Court File No. BK-21-02734090-0031

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

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

BOOK OF AUTHORITIES OF THE PROPOSAL TRUSTEE

(Re: Motion Returnable September 26, 2022)

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TAB 1

Bankruptcy and Insolvency Law of Canada, 4th Edition § 1:8

Bankruptcy and Insolvency Law of Canada, 4th Edition
The Honourable Mr. Justice Lloyd W. Houlden, Mr. Justice Geoffrey B. Morawetz, Dr. Janis P. Sarra

Part I. The Bankruptcy and Insolvency Act

Chapter 1. General; Short Title (S. 1)

II. Short Title (S. 1)

§ 1:8. Interpretation of Bankruptcy and Insolvency Legislation

The Supreme Court of Canada has held that the starting point for statutory interpretation in Canada is Driedger's definitive formulation in *Construction of Statutes* (2nd ed. 1982) at p. 87:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

Barrie Public Utilities v. Canadian Cable Television Assn. (2003), 2003 CarswellNat 1226, 2003 CarswellNat 1268, 2003 SCC 28, [2003] 1 S.C.R. 476.

English and French versions of the *BIA* are equally authoritative. Where the meaning of the words in one version are broader than the meaning in the other version, the court must strive to find a meaning that is shared by both versions: Schreiber v. Canada (Attorney General) (2001), 2001 CarswellOnt 385, 52 O.R. (3d) 577, 152 C.C.C. (3d) 205, 196 D.L.R. (4th) 281 (C.A.).

The Act should not be interpreted in an overly narrow, legalistic manner: A. Marquette & Fils Inc. v. Mercure, [1977] 1 S.C.R. 547, 65 D.L.R. (3d) 136, 10 N.R. 239; Re Olympia & York Developments Ltd. (1997), 1997 CarswellOnt 657, 45 C.B.R. (3d) 85, 143 D.L.R. (4th) 536 (Ont. Gen. Div.); Sun Life Assurance Co. of Canada v. Revenue Canada (Taxation), 1997 CarswellAlta 254, 45 C.B.R. (3d) 1, 47 Alta. L.R. (3d) 296, [1997] 5 W.W.R. 159, 144 D.L.R. (4th) 653 (C.A.); Re County Trucking Ltd. (1999), 1999 CarswellNS 231, 10 C.B.R. (4th) 124 (N.S. S.C.). It should be given a reasonable interpretation that supports the framework of the legislation; an absurd result should be avoided: Re Handelman (1997), 1997 CarswellOnt 2891, 48 C.B.R. (3d) 29 (Ont. Gen. Div.).

The Act puts day-to-day administration into the hands of trustees in bankruptcy and inspectors as business people and professionals; it is intended that the administration should be practical not legalistic, and the Act should be interpreted to give effect to this intent: Re Rassell (1999), 1999 CarswellAlta 718, 12 C.B.R. (4th) 316, 177 D.L.R. (4th) 396, 71 Alta. L.R. (3d) 85, 237 A.R. 136, 197 W.A.C. 136 (C.A.).

The sections of a statute must be interpreted so that they are in harmony and are not inconsistent, if such an interpretation is possible: Re Goldin (2002), 2002 CarswellOnt 2037, 34 C.B.R. (4th) 196 (Ont. S.C.J.), appeal dismissed (2003), 229 D.L.R. (4th) 736, 2003 CarswellOnt 2626, 174 O.A.C. 117 (Ont. C.A.).

Where a statutory provision is expressed to be "subject to" another statutory provision, the latter provision (the master provision) prevails over the former (the subject provision) if there is any conflict between them: Re A Debtor (No. 22 of 1993), [1994] 1 W.L.R. 47 (Ch.D.); Warran Whillans Enterprises Inc. (Trustee of) v. Gazzola (1989), 75 C.B.R. (N.S.) 151, 1989 CarswellBC 354, 38 B.C.L.R. (2d) 27, 4 R.P.R. (2d) 153, [1989] 5 W.W.R. 740, 60 D.L.R. (4th) 590 (*sub nom. Thome Ernst & Whinney Inc. v. Gazzola*); Canadian Imperial Bank of Commerce v. Canotek Development Corp. (1993), 13 O.R. (3d) 411, 1993 CarswellOnt

1045 (Gen. Div.), reversed on other grounds but affirmed on this ground (1997), 35 O.R. (3d) 247, 48 C.B.R. (3d) 161, 1997 CarswellOnt 3216, 152 D.L.R. (4th) 261 (C.A.).

