CITATION: Stephen Francis Podgurski (Re), 20202 ONSC 2552
COURT FILE NO.: 31-2597721
DATE: 2020-04-27

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF THE PROPOSAL OF STEPHEN FRANCIS PODGURSKI (of the Town of Courtice, in the Region of Durham, in the Province of Ontario)

THE SUPERINTENDANT OF BANKRUPTCY, Moving Party

AND:

STEPHEN FRANCIS PODGURSKI, Debtor

AND:

BDO CANADA LIMITED, Licensed Insolvency Trustee

BEFORE: Chief Justice G.B. Morawetz.

COUNSEL: *Stéphanie Lauriault*, for the for the Attorney General of Canada

Pamela Huff, for The Insolvency Institute of Canada

Stephen Francis Podgurski, self represented

HEARD: **April 24, 2020 (Via Video Conference)**

RELEASED: **April 27, 2020**

ENDORSEMENT

Overview

[1] The Superintendent of Bankruptcy ("Superintendent") brings this motion with a view to providing flexibility to the administration of all Ontario insolvency estates that are affected by the economic impacts of COVID-19, seeking an Order (a) increasing the number of payment defaults or time required to cause a deemed annulment of a consumer proposal; and (b) extending the timelines set out in specific sections of the *Bankruptcy and Insolvency Act*, (R.S.C., 1985, c. B-3) ("BIA") and *Bankruptcy and Insolvency General Rules,* (C.R.C., c. 368) ("BIGR") (The specific sections of the BIA and the BIGR are set out in Schedule "A"). The Superintendent intends to seek a similar order from each province and territory in Canada.

[2] The relief sought provides a temporary answer, within the jurisdiction of the Court, to a portion of the issues arising out of COVID-19 and its impact on the insolvency system. It is subject to any action that Parliament or the Governor-in-Council may decide to take, or where applicable, the legislature may decide to take, to address issues affecting the insolvency system caused by COVID-19.

[3] The Insolvency Institute of Canada and the Canadian Association of Insolvency and Restructuring Professionals support the position of the Superintendent.

PART I - Facts

[4] In Ontario, an emergency was declared pursuant to Order in Council 518/2020 (Ontario Regulation 50/20) on March 17, 2020, pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9. It was extended on April 14, 2020 until May 12, 2020.

[5] Provincial limitation periods and provisions relating to periods of time within which any step must be taken in any proceeding in Ontario provided in any statute, regulation, rule, by-law or order of the Government of Ontario were suspended for the duration of the emergency, retroactive to March 16, 2020.

[6] Every Canadian jurisdiction has taken various other measures to help slow the spread of COVID-19. These measures have impacts on society generally and have created significant delays. The insolvency process has not been spared.

[7] The emergency created by COVID-19 and its containment measures are impeding the ability of insolvency professionals, debtors, creditors and stakeholders to meet the timelines of the BIA.

PART II - Points in Issue

[8] The significant point raised in this motion is can and should this court exercise its discretion to provide the relief sought by the Superintendent, namely:

a. Increase the amount of payment defaults and increase the time required to cause a deemed annulment of a consumer proposal, as per ss. 66.31(1) of the BIA;

b. Extend the time for holding the meeting of creditors provided by ss. 51, 66.15, and 102 of the BIA;

c. Extend the time for holding mediation as required by paragraphs 105(4) and (10) of the BIGR;

d. Extend the time for referring a matter to court, as required by ss. 170.1(3) of the BIA;

e. Declare that the Order applies to all active bankruptcies, active Division I proposals, active Division II proposals, as well as all bankruptcies and proposals to be filed with the Superintendent up to June 30, 2020; and

f. Dispense with notice of the motion, as permitted by ss. 187(12) of the BIA

[9] The Superintendent contends that this court has jurisdiction to grant these remedies and that it should exercise its discretion to grant them given the current situation created by the COVID-19 pandemic.

[10] For the following reasons, the requested relief is granted.

PART III - Submissions

[11] The intent of the extension of a time for doing any act or thing by the time of the Suspension Period is for a party to be able to pick up from where things stood before the Suspension Period, as if the intervening period never existed.

[12] In requesting these remedies, the Superintendent referenced key definitions.

- The "Period of the Emergency" shall be defined as the period of March 13, 2020 to June 30, 2020. For greater certainty, the start date and the end date are included in the Period of the Emergency.

- The "Suspension Period" shall be defined as the period from the date of the Court's Order to June 30, 2020. For greater certainty, the start date and the end date are included in the Suspension Period.

- The "Active Consumer Proposals" (Division II proposals) targeted by the requested relief shall be defined as including the proposals filed with the Office of the Superintendent of Bankruptcy up to the end of the Period of the Emergency, but excluding the proposals that were deemed annulled, annulled or that were fully performed on or before the date of this Order.

