

File No. CI 20-01-26627

THE QUEEN'S BENCH
Winnipeg Centre

**IN THE MATTER OF: THE APPOINTMENT OF A RECEIVER PURSUANT TO
SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C., C., B-3 AS AMENDED, AND SECTION 55 OF
THE COURT OF QUEEN'S BENCH ACT, C.C.S.M., C.
C280, AS AMENDED**

BETWEEN:

WHITE OAK COMMERCIAL FINANCE, LLC

Applicant,

-and-

**NYGARD HOLDINGS (USA) LIMITED, NYGARD INC., FASHION VENTURES, INC.,
NYGARD NY RETAIL, LLC., 4093887 CANADA LTD., 4093879 CANADA LTD.,
NYGARD INTERNATIONAL PARTNERSHIP, NYGARD PROPERTIES LTD., AND
NYGARD ENTERPRISES LTD.**

Respondents

BRIEF OF THE RESPONDENTS
HEARING DATE: MARCH 10TH, 2020 at 2:00 PM

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**THE QUEEN'S BENCH
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PART I: ISSUE TO BE DETERMINED

- a. Should the Court pronounce an order for a Stay of Proceedings pursuant to S.69 of the *Bankruptcy and Insolvency Act*?

PART II: DOCUMENTS TO BE RELIED UPON

1. The pleadings herein;
2. Such further and other documents as may be submitted by counsel and considered by this Honourable Court.

PART III: AUTHORITIES TO BE RELIED UPON

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Legislation

<i>Bankruptcy and Insolvency Act</i>	1
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PART IV: POINTS TO BE ARGUED

STAY OF PROCEEDING

1. The Applicant served its Notice of Intention to Enforce Security, pursuant to s.244 of the *Bankruptcy and Insolvency Act*, on February 26, 2020 at 4:46 PM (Eastern Standard Time). (Affidavit of Robert Dean affirmed March 9, 2020, Part 1, Page 10, Exhibit A)

2. The legislation and case law requires a secured creditor to send the prescribed notice under s. 244 of the *Bankruptcy and Insolvency Act* and then wait ten days before enforcing the security.

3. In the case of *John Deere Credit Inc. v. Doyle Salewski Lemieux Inc.*, the Ontario Court of Appeal states as follows:

7 Section 244 requires a secured creditor to send the prescribed notice and then wait ten days before enforcing the security.

8 Section 69 entitles the insolvent person to file a proposal and thereby prevent a secured creditor from enforcing the security unless that creditor had sent the prescribed notice more than ten days earlier.

9 While these are separate legislative provisions, in my view they cover the same time period. Until a secured creditor, having sent the prescribed notice, has waited the time necessary before being able to enforce the security, the insolvent person can file a proposal staying that creditor's right to proceed to enforce the security.

10 Hence, for the purposes of the issue on appeal, the effect of sections 244 and 69 taken together is that a secured creditor must send a notice of intention to enforce his security and then wait for the expiry of ten days. Only thereafter can the security interest be enforced without the consent of the insolvent person. The latter has the same ten days following the day on which the notice was sent to file a notice of intention to make a proposal and gain the protection of the stay provisions. In effect, the two sections are designed so that the insolvent person has these ten days to determine whether to give up the security provided or to continue with the proposal proceedings.

11 Where the ten-day period available to the insolvent person to file and thereby gain the protection of a stay expires on a Sunday, it is my view that the insolvent person may file a notice of intention to make a proposal on Monday, the next day, so as to trigger the stay provided by s. 69. While Rule 112 is not felicitously worded, when s. 26 of the *Interpretation Act* is used to inform its meaning, this result is clearly prescribed. In *Ohayon Jewelry Inc. v. Libarian Jewels & Setting Ltd. (Trustee of)* (1987), 63 O.R. (2d) 157 (Ont. S.C.), the court adopted this interpretation of the statutory scheme. Indeed, without this interpretation

the insolvent person would have to file his notice on the preceding Friday (since filing is impossible on either Saturday or Sunday) and would therefore have only eight days to decide which way to proceed rather than the ten days prescribed by s. 69(2)(b).

12 I therefore conclude that on the central issue the appellant fails. Its notice of intention to enforce security was sent on May 29, 1997. The ten-day period that followed ended on Sunday, June 8. This permitted RRSI to file its notice of intention to make a proposal on Monday, June 9, so as to raise the stay provided for in s. 69(2)(b).

[Emphasis Added]

4. The Respondents therefore submit that the Applicant ought not to proceed due to the Stay of proceeding imposed by s.69 of the Act.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of March, 2020

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CANADA

CONSOLIDATION

CODIFICATION

Bankruptcy and Insolvency Act

Loi sur la faillite et l'insolvabilité

R.S.C., 1985, c. B-3

L.R.C. (1985), ch. B-3

Current to February 11, 2020

À jour au 11 février 2020

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When obligation to pay ceases

(16) If an opposition to the automatic discharge of a bankrupt individual who is required to pay an amount to the estate is filed, the bankrupt's obligation under this section ceases on the day on which the bankrupt would have been automatically discharged had the opposition not been filed, but nothing in this subsection precludes the court from determining that the bankrupt is required to pay to the estate an amount that the court considers appropriate.

R.S., 1985, c. B-3, s. 68; 1992, c. 27, s. 34; 1997, c. 12, s. 60; 2005, c. 47, s. 58; 2007, c. 36, s. 33.

Assignment of wages

68.1 (1) An assignment of existing or future wages made by a debtor before the debtor became bankrupt is of no effect in respect of wages earned after the bankruptcy.

Assignment of book debts

(2) An assignment of existing or future amounts receivable as payment for or commission or professional fees in respect of services rendered by a debtor who is an individual before the debtor became bankrupt is of no effect in respect of such amounts earned or generated after the bankruptcy.

1992, c. 27, s. 35; 1997, c. 12, s. 61; 2005, c. 47, s. 59.

Stay of Proceedings

Stay of proceedings — notice of intention

69 (1) Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,

(b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on

(i) the insolvent person's insolvency,

(ii) the default by the insolvent person of an obligation under the security agreement, or

(iii) the filing by the insolvent person of a notice of intention under section 50.4,

Cessation des versements

(16) L'obligation du failli qui est une personne physique de faire des versements à l'actif de la faillite au titre du présent article cesse, en cas d'opposition à sa libération d'office, le jour où il aurait été libéré n'eût été l'avis d'opposition, rien n'empêchant toutefois le tribunal de reconduire l'obligation pour la somme qu'il estime indiquée.

L.R. (1985), ch. B-3, art. 68; 1992, ch. 27, art. 34; 1997, ch. 12, art. 60; 2005, ch. 47, art. 58; 2007, ch. 36, art. 33.

Cession de salaire

68.1 (1) La cession de salaires présents ou futurs faite par le débiteur avant qu'il ne devienne un failli est sans effet sur les salaires gagnés après sa faillite.

Cession de créances comptables

(2) La cession de sommes — échues ou à percevoir — à titre de paiement, de commission ou d'honoraires professionnels pour la prestation de services, faite par un débiteur qui est une personne physique avant qu'il ne fasse faillite, est sans effet sur les sommes de même provenance qui sont gagnées après sa faillite.

1992, ch. 27, art. 35; 1997, ch. 12, art. 61; 2005, ch. 47, art. 59.