Where two interpretations of the Act are equally possible, the court should select the interpretation that favours equality among creditors, possessing the same characteristics, rather than the one that favours a particular group of creditors: Re Can. Tabulating Card Co., 17 C.B.R. (N.S.) 248, [1972] 3 O.R. 648, 1972 CarswellOnt 83, 29 D.L.R. (3d) 156; Re Olympia & York Developments Ltd. (1997), 143 D.L.R. (4th) 536, 1997 CarswellOnt 657, 45 C.B.R. (3d) 85 (Ont. Gen. Div.).

A judge is not required to follow the decision of the courts of another province on the interpretation of a federal statute unless he or she is persuaded of the correctness of the decision: Sigurdson v. Reid (1979), 32 C.B.R. (N.S.) 170, 17 B.C.L.R. 117, reversed on other grounds (1980), 37 C.B.R. (N.S.) 146, 26 B.C.L.R. 336, 118 D.L.R. (3d) 555 (B.C. C.A.). Likewise, an appellate court is not obliged to follow the decisions of an appellate court of another province. Such decisions act only as persuasive authority: Reznick v. Zitzerman (1994), 28 C.B.R. (3d) 234, 1994 CarswellMan 18 (Man. C.A.). However, the *Bankruptcy and Insolvency Act* is a federal statute and should, therefore, as far as possible, be interpreted consistently in each of the provinces and territories in Canada: Re County Trucking Ltd. (1999), 10 C.B.R. (4th) 124, 1999 CarswellNS 231 (N.S. S.C.).

In order to obtain uniformity of practice in bankruptcy matters in all of the provinces, a literal following of the letter of the Act should not be adopted where the intent of the Act is clear: Re Drysdale Estate, 19 C.B.R. 324, [1938] 3 W.W.R. 57, 53 B.C.R. 155 (B.C. S.C.).

A statute has full operation on the whole day it comes into force, whatever the hour of the day that sanction was given to it. The fact that certain events took place at an hour prior to the hour when the statute was passed into law is therefore of no relevance: Re Plywood Distributors Inc. (1966), 10 C.B.R. (N.S.) 22 (Que. S.C.).

If an amending Act alters the language of the principal Act, the alteration must be taken to have been made deliberately: Langille v. T.D. Bank (1981), 43 N.S.R. (2d) 608, 37 C.B.R. (N.S.) 35, 81 A.P.R. 608, affirmed 40 C.B.R. (N.S.) 113, 50 N.S.R. (2d) 217, 98 A.P.R. 217, 131 D.L.R. (3d) 571, 40 N.R. 67 (S.C.C).

When there is a bankruptcy, the rules established by the *Bankruptcy and Insolvency Act* will govern except where other legislation clearly creates an exception to those rules. The burden of proof that such an exception is created rests on the party who asserts its existence; and, if there is any doubt, the substance of the legislation, not the form, will govern and the doubt will be resolved against the person asserting it: Re Nolisair International Inc. (1966), 44 C.B.R. (3d) 112, 1996 CarswellQue 599, [1996] R.J.Q. 776 (C.S.).

Although there is a general rule that the legislative history of an enactment is not admissible in the interpretation of a statute, legislative history can be helpful in particular circumstances. In Reed v. Franco (1980), 35 C.B.R. (N.S.) 149, 1980 CarswellQue 54, [1980] C.S. 391 (Que. S.C.), appeal dismissed (1983), 49 C.B.R. (N.S.) 21, 1983 CarswellQue 41 (Que. C.A.); U.F.C.W., Local 617P v. Royal Dressed Meats Inc. (Trustee of) (1989), 76 C.B.R. (N.S.) 79, 1989 CarswellOnt 180, 37 C.P.C. (2d) 154 (Ont. S.C.).