- The "Active Bankruptcy Files" targeted by the requested relief shall be the ones filed with the Office of the Superintendent in Bankruptcy ("OSB")

- The "Active Commercial Proposals" (Division I proposals) targeted by the requested relief shall be the ones filed with the OSB up to the end of the Period of the Emergency.

Impact of COVID-19 in Insolvency

On Consumer Debtors

[13] The Superintendent submits that COVID-19 related disruptions have both increased financial pressures on consumer debtors and made complying with statutory requirements for creditor protection more difficult. When consumer debtors fail to make payments in accordance with their proposal, it can be deemed annulled by operation of law. The consumer debtor loses the protection of the stay of proceedings, and the rights of creditors are revived for the amount of their claim less any dividend they had received. Further, the debtor is prohibited from filing another proposal without court approval, and in the instance of when a consumer proposal made by a bankrupt is annulled, the consumer debtor is deemed to have made an assignment in bankruptcy.

[14] The Superintendent further submits that many consumer debtors were already in arrears for their proposal payments prior to COVID-19 and it is expected that the defaults in payments for consumer proposals are set to rise significantly.

[15] The evidence of the Superintendent establishes that there are 288,939 Canadians who have active consumer proposals, in which they have contractually agreed to make regular payments to their estate for the benefit of their creditors.

On Insolvency Administration

[16] The Superintendent deposes that concerns about difficulties meeting timelines and requirements of the BIA under the current conditions resulting from COVID-19 have been expressed to the OSB by debtors, creditors and Licensed Insolvency Trustees ("LIT").

[17] The Superintendent contends that from a practical standpoint, holding meetings of creditors, and mediations via teleconference where videoconferencing is unavailable, presents challenges with respect to verification of identification and timely exchange of documents and reports. Quorum may not be met if creditors who are working remotely do not receive notice of the meeting

[18] The courts in Ontario are operating, but at reduced and variable capacities. The running of limitations and of procedural timelines have been suspended in Ontario and certain other provinces for the duration of their declared states of emergency/public health emergency, retroactive to dates in March.

[19] As it stands, no emergency amendments or orders have been made that impact the statutory timelines and deadlines set by the BIA.

[20] The Superintendent points out that the BIA itself does not offer direct mechanisms to deal with the problems raised in this motion without a court order. Consequently, the Superintendent is asking this Court to grant remedies to address them.

Power of Superintendent to Intervene

[21] Subsection 5(4)(a) of the BIA gives the Superintendent the power to intervene in any matter or proceeding in court. The duties and powers of the Superintendent are very broad. They include the supervision of all estates and matters to which the BIA applies. It is under this power that that the Superintendent intervenes in the 451,536 open insolvency files comprised of all active consumer proposals, active commercial proposals and active bankruptcies.

Forms of Relief Requested

(a) Relief of Deemed Annulment Thresholds for Consumer Debtors

Legal Basis for Court's Jurisdiction: ss. 66.31(1) BIA

[22] In these exceptional times, due to the uncertainty caused by COVID-19, the Superintendent seeks an order to provide more flexibility to consumer debtors, many of whom are facing income interruptions.

[23] The Superintendent seeks an order to provide flexibility to consumer debtors by allowing the equivalent of up to three additional payment defaults or three months time during the period of March 13, 2020, to December 31, 2020, from the requirements of ss. 66.31(1) of the BIA before a deemed annulment of the consumer proposal is triggered.

[24] Subsections 66.31(1)(a) and (b) of the BIA provide a consumer proposal that is in default with respect to certain missed payments is deemed to be annulled. The relevant provisions of the BIA read as follows:

Deemed annulment — default of payment

66.31 (1) Unless the court has previously ordered otherwise or unless an amendment to the consumer proposal has previously been filed, a consumer proposal is deemed to be annulled on

(a) in the case when payments under the consumer proposal are to be made monthly or more frequently, the day on which the consumer debtor is in default for an amount that is equal to or more than the amount of three payments; or

(b) in the case when payments under the consumer proposal are to be made less frequently than monthly, the day that is three months after the day on which the consumer debtor is in default in respect of any payment.

Annulation présumée — défaut de paiement

66.31 (1) À moins que le tribunal n'en ait décidé autrement ou qu'une modification de la proposition n'ait été déposée antérieurement, la proposition de consommateur est réputée être annulée :

a) dans le cas où les paiements prévus par la proposition doivent être effectués mensuellement ou plus fréquemment, le jour où le débiteur est en défaut pour une somme correspondant à au moins trois de ces paiements;

b) dans le cas où les paiements doivent être effectués moins fréquemment que mensuellement, à l'expiration d'un délai de trois mois suivant le jour où le débiteur est en défaut par rapport à n'importe quel paiement.

[25] The Superintendent points out that these defaults will lead to an annulment under the statute "unless the court has previously ordered otherwise". As such, the Superintendent submits that the court has the express jurisdiction under ss. 66.31(1) of the BIA to alter ss. 66.31(1)(a) and (b)'s default criteria that will lead to an annulment.

