discovery Examination, q. 243 [LR, Vol. 1, Tab 3B, p. 156].

⁶ Partial Award of Arbitrator Horton dated March 22, 2022, para. 191(d) [**Horton Partial Award**] [LR, Vol. 1, Tab 3C, p. 223]

⁷ [*10390160 Canada Ltd. v. Casey*](#), 2022 ONSC 628, paras. [17-20](#).

⁸ Forged Letters to Otera Capital and Quadreal [LR, Vol. 1, Tabs 3D and 3E, pp. 225-226].

Athanasoulis issued a statement of claim against Cresford,⁹ and then the COVID-19 pandemic hit. By 2021, all four Cresford projects were subject to insolvency proceedings.

15. On April 20, 2021, YSL filed a Notice of Intention to Make a Proposal (the “**NOI**”) under s. 50.4(1) of the *BIA*.¹⁰ The applicant, KSV Restructuring Inc., was appointed as the Proposal Trustee.

16. Ms. Athanasoulis filed two proofs of claim in the *BIA* proceeding for a total of \$19 million:

- (a) a \$1 million claim for wrongful dismissal damages;¹¹ and
- (b) an \$18 million claim for the Profit-Share Claim based on the assertion that, but for her dismissal, Cresford would have eventually earned \$90 million in profit from the YSL Project, and she would have received 20% of that amount.¹²

17. The Profit-Share Claim is by far the largest unsecured claim made against YSL. At the claimed value of \$18 million, the Profit-Share Claim will reduce anticipated unsecured creditor recoveries from 100% to approximately 70%, and eliminate any recovery that the LPs might have obtained after creditors had been paid in full. The LPs are entitled to repayment of their initial \$14.8 million investment plus a 100% return on that investment (for a total of \$29.6 million) before Cresford is entitled to any profit from the YSL Project. Ms. Athanasoulis’ profit participation right was not separate and distinct from Cresford’s. Absent the Profit-Share Claim, the Proposal Trustee estimates that the LPs will recover approximately \$13.8 million of their initial \$14.8 million investment after all claims of unsecured creditors—including Ms. Athanasoulis’s wrongful dismissal” proof of claim—are paid in full.¹³

18. YSL’s BIA proposal was sponsored by another property developer unrelated to Cresford, Concord Properties Development Corp. (“**Concord**”). In July 2021, Justice Dunphy endorsed an

⁹ Athanasoulis Statement of Claim [LR, Vol. 1, Tab 3F, pp. 227-258].

¹⁰ Sixth Report of the Proposal Trustee, s. 1.0(1) [LR, Vol. 1, Tab 3G, p. 261].

¹¹ Athanasoulis Statement of Claim, paras. 1 and 103 [LR, Vol. 1, Tab 3F, pp. 229, 256-257].

¹² Sixth Report of the Proposal Trustee, s. 5.1(1) [LR, Vol. 1, Tab 3G, p. 271].

¹³ Eighth Report of the Proposal Trustee, s. 4.0(9) [LR, Vol. 1, Tab 3H, p. 384].

amended proposal that provided for Concord to acquire the YSL Project. The acquisition included the following terms:

- (a) Concord would assume all secured creditor claims, totalling approximately \$260 million, and all construction lien claims; and
- (b) Concord would pay to the Proposal Trustee a pool of cash of \$30.9 million to be distributed to unsecured creditors with proven claims. Amounts remaining in the Cash Pool, if any, would be distributed to the LPs.

19. Justice Dunphy approved the proposal on the basis that it provided “a superior outcome for all classes of creditors under every conceivable scenario”.¹⁴

20. The result of the acquisition was that neither Cresford nor YSL (i) owned the YSL Project, (ii) completed the YSL Project, or (iii) profited from the development of the YSL Project.

21. Because Ms. Athanasoulis relied on an oral agreement denied by Cresford, and because of the inevitability of lengthy court processes resulting from any determination made by the Proposal Trustee, the Proposal Trustee and Ms. Athanasoulis agreed to arbitrate her claim. The arbitration would be bifurcated: phase one would address whether an enforceable PSA existed, and phase two would address whether any damages were owing.

22. Phase one of the arbitration was held in February 2022. In this phase, Ms. Athanasoulis made two key admissions. First, she testified that the profit-share amount was payable “at the end of a project when it’s complete”.¹⁵ Second, she conceded that her profit-share amount would be calculated after equity investments were returned to the LPs, because “repayments to the LPs were treated as expenses that would be repaid prior to the calculation of [her profit-share]”.¹⁶ The LPs reasonably expected to rank ahead of Cresford in the distribution of profits.¹⁷

¹⁴ [*YG Limited Partnership and YSL Residences \(Re\)*](#), 2021 ONSC 5206, para. [15](#).

¹⁵ Athanasoulis Arbitration Direct Examination, pp. 160:23-161:2 [LR, Vol. 2, Tab 3I, pp. 160-161].

¹⁶ Athanasoulis Affidavit dated May 5, 2023, para. 88 [LR, Vol. 2, Tab 3J, p. 238].

¹⁷ Limited Partnership Agreement, s. 6.3 [LR, Vol. 2, Tab 3K, p. 263].