Suspension des procédures

Suspension des procédures en cas d'avis d'intention

69 (1) Sous réserve des paragraphes (2) et (3) et des articles 69.4, 69.5 et 69.6, entre la date du dépôt par une personne insolvable d'un avis d'intention aux termes de l'article 50.4 et la date du dépôt, aux termes du paragraphe 62(1), d'une proposition relative à cette personne ou la date à laquelle celle-ci devient un failli :

a) les créanciers n'ont aucun recours contre la personne insolvable ou contre ses biens et ne peuvent intenter ou continuer aucune action, exécution ou autre procédure en vue du recouvrement de réclamations prouvables en matière de faillite;

b) est sans effet toute disposition d'un contrat de garantie conclu entre la personne insolvable et un créancier garanti qui prévoit, pour l'essentiel, que celle-ci, dès qu'elle devient insolvable, qu'elle manque à un engagement prévu par le contrat de garantie ou qu'elle dépose un avis d'intention aux termes de l'article 50.4, est déchue des droits qu'elle aurait normalement de se servir des avoirs visés par le contrat de garantie ou de faire d'autres opérations à leur égard;

the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as he would otherwise have, has any force or effect,

(c) Her Majesty in right of Canada may not exercise Her rights under

(i) subsection 224(1.2) of the *Income Tax Act*, or

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that

(A) refers to subsection 224(1.2) of the *Income Tax Act*, and

(B) provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts,

in respect of the insolvent person where the insolvent person is a tax debtor under that subsection or provision, and

(d) Her Majesty in right of a province may not exercise her rights under any provision of provincial legislation in respect of the insolvent person where the insolvent person is a debtor under the provincial legislation and the provision has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a **provincial pension plan** as defined in that subsection,

until the filing of a proposal under subsection 62(1) in respect of the insolvent person or the bankruptcy of the insolvent person.

Limitation

(2) The stays provided by subsection (1) do not apply

c) est suspendu l'exercice par Sa Majesté du chef du Canada des droits que lui confère l'une des dispositions suivantes à l'égard de la personne insolvable, lorsque celle-ci est un débiteur fiscal visé à cette disposition :

(i) le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*,

(ii) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui, à la fois :

(A) renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*,

(B) prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi et des intérêts, pénalités ou autres montants y afférents;

d) est suspendu l'exercice par Sa Majesté du chef d'une province des droits que lui confère toute disposition législative provinciale à l'égard d'une personne insolvable, lorsque celle-ci est un débiteur visé par la loi provinciale et qu'il s'agit d'une disposition dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, dans la mesure où elle prévoit la perception d'une somme, et des intérêts, pénalités ou autres montants y afférents, qui :

(i) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(ii) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est une **province instituant un régime général de pensions** au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un **régime provincial de pensions** au sens de ce paragraphe.

Exceptions

(2) Le paragraphe (1) n'a pas pour effet :

(a) to prevent a secured creditor who took possession of secured assets of the insolvent person for the purpose of realization before the notice of intention under section 50.4 was filed from dealing with those assets;

(b) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security against the insolvent person more than ten days before the notice of intention under section 50.4 was filed, from enforcing that security, unless the secured creditor consents to the stay;

(c) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security from enforcing the security if the insolvent person has, under subsection 244(2), consented to the enforcement action; or

(d) [Repealed, 2012, c. 31, s. 416]

Limitation

(3) A stay provided by paragraph (1)(c) or (d) does not apply, or terminates, in respect of Her Majesty in right of Canada and every province if

(a) the insolvent person defaults on payment of any amount that becomes due to Her Majesty after the filing of the notice of intention and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

a) d'empêcher le créancier garanti de faire des opérations à l'égard des avoirs garantis de la personne insolvable dont il a pris possession — en vue de les réaliser — avant le dépôt de l'avis d'intention prévu à l'article 50.4;

b) d'empêcher le créancier garanti, sauf s'il a consenti à la suspension, qui a donné le préavis prévu au paragraphe 244(1) plus de dix jours avant le dépôt de l'avis d'intention prévu à l'article 50.4 de mettre à exécution sa garantie;

c) d'empêcher le créancier garanti qui a donné le préavis prévu au paragraphe 244(1) de mettre à exécution sa garantie si la personne insolvable a consenti à l'exécution au titre du paragraphe 244(2).

d) [Abrogé, 2012, ch. 31, art. 416]

Exception

(3) L'alinéa (1)c) ou d) ne s'applique pas, ou cesse de s'appliquer, à Sa Majesté du chef du Canada ou de la province en cause dans les cas suivants :

a) la personne insolvable manque à ses obligations de paiement d'un montant qui devient dû à Sa Majesté après le dépôt de l'avis d'intention et qui pourrait faire l'objet d'une demande aux termes d'une des dispositions suivantes :

(i) le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*,

(ii) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi et des intérêts, pénalités ou autres montants y afférents,

(iii) toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, dans la mesure où elle prévoit la perception d'une somme, et des intérêts, pénalités ou autres montants y afférents, qui :

(A) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a **provincial pension plan** as defined in that subsection; or

(b) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising Her rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a **provincial pension plan** as defined in that subsection.

R.S., 1985, c. B-3, s. 69; 1992, c. 27, s. 36; 1997, c. 12, s. 62; 2000, c. 30, s. 145; 2005, c. 3, s. 12, c. 47, s. 60; 2007, c. 36, s. 34; 2009, c. 33, s. 23; 2012, c. 31, s. 416.

le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(B) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est **une province instituant un régime général de pensions** au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un **régime provincial de pensions** au sens de ce paragraphe;

b) un autre créancier a ou acquiert le droit de réaliser sa garantie sur un bien qui pourrait être réclamé par Sa Majesté dans l'exercice des droits que lui confère l'une des dispositions suivantes :

(i) le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*,

(ii) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi et des intérêts, pénalités ou autres montants y afférents,

(iii) toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, dans la mesure où elle prévoit la perception d'une somme, et des intérêts, pénalités ou autres montants y afférents, qui :

(A) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(B) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est **une province instituant un régime général de pensions** au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un **régime provincial de pensions** au sens de ce paragraphe.

L.R. (1985), ch. B-3, art. 69; 1992, ch. 27, art. 36; 1997, ch. 12, art. 62; 2000, ch. 30, art. 145; 2005, ch. 3, art. 12, ch. 47, art. 60; 2007, ch. 36, art. 34; 2009, ch. 33, art. 23; 2012, ch. 31, art. 416.