[26] The Superintendent contends that the other options provided to consumer debtors in the BIA are both insufficient or impractical to respond to the current COVID-19 crisis.

[27] The option of an amendment to an active consumer proposal, as provided by ss. 66.37 of the BIA, needs not only to take place before the deemed annulment occurs, but also needs to be viable. To recommend an amendment, the administrator must be of the opinion that the consumer debtor will be able to perform the proposal as amended.

[28] However, the Superintendent contends that due to COVID-19, it is close to impossible for debtors who have recently lost their source of income to determine when or if they will return to work and earn income to pay for their proposal. In essence, consumer debtors' ability to make their payments is dependent on an uncertain event, the happening of which is entirely out of their hands.

[29] Another option under the BIA is to file a notice of revival within 30 days of the deemed annulment of a consumer proposal, as provided by ss. 66.31(6) of the BIA. This notice, sent to the official receiver and all the creditors, automatically revives a consumer proposal 60 days after the deemed annulment unless a creditor objects. As opposed to the voting requirements when approving a proposal, in this case, it only takes one creditor to object for this revival to fail.

[30] The revival does not cure the defaults of payments, nor does it change the terms of the consumer proposal.

(b) <u>Court may Extend Timelines</u>

Legal Basis for Court's Jurisdiction: ss. 187(11) BIA

[31] Subsection 187(11) of the BIA provides as follows:

Court may extend time

(11) Where by this Act the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof on such terms, if any, as it thinks fit to impose.

Le tribunal peut prolonger le délai

(11) Lorsque la présente loi restreint le délai fixé pour accomplir une action ou chose, le tribunal peut prolonger ce délai, avant ou après son expiration, aux termes, s'il en est, qu'il estime utile d'imposer.

[32] The Superintendent submits that ss. 187(11) confers the discretionary power to the bankruptcy court to extend the time for doing any act or thing either before or after the expiration thereof, unless explicitly provided otherwise.

[33] The Superintendent seeks to extend the timeline in which LITs must hold a meeting of creditors in active consumer proposals, active commercial proposals, and in active bankruptcies by the Suspension Period.

[34] The Superintendent submits that the BIA does provide some flexibility with respect to extensions and adjournments of creditor meetings by the official receiver or the chair of a meeting, however this flexibility may not be sufficient to address the needs in the current COVID-19 context.

[35] The Superintendent also seeks to extend the 45-day period under the BIGR in which mediations are to take place either as a result of issues arising out of the establishment of surplus income, or when the discharge of bankrupt is opposed for certain reasons.

[36] Though the BIA provides a certain flexibility for the mediation to be rescheduled or adjourned, this flexibility is rather limited as a new date must be set a maximum of 10 days after the rescheduling.

[37] Importantly, the Superintendent points out that the objective sought through the blanket order extension of time for the Period of the Emergency is not to adjourn all the creditors meetings or mediations until after the Period of the Emergency. The objective is to provide stakeholders with more time for the holding of these important meetings.

[38] The Superintendent submits that a blanket extension in all active insolvency files for holding creditor meetings and mediations by the Period of the Emergency would allow for the flexibility needed in certain situations due to COVID-19 containment measures, and avoid any unintended harm or prejudice.

Referrals to Court Should be Made After the Period of the Emergency

[39] Subsection 170.1(3) the BIA requires the LIT to apply without delay to the court for a hearing following a bankrupt's failure to comply with a mediated surplus agreement, or in the event that mediation fails to resolve issues.

[40] The Superintendent contends that extending the time in which LITs are required to apply to court will likely reduce the burden on the courts, as with the passage of time, many of these issues could resolve themselves, thereby reducing the need for applications. If LITs apply only after the Period of the Emergency, courts may be more operational and unresolved matters can then be scheduled in the normal course of business.

(c) Order to be Applied to All Active Insolvency Filings, as Well as to Filings with the OSB up to June 30, 2020

Legal Basis for Court's Jurisdiction: Inherent Jurisdiction

[41] The Superintendent seeks to have the procedural relief sought not only apply to existing active insolvency files as of the date of the order, but also to have the relief apply to filings with the OSB up to the end of the Period of the Emergency. The purpose would be to treat all insolvency stakeholders affected by the COVID-19 containment measures in an equitable fashion.

[42] The BIA does not specifically address the possibility for a bankruptcy court to issue an order binding on matters not before it. The Superintendent submits that this can be completed through the Ontario Superior Court of Justice exercising its inherent jurisdiction.