23. The arbitrator held that the PSA was enforceable and entitled Ms. Athanasoulis to 20% of any profits earned on Cresford projects, including the YSL Project. He held that the key terms of the PSA with respect to the YSL Project were:

- (a) “Profits were to be calculated, on a good faith basis, based on the pro forma budgets prepared by Cresford with respect to each project”, and “would ultimately have to be accounted for with third party investors;
- (b) “Profits were to be shared when earned, usually at the completion of a project”; and
- (c) “There was no requirement that [Ms.] Athanasoulis remain employed at the time that a profit was earned”.¹⁸

24. Following the conclusion of phase one, the LPs and Concord objected to the arbitral process. On November 1, 2022, the motion judge directed that phase two of the arbitration would not continue. Instead, the Proposal Trustee was to determine whether Ms. Athanasoulis had a “provable claim” in the *BIA* proceeding given the PSA and its determined terms.¹⁹

25. On August 30, 2023, the Proposal Trustee disallowed the Profit-Share Claim on the basis that it was not a debt or liability of YSL (*i.e.*, it was in substance a claim for equity in YSL, as it was based on the profit earned by Cresford on that project), and in any event (even if a debt or liability) it was too remote or speculative to be a provable claim.²⁰

B. The Decisions Below

(i) The ONSC Decision

26. On March 19, 2024, the ONSC allowed Ms. Athanasoulis’s appeal of the Notice of Disallowance. The ONSC held that the Profit-Share Claim was a provable claim under sections 121 and 135 of the *BIA* for two reasons.

27. First, the ONSC held that the Profit-Share Claim was not an equity claim because it did not fall within the definition of “equity claim” in the *BIA*. The ONSC declared that there was no such

¹⁸ Horton Partial Award, paras. 147 and 191(b)(ii)-(v) [LR, Vol. 1, Tab 3C, pp. 209, 223].

¹⁹ [*YG Limited Partnership \(Re\)*](#), 2022 ONSC 6138, para. 7.

²⁰ Notice of Disallowance [LR, Vol. 2, Tab 3L, pp. 287-293].

thing as an equity claim “in substance” and that prior appellate decisions to the contrary were inapposite.²¹

28. Second, the ONSC held that the alleged oral PSA was an integral part of Ms. Athanasoulis’s oral employment agreement that operated indefinitely, without reference to a common law reasonable notice period. Consequently, when Ms. Athanasoulis was dismissed, the Profit-Share Claim transformed from a claim to future profits into an immediate right to damages for breach of contract, and was therefore neither too remote nor too speculative to be provable under s. 121 of the *BIA*.²²

(ii) The ONCA Decision

29. On August 14, 2025, the ONCA dismissed the Proposal Trustee’s appeal from the ONSC’s decision for three reasons.

30. First, the ONCA held that the definition of equity claim introduced in the *BIA* in 2009 was exhaustive, ousted the previous body of law, and did not require any consideration of the substance or context of the claim.²³ In the ONCA’s view, an equity claim could no longer arise from anything “other than an ownership interest in a corporation”.²⁴ The ONCA concluded that, because the Profit-Share Claim did not arise from shares in a company, it was not an equity claim and could be a provable claim.²⁵

31. Second, the ONCA held that, while calculating an entitlement to the future profits of a bankrupt project may be difficult and even redundant, the Profit-Share Claim was to be viewed as

²¹ Decision of Justice Kimmel dated March 19, 2024, 2024 ONSC 1617, paras. 51-67 [**ONSC Decision**] [LR, Vol. 1, Tab 1A, pp. 15-18].

²² ONSC Decision, paras. 73-94 [LR, Vol. 1, Tab 1A, pp. 19-23].

²³ *YG Limited Partnership and YSL Residences Inc. (Re)*, 2025 ONCA 591, paras. [50-61](#) [**ONCA Decision**] [LR, Vol. 1, Tab 1C, pp. 53-59].

²⁴ ONCA Decision, para. [55](#) [LR, Vol. 1, Tab 1C, pp. 54-55].

²⁵ ONCA Decision, paras. [62-64](#) [LR, Vol. 1, Tab 1C, pp. 61-62].

an unliquidated claim and not a contingent claim.²⁶ The ONCA held that, because the claim was not contingent, the only bar to the recovery of damages was the remoteness of the type of loss.²⁷

32. Third, the ONCA held that the common law reasonable notice period did not apply to the Profit-Share Claim.²⁸

PART II - PROPOSED QUESTION OF LAW

33. This proposed appeal concerns whether the definition of “equity claim” in the BIA is exhaustive, and therefore any claim not meeting the statutory definition of “equity claim” is necessarily a “provable claim” under sections 121 and 135 of the BIA.

34. This question is of significant national and public importance. If the ONSC and ONCA decisions are correct, and the definitions of equity claim in the BIA and CCAA are exhaustive, then decades of jurisprudence (including after the most recent relevant amendments to the BIA and the CCAA) encouraging trustees and parties to look to the substance rather than the form of a claim will be rendered obsolete. Trustees will be forced to ignore important context and make distributions that do not accord with the fundamental principles of the Canadian insolvency regime. Across the thousands of insolvency proceedings commenced each year, statutory schemes relied on to produce fair outcomes for businesses and their stakeholders at their single most critical financial juncture become significantly more likely to fail creditors in favour of profit-sharing insiders or others whose interest in the debtor is in substance equity and not debt.

PART III - STATEMENT OF ARGUMENT

A. THERE IS A SIGNIFICANT DIVERGENCE IN THE JURISPRUDENCE

(i) Relevant Provisions

35. Canada’s insolvency statutes rest on two fundamental principles. First, equity claims are subordinate to debt claims. Second, only provable claims by creditors are to be valued and then receive a *pro rata* distribution from an estate.