Stay of proceedings — Division I proposals

69.1 (1) Subject to subsections (2) to (6) and sections 69.4, 69.5 and 69.6, on the filing of a proposal under subsection 62(1) in respect of an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged or the insolvent person becomes bankrupt;

(b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on

(i) the insolvent person's insolvency,

(ii) the default by the insolvent person of an obligation under the security agreement, or

(iii) the filing of a notice of intention under section 50.4 or of a proposal under subsection 62(1) in respect of the insolvent person,

the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as the insolvent person would otherwise have, has any force or effect until the trustee has been discharged or the insolvent person becomes bankrupt;

(c) Her Majesty in right of Canada may not exercise Her rights under subsection 224(1.2) of the *Income Tax Act* or any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, in respect of the insolvent person where the insolvent person is a tax debtor under that subsection or provision, until

(i) the trustee has been discharged,

(ii) six months have elapsed following court approval of the proposal, or

(iii) the insolvent person becomes bankrupt; and

(d) Her Majesty in right of a province may not exercise Her rights under any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that

Suspension des procédures en cas de dépôt d'une proposition

69.1 (1) Sous réserve des paragraphes (2) à (6) et des articles 69.4, 69.5 et 69.6, entre la date du dépôt d'une proposition visant une personne insolvable et :

a) soit sa faillite, soit la libération du syndic, les créanciers n'ont aucun recours contre elle ou contre ses biens et ne peuvent intenter ou continuer aucune action, exécution ou autre procédure en vue du recouvrement de réclamations prouvables en matière de faillite;

b) soit sa faillite, soit la libération du syndic, est sans effet toute disposition d'un contrat de garantie conclu entre elle et un créancier garanti qui prévoit, pour l'essentiel, que celle-ci, dès qu'elle devient insolvable, qu'elle manque à un engagement prévu par le contrat de garantie ou qu'est déposé à son égard un avis d'intention aux termes de l'article 50.4 ou une proposition aux termes du paragraphe 62(1), est déchue des droits qu'elle aurait normalement de se servir des avoirs visés par le contrat de garantie ou de faire d'autres opérations à leur égard;

c) soit sa faillite, soit la libération du syndic, soit l'expiration des six mois suivant l'approbation de la proposition par le tribunal, est suspendu l'exercice par Sa Majesté du chef du Canada des droits que lui confère le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* ou toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie à ce paragraphe et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi et des intérêts, pénalités ou autres montants y afférents, à l'égard de la personne insolvable, lorsque celle-ci est un débiteur fiscal visé à ce paragraphe ou à cette disposition;

d) soit sa faillite, soit la libération du syndic, soit l'expiration des six mois suivant l'approbation de la proposition par le tribunal, est suspendu l'exercice par Sa Majesté du chef d'une province des droits que lui confère toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, à l'égard de la personne insolvable, lorsque celle-ci est un débiteur visé par la loi provinciale, dans la mesure où la disposition prévoit la perception d'une somme, et des intérêts, pénalités ou autres montants y afférents, qui :

subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a **provincial pension plan** as defined in that subsection,

in respect of the insolvent person where the insolvent person is a debtor under the provincial legislation, until

(iii) the trustee has been discharged,

(iv) six months have elapsed following court approval of the proposal, or

(v) the insolvent person becomes bankrupt.

Limitation

(2) The stays provided by subsection (1) do not apply

(a) to prevent a secured creditor who took possession of secured assets of the insolvent person for the purpose of realization before the proposal was filed from dealing with those assets;

(b) unless the secured creditor otherwise agrees, to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security against the insolvent person more than ten days before

(i) a notice of intention was filed in respect of the insolvent person under section 50.4, or

(ii) the proposal was filed, if no notice of intention under section 50.4 was filed

from enforcing that security;

(c) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security from enforcing the security if the insolvent person has, under subsection 244(2), consented to the enforcement action; or

(d) [Repealed, 2012, c. 31, s. 417]

(i) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(ii) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est **une province instituant un régime général de pensions** au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un **régime provincial de pensions** au sens de ce paragraphe.

Exceptions

(2) Le paragraphe (1) n'a pas pour effet :

a) d'empêcher le créancier garanti de faire des opérations à l'égard des avoirs garantis de la personne insolvable dont il a pris possession — en vue de les réaliser — avant le dépôt de la proposition;

b) d'empêcher le créancier garanti, sauf s'il a consenti à la suspension, qui a donné le préavis prévu au paragraphe 244(1) plus de dix jours avant le dépôt de l'avis d'intention prévu à l'article 50.4 ou, à défaut d'avis d'intention, de la proposition de mettre à exécution sa garantie;

c) d'empêcher le créancier garanti qui a donné le préavis prévu au paragraphe 244(1) de mettre à exécution sa garantie si la personne insolvable a consenti à l'exécution au titre du paragraphe 244(2).

d) [Abrogé, 2012, ch. 31, art. 417]

Limitation

(3) A stay provided by paragraph (1)(c) or (d) does not apply, or terminates, in respect of Her Majesty in right of Canada and every province if

(a) the insolvent person defaults on payment of any amount that becomes due to Her Majesty after the filing of the proposal and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a **provincial pension plan** as defined in that subsection; or

(b) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising Her rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1

Exception

(3) L'alinéa (1)c) ou d) ne s'applique pas, ou cesse de s'appliquer, à Sa Majesté du chef du Canada ou de la province en cause dans les cas suivants :

a) la personne insolvable manque à ses obligations de paiement d'un montant qui devient dû à Sa Majesté après le dépôt de la proposition et qui pourrait faire l'objet d'une demande aux termes d'une des dispositions suivantes :

(i) le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*,

(ii) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi et des intérêts, pénalités ou autres montants y afférents,

(iii) toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, dans la mesure où elle prévoit la perception d'une somme, et des intérêts, pénalités ou autres montants y afférents, qui :

(A) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(B) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est une **province instituant un régime général de pensions** au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un **régime provincial de pensions** au sens de ce paragraphe;

b) un autre créancier a ou acquiert le droit de réaliser sa garantie sur un bien qui pourrait être réclamé par Sa Majesté dans l'exercice des droits que lui confère l'une des dispositions suivantes :

(i) le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*,

of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a **provincial pension plan** as defined in that subsection.

Limitation

(4) If, by virtue of subsection 69(3), the stay provided by paragraph 69(1)(c) or (d) does not apply or terminates, the stay provided by paragraph (1)(c) or (d) of this section does not apply.

Secured creditors to whom proposal not made

(5) Subject to sections 79 and 127 to 135 and subsection 248(1), the filing of a proposal under subsection 62(1) does not prevent a secured creditor to whom the proposal has not been made in respect of a particular security from realizing or otherwise dealing with that security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Where secured creditors vote against proposal

(6) Subject to sections 79 and 127 to 135 and subsection 248(1), where secured creditors holding a particular class of secured claim vote for the refusal of a proposal, a secured creditor holding a secured claim of that class may henceforth realize or otherwise deal with his security in

(ii) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi et des intérêts, pénalités ou autres montants y afférents,

(iii) toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, dans la mesure où elle prévoit la perception d'une somme, et des intérêts, pénalités ou autres montants y afférents, qui :

(A) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(B) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est **une province instituant un régime général de pensions** au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un **régime provincial de pensions** au sens de ce paragraphe.

Exception

(4) Les alinéas (1)c) et d) ne s'appliquent pas si, par l'effet du paragraphe 69(3), l'alinéa 69(1)c) ou d) ne s'applique pas ou cesse de s'appliquer.

Créanciers garantis exclus

(5) Sous réserve des articles 79 et 127 à 135 et du paragraphe 248(1), le dépôt d'une proposition aux termes du paragraphe 62(1) n'a pas pour effet d'empêcher un créancier garanti à qui la proposition n'a pas été faite en rapport avec une garantie en particulier de réaliser celle-ci ou de faire toutes autres opérations à son égard tout comme il aurait pu le faire en l'absence du présent article.

Cas de rejet par les créanciers garantis

(6) Sous réserve des articles 79 et 127 à 135 et du paragraphe 248(1), lorsque les créanciers garantis d'une même catégorie votent en faveur du rejet d'une proposition, tout créancier appartenant à cette catégorie peut dès lors réaliser sa garantie ou faire toutes autres

the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

1992, c. 27, s. 36; 1994, c. 26, s. 8(E); 1997, c. 12, s. 63; 2000, c. 30, s. 146; 2005, c. 3, s. 13, c. 47, s. 61; 2007, c. 36, s. 35; 2009, c. 33, s. 24; 2012, c. 31, s. 417.

