AS

COURT FILE NUMBER	24-3301173
COURT	COURT OF KING'S BENCH OF ALBERTA BANKRUPTCY
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, RSC 1985 c. B-3 AS AMENDED AND IN THE MATTER OF THE NOTICE OF INTENITON TO MAKE A PROPOSAL OF MORNING GLORY DAYCARE LTD.
APPLICANT	G. CHAN & ASSOCIATES INC. in its capacity as Trustee under a Notice of Intention to Make a Proposal of MORNING GLORY DAYCARE LTD.
DOCUMENT	**BRIEF OF THE APPLICANT, G. CHAN & ASSOCIATES INC. in its capacity as Trustee under a Notice of Intention to Make a Proposal of MORNING GLORY DAYCARE LTD.**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Sharek Logan & van Leenen LLP**, Barristers & Solicitors 2100, 10060 Jasper Avenue, Edmonton, AB T5J 3R8 Attention: David Archibold Phone: (780) 413-3100 File: 24434/DA

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I. INTRODUCTION

1. This is an application brought by G. Chan & Associates Inc. (the "**Proposal Trustee**"). in its capacity as Proposal Trustee under a Notice of Intention to Make a Proposal of Morning Glory Day Care Ltd. (the "**Debtor**") made November 21, 2025 (the "**NOI**").

2. The purpose of this application is three-fold. Firstly, this application seeks an order directing that a first priority administrative charge be granted in favor of the Proposal Trustee, Proposal Trustee's counsel, and Debtor's counsel in the aggregate amount of $50,000 (the "**Administrative Charge**").

3. Secondly, this application seeks an order extending the 30 day period within which the Proposal Trustee is required to file a proposal under sections 50.4(8) and 50.4(9) of the BIA by an additional 45 days, ending February 5 , 2026 (such period, as extended from time to time under section 50.4(9) of the BIA, being the "**Stay Period**", and the date on which the Stay Period expires being the "**Expiry Date**").

4. Thirdly, this application seeks an order temporarily sealing the Confidential Supplement to the Proposal Trustee's First Report.

II. FACTS

5. The Debtor is a registered corporation pursuant to the laws of the province of Alberta and carrying on business as a daycare provider in Edmonton, Alberta.

First Report of the Proposal Trustee, to be filed at para 10 **[NOT ATTACHED]**

6. At this early stage, the known secured creditors include:

a) TD Canada Trust;

First Report of the Proposal Trustee, to be filed at para 32 – 35 **[NOT ATTACHED]**

7. The Debtor formerly operated a daycare and out of school childcare program known as Morning Glory Daycare & OSC. The Debtor operated out of a lease premises bearing civic address 12761/63 – 50 Street, Edmonton, Alberta T5A 4L8 (the "**Premises**") pursuant to a 10-year term lease agreement dated September 13, 2021 (the "**Lease**").

First Report of the Proposal Trustee, to be filed at para 11 **[NOT ATTACHED]**

8. The Debtor is no longer carrying on business following the expiry of its probationary licence. On or about July 31, 2024, the Director of Child Care Licensing cancelled the Debtor's childcare licence and ordered the Debtor to cease carrying on business. The Debtor appealed to the Child Care Licensing Appeal Panel but the decision was confirmed on August 13, 2025.

First Report of the Proposal Trustee, to be filed at paras 12 – 15 **[NOT ATTACHED]**

9. The Debtor intends to pursue judicial review of the decisions leading up to and cancelling the Debtor's childcare licence.

First Report of the Proposal Trustee, to be filed at para 16 **[NOT ATTACHED]**

10. Although no longer carrying on business, the Debtor maintains control of the Premises to solicit a sale of substantially all of the Debtor's assets situated on the Premises.

First Report of the Proposal Trustee, to be filed at para 16 **[NOT ATTACHED]**

11. With the assistance of a broker (the "**Broker**"), the Debtor entered into a conditional Asset Purchase and Sale Agreement dated November 17, 2025 (the "**APA**") with an interested party (the "**Purchaser**") for the purchase all of the assets of the Debtor located at the Premises. The material terms of the APA include:

    a. Cash offer not subject to financing

    b. Conditions for the benefit of the Purchaser contemplate a 35-day due diligence period ("**Due Diligence Period**"), more specifically:

        i. a due diligence period of 15 days following the "Effective Date", which is not defined in the November 17 Offer; and

        ii. the Purchaser's satisfactory review of the Lease and consent of the Landlord to assign the Lease to the Purchaser on or before the 35th day following the "Effective Date".[1]

    c. Purchase of substantially all personal property situate on the Premises as described in the schedules to the APA, including

        i. any deposits

        ii. equipment

        iii. and leasehold improvements.

    d. The purchaser is to pay

        i. an initial deposit of $25,000 within five business days of acceptance of the APA;

        ii. An additional deposit of $25,000 within five business days of waiver of conditions; and

        iii. Payment of the balance of the purchase price on closing.

[1] Assuming the "Effective Date" refers to November 17, 2025, the latest date for the Purchaser to waive due diligence conditions and obtain an assignment of the Lease would be December 22, 2025 ("**Condition Waiver Date**").

First Report of the Proposal Trustee, to be filed at para 28, 41 **[NOT ATTACHED]**
Confidential Supplement to the First Report of the Proposal Trustee, to be filed **[NOT ATTACHED]**

III. ISSUES

12. The first issue on this application is whether the Proposal Trustee, its counsel, and the Debtor's counsel are entitled to a first priority Administrative Charge in the aggregate amount of $50,000 to secure the provision of prior and future expert services.

