

# The Canadian Abridgment eDigests -- Bankruptcy and Insolvency

2014-29  
July 21, 2014

BKY.IV.1

**Subject Title: Bankruptcy and insolvency**

**Classification Number: IV.1**

**Receivers -- Appointment**

Debtor company filed notice of intention to make proposal under s. 50.4(1) of Bankruptcy and Insolvency Act -- Creditor had not been paid for 3,500 hogs delivered to debtor in week leading to proposal and it and marketing board adduced evidence of other unpaid suppliers -- Creditor brought motion to terminate 30-day period for debtor to file proposal or for order appointing receiver over debtor's inventory -- Motion dismissed -- Appointing receiver would not be just and convenient as it would ignore express provisions of statutory regime and create preference to one class of creditors over others.

*Quality Meat Packers Ltd., Re* ([2014](#)), [2014 ONSC 2296](#), [2014 CarswellOnt 5007](#), D.M. Brown J. (Ont. S.C.J. [Commercial List]) [Ontario]

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BKY.VI.2.b

**Subject Title: Bankruptcy and insolvency**

**Classification Number: VI.2.b**

**Proposal -- Time period to file -- Termination of time period**

Debtor company filed notice of intention (NOI) to make proposal under s. 50.4(1) of Bankruptcy and Insolvency Act -- Creditor had not been paid for 3,500 hogs delivered to debtor in week leading to proposal and it and marketing board adduced evidence of other unpaid suppliers -- Creditor brought motion to terminate 30-day period for debtor to file proposal -- Motion dismissed -- Creditor was prompted to bring motion because of statutory restrictions on available special priority to farms under s. 81.2(1) -- Debtor's acceptance of product from suppliers in days before filing NOI was not in itself bad faith -- Debtor had decided not to close, so needed to continue with regular business activities, there was no evidence it ramped up its acceptance of supply, plus, it made efforts to maintain ordinary payment to suppliers, negotiated forbearance agreement with bank, retained proposal trustee and filed NOI promptly, all of which were evidence of its attempts to restructure -- Since filing, debtor had worked to reach agreements with numerous stakeholders and negotiated second forbearance agreement -- Proposal trustee had not seen any evidence of bad faith, nor had it determined debtor would be unable to make viable proposal -- While creditor insisted it would not support any plan that did not provide it with full payment, there was no evidence majority of creditors shared this view so it was not established that debtor would be unable to make proposal accepted by creditors -- Any prejudice to creditor resulted from legislative crafting of Act, not conduct of debtor company.

*Quality Meat Packers Ltd., Re* ([2014](#)), [2014 ONSC 2296](#), [2014 CarswellOnt 5007](#), D.M. Brown J. (Ont. S.C.J. [Commercial List]) [Ontario]

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BKY.XV.5

**Subject Title: Bankruptcy and insolvency**

**Classification Number: XV.5**

**Discharge of bankrupt -- Absolute discharge**

Debtor lost investment business in financial crisis -- Debtor was assessed by Minister of National Revenue and found to be owing \$75,000 in unwarranted business and charitable deductions -- Debtor entered bankruptcy -- Debtor was not high tax debtor within meaning of s. 172.1 of Bankruptcy and Insolvency Act, but quantum of debt was high and debtor had high surplus income -- Debtor brought application for discharge -- Application granted -- Discharge was absolute -- Debtor's income tax debt constituted 44 per cent of unsecured proven claims in bankruptcy, and proven claim for income tax was approximately \$243,000 -- Bankruptcy did not trigger s. 172.1 of Act, rather, discharge application was subject to s. 172 -- Debtor provided justification for his debt, including 52 per cent of his total proven unsecured claims that were not related to income tax -- Circumstances were such that debtor should not be held accountable for disparity between his assets and liabilities -- Debtor was honest but unfortunate -- Assigned in bankruptcy was not made for clear purpose of defeating income tax claim -- Discharge of bankrupt would not invite irresponsible investment in tax shelters generally.