Stay of proceedings — consumer proposals

69.2 (1) Subject to subsections (2) to (4) and sections 69.4 and 69.5, on the filing of a consumer proposal under subsection 66.13(2) or of an amendment to a consumer proposal under subsection 66.37(1) in respect of a consumer debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy until

(a) the consumer proposal or the amended consumer proposal, as the case may be, has been withdrawn, refused, annulled or deemed annulled; or

(b) the administrator has been discharged.

Exception

(2) Subsection (1) does not apply where the consumer proposal, other than an amendment to a consumer proposal referred to in section 66.37, is filed within six months after the filing of a previous consumer proposal in respect of the same debtor.

Idem

(3) Subsection (1) does not apply where an amendment to a consumer proposal is filed within six months after the filing of a previous amendment to the same consumer proposal.

Secured creditors

(4) Subject to sections 79 and 127 to 135 and subsection 248(1), the filing of a consumer proposal under subsection 66.13(2) does not prevent a secured creditor from realizing or otherwise dealing with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed, unless the court otherwise orders, but in so ordering the court shall not postpone the right of the secured creditor to realize or otherwise deal with his security, except as follows:

(a) in the case of a security for a debt that is due at the date of the approval or deemed approval of the consumer proposal or that becomes due not later than six months thereafter, that right shall not be postponed for more than six months from that date; and

(b) in the case of a security for a debt that does not become due until more than six months after the date of the approval or deemed approval of the consumer

opérations à son égard tout comme il aurait pu le faire en l'absence du présent article.

1992, ch. 27, art. 36; 1994, ch. 26, art. 8(A); 1997, ch. 12, art. 63; 2000, ch. 30, art. 146; 2005, ch. 3, art. 13, ch. 47, art. 61; 2007, ch. 36, art. 35; 2009, ch. 33, art. 24; 2012, ch. 31, art. 417.

Suspension des procédures en cas de dépôt d'une proposition de consommateur

69.2 (1) Sous réserve des paragraphes (2) à (4) et des articles 69.4 et 69.5, entre la date de dépôt d'une proposition de consommateur aux termes du paragraphe 66.13(2) ou d'une modification de la proposition aux termes du paragraphe 66.37(1) et son retrait, son rejet ou son annulation — effective ou présumée — ou la libération de l'administrateur, les créanciers n'ont aucun recours contre le débiteur consommateur ou ses biens et ne peuvent intenter ou continuer aucune action, exécution ou autre procédure en vue du recouvrement de réclamations prouvables en matière de faillite.

Exception

(2) Le paragraphe (1) ne s'applique pas si la proposition de consommateur, autre que la modification visée à l'article 66.37, est déposée dans les six mois suivant le dépôt d'une autre proposition de consommateur à l'égard du même débiteur.

Idem

(3) Le paragraphe (1) ne s'applique pas si une modification de la proposition de consommateur est déposée dans les six mois suivant le dépôt d'une autre modification de la même proposition de consommateur.

Créanciers garantis

(4) Sous réserve des articles 79 et 127 à 135 et du paragraphe 248(1), le dépôt d'une proposition de consommateur aux termes du paragraphe 66.13(2) n'a pas pour effet d'empêcher un créancier garanti de réaliser sa garantie ou de faire toutes autres opérations à son égard tout comme il aurait pu le faire en l'absence du présent article, à moins que le tribunal n'en ordonne autrement. Tout report ordonné à cet égard doit toutefois être conforme aux règles suivantes :

a) dans le cas d'une garantie relative à une dette échue à la date de l'approbation — effective ou présumée — de la proposition ou qui le devient dans les six mois suivants, l'exercice des droits du créancier ne peut être reporté à plus de six mois après cette date;

b) dans le cas d'une garantie relative à une dette qui ne devient échue que plus de six mois après la date de

proposal, that right shall not be postponed for more than six months from that date, unless all instalments of interest that are more than six months in arrears are paid and all other defaults of more than six months standing are cured, and then only so long as no instalment of interest remains in arrears or defaults remain uncured for more than six months, but, in any event, not beyond the date at which the debt secured by the security becomes payable under the instrument or act, or law, creating the security.

Exception

(5) No order may be made under subsection (4) if the order would have the effect of preventing a secured creditor from realizing or otherwise dealing with financial collateral.

1992, c. 27, s. 36; 1997, c. 12, s. 64; 2004, c. 25, s. 43(E); 2007, c. 29, s. 95.

Stays of proceedings — bankruptcies

69.3 (1) Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

End of stay

(1.1) Subsection (1) ceases to apply in respect of a creditor on the day on which the trustee is discharged.

Secured creditors

(2) Subject to sections 79 and 127 to 135 and subsection 248(1), the bankruptcy of a debtor does not prevent a secured creditor from realizing or otherwise dealing with his or her security in the same manner as he or she would have been entitled to realize or deal with it if this section had not been passed, unless the court otherwise orders, but in so ordering the court shall not postpone the right of the secured creditor to realize or otherwise deal with his or her security, except as follows:

(a) in the case of a security for a debt that is due at the date the bankrupt became bankrupt or that becomes due not later than six months thereafter, that right shall not be postponed for more than six months from that date; and

(b) in the case of a security for a debt that does not become due until more than six months after the date the bankrupt became bankrupt, that right shall not be postponed for more than six months from that date, unless all instalments of interest that are more than

l'approbation — effective ou présumée — de la proposition, l'exercice des droits du créancier peut être reporté à plus de six mois après cette date — mais en aucun cas au-delà de la date à laquelle la dette devient exigible en vertu de l'acte ou de la règle de droit instituant la garantie — seulement si tous les versements d'intérêts en souffrance depuis plus de six mois sont acquittés et si tous les autres manquements de plus de six mois sont réparés, et seulement tant qu'aucun versement d'intérêts ne demeure en souffrance, ou tant qu'aucun autre manquement ne reste sans réparation, pendant plus de six mois.

Exception

(5) L'ordonnance visée au paragraphe (4) ne peut avoir pour effet d'empêcher le créancier garanti de réaliser la garantie financière ou d'effectuer à l'égard de celle-ci toute autre opération.

1992, ch. 27, art. 36; 1997, ch. 12, art. 64; 2004, ch. 25, art. 43(A); 2007, ch. 29, art. 95.

Suspension des procédures en cas de faillite

69.3 (1) Sous réserve des paragraphes (1.1) et (2) et des articles 69.4 et 69.5, à compter de la faillite du débiteur, ses créanciers n'ont aucun recours contre lui ou contre ses biens et ils ne peuvent intenter ou continuer aucune action, mesure d'exécution ou autre procédure en vue du recouvrement de réclamations prouvables en matière de faillite.

Fin de la suspension

(1.1) Le paragraphe (1) cesse de s'appliquer à tout créancier le jour de la libération du syndic.