²⁶ ONCA Decision, paras. [65-75](#) [LR, Vol. 1, Tab 1C, pp. 62-66].

²⁷ ONCA Decision, paras. [76-80](#) [LR, Vol. 1, Tab 1C, pp. 67-68].

²⁸ ONCA Decision, paras. [81-83](#) [LR, Vol. 1, Tab 1C, pp. 68-70].

36. A provable claim is defined by section 121 of the *BIA*, while section 135 gives a trustee the power to determine what is a provable claim. The relevant portions state as follows:

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...

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.

[Underlining added.]

Determination of provable claims

135 (1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim...

[Underlining added.]

37. For many years, the *BIA* did not define what constituted an equity claim. That void was filled by decades of common law precedent, which affirmed that claims in the nature of equity are *not* provable claims and are not captured in sections 121 and 135 of the *BIA*.²⁹ As a result, trustees would have regard for the substance and context of the claim, and disallowed ones that were in the nature of equity as not being provable claims. Courts consistently upheld this approach.

38. Historically, the classification of a claim was a discretionary exercise. In *Canada Deposit Insurance Corp. v. Canadian Commercial Bank*, this Court held that claims should be categorized based on their “substance”, and that the determination of this substance was based on the intention of the parties and the surrounding circumstances.³⁰ In *Re Central Capital Corp*, the ONCA

²⁹ *Infra*, paras. 48, 50.

³⁰ [*Canada Deposit Insurance Corp.*](#), pp. 587-590.

reaffirmed the importance of the contextual approach for the purpose of determining whether the claim at issue was not a debt or liability but rather in the nature of equity.³¹

39. The statutory definitions of “equity claim” and “equity interest” were introduced as part of a series of amendments in 2009 (the “**Amendments**”). Section 2 of the *BIA* and section 2(1) of the *CCAA* now define an equity claim and equity interest as follows:

equity claim means a claim that is in respect of an equity interest, including a claim for, among others,

(a) dividend or similar payment...

equity interest means

(a) in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt...

[Underlining added.]

40. Section 2 of the *BIA* describes a “provable claim” as “any claim or liability provable in proceedings under this Act by a creditor”. The statute defines a “creditor” as “a person having a claim provable as a claim under this Act”.

41. The decisions below held that the Amendments eliminated the common law contextual analysis in insolvency proceedings that had been set out by this Court in *Canada Deposit Insurance Corp* and by the ONCA in *Re Central Capital Corp*. This conclusion is inconsistent with both the legislative history, and the existing case law considering the Amendments.

(ii) *Parliament Did Not Drastically Overhaul the Law*

42. The ONCA held that the “2009 [A]mendments were introduced to remove the uncertainty in this type of analysis” concerning whether a claim was equitable in substance, and “leave no room” for context.³² This holding is simply not reflected in the legislative history. The ONCA

³¹ [*Royal Bank of Canada v. Central Capital Corp.*](#), 1996 CanLII 1521 (ON CA), pp. 524-530, 536-540.

³² ONCA Decision, paras. [56](#), [58](#) [LR, Vol. 1, Tab 1C, pp. 55-57].

cites the clause-by-clause analysis of the Amendments published by the Office of the Superintendent of Bankruptcy, but this analysis only confirms that the definitions of “equity claim” and “equity interest” were “added to provide greater clarity”, but not to completely oust decades of precedent.³³

43. Instead, as the ONCA previously explained in *Sino-Forest Corporation (Re)*, the legislative history and commentary in support of the Amendments was limited, “brief”, and “imprecise”, and the changes were generally understood to be primarily directed towards greater conformity with U.S. insolvency law to avoid forum shopping.³⁴ There was no expressed desire from the legislature to exhaustively delineate the types of claims that are and are not equity claims, and consequently, the types of claims that are and are not provable claims. Rather, the main catalyst for the Amendments was to embody the common law determination that certain contractual indemnity claims and the like related to shareholder lawsuits (which arguably constitute a debt or liability of the indemnitor) should not be provable claims in the indemnitor’s insolvent estate as they are in essence derivative of the main shareholder claim, which would not be a provable claim.

44. Had Parliament intended to overhaul the common law pertaining to the assessment of provable claims as discussed in *Canada Deposit Insurance Corp.* and *Re Central Capital Corp.* by eliminating the concept of an equity claim in substance, it could have done so. But it did not. It is trite that Parliament is not presumed to alter the common law “without expressing its intentions to do so with irresistible clearness”.³⁵ Instead, by leaving the meaning of “provable claims” in the *BIA* untouched by the Amendments, Parliament intended that the pre-existing common law continues to apply in the assessment of provable claims under sections 121 and 135 of the *BIA*.

45. Moreover, the ONCA’s decision that an equity interest and equity claim cannot arise from anything “other than an ownership interest in a corporation” and that the definition of “equity interest” in the *BIA* produces “an exhaustive list of ownership interests” cannot be true because the definition would then exclude a number of business arrangements that do not take a corporate

³³ Office of the Superintendent of Bankruptcy, [Bill C-12: Clause by Clause Analysis—Clauses 1–10](#); ONCA Decision, para. [58](#) [LR, Vol. 1, Tab 1C, pp. 56-57].

³⁴ [Sino-Forest Corporation \(Re\)](#), 2012 ONCA 816, paras. [51-52](#) [*Sino-Forest ONCA*].

