

The Canadian Abridgment eDigests -- Bankruptcy and Insolvency

2010-18
May 03, 2010

BKY.IX.1.m

Subject Title: Bankruptcy and insolvency

Classification Number: IX.1.m

Proving claim -- Provable debts -- Miscellaneous

Expunging allowed claims -- Debtor was discharged from bankruptcy subject to payment of \$193,000 to trustee -- Bank was major creditor, holding \$193,000 as non-government student loan and \$7,577 credit card debt -- Other claims came to light which bank originally claimed had not been disclosed but later conceded had been filed -- Bank brought application to expunge claims -- Application dismissed -- Trustee is required to examine every proof of claim under s. 135 of Bankruptcy and Insolvency Act -- Application to expunge under s. 135(5) of Act is appeal against allowance -- Bank made no argument that denial of claim was improper after it abandoned argument that claims not filed in timely manner -- Section 135 of Act does not confer unqualified right to challenge proven claims, and should not be used as entry point to attack other processes or decisions by trustee.

Royal Bank v. Insley [\(2010\), 2010 SKQB 17,](#)
[2010 CarswellSask 47](#), Reg. Lian M. Schwann (Sask. Q.B.) [Saskatchewan]

BKY.XIV.2.a

Subject Title: Bankruptcy and insolvency

Classification Number: XIV.2.a

Administration of estate -- Trustees -- Licensing

Superintendent of bankruptcy found that trustee made unauthorized withdrawals from accounts, and had false and misleading accounting system -- Superintendent found that trustee and trustee's business exercised powers of trustee while suspended, and did not properly deposit all money received -- Superintendent cancelled licenses of trustee -- Trustee brought application for judicial review -- Application dismissed -- Superintendent's determination was reasonable and supported by evidence -- Trustee knew of irregular activities -- Critical evidence was not withheld from trustee -- Certain documents at issue had been released to trustee through avenues other than superintendent directly -- Assuming certain documents were relevant and not disclosed, they would not have changed result of proceeding -- Trustee was not trustworthy.

Sztern v. Canada
(Attorney General) [\(2010\), 2010 CarswellNat 376, 2010](#)
[FC 181](#), Richard Boivin J. (F.C.) [Federal]

BKY.XIV.2.m

Subject Title: Bankruptcy and insolvency

Classification Number: XIV.2.m

Administration of estate -- Trustees -- Miscellaneous

Trustee had system in place whereby interest earned from deposits from estates was estimated, and paid out from fund if ultimately more, and transferred from interest fund if less -- Trustee and professional business was investigated by securities board, and account system was changed on request -- Board found that trustee had authority to operate interest account in manner adopted and shut down account when instructed -- Board found that trustee acted with due diligence regarding several offences -- Board found that trustee had not acted with proper celerity in administration of two estates, and four week restriction on taking new clients was imposed -- Superintendent of bankruptcy brought application for judicial review -- Application granted in part -- Matter returned to delegate for sole purpose of determining appropriate remedy for breaches related to third party transactions -- Although not made explicit by statute, superintendent had discretion to impose reprimand -- Option of not imposing sanction exists -- Act contains disciplinary and remedial measures, which may be combined -- Delegate felt that liability proceedings had served purposes of Act.

Canada (Superintendent of Bankruptcy) v. MacLeod

[\(2010\),](#)

[2010 CarswellNat 193, 2010 FC 97](#), Robert M. Mainville J. (F.C.) [Federal]

BKY.XV.10.b.ii

Subject Title: Bankruptcy and insolvency

Classification Number: XV.10.b.ii

Discharge of bankrupt -- Effect of discharge -- Debts not released by discharge -- Maintenance or support

Parties entered into cohabitation agreement in February 1992 -- Parties married in July 1992 and separated in July 2004 -- Appellant commenced action against respondent for \$61,000 allegedly owed to her under terms of cohabitation agreement -- Respondent consented to judgment against him -- Respondent made assignment into bankruptcy in August 2006 -- Appellant filed proof of claim as unsecured creditor and opposed respondent's discharge -- Registrar in Bankruptcy discharged respondent -- Appellant appealed on grounds that provision in cohabitation agreement requiring respondent to pay her \$61,000 was contingent obligation for future spousal support -- Appeal was dismissed -- Appellate judge found that attempt to categorize funds as contingent spousal support was nothing more than transparent attempt to shelter claim from respondent's assignment into bankruptcy -- Appellant appealed -- Appeal dismissed -- Language of cohabitation agreement was clear -- \$61,000 related to appellant's net equity in matrimonial home.

Hughes v. Haycock

[\(2010\), 2010 CarswellOnt 1738, 2010](#)

[ONCA 227](#), John Laskin J.A., M.J. Moldaver J.A., Robert P. Armstrong J.A. (Ont. C.A.); affirming [\(2009\),](#)

[2009 CarswellOnt 1488](#), W.U. Tausendfreund J. (Ont. S.C.J.) [Ontario]

BKY.XIX.1.c.i

Subject Title: Bankruptcy and insolvency

Classification Number: XIX.1.c.i

Companies' Creditors Arrangement Act -- General principles -- Application of Act -- Relationship between Act and Bankruptcy and Insolvency Act

Foreign debtors and their international affiliates supplied parts to airline industry -- Foreign debtors had assets in Canada -- Foreign debtor and Canadian customer entered into agreements providing for exchange of bills of exchange, set-off agreements and purchase and sale agreement with respect to inventory -- Administration proceedings were commenced in respect of foreign debtors in England and foreign representatives were appointed as joint administrators of affairs, business and property of foreign debtors -- Canadian judge granted order recognizing orders made by English court, recognizing foreign representatives as defined in s. 45 of Companies' Creditors Arrangement Act (CCAA) and staying all proceedings in respect of foreign debtors -- Foreign representatives brought motion for order to temporarily lift stay granted in recognition order and for leave to assign foreign debtors into bankruptcy -- Motion granted -- Part IV of CCAA contemplated concurrent proceedings involving Bankruptcy and Insolvency Act (BIA) -- Foreign representatives sought to invoke Canadian bankruptcy proceedings to take advantage of Canadian preference provisions for purpose of maximizing debtors' companies' assets -- Proposed actions were consistent with what creditor representative would undertake in Canada -- If relief sought was not granted, effect could be that transaction that may be preferential in nature may escape review by creditor representative -- Such outcome would be inconsistent with Canadian public policy -- There was no going concern operation.

*Tucker v. Aero Inventory
(UK) Ltd.*

[\(2010\), 2010 ONSC 1196, 2010 CarswellOnt 1094](#), Morawetz J. (Ont. S.C.

J. [Commercial List]) [Ontario]

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