Créanciers garantis

(2) Sous réserve des articles 79 et 127 à 135 et du paragraphe 248(1), la faillite d'un débiteur n'a pas pour effet d'empêcher un créancier garanti de réaliser sa garantie ou de faire toutes autres opérations à son égard tout comme il aurait pu le faire en l'absence du présent article, à moins que le tribunal n'en décide autrement. Tout report ordonné à cet égard doit toutefois être conforme aux règles suivantes :

a) dans le cas d'une garantie relative à une dette échue à la date où le failli est devenu tel ou qui le devient dans les six mois suivants, l'exercice des droits du créancier ne peut être reporté à plus de six mois après cette date;

b) dans le cas d'une garantie relative à une dette qui ne devient échue que plus de six mois après la date où le failli est devenu tel, l'exercice des droits du créancier peut être reporté à plus de six mois après cette date — mais en aucun cas au-delà de la date à laquelle la dette devient exigible en vertu de l'acte ou

six months in arrears are paid and all other defaults of more than six months standing are cured, and then only so long as no instalment of interest remains in arrears or defaults remain uncured for more than six months, but, in any event, not beyond the date at which the debt secured by the security becomes payable under the instrument or law creating the security.

Exception

(2.1) No order may be made under subsection (2) if the order would have the effect of preventing a secured creditor from realizing or otherwise dealing with financial collateral.

(3) [Repealed, 2012, c. 31, s. 418]

1992, c. 27, s. 36; 2005, c. 3, s. 14, c. 47, s. 62; 2007, c. 29, s. 96, c. 36, s. 36; 2012, c. 31, s. 418.

Stay of proceedings — directors

69.31 (1) Where a notice of intention under subsection 50.4(1) has been filed or a proposal has been made by an insolvent corporation, no person may commence or continue any action against a director of the corporation on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the corporation where directors are under any law liable in their capacity as directors for the payment of such obligations, until the proposal, if one has been filed, is approved by the court or the corporation becomes bankrupt.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the corporation's obligations or an action seeking injunctive relief against a director in relation to the corporation.

Resignation or removal of directors

(3) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the corporation shall be deemed to be a director for the purposes of this section.

1997, c. 12, s. 65.

Court may declare that stays, etc., cease

69.4 A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied

de la règle de droit instituant la garantie — seulement si tous les versements d'intérêts en souffrance depuis plus de six mois sont acquittés et si tous les autres manquements de plus de six mois sont réparés, et seulement tant qu'aucun versement d'intérêts ne demeure en souffrance, ou tant qu'aucun autre manquement ne reste sans réparation, pendant plus de six mois.

Exception

(2.1) L'ordonnance visée au paragraphe (2) ne peut avoir pour effet d'empêcher le créancier garanti de réaliser la garantie financière ou d'effectuer à l'égard de celle-ci toute autre opération.

(3) [Abrogé, 2012, ch. 31, art. 418]

1992, ch. 27, art. 36; 2005, ch. 3, art. 14, ch. 47, art. 62; 2007, ch. 29, art. 96, ch. 36, art. 36; 2012, ch. 31, art. 418.

Suspension des procédures — administrateurs

69.31 (1) Entre la date où une personne morale insolvable a déposé l'avis d'intention prévu au paragraphe 50.4(1) ou une proposition et la date d'approbation de la proposition ou celle de sa faillite, nul ne peut intenter ou continuer d'action contre les administrateurs relativement aux réclamations contre eux qui sont antérieures aux procédures intentées sous le régime de la présente loi et visent des obligations dont ils peuvent être, ès qualités, responsables en droit.

Exception

(2) La suspension ne s'applique toutefois pas aux actions contre les administrateurs pour les garanties qu'ils ont données relativement aux obligations de la personne morale ni aux mesures de la nature d'une injonction les visant au sujet de celle-ci.

Démission ou destitution des administrateurs

(3) Si tous les administrateurs démissionnent ou sont destitués par les actionnaires sans être remplacés, quiconque dirige ou supervise les activités commerciales et les affaires internes de la personne morale est réputé un administrateur pour l'application du présent article.

1997, ch. 12, art. 65.

Déclaration de non-application

69.4 Tout créancier touché par l'application des articles 69 à 69.31 ou toute personne touchée par celle de l'article 69.31 peut demander au tribunal de déclarer que ces articles ne lui sont plus applicables. Le tribunal peut, avec les réserves qu'il estime indiquées, donner suite à la demande s'il est convaincu que la continuation d'application des articles en question lui causera

(a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or

(b) that it is equitable on other grounds to make such a declaration.

1992, c. 27, s. 36; 1997, c. 12, s. 65.

Non-application of certain provisions

69.41 (1) Sections 69 to 69.31 do not apply in respect of a claim referred to in subsection 121(4).

No remedy, etc.

(2) Notwithstanding subsection (1), no creditor with a claim referred to in subsection 121(4) has any remedy, or shall commence or continue any action, execution or other proceeding, against

(a) property of a bankrupt that has vested in the trustee; or

(b) amounts that are payable to the estate of the bankrupt under section 68.

1997, c. 12, s. 65.

No stay, etc., in certain cases

69.42 Despite anything in this Act, no provision of this Act shall have the effect of staying or restraining, and no order may be made under this Act staying or restraining,

(a) the exercise by the Minister of Finance or the Superintendent of Financial Institutions of any power, duty or function assigned to them by the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*;

(b) the exercise by the Governor in Council, the Minister of Finance or the Canada Deposit Insurance Corporation of any power, duty or function assigned to them by the *Canada Deposit Insurance Corporation Act*; or

(c) the exercise by the Attorney General of Canada of any power, assigned to him or her by the *Winding-up and Restructuring Act*.

2001, c. 9, s. 574.

Provincial legislation

69.5 Except for paragraphs 69(1)(c) and (d) and 69.1(1)(c) and (d), sections 69 to 69.3 do not affect the operation of any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any

vraisemblablement un préjudice sérieux ou encore qu'il serait, pour d'autres motifs, équitable de rendre pareille décision.

1992, ch. 27, art. 36; 1997, ch. 12, art. 65.

Précision

69.41 (1) Les articles 69 à 69.31 ne s'appliquent pas aux réclamations visées au paragraphe 121(4).

Recours interdits

(2) Malgré le paragraphe (1), le créancier d'une réclamation mentionnée au paragraphe 121(4) n'a aucun recours et ne peut tenter ou continuer d'actions, exécutions ou autres procédures relativement aux biens du failli dévolus au syndic ou aux montants à verser à l'actif de la faillite au titre de l'article 68.

1997, ch. 12, art. 65.

Restrictions

69.42 Malgré les autres dispositions de la présente loi, aucune disposition de la présente loi ne peut avoir pour effet de suspendre ou restreindre et aucune ordonnance ne peut être rendue, pour suspendre ou restreindre :

a) l'exercice par le ministre des Finances ou par le surintendant des institutions financières des attributions qui leur sont conférées par la *Loi sur les banques*, la *Loi sur les associations coopératives de crédit*, la *Loi sur les sociétés d'assurances* ou la *Loi sur les sociétés de fiducie et de prêt*;

b) l'exercice par le gouverneur en conseil, le ministre des Finances ou la Société d'assurance-dépôts du Canada des attributions qui leur sont conférées par la *Loi sur la Société d'assurance-dépôts du Canada*;

c) l'exercice par le procureur général du Canada des pouvoirs qui lui sont conférés par la *Loi sur les liquidations et les restructurations*.

2001, ch. 9, art. 574.

Effet sur les lois provinciales

69.5 À l'exception des alinéas 69(1)(c) et d) et 69.1(1)(c) et d), les articles 69 à 69.3 n'ont pas pour effet de porter atteinte à l'application de toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, dans la mesure où elle

related interest, penalties or other amounts, where the sum

(a) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(b) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a **provincial pension plan** as defined in that subsection,

and for the purpose of this section, the provision is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in paragraph (a), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in paragraph (b), and in respect of any related interest, penalties or other amounts.