³⁵ [Heritage Capital Corp. v. Equitable Trust Co.](#), 2016 SCC 19, paras. [29-31](#).

form.³⁶ As the British Columbia Supreme Court noted in *0731431 B.C. Ltd. v Panorama Parkview Homes Ltd.*:

“The 2009 amendments do not contain a complete definition of an equity creditor, stating only that an equity creditor is a person who makes a claim in respect of an equity interest. The definition of equity interest referred to above applies only to corporations. There is a similar definition of an equity interest in an income trust. There is however no statutory definition in the BIA of an equity claim that arises out of other business arrangements ... a statute should be presumed to have modified the pre-existing common law only if it does so in clear language ... Parliament intended that the existing rule would remain in force”.³⁷

[Emphasis added.]

46. That the purportedly “exhaustive” interpretation adopted in the decisions below would need to be expanded simply to avoid the commercially absurd result that partnerships, joint ventures, and other common business arrangements other than a “corporation” could never give rise to equity claims in insolvency proceedings demonstrates the incorrect and unduly restrictive construction of these concepts in the ONCA decision.

47. As this Court has noted, the *BIA* and *CCAA* are remedial statutes that must be interpreted liberally and are intended to facilitate constructive and equitable solutions.³⁸ Their rules are meant to give effect to the foundational debt priority principle,³⁹ and eschew commercially unreasonable results.⁴⁰ The decisions below achieve none of these objectives and, by leapfrogging the LPs, place Ms. Athanasoulis’s Profit-Share Claim in a better position as a result of the underlying insolvency.

48. Such a result is inconsistent with the “prime directive” of statutory interpretation to adopt an interpretation that complies with accepted legal norms, and is reasonable and just.⁴¹ Indeed, the

³⁶ ONCA Decision, para. [55](#) [LR, Vol. 1, Tab 1C, pp. 54-55].

³⁷ [0731431 B.C. Ltd. v Panorama Parkview Homes Ltd.](#), 2021 BCSC 607, para. [534](#), emphasis added, citations omitted.

³⁸ [Century Services Inc. v. Canada \(Attorney General\)](#), 2010 SCC 60, paras. [15](#), [59](#); [Sun Indalex Finance, LLC v. United Steelworkers](#), 2013 SCC 6, para. [205](#).

³⁹ [Re Sino-Forest Corp.](#), 2012 ONSC 4377, para. [24](#) [*Sino-Forest ONSC*].

⁴⁰ [Re U.S. Steel Canada Inc.](#), 2016 ONSC 569, para. [153](#) [*U.S. Steel ONSC*], *aff’d* [2016 ONCA 662](#) [*U.S. Steel ONCA*].

⁴¹ [Piekut v. Canada \(National Revenue\)](#), 2025 SCC 13, para. [49](#).

ONCA itself acknowledged that its decision led to an “apparent unfairness”.⁴² That result was reached through a fundamental misinterpretation of the scope and application of sections 121 of the 135 of the BIA that has national ramifications and is an issue of great public importance that should be settled authoritatively by this Court.

(iii) The Decisions Below Create a Split in the Jurisprudence

49. The ONCA’s approach departs from what had been the unanimous approach of courts across the country (including the ONCA) which had held that the Amendments did not eliminate the need for a contextual approach to determine what was an equity claim in substance.

50. Until the decisions below, courts across Canada had: (i) consistently endorsed a contextual and multi-factorial approach to determine what was a provable claim; and (ii) rejected the argument that the definitions created by the Amendments were exhaustive, or operated to limit the scope of disallowable claims to those that strictly fit within the statutory definitions of “equity interest” and “equity claim”:⁴³

- (a) In the very first reported decision considering the Amendments, Justice Pepall (as she then was) held in *Re Nelson Financial Group* that the Amendments “incorporated the historical treatment of equity claims”, and that the proper approach to the characterization of claims still flowed from the ONCA’s guidance in *Re Central Capital Corp.*⁴⁴ After noting that the claims before her possessed characteristics of both debt and equity, Justice Pepall considered a variety of contextual factors and concluded that “the substance of the arrangement” was “a relationship based on equity and not debt”.⁴⁵
- (b) In *Re Sino-Forest Corp.*, Justice Morawetz (as he then was) agreed that proper characterization “focuses on the substance of the claim”,⁴⁶ and held that the Amendments were made with the intention of “clarifying”, rather than supplanting,

⁴² ONCA Decision, para. [63](#) [LR, Vol. 1, Tab 1C, pp. 61-62].

⁴³ *Sino-Forest ONCA*, paras. [37-41](#), [44-46](#).

⁴⁴ *Nelson Financial Group Ltd. (Re)*, 2011 ONSC 2750, paras. [27-30](#) [*Nelson*].

⁴⁵ *Nelson*, paras. [31-32](#), emphasis added.