13. The second issue before the Court is whether the Debtor is entitled to an extension of the Stay Period in accordance with section 50.4(9) of the BIA and in that regard must satisfy the Court that:

    a. They have acted, and are acting, in good faith and with due diligence;

    b. They will likely be able to make a viable proposal if the extension applied for is granted; and

    c. No creditor will be materially prejudiced if the extension applied for is granted.

14. The third issue to be addressed is whether the Confidential Exhibit to the Proposal Trustee's First Report should be temporarily sealed to protect the commercially sensitive information therein.

IV. LAW

A. Administrative Charge

15. The Court is empowered pursuant to Section 64.2 of the BIA to grant a first priority charge for, *inter alia*, the fees of the Proposal Trustee, its counsel, and counsel for the insolvent person who filed a notice of intention to make a proposal:

> **64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of
>
> > **(a)** the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
> >
> > **(b)** any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
> >
> > **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary

for the effective participation of that person in proceedings under this Division.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Bankruptcy and Insolvency Act, RSC 1985 c. B-3 Section 64.2 **[TAB 1]**

16. The Court has recognized that professional advisors are necessary to the successful restructuring:

> [33] In this case, notice was given although it may have been short. There can be no question that the involvement of professional advisors is critical to a successful restructuring. This process is reasonably complex and their assistance is self evidently necessary to navigate to completion. The debtors have limited means to obtain this professional assistance. See also Re Colossus Minerals Inc., 2014 ONSC 514 (S.C.J.) and the discussion in it.

Mustang GP Ltd. (Re), 2015 ONSC 6562, at para 33 **[Tab 2]**

B. Stay Extension

17. Under the terms of the BIA, the Court has the ability to order an extension of the time within which to file a proposal provided that the debtor meets all three criteria set out in section 50.4(9), which states:

> **(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.

Bankruptcy and Insolvency Act, RSC 1985 c. B-3 Section 50.4(9) **[Tab 3]**

18. The onus of proving the existence of the factors outlined in section 50.4(9)(a) through (c) rests on the Debtor.

H & H Fisheries Limited, Re, 2005 NSSC 346 at para 12 **[Tab 4]**

19. Whether an extension is warranted is a question of fact, and where the factual basis exists to satisfy section 50.4(9), an extension is warranted.

Good Faith

20. Good faith is not a defined term in the BIA. However, Black's law Dictionary defines "good faith" as:

> A state of mind consisting of: (1) honesty and belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing and giving trader business, or (4) absence of intent to defraud or seek unconscionable advantage.

Black's Law Dictionary 5th ed., p. 623 – 624 **[Tab 5]**

Likely to make a viable proposal if the extension applied for is granted

21. In the context of NOIs, a viable proposal is not necessarily one that would be accepted by every creditor, recognizing that a creditor may vote against any proposal, reasonable or not. Furthermore, a viable proposal need not be certain, only likely. The Supreme Court of Nova Scotia, in *H & H Fisheries Limited, Re,* 2005 NSSC 346, aptly described the requirement:

> [22] "Viable" in this context means a proposal which seems reasonable on its face to a reasonable creditor (Re Baldwin Valley Investors Inc., [1994] 23 C.B.R. (3rd) 219). Again, the court must be satisfied on a balance of probabilities that HHFL would likely. This at the very least means that a reasonable level of effort dictated by the circumstances must have been made that gives some indication of the likelihood a viable proposal will be advanced within the time frame of the extension applied for.

H & H Fisheries Limited, Re, 2005 NSSC 346 at para 22 **[Tab 4]**

No creditor will be materially prejudiced

22. Material prejudice differs from simple prejudice. Evidence of material prejudice necessitates that a creditor will be substantially or considerably prejudiced if the extension is granted.

In the Matter of the Proposal of Cantrail Coach Lines Ltd., 2005 BCSC 351 at para 21 **[Tab 6]**

23. A mere inability to collect on monies owed will not be considered material prejudice. To amount to material prejudice, "the prejudice must be of a degree that raises significant concern to a level that it would be unreasonable for a creditor or creditors to accept."

H & H Fisheries Limited, Re, 2005 NSSC 346 at para 37 **[Tab 4]**

V. APPLICATION AND ARGUMENT

A. Administrative Charge

24. It is necessary that the Administrative Charge be granted in favor of the Proposal Trustee, the Proposal Trustee's counsel, and the Debtor's counsel in the aggregate amount of $50,000. The Administrative Charge is warranted, necessary, and reasonable in light of the complexity of the underlying industry, the limited assets of the Debtor and the Debtor's lack of ongoing operations, and lack of liquidity.

25. The Debtor requires the knowledge, expertise, and continuing participation of the beneficiaries of the proposed Administrative Charge in order to successfully conclude the APA, restructure its operations, and present its creditors with a viable proposal under the NOI. The proposed quantum of $50,000 is reasonable in the circumstances.

26. The Proposal Trustee has advised in its First Report that such quantum is appropriate in light of:

    a. the Proposal Trustee anticipating playing a material role in these proceedings generally, and including participating in any proposed transaction and formulating a proposal with a view to maximizing recovery to creditors;

    b. the Debtor being unable to proceed under its NOI and close any transaction without the expertise of legal counsel; and

    c. the Debtor's liquidity constraints and having no way of paying professionals other than out of proceeds from liquidation the Debtor's assets, which will require professionals' assistance in obtaining a Sale and Vesting Order to convey clean title and close any transaction.