1992, c. 27, s. 36; 2000, c. 30, s. 147.

Meaning of regulatory body

69.6 (1) In this section, **regulatory body** means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — sections 69 and 69.1

(2) Subject to subsection (3), no stay provided by section 69 or 69.1 affects a regulatory body's investigation in respect of an insolvent person or an action, suit or proceeding that is taken in respect of the insolvent person by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Exception

(3) On application by the insolvent person and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

prévoit la perception d'une somme, ou des intérêts, pénalités ou autres montants y afférents, qui :

a) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*;

b) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est **une province instituant un régime général de pensions** au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un **régime provincial de pensions** au sens de ce paragraphe.

Pour l'application du présent article, la disposition en question est réputée avoir, à l'encontre de tout créancier et malgré tout texte législatif fédéral ou provincial et toute règle de droit, la même portée et le même effet que le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* quant à la somme visée à l'alinéa a), ou que le paragraphe 23(2) du *Régime de pensions du Canada* quant à la somme visée à l'alinéa b), et quant aux intérêts, pénalités ou autres montants y afférents, quelle que soit la garantie dont bénéficie le créancier.

1992, ch. 27, art. 36; 2000, ch. 30, art. 147.

Définition de organisme administratif

69.6 (1) Au présent article, **organisme administratif** s'entend de toute personne ou de tout organisme chargé de l'application d'une loi fédérale ou provinciale; y est assimilé toute personne ou tout organisme désigné à ce titre par les Règles générales.

Organisme administratif — suspensions prévues aux articles 69 ou 69.1

(2) Sous réserve du paragraphe (3), les suspensions prévues aux articles 69 ou 69.1 ne portent aucunement atteinte aux mesures — action, poursuite ou autre procédure — prises à l'égard de la personne insolvable par ou devant un organisme administratif, ni aux investigations auxquelles il procède à son sujet. Elles n'ont d'effet que sur l'exécution d'un paiement ordonné par lui ou le tribunal.

Exception

(3) Le tribunal peut par ordonnance, sur demande de la personne insolvable et sur préavis à l'organisme administratif et à toute personne qui sera vraisemblablement touchée par l'ordonnance, déclarer que le paragraphe (2) ne s'applique pas à l'une ou

(a) a viable proposal could not be made in respect of the insolvent person if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the stay provided by section 69 or 69.1.

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the insolvent person and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

2007, c. 36, s. 37.

General Provisions

Precedence of bankruptcy orders and assignments

70 (1) Every bankruptcy order and every assignment made under this Act takes precedence over all judicial or other attachments, garnishments, certificates having the effect of judgments, judgments, certificates of judgment, legal hypothecs of judgment creditors, executions or other process against the property of a bankrupt, except those that have been completely executed by payment to the creditor or the creditor's representative, and except the rights of a secured creditor.

Costs

(2) Despite subsection (1), one bill of costs of a barrister or solicitor or, in the Province of Quebec, an advocate, including the executing officer's fees and land registration fees, shall be payable to the creditor who has first attached by way of garnishment or filed with the executing officer an attachment, execution or other process against the property of the bankrupt.

R.S., 1985, c. B-3, s. 70; 1992, c. 27, s. 37; 1997, c. 12, s. 66(F); 2004, c. 25, s. 44; 2005, c. 47, s. 63(E).

Vesting of property in trustee

71 On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any assignment or transfer.

R.S., 1985, c. B-3, s. 71; 1997, c. 12, s. 67; 2004, c. 25, s. 44.

plusieurs des mesures prises par ou devant celui-ci, s'il est convaincu que, à la fois :

a) il ne pourrait être fait de proposition viable à l'égard de la personne insolvable si ce paragraphe s'appliquait;

b) la suspension demandée au titre des articles 69 ou 69.1 n'est pas contraire à l'intérêt public.

Déclaration : organisme agissant à titre de créancier

(4) En cas de différend sur la question de savoir si l'organisme administratif cherche à faire valoir ses droits à titre de créancier dans le cadre de la mesure prise, le tribunal peut déclarer par ordonnance, sur demande de la personne insolvable et sur préavis à l'organisme, que celui-ci agit effectivement à ce titre et que la mesure est suspendue.

2007, ch. 36, art. 37.

Dispositions générales

Priorité des ordonnances de faillite et cessions

70 (1) Toute ordonnance de faillite rendue et toute cession faite en conformité avec la présente loi ont priorité sur toutes saisies, saisies-arrêts, certificats ayant l'effet de jugements, jugements, certificats de jugements, hypothèques légales résultant d'un jugement, procédures d'exécution ou autres procédures contre les biens d'un failli, sauf ceux qui ont été complètement réglés par paiement au créancier ou à son représentant, et sauf les droits d'un créancier garanti.

Frais

(2) Malgré le paragraphe (1), un seul mémoire de frais émanant d'un avocat, y compris les honoraires de l'huissier-exécutant et les droits d'enregistrement fonciers, est à payer au créancier qui a le premier mis la saisie-arrêt ou déposé entre les mains de l'huissier-exécutant une saisie, une procédure d'exécution ou une autre procédure contre les biens du failli.

L.R. (1985), ch. B-3, art. 70; 1992, ch. 27, art. 37; 1997, ch. 12, art. 66(F); 2004, ch. 25, art. 44; 2005, ch. 47, art. 63(A).

Dévolution des biens au syndic

71 Lorsqu'une ordonnance de faillite est rendue, ou qu'une cession est produite auprès d'un séquestre officiel, le failli cesse d'être habile à céder ou autrement aliéner ses biens qui doivent, sous réserve des autres dispositions de la présente loi et des droits des créanciers garantis, immédiatement passer et être dévolus au syndic nommé dans l'ordonnance de faillite ou dans la cession, et advenant un changement de syndic, les biens passent de syndic à syndic sans cession ni transfert quelconque.

L.R. (1985), ch. B-3, art. 71; 1997, ch. 12, art. 67; 2004, ch. 25, art. 44.

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of disbursements

(7) In subsection (6), *disbursements* does not include payments made in the operation of a business of the insolvent person or bankrupt.

1992, c. 27, s. 89; 2005, c. 47, s. 115; 2007, c. 36, s. 58.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

Lieu du dépôt

(5) La demande de nomination est déposée auprès du tribunal compétent dans le district judiciaire de la localité du débiteur.

Ordonnances relatives aux honoraires et débours

(6) Le tribunal peut, relativement au paiement des honoraires et débours du séquestre nommé en vertu du paragraphe (1), rendre toute ordonnance qu'il estime indiquée, y compris une ordonnance portant que la réclamation de celui-ci à l'égard de ses honoraires et débours est garantie par une sûreté de premier rang sur tout ou partie des biens de la personne insolvable ou du failli, avec préséance sur les réclamations de tout créancier garanti; le tribunal ne peut toutefois déclarer que la réclamation du séquestre est ainsi garantie que s'il est convaincu que tous les créanciers garantis auxquels l'ordonnance pourrait sérieusement porter atteinte ont été avisés à cet égard suffisamment à l'avance et se sont vu accorder l'occasion de se faire entendre.

Sens de débours

(7) Pour l'application du paragraphe (6), ne sont pas comptés comme débours les paiements effectués dans le cadre des opérations propres aux affaires de la personne insolvable ou du failli.