⁴⁶ *Sino-Forest OSNC*, paras. [85-90](#).

the common law with respect to equity claims.⁴⁷ The ONCA affirmed this reasoning, explaining that the statutory definition should be construed expansively, not restrictively, and that an “[e]quity claim” is not confined by its definition, or by the definition of ‘claim’, to a claim advanced by the holder of an equity interest”.⁴⁸

- (c) In *Re U.S. Steel Canada Inc.*, Justice Wilton-Siegel held that the statutory definitions of “equity interest” and “equity claim” do not exhaustively delineate claims that are not provable claims because doing so ignores “reality” and leads to “unreasonable” conclusions,⁴⁹ and proceeded to engage in a thorough review of the context relevant to the claim.⁵⁰ He focussed on the objective intent of the parties and then determined that the claims were in substance claims in debt rather than claims based in equity.⁵¹ On appeal, Chief Justice Strathy reviewed the effects of the Amendments together with the fundamental rule that equity must be subordinate to other claims. He explicitly affirmed that, under the *CCAA*, courts remain permitted to determine the “substance” of a claim, and concluded that the new definition of equity claim “**codifies** what was essentially the law before the 2009 amendments”.⁵²
- (d) In a decision issued just a few months before the ONCA decision, the ONSC in *Re Organic Garage* endorsed the liberal interpretative approaches taken by the ONCA in *Sino-Forest*, and by Justice Dunphy in the proposal proceedings concerning Ms. Athanasoulis’s profit-sharing claims in other Cresford projects,⁵³ and used a contextual analysis to determine which of the various claims advanced by the appellant in that case were in the nature of equity.

⁴⁷ *Sino-Forest ONSC*, para. [32](#).

⁴⁸ *Sino-Forest ONCA*, para. [46](#).

⁴⁹ *U.S. Steel ONSC*, para. [153](#).

⁵⁰ *Ibid*, paras. [182-271](#).

⁵¹ *Ibid*, paras. [333](#) and [421](#).

⁵² *U.S. Steel ONCA*, paras. [63-65](#), [86](#), emphasis added.

⁵³ *Re Organic Garage*, 2025 ONSC 2476, paras. [79-88](#).

- (e) In the context of this very proceeding, a different judge, Justice Dunphy, applied a context-based test to determine that claims for the repayment of intercompany loans advanced by affiliates of YSL *that held no equity in YSL* were claims in the nature of equity and therefore not provable claims even though those claims did not fall within the definition of “equity claim” in the *BIA*.⁵⁴

51. The decisions below acknowledge that each of the cases above consider the nature and substance of claims at length and perform a contextual analysis to properly characterize the claims at issue—and then effectively treat this line of reasoning as redundant under their constructions of equity claim and equity interest.⁵⁵ The decisions below ignore that this Court has previously affirmed the primacy of substance over form in insolvency matters.⁵⁶ If there is no such thing as an equity claim “in substance”, then the extensive attention that these decisions paid to analyzing the substance and nature of the claims before them served no purpose. Rather than reducing considered reasoning to obsolescence, the more reasonable and straightforward interpretation of the Amendments is that the concept of an equity claim “in substance” does in fact survive, and should be considered by a trustee.

52. Jurisprudence from other jurisdictions further highlights the uncertainty engendered by the decisions below. Courts in Nova Scotia, Quebec, and British Columbia have all confirmed that trustees must consider the substance of a claim to determine whether it is in the nature of equity:

- (a) In *Re Bul River Mineral Corp.* and *Re All Canadian Investment Corporation*, the British Columbia Supreme Court held that the Amendments did not affect “the ability of the court to analyze the substance of the claims”⁵⁷ and that the “focus of the inquiry is to determine whether in substance the [...] claims are debt or equity. They cannot be both.”⁵⁸

⁵⁴ [*YG Limited Partnership and YSL Residences \(Re\)*](#), 2021 ONSC 4178, paras. [44-48](#).

⁵⁵ ONCA Decision, paras. [59-61](#) [LR, Vol. 1, Tab 1C, pp. 57-61].

⁵⁶ [*Newfoundland and Labrador v. AbitibiBowater Inc.*](#), 2012 SCC 67, paras. [19](#), [45](#).

⁵⁷ [*Re Bul River Mineral Corp.*](#), 2014 BCSC 1732, para. [85](#).

⁵⁸ [*Re All Canadian Investment Corporation*](#), 2019 BCSC 1488, para. [70](#), emphasis added.

- (b) In Quebec, the Court of Appeal has twice recently affirmed the primacy of the “in substance” approach. In *Syndic de Société de vélo en libre-service*, the Court endorsed a contextual framework and overturned the trial judge’s determination that a claim was not in equity.⁵⁹ In *Avis d’intention de Cryogénique inc.*, the Court was even more explicit, and held:

...the judge’s characterization of the nature of the claim was not a purely technical exercise; **it required her to consider the circumstances of the matter at hand in order to seek out the true nature of the transaction** [...] This approach is all the more necessary as it has been noted that distinguishing equity from unsecured claims may be difficult at times because corporations are finding new mechanisms that can narrow the gap between these two categories.

[...]

...the Court cannot accept the appellants’ argument that the definition of “equity claim” presupposes that, at the time of the notice of intention, they had to hold a share in the respondent, or a warrant, an option or other such right. Not only would adding such a condition run counter to the broad and liberal interpretation of this definition and depart from the legislature’s intent to subordinate the protection of holders of an equity interest to that of creditors – as already discussed above – **but the very wording of the definition does not suggest it...**

...an analysis of the nature of the claim rather than the nature of the claimant indicates that the claim is in respect of an equity interest.”⁶⁰

[Emphasis added.]

- (c) The Nova Scotia Supreme Court in *Re Atlantic Sea Cucumber Ltd.*, just one month before the ONCA decision, held that the determination of an equity claim must be viewed through the lens of its “non-exhaustive” definition in the *BIA*, and that each claim “must be assessed on its own facts properly in evidence, and not as a mechanical or ‘rubber stamp’ exercise”.⁶¹

⁵⁹ *Syndic de Société de vélo en libre-service*, 2023 QCCA 368, paras. [57-67](#).

⁶⁰ *Avis d’intention de Cryogénique inc.*, 2022 QCCA 1387, paras. [28-31](#), emphasis added.