[43] The jurisdiction of the Ontario Superior Court of Justice, as well as the other Canadian bankruptcy courts is conferred by ss. 183(1) of the BIA, and reads as follows:

Courts vested with jurisdiction

183 (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

Tribunaux compétents

183 (1) Les tribunaux suivants possèdent la compétence en droit et en equity qui doit leur permettre d'exercer la juridiction de première instance, auxiliaire et subordonnée en matière de faillite et en d'autres procédures autorisées par la présente loi durant leurs termes respectifs, tels que ces termes sont maintenant ou peuvent par la suite être tenus, pendant une vacance judiciaire et en chambre :

[44] The Superintendent submits that the effect of ss. 183(1) of the BIA is to expressly preserve the bankruptcy court's equitable and ancillary powers of a superior court. It also confirms that the sparingly used tool that is the inherent jurisdiction of the superior court which is entrenched in s. 96 of the *Constitution Act, 1867*, and confirmed in ss. 11(2) of the *Courts of Justice Act,* may be relied upon in the context of administering the BIA.

PART IV – Law and Analysis

[45] It is clear and obvious that COVID 19 has had a seismic economic impact on Canada. Thousands insolvent debtors and their creditors are impacted by COVID-19 and have raised a number of concerns with the Superintendent. Professional organizations such as the Insolvency

Institute of Canada and the Canadian Association of Insolvency and Restructuring Professionals have also raised issues with the Superintendent and the Superintendent in seeking this relief is responding to their concerns.

[46] In determining this motion it is necessary to consider the impact of the requested relief on both insolvent debtors and on their creditors, and to ensure that the substantive rights of both are not unduly altered during the Suspension Period.

[47] It must also be recognized that the legal issues raised on this motion are unusual. I am mindful that Parliament, in enacting numerous time limits in the BIA, specifically addressed the administration of Division I and Division II proposals and bankruptcy estates in general.

[48] However, it must also be recognized that in enacting the BIA, and in making amendments over the years, Parliament could never have envisioned the impact of a pandemic such as COVID-19.

[49] This motion raises many practical questions and it is up to this court to provide practical answers and direction. There is precedent for taking this practical approach. In many respects, the BIA is a commercial statute, the administration of which is largely in the hands of businesspeople. Technical objections should, therefore, not be given effect to beyond what is necessary for the proper interpretation of the BIA: *Re McCoubrey* (1924), 5 C.B.R. 248 (Alta. S.C.); *Camirand Ltée v. Gagnon* (1924) 4 C.B.R. 344 (Qué S.C.)).

(a) Relief of Deemed Annulment Threshold for Consumer Debtors

[50] With respect to the requested relief of deemed annulment thresholds for consumer debtors, I accept the submissions of the Superintendent to the effect that the alternatives are insufficient or impractical in the exceptional circumstances created by the containment measures of COVID-19. I am satisfied that ss. 66.31 establishes the legal basis to make the requested order. The automatic impact of payment defaults can be alleviated by court order provided such order is made prior to the deemed annulment.

[51] The impact of such a court order is exceptional. But, as the Superintendent points out, these are exceptional times and the relief requested by the Superintendent is, in my view, reasonable in the circumstances and it is granted.

[52] In arriving at this conclusion, I have also taken into account that the relief requested by the Superintendent does not apply to proposals that were deemed annulled, annulled or that were fully performed on or before today’s date.

(b) Extension of Timelines

[53] With respect to the request to extend the aforementioned timelines, the issue is whether ss. 187 (11) confers the necessary discretionary power to the court to grant the requested relief.

[54] The Superintendent takes the position that the court can grant such relief as the statutory provisions in question do not explicitly provide that the court cannot extend the time for doing the acts in question.

[55] Most cases which have addressed the scope of ss. 187(11) deal with the question of extension of time in relation to appeals from a disallowance of claim. A number of cases have held that if the provisions of ss. 187(11) conflict with a special provision of the BIA, e.g. ss. 135(4), which requires that a creditor appeal from a disallowance of a claim within 30 days after the service or mailing of the disallowance, then the special provision governs and the court cannot extend the time under ss. 187(11): *Re Truax Carsley & Co.* (1930) 12 C.B.R. 28 (Que. S.C.); *Re Glen Woollen Mills Limited* (1939), 20 C.B.R. 162 (Ont. S.C.); *Re St. Pierre* (1963), 5 C.B.R. (N.S.) 61 (Qué S.C.); *Re King* (1990), 79 C.B.R. (N.S.) 169 (B.C.S.C.) and *Re Fredrickson* (1994), 29 C.B.R. (3d) 135 (Man. Q. B.).

[56] These cases are distinguishable on the basis that the provisions from which the Superintendent requests relief do not provide that an application for extension of time must be made within a certain period. This distinction has been referenced in appeals from a notice of dispute by a trustee under ss. 81.2. Examples are *Re St. Pierre Automotive Products Co. v. Sylvain et Lafaive, supra* and *Re Weinberg* (1969), 14 C.B.R. (N.S.) 182 (Ont. S.C.). Other examples are *Re Rizzo Shoes (1989) Limited* (1995), 29 C.B.R. (3rd) 270 and *Keystone Forest Products Limited v. Garibaldi Building Supplies Ltd. (Receiver of)* (1995), 32 C.B.R. (3d) 139. It should be noted that in *Rizzo* and *Keystone*, the court expressed a reluctance to extend the time periods, but noted that in appropriate circumstances, the time could be extended.