1992, ch. 27, art. 89; 2005, ch. 47, art. 115; 2007, ch. 36, art. 58.

Préavis

244 (1) Le créancier garanti qui se propose de mettre à exécution une garantie portant sur la totalité ou la quasi-totalité du stock, des comptes recevables ou des autres biens d'une personne insolvable acquis ou utilisés dans le cadre des affaires de cette dernière doit lui en donner préavis en la forme et de la manière prescrites.

Délai

(2) Dans les cas où un préavis est requis aux termes du paragraphe (1), le créancier garanti ne peut, avant l'expiration d'un délai de dix jours suivant l'envoi du préavis, mettre à exécution la garantie visée par le préavis, à moins que la personne insolvable ne consente à une exécution à une date plus rapprochée.

Notice of intention

- **50.4 (1)** Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating
 - **(a)** the insolvent person's intention to make a proposal,
 - **(b)** the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
 - **(c)** the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,and attaching thereto a copy of the consent referred to in paragraph (b).
- **Marginal note: Certain things to be filed**

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

 - **(a)** a statement (in this section referred to as a "cash-flow statement") indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
 - **(b)** a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
 - **(c)** a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.
- **Marginal note: Creditors may obtain statement**

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.
- **Marginal note: Exception**

(4) The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

 - **(a)** such release would unduly prejudice the insolvent person; and
 - **(b)** non-release would not unduly prejudice the creditor or creditors in question.
- **Marginal note: Trustee protected**

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.
- **Marginal note: Trustee to notify creditors**

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

- **Marginal note: Trustee to monitor and report**

(7) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

- **(a)** shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;
- **(b)** shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —
 - **(i)** with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and
 - **(ii)** with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and
- **(c)** shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

- **Marginal note: Where assignment deemed to have been made**

(8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

- **(a)** the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;
- **(b)** the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;
- **(b.1)** the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and
- **(c)** the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

- **Marginal note: Extension of time for filing proposal**

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- **(a)** the insolvent person has acted, and is acting, in good faith and with due diligence;
- **(b)** the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- **(c)** no creditor would be materially prejudiced if the extension being applied for were granted.

- **Marginal note: Court may not extend time**

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

- **Marginal note: Court may terminate period for making proposal**

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- **(a)** the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- **(b)** the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- **(c)** the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- **(d)** the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

Bankruptcy and Insolvency General Rules

3 In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules. SOR/98-240, s. 1.

COURT OF QUEEN'S BENCH RULES

RULE 1

CITATION, APPLICATION AND INTERPRETATION

DEFINITIONS

"holiday" means,

- (a) any Saturday or Sunday,
- (b) any special holiday proclaimed by the Governor General or the Lieutenant Governor,
- (c) New Year's Day,
- (c.1) Louis Riel Day (the third Monday in February),
- (d) Good Friday,
- (e) Easter Monday,
- (f) Victoria Day,
- (g) Canada Day,
- (h) Civic Holiday,
- (i) Labour Day,
- (j) Thanksgiving Day,
- (k) Remembrance Day,
- (l) Christmas Day,
- (m) Boxing Day,

and where a holiday falls on a Saturday, the first preceding day which is not a holiday shall be deemed to be a holiday and where a holiday falls on a Sunday the first day following which is not a holiday shall be deemed to be a holiday; (« jour férié »)

RULE 3

TIME

COMPUTATION

3.01 In the computation of time under these rules or an order, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words "at least" are used;
- (b) where a period of less than seven days is prescribed, holidays shall not be counted;
- (c) where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday; and
- (d) service of a document, other than an originating process, after 5 p.m., or at any time on a holiday, shall be deemed to have happened on the next day that is not a holiday.

FEDERAL COURTS RULES (SOR/98-106)

Computation, Extension and Abridgement of Time

Marginal note:*Interpretation Act*

- **6 (1)** Subject to subsections (2) and (3), the computation of time under these Rules, or under an order of the Court, is governed by sections 26 to 30 of the *Interpretation Act*.

INTERPRETATION ACT (R.S.C., 1985, c. I-21)

Computation of Time

Marginal note:Time limits and holidays

26 Where the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.

- R.S., 1985, c. I-21, s. 26
- 1999, c. 31, s. 147(F)

Marginal note:Clear days

- **27 (1)** Where there is a reference to a number of clear days or “at least” a number of days between two events, in calculating that number of days the days on which the events happen are excluded.

- **Marginal note:**Not clear days

(2) Where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating that number of days the day on which the first event happens is excluded and the day on which the second event happens is included.

- **Marginal note:**Beginning and ending of prescribed periods

(3) Where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.

- **Marginal note:**After specified day

(4) Where a time is expressed to begin after or to be from a specified day, the time does not include that day.

- **Marginal note:**Within a time

(5) Where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

- R.S., c. I-23, s. 25

1997 CarswellOnt 4431
Ontario Court of Appeal

John Deere Credit Inc. v. Doyle Salewski Lemieux Inc.

1997 CarswellOnt 4431, 105 O.A.C. 156, 153 D.L.R. (4th) 572, 36 O.R. (3d) 259, 50 C.B.R. (3d) 286, 75 A.C.W.S. (3d) 413

In The Matter of the Proposal of Ready Rental and Supply Limited of the City of Sudbury, in the Province of Ontario

John Deere Credit Inc., Creditor (Appellant) and Doyle Salewski Lemieux Inc., Trustee (Respondent)

Osborne, Laskin, Goudge JJ.A.

Heard: September 23, 1997
Judgment: November 20, 1997
Docket: CA C27577

Counsel: *David G. Timms* and *Elizabeth Capitano*, for the appellant.
Justin R. Fogarty, for the respondent.

Subject: Insolvency

Headnote

Bankruptcy --- Priorities of claims --- Secured claims --- Dealings with security after bankruptcy --- By secured creditor --- Realization of security

Secured creditor delivered notice to debtor of intention to realize on security — Debtor filed proposal with Official Receiver on Sunday, being tenth day after creditor served its notice — Creditor was denied access to secured property on grounds that debtor's proposal had been filed and stay of proceedings in effect under Bankruptcy and Insolvency Act — Trustee in bankruptcy was granted order restraining creditor from realizing on security — Creditor's appeal of order dismissed — Having sent notice prescribed under s. 244 of Act, creditor was required to wait 10 days before realizing on security — Debtor was then entitled to file proposal at any time within 10-day period to prevent creditor from enforcing security — Where 10-day period expired on Sunday, debtor was entitled to file notice of intention to make proposal next day, Monday — Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, ss. 50.4(1), 69(1)(a), (2)(b), 244 — Bankruptcy and Insolvency Rules, C.R.C. 1978, c. 368, R. 112.

On May 29, a secured creditor hand-delivered a notice of intention to enforce security pursuant to s. 244(1) of the *Bankruptcy and Insolvency Act* for a number of conditional sales contracts it had with the debtor. On Sunday, June 8, the debtor transmitted a notice of intention to make a proposal with the Official Receiver pursuant to s. 50.4(1) of the Act. The debtor's notice was filed with the Official Receiver the next day when the Receiver's office opened for business. Thereafter, when the creditor attended at the debtor's premises to repossess the secured property, the debtor asserted the protection of the stay provided in s. 69(1)(a) of the Act. The trustee in bankruptcy then brought a motion for and was granted an order restraining the creditor from realizing on its security and requiring the creditor to return any security of which it had already taken possession. The creditor's cross-motion for an order permitting it to realize in its security unimpeded by the stay was dismissed. The creditor appealed.