    First Report of the Proposal Trustee, to be filed at para 37 **[NOT ATTACHED]**

27. A first priority administrative charge is necessary and appropriate recognizing the lack of continuing operations and that the Debtor is not generating any income as well as the limited amount of equity in the Debtor's assets.

B. Stay Extension

28. At all times material to these proceedings, the Debtor has acted in good faith and with due diligence. The Debtor has been cooperative with the Proposal Trustee.

    First Report of the Proposal Trustee, to be filed at para 40 **[NOT ATTACHED]**

29. The Debtor expended a great deal of time and effort to conclude the APA with the Purchaser, including retaining the Broker to identify prospective purchasers and coordinate and negotiate materials terms of the APA which are to the benefit of the creditors of the Debtor.

30. The Proposal Trustee has observed that the Debtor is acting in good faith and with due diligence in negotiating, facilitating, and concluding the APA.

First Report of the Proposal Trustee, to be filed at para 43 **[NOT ATTACHED]**

31. As of the date of this application, the Debtor has been in these NOI proceedings for a period of 13 days. As a result of the Debtor having ceased operations, it is unable to operate, generate income, or make payments to its creditors and requires the closing of the APA to make a viable proposal; which is only possible if the Stay Period is extended.

32. To date, the Debtor has been unable to formulate a proposal due to its and the Trustee's efforts having been focused on ensuring the APA closes as intended.

33. The Debtor anticipates being able to make a viable proposal in the future upon the closing of the APA. The alternative to granting this extension will be bankruptcy of the Debtor, causing unnecessary and inexpedient proceedings that will delay, if not frustrate, the closing of the APA and reducing the perceived value of the Debtors business in the market, thereby materially prejudicing the creditors of the Debtor through a delayed sale, reduced sale price, and increased professional and expert fees.

34. No creditor will be materially prejudiced by the stay extension. However, as noted immediately above, the denial of this stay is likely to have significant adverse effects on the Debtor's creditors by delaying if not frustrating the APA.

C. Temporary Sealing Order

35. It is common practice in the insolvency context for information in relation to the sale of the assets of an insolvent person to be kept confidential until after the sale is completed. Put simply, a sealing order serves to ensure fairness should the asset be returned to market by ensuring any interested party utilizes its own resource to value the assets.

***Look Communications Inc v Look Mobile Corporation*, 2009 CanLII 71005 at para 17 [TAB 7]**

36. The content of the Confidential Supplement to the Trustee's First Report contains highly sensitive information of a commercial nature, including purchase prices and personal identifying information.

37. It is respectfully submitted that the publication of the contents of the Confidential Supplement to the Trustee's First Report could prejudice a future sale if the proposed transaction is not concluded. Furthermore, the salutary effect of sealing the Confidential Supplement to the Trustee's First Report greatly outweigh the deleterious effect of sealing.

38. The sealing of the Confidential Supplement to the Trustee's First Report is both reasonable and appropriate in the circumstances.

VI. CONCLUSION

39. The Applicants respectfully request that this Honourable Court:

a. Grant the first priority Administrative Charge in the amount of $50,000;

b. Grant a 45 day extension of the stay of proceedings up to February 4, 2026; and

c. Seal the confidential supplement of the Proposal Trustee, to be filed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24th DAY OF NOVEMBER, 2025

Sharek Logan & van Leenen LLP

Per: 

David Archibold, counsel for G. Chan & Associates Inc., in its capacity as Trustee under a Notice of Intention to Make a Proposal of Morning Glory Day Care Ltd.

TAB 1

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 October 28, 2025

Last amended on December 12, 2024

À jour au 28 octobre 2025

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obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

2005, c. 47, s. 42; 2007, c. 36, s. 24.

dirigeant assume, selon lui, par suite de sa négligence grave ou de son inconduite délibérée ou, au Québec, par sa faute lourde ou intentionnelle.

2005, ch. 47, art. 42; 2007, ch. 36, art. 24.

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Biens grevés d'une charge ou sûreté pour couvrir certains frais

64.2 (1) Le tribunal peut par ordonnance, sur préavis aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de la personne à l'égard de laquelle a été déposé un avis d'intention aux termes de l'article 50.4 ou une proposition aux termes du paragraphe 62(1) sont grevés d'une charge ou sûreté, d'un montant qu'il estime indiqué, pour couvrir :

a) les dépenses et honoraires du syndic, ainsi que ceux des experts — notamment en finance et en droit — dont il retient les services dans le cadre de ses fonctions;

b) ceux des experts dont la personne retient les services dans le cadre de procédures intentées sous le régime de la présente section;

c) ceux des experts dont tout autre intéressé retient les services, si, à son avis, la charge ou sûreté était nécessaire pour assurer sa participation efficace aux procédures intentées sous le régime de la présente section.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Priorité

(2) Il peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la personne.

Individual

(3) In the case of an individual,

(a) the court may not make the order unless the individual is carrying on a business; and

(b) only property acquired for or used in relation to the business may be subject to a security or charge.

2005, c. 47, s. 42; 2007, c. 36, s. 24.