The substantive rights of creditors are determined in accordance with the provisions of the *Bankruptcy and Insolvency Act* as it stood at the date of bankruptcy: Albert v. Canada (Human Resources Development) (2002), 39 C.B.R. (4th) 1, 2002 CarswellNB 478, 2002 NBQB 400 (N.B.Q.B.).

Where a section of the *Bankruptcy and Insolvency Act* is revoked or repealed and a new section substituted, the rights of creditors in a bankrupt estate that is in the course of administration, are to be determined so far as substantive rights are concerned in accordance with the former section, and so far as procedural rights are concerned in accordance with the new section: Re Mahon (1935), 16 C.B.R. 132, 1934 CarswellNS 3, [1935] 1 D.L.R. 416 (N.S. S.C.); Transamerica Commercial Finance Corp., Canada v. Imperial T.V. & Stereo Centre Ltd. (Receiver of) (1993), 22 C.B.R. (3d) 297, 1993 CarswellAlta 429, 13 Alta. L.R. (3d) 99, [1994] 1 W.W.R. 506 (Q.B.). Unless there is a clear intention that an amendment to the *Bankruptcy and Insolvency Act* shall operate retrospectively, manifested by express words or arising by necessary and direct implication, a substantive amendment

should be viewed as operating prospectively only: Bank of Nova Scotia v. Plastic & Allied Building Products Ltd. (1992), 15 C.B.R. (3d) 161, 1992 CarswellOnt 191, [1993] O.J. No. 2655 (Ont. Gen. Div. [Commerical List]).

Unless the text reveals a contradiction or inconsistency that cannot be avoided without employing a strained and unrealistic construction, the *BIA* should be interpreted in a manner that respects its integrity. A specific provision concerning the procedure to be followed in a particular aspect of the administration of an estate, such as s. 135, which provides for appeals from disallowance of claims by a trustee, prevail over a general section, such as s. 37, which provides for the review of trustee's decisions: Re Drummie (2004), 49 C.B.R. (4th) 90, 2004 CarswellNB 17, 2004 NBQB 35 (N.B. Q.B.).

Mere verbal inaccuracies or errors in the use of words, numbers, grammar, punctuation or spelling will be corrected by the court whenever necessary to carry out the intention of Parliament as gathered from the entire *Bankruptcy and Insolvency Act.* Hence if a section of the Act refers to another section by the wrong number and if the legislative intent is clear, the court will correct the error: Re Ferguson, 16 C.B.R. 261, 1935 CarswellOnt 83, [1935] O.R. 223, [1935] 2 D.L.R. 473 (S.C.).

The amendments to the *Bankruptcy and Insolvency Act* in 1992 brought it more into line with the United States *Bankruptcy Code.* American jurisprudence and authorities in bankruptcy matters are, therefore, of assistance in interpreting the *Bankruptcy and Insolvency Act:* Re A. & F. Baillargeon Express Inc. (1993), 27 C.B.R. (3d) 36, 1993 CarswellQue 49 (Que. S.C.).

For a discussion of the principles of statutory interpretation to be applied where the provisions of two statutes appear to be in conflict, see "Case Commentary on *Re Solid Resources Ltd.*" by Jamie Feehely, 40 C.B.R. (4th) 238.

See also Michael J. Bray and Micheline Gleixner, "Differing Climates of Bankruptcy: A Question of Latitude?", in J. Sarra, ed., Annual Review of Insolvency Law, 2011 (Toronto: Carswell, 2012) 281–312; Stephanie Ben-Ishai and Saul Schwartz, "Debtor Assistance and Debt Advice: The Role of the Canadian Credit Counselling Industry" and Jerry Buckland, "A Commentary on the Canadian Task Force on Financial Literacy's Recommendations", in J. Sarra, ed., Annual Review of Insolvency Law, 2011 (Toronto: Carswell, 2012) 351–408; Janis Sarra, "At What Cost? Access to Consumer Credit in a Post-Financial Crisis Canada", Annual Review of Insolvency Law, 2011 (Toronto: Carswell, 2012) 409–478; Paul Goodman and Anna Lund, "Concerns of Insolvency Professionals—Small and Medium Size Enterprises", in J. Sarra, ed., Annual Review of Insolvency Law, 2011 (Toronto: Carswell, 2012) 191–206.

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