[57] One decision requires further comment. In *Re IDG Environmental Solutions Inc.* (1993), 16 C.B.R. (3d) 317 (Ont. Reg.) ("*IDG*"), the court held that it could not extend the time, pursuant to s. 187(11) to file a cash flow statement after the expiration of the time limited to do so.

[58] In *IDG*, a notice of intention to file a proposal by *IDG* was filed on December 31, 1992. The cash flow statement was not filed until January 15, 1993.

[59] Subsection 50.4(2) of the BIA provides that "within 10 days after filing a notice of intention…, the insolvent person shall file with the official receiver…" a cash flow statement and the other documents mentioned in the subsection.

[60] Registrar Ferron commented that unlike ss. 50.4(9), ss. 50.4(2) makes no provision for an extension of time for filing, so that if the time is to be extended, one must look elsewhere in the BIA for authority. He then referenced ss. 187 (11):

> [7] In my opinion, that section is not applicable. Section 187 (11) is applicable only in those cases where *there is no intervening statutory event consequent upon default*. Here, as a consequence of the default, a very significant event occurs; bankruptcy intervenes. (emphasis added)

…

> [9] The bankruptcy of the insolvent person in the circumstances is automatic and by operation of the statute, immediate, on the expiration of the 10 days following the filing of the notice of intention in cases where the cash flow statement is not filed. No motion nor action by anyone is required to deem the insolvent person a bankrupt.

…

> [12] At this point, that is, the date of the motion, the insolvent person is bankrupt, rights have accrued and the devolution of asset accomplished. A court which, in effect, attempts to cure the default following the cash flow statement by a *nunc pro tunc* extension of time order would be, in fact, setting aside an assignment, and abrogating the rights of creditors and others, acquired or occurring on the bankruptcy which, as I pointed out, becomes the fact on the expiration of the 10 days referred to in subs. 2.

[61] In contrast, in the provisions from which the Superintendent is requesting extension of time, there is no intervening statutory event which results in a bankruptcy. The consequential events referenced by Registrar Ferron in relation to ss. 50.4(8) do not exist in the circumstances referenced by the Superintendent.

[62] It is significant that the obligation contained in ss. 50.4(2) falls upon the person making the proposal, whereas the obligation under ss. 66.15 is an obligation upon LITs. It would seem perverse for automatic bankruptcy, the intervening event that arises upon default for a breach of ss. 50.4(2), to result for a consumer if an administrator fails to act under ss. 66.15.

[63] Further, in *Re Casa Verde Health Centre Inc.* (1993), 22 C.B.R. (3rd) 24, Ground J. of the Ontario Court (General Division), without giving reasons, extended the time for filing the cash flow statement *nunc pro tunc*; presumably relying on ss. 187(11) as authority for making the order.

[64] In my view, given the circumstances outlined by the Superintendent giving rise to this motion, it is appropriate to grant the requested relief concerning the extension of time limits.

[65] There is also scope to grant the requested relief using the inherent jurisdiction of the court. The inherent jurisdiction of the provincial superior courts is a broad and diverse power. It has been said that inherent jurisdiction is a power that is exercisable "in any situation where the requirements of justice demands it" (*Gillespie v. Manitoba (Atty. Gen.)*, 2000 MBCA 1, at para. 92), and that "nothing shall be intended to be out of the jurisdiction of the Superior Court, but that which is specifically appears to be so" (*Board v. Board* [1919] A. C. 956 at pp. 17-18, per Viscount Haldane).

[66] Recently, the Supreme Court of Canada reviewed the inherent jurisdiction of superior courts in *Endean v. British Columbia*, 2016 SCC 42, and described it as follows:

> [23] The inherent powers of superior courts are central to the role of those courts, which form the backbone of our judicial system. Inherent jurisdiction derives from the very nature of the court as a superior court of law and may be defined as a "reserve or fund of powers" or a "residual source of powers", which a superior court "may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them": I. H. Jacob, "The Inherent Jurisdiction of the Court" (1970), 23 *Curr. Legal Probs.* 23, at p. 51, cited with approval in, e.g., *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43, [2013] 3 S.C.R. 3, at para. 20; *R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78, at para. 24; and *MacMillan Bloedel Ltd. v. Simpson*, 1995 CanLII 57 (SCC), [1995] 4 S.C.R. 725, at paras. 29-31.The Supreme Court acknowledges that the doctrine of inherent jurisdiction is amorphous in nature: *Ontario v. Ontario Criminal Lawyers Association of Ontario*, 2013 SCC 43, at para. 22. As a result, the parameters of what a Superior Court judge may do or not do under the power of inherent jurisdiction are unknown.

[67] The ambiguity inherent in the doctrine is compounded by the fact that COVID-19 is a novel public health crisis imposes an ever-evolving challenge to the administration of the Ontario Superior Court of Justice.