Personne physique

(3) Toutefois, s'agissant d'une personne physique, il ne peut faire la déclaration que si la personne exploite une entreprise et, le cas échéant, seuls les biens acquis ou utilisés dans le cadre de l'exploitation de l'entreprise peuvent être grevés.

2005, ch. 47, art. 42; 2007, ch. 36, art. 24.

Where proposal is conditional on purchase of new securities

65 A proposal made conditional on the purchase of shares or securities or on any other payment or contribution by the creditors shall provide that the claim of any creditor who elects not to participate in the proposal

Cas où la proposition est subordonnée à l'achat de nouvelles valeurs mobilières

65 Une proposition faite subordonnément à l'achat d'actions ou de valeurs mobilières ou à tout autre paiement

TAB 2

CITATION: Mustang GP Ltd. (Re), 2015 ONSC 6562
COURT FILE NOs.: 35-2041153, 35-2041155, 35-2041157
DATE: 2015/10/28

SUPERIOR COURT OF JUSTICE – ONTARIO – IN BANKRUPTCY

RE: IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF MUSTANG GP LTD.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HARVEST POWER MUSTANG GENERATION LTD.

BEFORE: Justice H. A. Rady

COUNSEL: Harvey Chaiton, for Mustang GP Ltd., Harvest Ontario Partners Limited Partnership and Harvest Power Mustang Generation Ltd.

Joseph Latham for Harvest Power Inc.

Jeremy Forrest for Proposal Trustee, Deloitte Restructuring Inc.

Robert Choi for Badger Daylighting Limited Partnership

Curtis Cleaver for StormFisher Ltd.

No one else appearing.

HEARD: October 19, 2015

ENDORSEMENT

Introduction

[1] This matter came before me as a time sensitive motion for the following relief:

(a) abridging the time for service of the debtors' motion record so that the motion was properly returnable on October 19, 2015;

[32] The authority to grant this relief is found in s. 64.2 of the *BIA*.

> **64.2 (1)** ***Court may order security or charge to cover certain costs:*** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of
>
> (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
>
> (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
>
> (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.
>
> **64.2 (2)** ***Priority:*** The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

[33] In this case, notice was given although it may have been short. There can be no question that the involvement of professional advisors is critical to a successful restructuring. This process is reasonably complex and their assistance is self evidently necessary to navigate to completion. The debtors have limited means to obtain this professional assistance. See also *Re Colossus Minerals Inc.*, 2014 ONSC 514 (S.C.J.) and the discussion in it.

d) the D & O charge

[34] The *BIA* confers the jurisdiction to grant such a charge at s. 64.1, which provides as follows:

> **64.1 (1)** On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge – in an amount that the court considers appropriate in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

TAB 3

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

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(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.

(i) auprès du séquestre officiel dès qu'il note un changement négatif important au chapitre des projections relatives à l'encaisse de la personne insolvable ou au chapitre de la situation financière de celle-ci,

(ii) auprès du tribunal au plus tard lors de l'audition de la demande dont celui-ci est saisi aux termes du paragraphe (9) et aux autres moments déterminés par ordonnance du tribunal;

c) envoie aux créanciers un rapport sur le changement visé au sous-alinéa b)(i) dès qu'il le 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.

Cas de cession présumée

(8) Lorsque la personne insolvable omet de se conformer au paragraphe (2) ou encore lorsque le syndic omet de déposer, ainsi que le prévoit le paragraphe 62(1), la proposition auprès du séquestre officiel dans les trente jours suivant le dépôt de l'avis d'intention aux termes du paragraphe (1) ou dans le délai supérieur accordé aux termes du paragraphe (9) :

a) la personne insolvable est, à l'expiration du délai applicable, réputée avoir fait une cession;

b) le syndic en fait immédiatement rapport, en la forme prescrite, au séquestre officiel;

b.1) le séquestre officiel délivre, en la forme prescrite, un certificat de cession ayant, pour l'application de la présente loi, le même effet qu'une cession déposée en conformité avec l'article 49;

c) le syndic convoque, dans les cinq jours suivant la délivrance du certificat de cession, une assemblée des créanciers aux termes de l'article 102, assemblée à laquelle les créanciers peuvent, par résolution ordinaire, nonobstant l'article 14, confirmer sa nomination ou lui substituer un autre syndic autorisé.

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

Prorogation de délai

(9) La personne insolvable peut, avant l'expiration du délai de trente jours — déjà prorogé, le cas échéant, aux termes du présent paragraphe — prévu au paragraphe (8), demander au tribunal de proroger ou de proroger de nouveau ce délai; après avis aux intéressés qu'il peut désigner, le tribunal peut acquiescer à la demande, pourvu qu'aucune prorogation n'excède quarante-cinq jours et que le total des prorogations successives demandées et accordées n'excède pas cinq mois à compter de l'expiration du délai de trente jours, et pourvu qu'il soit convaincu, dans le cas de chacune des demandes, que les conditions suivantes sont réunies :

(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.

a) la personne insolvable a agi — et continue d'agir — de bonne foi et avec toute la diligence voulue;

b) elle serait vraisemblablement en mesure de faire une proposition viable si la prorogation demandée était accordée;

c) la prorogation demandée ne saurait causer de préjudice sérieux à l'un ou l'autre des créanciers.

Court may not extend time

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

Non-application du paragraphe 187(11)

(10) Le paragraphe 187(11) ne s'applique pas aux délais prévus par le paragraphe (9).

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.