Held: The appeal was dismissed.

Section 244 of the Act requires the creditor filing a notice of intention to realize on a security to wait 10 days from the time of giving the notice before proceeding. Section 69 entitles a debtor to file a proposal and thereby prevent a secured creditor from enforcing the security unless the creditor had sent the notice more than 10 days earlier. The effect of those sections

together is that the debtor has the same 10 days following the day on which the creditor sends his or her notice to file a notice of intention to make a proposal and gain the protection of the stay. Where the 10 days expire on a Sunday, the debtor can file a notice on Monday, the next day, in order to trigger the stay, given R. 112 of the *Bankruptcy and Insolvency Rules*. Without this interpretation, a debtor would have to file his or her notice on the preceding Friday and would therefore really have only eight days to decide which way to proceed, rather than the 10 days prescribed by s. 69(2)(b).

Table of Authorities

Cases considered by Goudge J.A.:

Ohayon Jewelry Inc. v. Libarian Jewels & Setting Ltd. (Trustee of) (1987), 66 C.B.R. (N.S.) 302, 63 O.R. (2d) 157 (Ont. S.C.) — considered

Statutes considered by Goudge J.A.:

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

Generally — referred to

s. 50.4(1) [en. 1992, c. 27, s. 19] — considered

s. 69 [rep. & sub. 1992, c. 27, s. 36(1)] — considered

s. 69.4 [en. 1992, c. 27, s. 36(1)] — referred to

s. 69(1) [rep. & sub. 1992, c. 27, s. 36(1)] — referred to

s. 69(1)(a) [rep. & sub. 1992, c. 27, s. 36(1)] — considered

s. 69(2)(b) [rep. & sub. 1992, c. 27, s. 36(1)] — considered

s. 244 [en. 1992, c. 27, s. 89(1)] — considered

s. 244(1) [en. 1992, c. 27, s. 89(1)] — considered

s. 244(2) [en. 1992, c. 27, s. 89(1)] — considered

Interpretation Act, R.S.C. 1985, c. I-21

s. 26 — considered

Rules considered by Goudge J.A.:

Bankruptcy and Insolvency Rules, C.R.C. 1978, c. 368

R. 112 — considered

APPEAL by secured creditor from order restraining it from realizing on security in bankrupt's possession.

The judgment of the court was delivered by Goudge J.A.:

1 The appellant is a secured creditor of Ready Rental and Supply Limited ("RRSL"). The respondent is the trustee of RRSL pursuant to a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as am. by S.C. 1992, c. 27.

2 The order under appeal allowed the respondent's motion. It restrained the appellant from realizing on its security and

further required the appellant to return any security interest of which it had already taken possession. The order also dismissed the appellant's cross-motion for an order that it be permitted to realize on its security unimpeded by the stay provided by s. 69(1) of the *Bankruptcy and Insolvency Act* or, alternatively, that it be released from the operation of that stay on equitable grounds.

3 The facts relevant to this appeal are straightforward. On May 29, 1997 the appellant delivered by hand to RRSL pursuant to s. 244(1) of the *Bankruptcy and Insolvency Act*, a notice of intention to enforce security for each conditional sales agreement it had with RRSL. On Sunday, June 8, 1997, RRSL transmitted a notice of intention to make a proposal to the office of the Official Receiver in Toronto. The next day, June 9, when the office reopened, this notice was filed with the Official Receiver. Thereafter, when the appellant attended at RRSL to repossess the equipment, the debtor company asserted the protection of the stay provided in the legislation and the motions referred to above were brought.

4 The central issue on this appeal is whether the appellant's rights as a secured creditor are stayed by the filing by RRSL of the notice of intention to make a proposal. The germane sections of the *Bankruptcy and Insolvency Act* are as follows:

244. (1) A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable,
- (c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

50.4 (1) Before lodging a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

- (a) the insolvent person's intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

69. (1) Subject to subsections (2) and (3) and sections 69.4 and 69.5 on the filing of a notice of intention under section 50.4 by an insolvent person,

- (a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,

.....
until the filing of a proposal under subsection 62(1) in respect of the insolvent person or the bankruptcy of the insolvent person.

(2) The stays provided by subsection (1) do not apply

.....

(b) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security against the insolvent person more than ten days before the notice of intention under section 50.4 was filed, from enforcing that security.

5 Also of relevance is Rule 112 of the *Bankruptcy and Insolvency Rules*, C.R.C., Vol. IV, c. 368:

112. Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices of the court are closed, and by reason thereof the act or proceeding cannot be done or taken on that day, the act or proceeding shall, for the purpose of determining the time when the act was done or the proceeding taken, be deemed to be done or taken on the next day on which such offices are open.

6 Finally, regard must be had to s. 26 of the *Interpretation Act*, R.S.C. 1985, c. I-21:

26. Where the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.

7 Section 244 requires a secured creditor to send the prescribed notice and then wait ten days before enforcing the security.

8 Section 69 entitles the insolvent person to file a proposal and thereby prevent a secured creditor from enforcing the security unless that creditor had sent the prescribed notice more than ten days earlier.

9 While these are separate legislative provisions, in my view they cover the same time period. Until a secured creditor, having sent the prescribed notice, has waited the time necessary before being able to enforce the security, the insolvent person can file a proposal staying that creditor's right to proceed to enforce the security.

10 Hence, for the purposes of the issue on appeal, the effect of sections 244 and 69 taken together is that a secured creditor must send a notice of intention to enforce his security and then wait for the expiry of ten days. Only thereafter can the security interest be enforced without the consent of the insolvent person. The latter has the same ten days following the day on which the notice was sent to file a notice of intention to make a proposal and gain the protection of the stay provisions. In effect, the two sections are designed so that the insolvent person has these ten days to determine whether to give up the security provided or to continue with the proposal proceedings.

11 Where the ten-day period available to the insolvent person to file and thereby gain the protection of a stay expires on a Sunday, it is my view that the insolvent person may file a notice of intention to make a proposal on Monday, the next day, so as to trigger the stay provided by s. 69. While Rule 112 is not felicitously worded, when s. 26 of the *Interpretation Act* is used to inform its meaning, this result is clearly prescribed. In *Ohayon Jewelry Inc. v. Libarian Jewels & Setting Ltd. (Trustee of)* (1987), 63 O.R. (2d) 157 (Ont. S.C.), the court adopted this interpretation of the statutory scheme. Indeed, without this interpretation the insolvent person would have to file his notice on the preceding Friday (since filing is impossible on either Saturday or Sunday) and would therefore have only eight days to decide which way to proceed rather than the ten days prescribed by s. 69(2)(b).

12 I therefore conclude that on the central issue the appellant fails. Its notice of intention to enforce security was sent on May 29, 1997. The ten-day period that followed ended on Sunday, June 8. This permitted RRSI to file its notice of intention to make a proposal on Monday, June 9, so as to raise the stay provided for in s. 69(2)(b).

13 The appellant also argued that it ought to be relieved from the effect of the stay for equitable reasons, as is permitted by s. 69.4 of the *Bankruptcy and Insolvency Act*. Given that the material filed by the appellant on this issue was no more than a bare assertion of the possibility of the value of its security declining over time if it could not repossess that security, I am unprepared to allow the appeal on this basis.

14 For these reasons I would dismiss the appeal with costs.

Appeal dismissed.

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