⁶¹ *Atlantic Sea Cucumber Ltd. (Re)*, 2025 NSSC 234, paras. [37-39](#).

53. The above analyses—performed consistently by courts across multiple jurisdictions over the fifteen years since the Amendments—again refute the conclusions in the decisions below that there is no such thing as an equity claim “in substance” while also highlighting the utility of this exercise in the context of the insolvency statutes. Under ss. 121 and 135 of the *BIA*, the trustee is armed with considerable discretion and empowered to examine the grounds for each claim made against an insolvent party, and then to determine the provability and value of such a claim. Similarly, the *CCAA* grants “broad powers to the courts in general terms”.⁶² This discretion is in turn informed by the broader purposes underpinning the Canadian insolvency regime, including the debt priority principle. Undermining this discretion by imposing a mechanistic approach devoid of context may promote efficiency, but it does not assist trustees or courts in ensuring that the distribution process complies with the debt priority principle at a fundamental level.

54. When the proper common law test for determining whether a claim is a provable claim is adopted, it is clear that Ms. Athanasoulis’ Profit-Share Claim does not and cannot “sound in debt” and the fact that she did not hold shares in YSL or Cresford is irrelevant. Her Profit-Share Claim is:

- (a) based on a PSA that did not provide for regular payments, and only required payment from the profits (if any) earned by Cresford on a project;
- (b) tied entirely to and contingent on the success of the business; and
- (c) only to be calculated after all expenses are paid.

As Justice Wilton-Siegel held in *Re U.S. Steel*, these are all quintessential indicators of a claim in the nature of equity, and not debt.⁶³

⁶² *U.S. Steel ONCA*, para. [53](#).

⁶³ *U.S. Steel ONSC*, para. [183](#).

B. Public Importance

55. Nearly 6,200 businesses filed for insolvency in 2024, the largest single-year figure since the Great Recession.⁶⁴ The fair resolution of insolvencies plays an indispensable role in the functioning of the overall Canadian financial landscape. Both businesses and creditors rely on and benefit from a fair claims resolution process. As this case demonstrates, inconsistencies arising from the insolvency statutes create confusion, significantly prolong disputes, and threaten inequitable outcomes.

56. When the insolvency regime functions properly, creditors receive the best return on their contributions to the business that can fairly be achieved, understanding that they will not have their entitlements improperly reduced by claimants who had chosen to pursue the unlimited upside potential associated with equity. This priority scheme provides comfort for creditors and an incentive to lend and fund other business ventures that contribute to Canada's overall financial health.

57. The decisions below inject uncertainty into the insolvency regimes by categorically eliminating the ability of trustees to treat speculative claims to future profits (and similar upside-chasing arrangements) as the claims in equity that they fundamentally are, unless they are explicitly tied to the (apparently) now-exhaustive definition of "equity claim", notwithstanding Parliament's choice *not* to treat this concept as all-encompassing.

58. Creditors have always operated on the understanding that speculative claimants like Ms. Athanasoulis could not reasonably have expected to maintain an economic interest in an insolvent enterprise. Now, creditors must plan for the possibility that profit-sharing claims can in fact meaningfully reduce or eliminate creditors' entitlements altogether. Many claims that ordinary creditors previously considered to sound in equity may well turn out to be provable claims, regardless of the relevant details the trustee discerned through their investigations.

59. In light of this uncertainty, creditors may choose to significantly reduce lending to important business ventures, with potentially devastating consequences. As the Bank of Canada discussed in its 2025 Financial Stability Report, credit losses resulting from the imposition of

⁶⁴ Canadian Association of Insolvency and Restructuring Professionals, "[Q4 2024 Canadian Insolvency Statistics](#)", July 9, 2024.

tariffs and associated trade war consequences have already increased the risk of both insolvencies and credit losses and reduced the appetite for lending.⁶⁵ As the same report highlights, reductions in lending could severely limit or even unwind the positions of the large funds that have taken on a greater supporting role in the Canadian economy.⁶⁶

60. The decisions below also preclude natural solutions to the increased uncertainty they have created. Creditors may demand assurances that profit-sharing arrangements not meeting the definition of “equity claims” will not dilute the asset pool available to them when businesses encounter difficulties. However, if it is not enough for the claimant to concede, as Ms. Athanasoulis did, that their right to profits would only come due “at the end of the project when it’s complete” and that those profits were subordinate to the payments to LPs,⁶⁷ creditors have no guarantee that the priority rankings that the parties objectively intended to create can actually be given effect by a trustee or a reviewing court in the event of a dispute.

PART IV - SUBMISSIONS CONCERNING COSTS

61. The Proposal Trustee seeks the costs of this Application in the cause.

PART V - ORDER SOUGHT

62. For these reasons, the Proposal Trustee requests an order under s. 40(1) of the *Supreme Court Act*,⁶⁸ as amended, granting the Proposal Trustee leave to appeal from the judgment of the ONCA dated August 14, 2025, with costs.

⁶⁵ Bank of Canada, “[Financial Stability Report—2025](#)”.

⁶⁶ *Ibid.*

⁶⁷ Athanasoulis Arbitration Cross-Examination, 276:3-25 [LR, Vol. 2, Tab 3M, p. 350]; Athanasoulis Affidavit dated May 5, 2023, para. 88 [LR, Vol. 2, Tab 3J, p. 238].