1992, c. 27, s. 19; 1997, c. 12, s. 32; 2004, c. 25, s. 33(F); 2005, c. 47, s. 35; 2007, c. 36, s. 17; 2017, c. 26, s. 6(E).

Interruption de délai

(11) À la demande du syndic, d'un créancier ou, le cas échéant, du séquestre intérimaire nommé aux termes de l'article 47.1, le tribunal peut mettre fin, avant son expiration normale, au délai de trente jours — prorogé, le cas échéant — prévu au paragraphe (8), s'il est convaincu que, selon le cas :

a) la personne insolvable n'agit pas — ou n'a pas agi — de bonne foi et avec toute la diligence voulue;

b) elle ne sera vraisemblablement pas en mesure de faire une proposition viable avant l'expiration du délai;

c) elle ne sera vraisemblablement pas en mesure de faire, avant l'expiration du délai, une proposition qui sera acceptée des créanciers;

d) le rejet de la demande causerait un préjudice sérieux à l'ensemble des créanciers.

Si le tribunal acquiesce à la demande qui lui est présentée, les alinéas (8)a) à c) s'appliquent alors comme si le délai avait expiré normalement.

1992, ch. 27, art. 19; 1997, ch. 12, art. 32; 2004, ch. 25, art. 33(F); 2005, ch. 47, art. 35; 2007, ch. 36, art. 17; 2017, ch. 26, art. 6(A).

Trustee to help prepare proposal

50.5 The trustee under a notice of intention shall, between the filing of the notice of intention and the filing of a proposal, advise on and participate in the preparation of the proposal, including negotiations thereon.

1992, c. 27, s. 19.

Préparation de la proposition

50.5 Le syndic désigné dans un avis d'intention doit, entre le dépôt de l'avis d'intention et celui de la proposition, participer, notamment comme conseiller, à la préparation de celle-ci, y compris aux négociations pertinentes.

1992, ch. 27, art. 19.

Order — interim financing

50.6 (1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the

Financement temporaire

50.6 (1) Sur demande du débiteur à l'égard duquel a été déposé un avis d'intention aux termes de l'article 50.4 ou une proposition aux termes du paragraphe 62(1), le tribunal peut par ordonnance, sur préavis de la demande

TAB 4

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY
Citation: *H &H Fisheries Limited, Re,* 2005 NSSC 346

Date: 20051219
Docket: SH B259148
Registry: Halifax

IN THE MATTER OF: H & H Fisheries Limited

DECISION

Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: December 14, 2005 in Halifax, Nova Scotia

Counsel: Victor J. Goldberg and Martha L. Mann for
H & H Fisheries Limited
Stephen J. Kingston and Bob Mann, articled clerk, for
the Bank of Nova Scotia

> 12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

APPLICATION:

[10] HHFL filed a Notice of Intention dated November 3, 2005 under ss. 50.4(1) to make a Proposal of H & H Fisheries Limited. An order was granted extending the time to file a proposal November 29, 2005 to December 8, 2005. Unfortunately, the Chambers' docket was so heavy that the Justice presiding on December 8, 2005 was unable to address the matter and I was asked to deal with it and it was put over by consent to December 14, 2005. The application is comprised of several affidavits and both parties declined cross-examination of the other sides' supporting affidavits. On December 14th I heard almost four hours of argument and reserved my decision in order to thoroughly review the extensive material filed by both parties and arrive at a determination.

ONUS:

[11] The court, as directed by s. 50.4(9) above, must be 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.

[12] The onus is upon the applicant, in this case HHFL), to satisfy the court on a balance of probabilities that all three prerequisites of s. 50.4(9) have been established on the application.

[13] This is so because of the use of the "semi-colon" and the use of the word "and" in (b), rendering the requirements conjunctive. This requires the court to consider each of the subsections as to whether the applicant has established the prerequisite contained in the subsection on a balance of probabilities. For the application to be successful the court must be satisfied that all three prerequisites

representation made in oral argument that Mr. Hartlen has probably advanced $90,000 to $95,000 to HHFL recently because I do not recall seeing anything in the evidence, particularly documentation confirming this infusion and therefore I am unable to give it any weight.

[20] The second wing of subparagraph (a) is in relation to due diligence and while the company has not acted in quite the timely manner it ought to have acted its deficiency in this regard is not severe and the cumulative evidence before me including the summary contained in Mr. Rosen's affidavit of December 1, 2005 and the volume of response which has been made to the BNS's requests and entitlement for documentation, combined with the efforts being made by the trustee in bankruptcy, Mark S. Rosen, to address a resolution constitutes satisfaction on a balance of probabilities of due diligence to this date.

[21] **Would HHFL likely to be able to make a viable proposal if the extension being applied for were granted?**

[22] "Viable" in this context means a proposal which seems reasonable on its face to a reasonable creditor (*Re Baldwin Valley Investors Inc.*, [1994] 23 C.B.R. (3rd) 219). Again, the court must be satisfied on a balance of probabilities that HHFL **would likely**. This at the very least means that a reasonable level of effort dictated by the circumstances must have been made that gives some indication of the likelihood a viable proposal will be advanced within the time frame of the extension applied for.

[23] Lack of detail and assurance of this kind was considered in *St. Isidore Meats Inc. v. Paquette Fine Foods Inc.* [1997] O.J. No. 1863. In dismissing an application for an extension of time, Justice Chadwick stated (at para. 16):

> "...[T]he debtors have not been able to put forth any meaningful financial plan which would support a proposal. There is a vague reference in the affidavit material that they have approached at least two prospective purchasers, however there is no evidence that any of these parties are interested in assisting the debtor either now or in the future."