[68] In the oft-cited *80 Wellesley St. E., Ltd. v. Fundy Bay Builders Ltd.*, [1972] 2 O.R. 280 (C.A.), the Court of Appeal for Ontario held that except where provided specifically to the contrary, the court's inherent jurisdiction is "unlimited and unrestricted in substantial law and civil matters." The Court of Appeal set out the jurisprudential basis for this holding:

> In *Re-Michie Estate and City of Toronto et al.* [1968] 1 O.R. 266 at pp. 268 – 9, Stark J, after considering the relevant provisions of the Judicature Act and the authorities, said:
>
>> It appears clear that the Supreme Court of Ontario has broad universal jurisdiction over all matters of substantial law unless the Legislature divests from this universal jurisdiction by legislation in unequivocal terms. The rule of law relating to the jurisdiction of superior Courts was laid down at least as early as 1667 in the case of *Peacock v. Bell and Kendall* [1667], 1 Wms. Sound. 73 at p. 74, 85 E.R.84:
>>
>> … And the rule for jurisdiction is, that nothing shall be intended to be out of the jurisdiction of a Superior Court, but that which specifically appears to be so; and, on the contrary, nothing shall be intended to be within the jurisdiction of an Inferior Court but that which is so expressly alleged.

[69] However, the doctrine is not unlimited: it is subject to both statutory and purposive limitations. The doctrine cannot be exercised so as to contradict a statute or rule. Inherent

jurisdiction is also limited to exercises that fulfil the underlying purpose of the doctrine, being to regularize and protect the administration of justice. Inherent jurisdiction should be exercised "sparingly and with caution:" *R c. Caron*, 2011 SCC 5, at para. 28.

[70] In *Endean*, the Supreme Court set out that before exercising the court's inherent jurisdiction, a justice should first determine the scope of express grants of statutory powers before dipping into this "important but murky pool of residual authority" (*Endean*, at para. 24). Having done so, in my view, it is both necessary and appropriate to exercise inherent jurisdiction in responding to this motion.

[71] In these most unusual circumstances, there is little guidance to be found in the jurisprudence. We are dealing with the unknown and a just and practical response must be found.

(c) Order to be Applied to All Active Insolvency Files

[72] In requesting the relief to extend the various timelines as well as to request that the order be applied to all active insolvency filings as well as to filings with the Superintendent up to June 30, 2020, I have not identified any statutory provision that specifically prohibits a superior court from granting the requested relief. Unlike *IDG*, it is not the case that automatic bankruptcy results from a failure of administrators to meet their duties. There is a legislative gap around the events, if any, that flow from such a failure to act.

[73] Having determined that there is no statutory provision preventing the granting of the requested relief, in my view this is one of the occasions, keeping in mind that inherent jurisdiction is to be used sparingly, where it is appropriate and necessary to grant the relief requested by the Superintendent.

<u>Order Dispensing with Notice</u>

Legal Basis for Court's Jurisdiction: ss. 187(12) BIA

[74] Finally, the Superintendent seeks an order to dispense with the requirement to serve the Motion Record on each interested party and dispensing with the requirement to file it in each individual court file.

[75] Requiring the Superintendent to provide notice of this motion to the 451,536 open insolvency files comprised of all active consumer proposals, active commercial proposals and active bankruptcies, each one containing a separate list of creditors is unreasonable in the circumstances and is justification for this Court to dispense with the notice requirements required by the BIA.

[76] I am satisfied that, in accordance with the provisions of ss. 187(12) of the BIA, that it is appropriate to dispense with the foregoing notice provisions.

PART V - Order Sought

[77] The Superintendent of Bankruptcy respectfully requests the relief set out below:

[78] For the purposes of this Order:

a. The "Period of the Emergency" shall be defined as the period of March 13, 2020, to June 30, 2020. For greater certainty, the start date and the end date are included in the Period of the Emergency.

b. The "Suspension Period" shall be defined as the period from the date of the Court's Order to June 30, 2020. For greater certainty, the start date and the end date are included in the Suspension Period.

c. All "Active Commercial Proposals" (Division I proposals), which shall be defined as all the Division I proposals filed with the OSB up to the end of the Period of the Emergency;

d. All "Active Consumer Proposals" (Division II proposals), which shall be defined as all the Division II proposals filed with the Office of the Superintendent of Bankruptcy ("OSB") up to the end of the Period of the Emergency, but excluding the Division II proposals that were deemed annulled, annulled or that were fully performed on or before the date of this Order; and

e. All "Active Bankruptcy Files", which shall be defined as all bankruptcies filed with the OSB, up to the end of the Period of the Emergency, but excluding the bankruptcies wherein the bankrupt had received his or her discharge on or before the date of this Order.

Matters applicable to Active Commercial Proposals

- The time for holding the meeting of creditors that is to take place during the Period of the Emergency, as provided by s. 51 of the BIA, is to be extended by the time of the Suspension Period.