⁶⁸ [Supreme Court Act](#), R.S.C. 1985, c. S-6.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

October 14, 2025



for:

Matthew Milne-Smith



for:

Robin Schwill



for:

Chenyang Li



for:

Ryan Reid

Davies Ward Phillips & Vineberg LLP

Counsel for the Applicant, KSV Restructuring
Inc. (the Proposal Trustee)

PART VI - TABLE OF AUTHORITIES

	Jurisprudence	Memorandum Paragraph References
1.	<i>0731431 B.C. Ltd. v Panorama Parkview Homes Ltd.</i> , 2021 BCSC 607	45
2.	<i>10390160 Canada Ltd. v. Casey</i> , 2022 ONSC 628	14
3.	<i>Atlantic Sea Cucumber Ltd. (Re)</i> , 2025 NSSC 234	52(c)
4.	<i>Avis d'intention de Cryogénique inc.</i> , 2022 QCCA 1387	52(b)
5.	<i>Canada Deposit Insurance Corp. v. Canadian Commercial Bank</i> , 1992 CanLII 49 (SCC)	6, 37
6.	<i>Century Services Inc. v. Canada (Attorney General)</i> , 2010 SCC 60	47
7.	<i>Heritage Capital Corp. v. Equitable Trust Co.</i> , 2016 SCC 19	44
8.	<i>Nelson Financial Group Ltd. (Re)</i> , 2011 ONSC 2750	50(a)
9.	<i>Newfoundland and Labrador v. AbitibiBowater Inc.</i> , 2012 SCC 67	51
10.	<i>Piekut v. Canada (National Revenue)</i> , 2025 SCC 13	48
11.	<i>Re All Canadian Investment Corporation</i> , 2019 BCSC 1488	52(a)
12.	<i>Re Bul River Mineral Corp.</i> , 2014 BCSC 1732	52(a)
13.	<i>Re Organic Garage</i> , 2025 ONSC 2476	50 (d)
14.	<i>Re Sino-Forest Corp.</i> , 2012 ONSC 4377 <i>aff'd</i> , 2012 ONCA 816	43, 47, 50(b)
15.	<i>Re U.S. Steel Canada Inc.</i> , 2016 ONSC 569, <i>aff'd</i> 2016 ONCA 662	47, 50 (c), 53, 54
16.	<i>Royal Bank of Canada v. Central Capital Corp.</i> , 1996 CanLII 1521 (ON CA)	38
17.	<i>Sun Indalex Finance, LLC v. United Steelworkers</i> , 2013 SCC 6	47
18.	<i>Syndic de Société de vélo en libre-service</i> , 2023 QCCA 368	52(b)
19.	<i>YG Limited Partnership (Re)</i> , 2022 ONSC 6138	24
20.	<i>YG Limited Partnership and YSL Residences (Re)</i> , 2021 ONSC 4178	50(e)

	Jurisprudence	Memorandum Paragraph References
21.	<i>YG Limited Partnership and YSL Residences (Re)</i> , 2021 ONSC 5206	19

	Legislative Provisions	Memorandum Paragraph References
1.	<i>Bankruptcy and Insolvency Act</i>, RSC 1985, c B-3 <i>Loi sur la faillite et l'insolvabilité</i>, LRC 1985, c B-3	1, 7, 36, 37
2.	<i>Companies' Creditors Arrangement Act</i>, RSC 1985, c C-36 <i>Loi sur les arrangements avec les créanciers des compagnies</i>, LRC 1985, c C-36	7

	Secondary Sources	Memorandum Paragraph References
1.	Canadian Association of Insolvency and Restructuring Professionals, “ Q4 2024 Canadian Insolvency Statistics ”, July 9, 2024	1, 55
2.	Office of the Superintendent of Bankruptcy, Bill C-12: Clause by Clause Analysis—Clauses 1–10	42
3.	Bank of Canada, “ Financial Stability Report—2025 ”.	59