[24] The BNS points to a number of specifics of what it considers a lack of effort that should result in a finding that there is little likelihood of HHFL making a viable proposal. BNS notes the fact that it has stated clearly that it no longer has any interest of being involved in the affairs of HHFL which will necessitate, in all

[37] This section of the *Act* contemplates some prejudice to creditors and I am of the view that the prejudice must be of a degree that raises significant concern to a level that it would be unreasonable for a creditor or creditors to accept. Overall, I am satisfied that HHFL has met the requirement of establishing on the balance of probabilities that the granting of an extension will not materially prejudice any of the creditors and in particular BNS.

CONDITIONS:

[38] During the course of argument I indicated if an extension was granted that BNS at the very least was entitled to have timely full disclosure of the utilization of funds for the continued operation of the company. This could be achieved by requiring HHFL to return to the commitment of having all operating funds passed through its accounts with BNS but it will also require a direction that other than interest entitlement, if not paid, BNS would not be able in the intervening period to encroach upon the trading funds which are absolutely necessary for the continued operation and survival chances of the business. The direction would probably also require any outstanding documentation, possibly requiring HHFL to produce the invoices in the reconciliation it provided for cash withdrawals for cash purchases from Pacmar Norway, etc. There would be a requirement of timely disclosure. There are a number of other possible conditions that come to mind. However, as both counsel indicated if the extension was granted they requested the opportunity to address possible conditions, I readily accede to their offer of assistance. Counsel, if they agree, may take some time to consult with each other and put their views in writing or alternatively address the matter orally and, in any event, I will, as scheduled be available at 2:00 p.m. this afternoon unless both counsel agree on the appropriate terms and conditions of the order of extension.

J.

TAB 5

BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

Author of Treatises on Judgments, Tax Titles, Intoxicating Liquors, Bankruptcy, Mortgages, Constitutional Law, Interpretation of Laws, Rescission and Cancellation of Contracts, Etc.

FIFTH EDITION

BY

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1979

Golden Rule argument. "Golden Rule" type of argument, by which jurors are urged to place themselves or members of their families or friends in place of person who has been offended and to render verdict as if they or either of them or member of their families or friends was similarly situated, is improper in both civil and criminal cases. Lycans v. Com., Ky., 562 S.W.2d 303.

Goldsmiths' notes. Bankers' cash notes (*i.e.*, promissory notes given by a banker to his customers as acknowledgments of the receipt of money) were originally called in London "goldsmiths' notes," from the circumstance that all the banking business in England was originally transacted by goldsmiths.

Gold standard. A monetary system in which every form of currency is convertible on demand into its legal equivalent in gold or gold coin. The United States adopted the gold standard in 1900 and terminated it in 1934.

Goldwit. A mulct or fine in gold.

Gomashtah /gəmáshtə/. In Hindu law, an agent; a steward; a confidential factor; a representative.

Good. Valid; sufficient in law; effectual; unobjectionable; sound; responsible; solvent; able to pay an amount specified.

Of a value corresponding with its terms; collectible. A note is said to be "good" when the payment of it at maturity may be relied on.

Good abearing. See **Abearance.**

Good and clear record title, free from all incumbrances. A title which on the record itself can be again sold as free from obvious defects and substantial doubts, and differs from a "good, marketable title," which is an actual title, but which may be established by evidence independently of the record.

Good and valid. Reliable, sufficient, and unimpeachable in law; adequate; responsible.

Good and workmanlike manner. In a manner generally considered skillful by those capable of judging such work in the community of the performance.

Good behavior. Orderly and lawful conduct; behavior such as is proper for a peaceable and law-abiding citizen. "Good behavior," as used in an order suspending sentence upon a defendant during good behavior, means merely conduct conformable to law, or to the particular law theretofore breached.

Under some state penal systems, each day of "good behavior" by a prisoner reduces his or her sentence by one day. See also **Goodtime allowance.**

Good cause. Substantial reason, one that affords a legal excuse. Legally sufficient ground or reason. Phrase "good cause" depends upon circumstances of individual case, and finding of its existence lies largely in discretion of officer or court to which decision is committed. Wilson v. Morris, Mo., 369 S.W.2d 402, 407. "Good cause" is a relative and highly abstract term, and its meaning must be determined not only by verbal context of statute in which term is employed but also by context of action and procedures involved in type of case presented. Wray v. Folsom, D.C.Ark., 166 F.Supp. 390, 394, 395. See also **Probable cause.**

Discovery. "Good cause" for discovery is present if information sought is material to moving party's trial preparation. Daniels v. Allen Industries, Inc., 391 Mich. 398, 216 N.W.2d 762, 766. "Good cause" requirement for discovery and production of documents is ordinarily satisfied by a factual allegation showing that requested documents are necessary to establishment of the movant's claim or that denial of production would cause moving party hardship or injustice. Black v. Sheraton Corp. of America, D.C.D.C., 47 F.R.D. 263, 273. Under a 1970 amendment to Fed.R. Civil P. 34, however, "good cause" is no longer required to be shown for production of documents and things. Federal Rule 35(a) does, however, require that "good cause" be shown for order requiring physical or mental examination, as does Rule 26(c) for protective orders to restrict scope of discovery.