Matters applicable to Active Consumer Proposals

- The time for holding the meeting of creditors that is to take place during the Period of the Emergency, as provided by ss. 66.15 of the BIA, is to be extended by the time of the Suspension Period.

- An Active Consumer Proposal shall not be deemed annulled pursuant to ss. 66.31 of the BIA unless the consumer debtor is in default of:

a. In the case when payments under the Active Consumer Proposal are to be made monthly or more frequently, the day on which the consumer debtor is in default for an amount that is equal to more than the amount of three payments plus an additional amount equivalent to up to three payments for defaults that occurred during the period of March 13, 2020, to December 31, 2020; or

b. In the case when payments under the Active Consumer Proposal are to be made less frequently than monthly, the day that is three months after the day on which the consumer debtor is in default in respect of any payment except that for those payments due between March 13, 2020 to December 31, 2020 it shall be the day that is six months after the day on which the consumer debtor is in default.

Matters applicable to Active Bankruptcy Files:

- The trustee's obligation to apply to court for a hearing during the Period of the Emergency, as provided by ss. 170.1(3) of the BIA, is to be extended by the time of the Suspension Period.

- The time for the holding of the meeting of creditors that is to take place during the Period of the Emergency, as provided by s. 102 of the BIA, is to be extended by the time of the Suspension Period.

- The time for scheduling a mediation that is to take place during the Period of the Emergency, as provided by rule 105(4) and (10) of the BIGR, is to be extended by the time of the Suspension Period.

- Any interested person may apply to the Court to terminate the relief provided herein in respect of any proceeding, on providing notice of the application to do so on five days notice to the trustee, the OSB, and any other person likely to be affected by the order sought.

PART VI – Disposition

[79] In the result, the relief requested by the Superintendent is granted. An order reflecting the foregoing has been signed.

[80] With the exception of notice to Stephen Podgurski, these Orders were made without notice to affected creditors or debtors in the context of LIT substitution motions.

[81] The publication of the Order on the OSB's website is sufficient in the circumstance to notify interested parties of their rights flowing from the Order of this Court.

[82] I thank counsel for their helpful submissions.

[83] In view of the relief granted, I direct that this endorsement be brought to the attention of the affected government ministries, for information purposes in the event that relief is required beyond June 30, 2020.

"G.B. Morawetz, C.J."
Chief Justice G.B. Morawetz

Date: April 27, 2020

Schedule "A"

Text of Statutes

Bankruptcy and Insolvency Act

Calling of meeting of creditors

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

Convocation d'une assemblée des créanciers

51 (1) Le syndic convoque immédiatement une assemblée des créanciers — qui doit avoir lieu dans les vingt et un jours suivant le dépôt de la proposition auprès du séquestre officiel aux termes du paragraphe 62(1) — en adressant, de la manière prescrite, à chaque créancier connu et au séquestre officiel, au moins dix jours avant l'assemblée, les documents suivants :

Meeting of creditors

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

Idem

(2) The administrator shall call a meeting of creditors

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

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

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

Assemblée des créanciers

66.15 (1) Le séquestre officiel peut, dans les quarante-cinq jours suivant le dépôt de la proposition de consommateur, enjoindre à l'administrateur de convoquer une assemblée des créanciers.

Idem

(2) L'administrateur convoque une assemblée des créanciers :

a) soit dès que le séquestre officiel lui enjoint de le faire aux termes du paragraphe (1);

b) soit à l'expiration des quarante-cinq jours suivant le dépôt de la proposition, si des créanciers représentant en valeur au moins vingt-cinq pour cent des réclamations prouvées lui en font alors la demande.

L'assemblée doit avoir lieu dans les vingt et un jours suivant sa convocation.

Deemed annulment — default of payment

66.31 (1) Unless the court has previously ordered otherwise or unless an amendment to the consumer proposal has previously been filed, a consumer proposal is deemed to be annulled on

(a) in the case when payments under the consumer proposal are to be made monthly or more frequently, the day on which the consumer debtor is in default for an amount that is equal to or more than the amount of three payments; or

(b) in the case when payments under the consumer proposal are to be made less frequently than monthly, the day that is three months after the day on which the consumer debtor is in default in respect of any payment.

Annulation présumée — défaut de paiement

66.31 (1) À moins que le tribunal n'en ait décidé autrement ou qu'une modification de la proposition n'ait été déposée antérieurement, la proposition de consommateur est réputée être annulée :

a) dans le cas où les paiements prévus par la proposition doivent être effectués mensuellement ou plus fréquemment, le jour où le débiteur est en défaut pour une somme correspondant à au moins trois de ces paiements;

b) dans le cas où les paiements doivent être effectués moins fréquemment que mensuellement, à l'expiration d'un délai de trois mois suivant le jour où le débiteur est en défaut par rapport à n'importe quel paiement.