PART VII - STATUTORY PROVISIONS

<i>Bankruptcy and Insolvency Act, RSC 1985, c B-3</i> 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; (réclamation prouvable en matière de faillite ou réclamation prouvable) creditor means a person having a claim provable as a claim under this Act; (créancier) equity claim means a claim that is in respect of an equity interest, including a claim for, among others, (a) a dividend or similar payment, (b) a return of capital, (c) a redemption or retraction obligation, (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (réclamation relative à des capitaux propres) equity interest means (a) in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt, and (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (intérêt relatif à des capitaux propres)	<i>Loi sur la faillite et l'insolvabilité L.R.C. (1985), ch. B-3</i> Définitions 2 Les définitions qui suivent s'appliquent à la présente loi. réclamation prouvable en matière de faillite ou réclamation prouvable Toute réclamation ou créance pouvant être prouvée dans des procédures intentées sous l'autorité de la présente loi par un créancier. (claim provable in bankruptcy, provable claim or claim provable) créancier Personne titulaire d'une réclamation prouvable à ce titre sous le régime de la présente loi. (creditor) réclamation relative à des capitaux propres Réclamation portant sur un intérêt relatif à des capitaux propres et visant notamment: a) un dividende ou un paiement similaire; b) un remboursement de capital; c) tout droit de rachat d'actions au gré de l'actionnaire ou de remboursement anticipé d'actions au gré de l'émetteur; d) des pertes pécuniaires associées à la propriété, à l'achat ou à la vente d'un intérêt relatif à des capitaux propres ou à l'annulation de cet achat ou de cette vente; e) une contribution ou une indemnité relative à toute réclamation visée à l'un des alinéas a) à d). (<i>equity claim</i>) intérêt relatif à des capitaux propres a) S'agissant d'une personne morale autre qu'une fiducie de revenu, action de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle action et ne provenant pas de la conversion d'une dette convertible; b) s'agissant d'une fiducie de revenu, part de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle part et ne provenant pas de la conversion d'une dette convertible. (<i>equity interest</i>)
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Claims provable <u>121 (1)</u> 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. Trustee shall examine proof <u>135 (1)</u> 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.	Réclamations prouvables <u>121 (1)</u> Toutes créances et tous engagements, présents ou futurs, auxquels le failli est assujéti à la date à laquelle il devient failli, ou auxquels il peut devenir assujéti avant sa libération, en raison d'une obligation contractée antérieurement à cette date, sont réputés des réclamations prouvables dans des procédures entamées en vertu de la présente loi. Décision (2) La question de savoir si une réclamation éventuelle ou non liquidée constitue une réclamation prouvable et, le cas échéant, son évaluation sont décidées en application de l'article 135. Créances payables à une date future (3) Un créancier peut établir la preuve d'une créance qui n'est pas échue à la date de la faillite, et recevoir des dividendes tout comme les autres créanciers, en en déduisant seulement un rabais d'intérêt au taux de cinq pour cent par an calculé à compter de la déclaration d'un dividend jusqu'à la date où la créance devait échoir selon les conditions auxquelles elle a été contractée. Réclamations alimentaires (4) Constitue une réclamation prouvable la réclamation pour une dette ou une obligation mentionnée aux alinéas 178(1)b) ou c) découlant d'une ordonnance judiciaire rendue ou d'une entente conclue avant l'ouverture de la faillite et à un moment où l'époux, l'ex-époux ou ancien conjoint de fait ou l'enfant ne vivait pas avec le failli, que l'ordonnance ou l'entente prévoit une somme forfaitaire ou payable périodiquement. L.R. (1985), ch. B-3, art. 121; 1992, ch. 27, art. 50; 1997, ch. 12, art. 87; 2000, ch. 12, art. 14. Examen de la preuve <u>135 (1)</u> Le syndic examine chaque preuve de réclamation ou de garantie produite, ainsi que leurs motifs, et il peut exiger de nouveaux témoignages à l'appui.
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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.	Réclamations éventuelles et non liquidées (1.1) Le syndic décide si une réclamation éventuelle ou non liquidée est une réclamation prouvable et, le cas échéant, il l'évalue; sous réserve des autres dispositions du présent article, la réclamation est dès lors réputée prouvée pour le montant de l'évaluation. Rejet par le syndic (2) Le syndic peut rejeter, en tout ou en partie, toute réclamation, tout droit à un rang prioritaire dans l'ordre de collocation applicable prévu par la présente loi ou toute garantie. Avis de la decision (3) S'il décide qu'une réclamation est prouvable ou s'il rejette, en tout ou en partie, une réclamation, un droit à un rang prioritaire ou une garantie, le syndic en donne sans délai, de la manière prescrite, un avis motivé, en la forme prescrite, à l'intéressé. Effet de la decision (4) La décision et le rejet sont définitifs et péremptoires, à moins que, dans les trente jours suivant la signification de l'avis, ou dans tel autre délai que le tribunal peut accorder, sur demande présentée dans les mêmes trente jours, le destinataire de l'avis n'interjette appel devant le tribunal, conformément aux Règles générales, de la decision du syndic. Rejet total ou partiel d'une preuve (5) Le tribunal peut rayer ou réduire une preuve de réclamation ou de garantie à la demande d'un créancier ou du débiteur, si le syndic refuse d'intervenir dans l'affaire. L.R. (1985), ch. B-3, art. 135; 1992, ch. 1, art. 20, ch. 27, art. 53; 1997, ch. 12, art. 89.
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R.S., 1985, c. B-3, s. 135; 1992, c. 1, s. 20, c. 27, s. 53; 1997, c. 12, s. 89.	
<i>Companies' Creditors Arrangement Act R.S.C., 1985, c. C-36</i> Definitions <u>2 (1)</u> In this Act, equity claim means a claim that is in respect of an equity interest, including a claim for, among others, (a) a dividend or similar payment, (b) a return of capital, (c) a redemption or retraction obligation, (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (réclamation relative à des capitaux propres) equity interest means (a) in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt, and (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (intérêt relatif à des capitaux propres)	Loi sur les arrangements avec les créanciers des compagnies L.R.C. (1985), ch. C-36 Définitions <u>2 (1)</u> Les définitions qui suivent s'appliquent à la présente loi. réclamation relative à des capitaux propres Réclamation portant sur un intérêt relatif à des capitaux propres et visant notamment: a) un dividende ou un paiement similaire; b) un remboursement de capital; c) tout droit de rachat d'actions au gré de l'actionnaire ou de remboursement anticipé d'actions au gré de l'émetteur; d) des pertes pécuniaires associées à la propriété, à l'achat ou à la vente d'un intérêt relatif à des capitaux propres ou à l'annulation de cet achat ou de cette vente; e) une contribution ou une indemnité relative à toute réclamation visée à l'un des alinéas a) à d). (equity claim) intérêt relatif à des capitaux propres a) S'agissant d'une compagnie autre qu'une fiducie de revenu, action de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle action et ne provenant pas de la conversion d'une dette convertible; b) s'agissant d'une fiducie de revenu, part de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle part et ne provenant pas de la conversion d'une dette convertible. (equity interest)