Quitting employment. "Good cause" for leaving one's employment is such good cause as would compel a reasonably prudent person to quit under similar circumstances. Chamblee v. Employment Division, Or.App., 541 P.2d 165, 167.

Unemployment compensation. "Good cause" within statute denying unemployment compensation benefits if claimant has refused without good cause to accept an offer of suitable work is that cause that to an ordinary intelligent man is a justifiable reason for doing or not doing a certain particular thing. Wallace v. Bureau of Unemployment Compensation, Ohio Com.Pl., 160 N.E.2d 580, 582.

Good character. Sum or totality of virtues of a person which generally forms the basis for one's reputation in the community, though his reputation is distinct from his character. See **Character; Reputation.**

Good conduct. See **Certificate of good conduct.**

Good consideration. Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise. That consideration or detriment which the law considers valid and to this extent "good" does not refer to moral goodness. See **Consideration.**

Good faith. Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage, and an individual's personal good faith is concept of his own mind and inner spirit and, therefore, may not conclusively be determined by his protestations alone. Doyle v. Gordon, 158 N.Y.S.2d 248, 259, 260. Honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. An honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious. In common usage this term is ordinarily used to

describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation. Efron v. Kalmanovitz, 249 Cal.App. 187, 57 Cal.Rptr. 248, 251. See **Bona fide.**

Commercial law. Honesty in fact in the conduct or transaction concerned. U.C.C. § 1–201(19). In the case of a merchant, honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade. U.C.C. § 2–103(1)(b).

Good faith purchaser. Those who buy without notice of circumstances which would put a person of ordinary prudence on inquiry as to the title of seller.

Good health. Good health, as employed in insurance contract, ordinarily means a reasonably good state of health. It means that the applicant has no grave, important, or serious disease, and is free from any ailment that seriously affects the general soundness and healthfulness of the system. A mere temporary indisposition not tending to weaken or undermine constitution does not render a person in "bad health". It does not mean a condition of perfect health.

Good jury. A jury of which the members are selected from the list of special jurors.

Good, merchantable abstract of title. An abstract showing a good title, clear from incumbrances, and not merely an abstract of matters of record affecting the title, made by one engaged in the business of making abstracts in such form as is customary, as passing current among persons buying and selling real estate and examining titles. See also **Marketable title.**

Good order. Goods or property are in "good order" when they are in acceptable condition under all the circumstances. See **Merchantability.**

Good record title. A "good record title," without words of limitation, means that the proper records shall show an unincumbered, fee-simple title, the legal estate in fee, free and clear of all valid claims, liens, and incumbrances. See also **Marketable title.**

Good repute. An expression, synonymous with and meaning only "of good reputation." See **Reputation.**

Goodright, goodtitle. The fictitious plaintiff in the old action of ejectment, most frequently called "John Doe," was sometimes called "Goodright" or "Goodtitle."

Goods. A term of variable content and meaning. It may include every species of personal property or it may be given a very restricted meaning.

Items of merchandise, supplies, raw materials, or finished goods. Sometimes the meaning of "goods" is extended to include all tangible items, as in the phrase "goods and services."

All things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities and things in action. Also includes the unborn of animals and growing crops and other identified things attached to realty as fixtures. U.C.C. § 2–105(1). All things treated as movable for the purposes of a contract of storage or transportation. U.C.C. § 7–102(1)(f).

As used with reference to collateral for security interest, goods include all things which are movable at the time the security interest attaches or which are fixtures. Section 9–105(1)(h) of the 1972 U.C.C.; § 9–105(1)(f) of the 1962 U.C.C.

See also **Confusion of goods; Future goods; Identification of goods.**

Capital goods. The equipment and machinery used in production of other goods or services.

Consumer goods. Goods which are used or bought for use primarily for personal, family or household purposes. U.C.C. § 9–109(1). See also **Consumer goods.**

Durable goods. Goods which have a reasonably long life and which are not generally consumed in use; *e.g.* refrigerator.

Fungible goods. Goods, every unit of which is similar to every other unit in the mass; *e.g.* uniform goods such as coffee, grain, etc. U.C.C. § 1–201.

Hard goods. Consumer durable goods. See *Durable goods, supra.*

Soft goods. Generally consumer goods such as wearing apparel, curtains, etc., in contrast to hard goods.

Good Samaritan doctrine. One who sees a person in imminent and serious peril through negligence of another cannot be charged with contributory negligence, as a matter of law, in risking his own life or serious injury in attempting to effect a rescue, provided the attempt is not recklessly or rashly made. Jobst v. Butler Well Servicing, Inc., 190 Kan. 86, 372 P.2d 55, 59. Under doctrine, negligence of a volunteer rescuer must worsen position of person in distress before liability will be imposed. U. S. v. DeVane, C.A.Fla., 306 F.2d 182, 186. This protection from liability is provided by statute in most states.

Goods and chattels. This phrase is a general denomination of personal property, as distinguished from real property. In the law of wills, the term "goods and chattels" will, unless restrained by the context, pass all the personal estate.

Goods sold and delivered. A phrase frequently used in the action of *assumpsit,* when the sale and delivery of goods furnish the cause.

Goods, wares, and merchandise. A general and comprehensive designation of such chattels and goods as are ordinarily the subject of traffic and sale. The phrase is used in the statute of frauds, and is sometimes found in pleadings and other instruments.