First meeting of creditors

102 (1) Subject to subsection (1.1), it is the duty of the trustee to inquire as to the names and addresses of the creditors of a bankrupt and, within five days after the date of the trustee's appointment, to send in the prescribed manner to the bankrupt, to every known creditor and to the Superintendent a notice in the prescribed form of the bankruptcy and of the first meeting of creditors, to be held within the twenty-one day period

Première assemblée des créanciers

102 (1) Sous réserve du paragraphe (1.1), il incombe au syndic de se renseigner sur les noms et adresses des créanciers du failli et, dans les cinq jours qui suivent la date de sa nomination, il adresse, de la manière prescrite, au failli, à tout créancier connu, ainsi qu'au surintendant, un avis de la faillite, en la forme prescrite, et de la première assemblée des créanciers devant être tenue au bureau du séquestre officiel de la localité du failli, dans les

following the day of the trustee's appointment, at the office of the official receiver in the locality of the bankrupt, but the official receiver may, when the official receiver deems it expedient, authorize the meeting to be held at the office of any other official receiver or at such other place as the official receiver may fix.

vingt et un jours suivant la nomination du syndic, mais, s'il l'estime utile, le séquestre officiel peut autoriser la tenue de l'assemblée au bureau de tout autre séquestre officiel, ou à l'endroit que le séquestre officiel peut fixer.

170.1

Court hearing

(3) If the issues submitted to mediation are not resolved by the mediation or the bankrupt failed to comply with conditions that were established as a result of the mediation, the trustee shall without delay apply to the court for an appointment for the hearing of the matter — and the provisions of this Part relating to applications to the court in relation to the discharge of a bankrupt apply, with any modifications that the circumstances require, in respect of an application to the court under this subsection — which hearing is to be held

(a) within 30 days after the day on which the appointment is made; or

(b) at a later time that is fixed by the court.

170.1

Convocation par le tribunal

(3) En cas d'échec de la médiation ou de manquement du failli aux conditions prévues par l'entente consécutive à la médiation, le syndic demande sans délai au tribunal de fixer une date d'audience à tenir dans les trente jours suivant la date de convocation ou à la date postérieure que le tribunal peut fixer, les dispositions de la présente partie relatives aux demandes de libération s'appliquant avec les adaptations nécessaires.

187

Court may extend time

(11) Where by this Act the time for doing any act or thing is limited, the court may extend the time either before or after the expiration thereof on such terms, if any, as it thinks fit to impose.

187

Le tribunal peut prolonger le délai

(11) Lorsque la présente loi restreint le délai fixé pour accomplir une action ou chose, le tribunal peut prolonger ce délai, avant ou après son expiration, aux termes, s'il en est, qu'il estime utile d'imposer.

Court may dispense with certain requirements respecting notices

(12) Where in the opinion of the court the cost of preparing statements, lists of creditors or other material required by this Act to be sent with notices to creditors, or the cost of sending the material or notices, is unjustified in the circumstances, the court may give leave to omit the material or any part thereof or to send the material or notices in such manner as the court may direct.

R.S., 1985, c. B-3, s. 187; 1992, c. 1, s. 20, c. 27, s. 66; 2004, c. 25, s. 87.

Le tribunal peut dispenser de certaines exigences concernant les avis

(12) Lorsque, de l'avis du tribunal, les frais qu'entraîne la préparation de déclarations, de listes de créanciers ou d'autres documents dont la présente loi exige l'expédition avec les avis aux créanciers, ou lorsque les frais d'envoi de pareils documents ou avis ne sont pas justifiables dans les circonstances, le tribunal peut permettre d'omettre ces documents ou d'en omettre une partie ou d'expédier les documents ou avis de la façon qu'il estime indiquée.

L.R. (1985), ch. B-3, art. 187; 1992, ch. 1, art. 20, ch. 27, art. 66; 2004, ch. 25, art. 87.

Bankruptcy and Insolvency General Rules

105

(4) On receipt of a request for mediation from a trustee under subsection 68(6) or (7) or 170.1(1) of the Act, accompanied by the most recent income and expense statement in prescribed form completed by the bankrupt, the official receiver shall refer the matter to the mediator, who shall set the time and place for the mediation. The time set for the mediation must be within 45 days after the official receiver received the request for mediation.

(10) If a mediation is rescheduled or adjourned, the new date set must be within 10 days after the date on which the rescheduling or adjournment occurs.

105

(4) Sur réception d'une demande de médiation d'un syndic conformément aux paragraphes 68(6) ou (7) ou 170.1(1) de la Loi, accompagnée de l'état des revenus et dépenses le plus récent établi par le failli en la forme prescrite, le séquestre officiel confie le dossier au médiateur qui fixe les date, heure et lieu de la médiation. La médiation a lieu dans les 45 jours suivant la réception par le séquestre officiel de la demande de médiation.

(10) En cas de report ou d'ajournement de la médiation, la nouvelle date se situe dans les 10 jours suivant celui où la médiation a été reportée ou ajournée.