*Stanzel, Re* ([2014](#)), [2014 CarswellSask 424](#), [2014 SKQB 187](#), C. Elaine Thompson Reg. (Sask. Q.B.) [Saskatchewan]

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BKY.XVI.2

**Subject Title: Bankruptcy and insolvency**

**Classification Number: XVI.2**

**Effect of bankruptcy on other proceedings -- Proceedings by bankrupt**

Actions undertaken without authorization of trustee -- Corporation was bankrupt -- Parties were involved in proceedings in tax court regarding tax treatment of Input Tax Credits related to borrowed amount -- Trustee in bankruptcy did not authorize proceedings -- Corporation brought motion to be represented by agent who was not counsel, Minister of National Revenue brought motion to quash proceedings for lack of legal capacity -- Motions dismissed -- General security agreement had been vetted, approved and not redeemed by trustee -- Release was termed to allow recovery by secured creditors as they saw fit -- Trustee did not have interest in chose of action regarding ITCs, and could not have transferred that interest to allow others to bring action -- Secured creditor, acting as receiver in respect of part of property of debtor under debt security, may be agent under s. 266(1) of Excise Tax Act and is not precluded from objecting to GST assessment or reassessment in respect of assigned property -- Prior assignment of bankrupt's interest in certain property to secured creditors, as recognized by trustee, removed property from trustee's authority -- On basis of general security agreement, and release of all other creditors' claims by trustee, secured creditors were entitled to continue current appeal.

*International Hi-Tech Industries Inc. v. R.* ([2014](#)), [2014 TCC 198](#), [2014 CarswellNat 2309](#), Randall S. Boccock J. (T.C.C. [General Procedure]) [Federal]

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BKY.XVII.7.e

**Subject Title: Bankruptcy and insolvency**

**Classification Number: XVII.7.e**

**Practice and procedure in courts -- Appeals -- Miscellaneous**

Judge determined that mortgage of O Corp. had priority over construction lien of S Ltd. -- Judge directed receiver of property owner to disburse balance of proceeds of sale of mortgaged property to O Corp. -- S Ltd. sought to appeal on basis that judge incorrectly interpreted priority scheme in s. 78 of Construction Lien Act -- S Ltd. brought motion for extension of time to appeal order -- Motion dismissed -- There was no evidence that S Ltd. formed intention to appeal prior to expiry of appeal period -- It was not established that appeal had any merit -- While S Ltd. contended that judge erred in finding that its work did not relate to improvements financed by C Ltd. mortgage, judge found that there was no evidence to support that conclusion -- Appeal was, at its core, fact-based, and S Ltd. identified no palpable or overriding error in judge's findings of fact -- Funds had been disbursed and it would not be fair to revisit issue when funds were out of receiver's hands -- Justice of case did not require extension of time.

*Ontario Wealth Management Corp. v. Sica Masonry and General Contracting Ltd.* ([2014](#)), [2014 CarswellOnt 5886](#), [2014 ONCA 500](#), G.R. Strathy J.A., In Chambers (Ont. C.A.) [Ontario]

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BKY.XIX.2.b.i

**Subject Title: Bankruptcy and insolvency**

**Classification Number: XIX.2.b.i**

**Companies' Creditors Arrangement Act -- Initial application -- Grant of stay -- General principles**

Applicant companies applied for protection under Companies' Creditors Arrangement Act (CCAA) -- Applicant companies sought initial order under CCAA to permit them to protect their business, ensure ongoing operations and preserve value while they sought to restructure their affairs -- Applicant RIC was commercial lender to Canadian based small to medium sized businesses and established entrepreneurs that wished to obtain additional working capital on short-term basis from third party lenders -- RIC sought to raise capital for its lending activities by way of continuous offering of unsecured promissory notes of RIC -- Applicant RCC was established for purpose of loaning funds to RIC -- To raise capital for its lending activities, RCC issued 710 bonds -- As of February 28, 2014, RIC's unsecured obligations to RIC noteholders was approximately \$23.3 million dollars and RCC's unsecured obligations to RCC bond holders was approximately \$16.3 million -- Applicants' president and CEO claimed that applicants were insolvent and in order to ensure best possible recovery for stakeholders, applicants had determined that either sale of RIC portfolio was required or orderly wind-down was required -- Application allowed -- RIC and RCC faced current claims in total approximate amount of \$6.36 million -- RIC and RCC both met test of insolvency under Bankruptcy and Insolvency Act, and expanded test for insolvency as applicants would eventually not have funds necessary to make interest and

maturity payments under RIC notes and RCC bonds -- Applicants were each "debtor company" within meaning of CCAA and qualified for protection under CCAA -- Court stayed proceedings against applicants and granted initial order -- Court granted administrative charge of \$750,000 to secure fees and disbursements at standard rates and charges of monitor -- Court also granted charge of \$100,000 over assets, property and undertakings of applicants to indemnify directors and officers of applicants in respect of certain potential liabilities they may incur in such capacities after date of initial order.

*Redstone Investment Corp., Re* ([2014](#)), [2014 CarswellOnt 5119](#), [2014 ONSC 2004](#), Morawetz R.S.J. (Ont. S.C.J.) [Ontario]

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