Goodtime allowance. "Good time" is awarded for good conduct and reduces period of sentence which prisoner must spend in prison although it does not reduce the period of the sentence itself. Carothers v. Follette, D.C.N.Y., 314 F.Supp. 1014, 1026, 1027. Credit allowed on the sentence which is given for satisfactory conduct in prison. Introduced as an incentive for inmates, it has become practically automatically awarded. It may reduce the minimum or maximum sentence or both. See also **Good behavior.**

Good title. One free from reasonable doubt, that is, not only a valid title in fact, but one that can again be sold to a reasonable purchaser or mortgaged to a

TAB 6

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***In the Matter of the Proposal of Cantrail Coach Lines Ltd.***
2005 BCSC 351

Date: 20050301
Docket: B050363
Registry: Vancouver

IN THE MATTER OF THE PROPOSAL OF CANTRAIL COACH LINES LTD.

Before: Master Groves

Oral Reasons for Judgment

In Chambers
March 1, 2005

Counsel for Petitioner	H. Ferris
Counsel for Creditor (Volvo)	R. Finlay
Place of Trial/Hearing:	Vancouver

[1] **THE COURT:** This is my decision on the matter of the proposal of Cantrail Coach Lines Ltd. who I will refer to as Cantrail.

[2] Cantrail applies to the Court pursuant to s. 50.4(9) of the ***Bankruptcy and Insolvency Act*** for extension of time for filing a proposal.

[3] VFS Canada Inc., who I will refer to as Volvo, a secured creditor of Cantrail, opposes the application and cross-

[20] I am impressed thus far with the efforts of Cantrail and with the efforts of the trustee, Patty Wood, in trying to get this matter resolved. I am satisfied that the insolvent company, in my view, would likely be able to make a viable proposal, a proposal that is at least feasible, a proposal that would be practicable from an economic standpoint, if the extension being applied for were granted.

[21] Under the third aspect of the test, I must be satisfied that no creditor would be materially prejudiced if extension being applied for were granted. That aspect of the test uses the term "materially prejudiced." There is a difference, in my view, between being prejudiced and being materially prejudiced. Again, consulting the *Concise Oxford Dictionary* materially means substantially or considerably. The creditor here must be substantially or considerably prejudiced if the extension being applied for is granted.

[22] There is no doubt that Volvo has been prejudiced by the circumstances which have befallen Cantrail and befallen Volvo as a secured creditor. The ***Act*** in and of itself, and the possibility of a proposal, does create simple prejudice by staying the obligations of a person attempting to make a proposal during the period of time in which the proposal is being formulated. There is no evidence before me of anything

TAB 7

COURT FILE NO.: 08-CL-7877
DATE: 20091218

SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST

RE: IN THE MATTER OF LOOK COMMUNICATIONS INC.

Applicant

LOOK MOBILE CORPORATION AND LOOK COMMUNICATIONS L.P.

Respondent

AND IN THE MATTER OF AN APPLICATION BY LOOK COMMUNICATIONS INC. UNDER SECTION 192 OF *THE BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C.44, AS AMENDED

BEFORE: Justice Newbould

COUNSEL: *John T. Porter*, for Look Communications Inc.

Aubrey E. Kauffman, for Inukshuk Wireless Partnership

DATE HEARD: December 17, 2009

E N D O R S E M E N T

[1] Look Communications Inc.(Look) moves for an order extending a sealing order under which bids made in a court approved sales process were sealed. The order is opposed by Inukshuk Wireless Partnership which is a joint venture between Rogers Communications Inc. and Bell Canada.

[16] Look points out that it is not a private company. It is a public company with stakeholders, being public shareholders. It is not the kind of private corporation that Iacobucci J. was discussing in *Sierra*.

[17] It is common when assets are being sold pursuant to a court process to seal the Monitor's report disclosing all of the various bids in case a further bidding process is required if the transaction being approved falls through. Invariably, no one comes back asking that the sealing order be set aside. That is because ordinarily all of the assets that were bid on during the court sale process end up being sold and approved by court order, and so long as the sale transaction or transactions closed, no one has any further interest in the information. In *8857574 Ontario Inc. v. Pizza Pizza Ltd*, (1994), 23 B.L.R. (2nd) 239, Farley J. discussed the fact that valuations submitted by a Receiver for the purpose of obtaining court approval are normally sealed. He pointed out that the purpose of that was to maintain fair play so that competitors or potential bidders do not obtain an unfair advantage by obtaining such information while others have to rely on their own resources. In that context, he stated that he thought the most appropriate sealing order in a court approval sale situation would be that the supporting valuation materials remain sealed until such time as the sale transaction had closed.

[18] This case is a little different from the ordinary. Some of the assets that were bid on during the sales process were not sold. However, because the assets that were sold constituted substantially all of the assets of Look, the arrangement under section 192 of the CBCA was completed. Those assets that were not sold remained, however, to be sold and it is in the context of that process that Rogers has been discussing purchasing one or more of these assets from Look.

[19] In this case, had the closing of the sale of the Spectrum and the License been drawn out to the maximum three year period provided for in the sale agreement, these remaining assets in all likelihood would have been sold before the maximum period ran out and during a period of time in which the Receiver's First Report remaining sealed. In those circumstances the effect of the sealing order would have been to protect the later sale process, a process which originally involved a sale of all of the assets of Look. While the remaining sales will not take place under