



INSOLVENCY CONSULTANTS & TRUSTEE IN BANKRUPTCY

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INSOLVENCY UPDATE

December, 2008

Stephen Boale re-elected as Director of the BCAIRP – Named President

Stephen Boale has been re-elected to the Board of Directors of the BCAIRP. He has asked to serve as President. Stephen has been a Director of the association for three years and the role of President is typically a two year term. Congratulations Stephen.

Boale, Wood & Company Ltd. hires new Trustee

The partners and staff of Boale, Wood & Company Ltd. are pleased to announce that John McEown joined the firm in June, 2008.

John McEown is a member of the Canadian Association of Insolvency and Restructuring Professionals ("CAIRP"), a licenced Trustee in Bankruptcy and a Chartered Accountant. Prior to joining Boale, Wood & Company Ltd., John spent several years with another insolvency boutique and a number of years in industry.

John has been involved in and has extensive experience in corporate insolvency proceedings. He has been involved in large real estate and development restructurings as well as a variety of other corporate matters. He has worked for secured lenders performing viability assessments, acted as Monitor under the *Companies Creditors Arrangement Act* as well as formal receiverships and has worked with debtors in financial difficulty.

He is also a member of the Vancouver Insolvency Discussion Group.

John can be reached at (604) 605-3335 or at jmceown@boalewood.ca.

Boale, Wood & Company Ltd. opens office in New Westminster

Boale, Wood & Company Ltd. has opened an office in New Westminster located at:

400 – 604 Columbia Street
New Westminster, BC V3M 1A5
Phone: 604 605-3335

Interviews at this office are by appointment only.

The telephone and fax number remain the same as the Vancouver office. The opening of this office will allow us to serve those located in Burnaby, New Westminster, and Surrey and so on better.

Insolvency Seminar in early February

Boale, Wood & Company Ltd. will be hosting an insolvency seminar on corporate matters in early 2009 at our New Westminster office. We will also be hosting a seminar in March 2009 on personal insolvency. Details will follow in a separate newsletter in January.

Case Law Update

Re: Smith (BC Supreme Court)

This case deals with the issue of out of pocket disbursements in a summary administration that are necessary for the preservation or realization of the bankrupts' property.

In summary administration bankruptcies, the fees and disbursements of the Trustee are governed by Rule 128 of the *Bankruptcy and Insolvency Act* rules. The rule allows for an administrative disbursement of \$100, regardless of the actual amount of disbursements incurred. In cases where the Trustee has to incur large disbursements the Superintendent of Bankruptcy has always indicated that the Trustee should request the bankruptcy be converted to an Ordinary Administration. This then requires the

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Trustee to have his fees and disbursements taxed by the court which undoubtedly adds additional cost to the administration of the file.

The Trustee was claiming certain disbursements such as the cost of registering a judgment on title over and above the \$100 administrative disbursement. The Superintendent of Bankruptcy opposed this practice and requested the Trustee proceed to Court to have its final statement of receipts & disbursements taxed by the Court. The Registrar decided that the disbursements the Trustee was claiming over and above the administrative disbursements were necessary and fell within the definition of "necessary disbursements relating directly to the realization of the property of the bankrupt" in Rule 128(1) and allowed them. This case can be found on the British Columbia Supreme Court website at <http://www.courts.gov.bc.ca/index.asp> or by calling us and requesting a copy.

Re: Dyrland (Alberta Court of Queens Bench)

This case deals with the statute of limitations as it pertains to creditors, Canada Revenue Agency and confirms that the Stay of Proceedings against an undischarged bankrupt no longer applies once the Trustee is discharged.

The bankrupts' application for discharge was adjourned generally and the Trustee was discharged. Canada Revenue Agency began enforcement proceedings against the bankrupt for its pre-bankruptcy debt and collected approximately \$50,000.00. More than two years later, the bankrupt decided to proceed with his discharge application. A new trustee was appointed. The new trustee brought a motion for directions regarding the statute of limitation period on claims against the bankrupt. Canada Revenue Agency brought a motion for declaration that its claim as creditor was not statute barred. The Alberta Treasury Branch brought a motion for an order that it be dealt with as secured creditor. The court held that the claim of the Alberta Treasury Board was statute barred and the claim of Canada Revenue Agency was not.

In Alberta, once the Trustee is discharged, the statutory stay of proceedings for collection of your debt is lifted assuming the bankrupt is discharged or not. The Court held that the limitation period begins

to run when stay of proceedings lifted. It further ruled that there was no operational conflict between provincial limitations statutes and the *Bankruptcy and Insolvency Act* and the limitation period did not alter priorities under *Bankruptcy and Insolvency Act*. Admission of debt or part payment by Trustee is not akin to court judgment, although it does extend the limitation period. The Trustee is not required to warn creditors that the limitation period will resume upon discharge. Therefore, creditors must obtain a remedial order to maintain claim or risk the limitation period expiring and extinguishing their debt. If a claim survives bankruptcy, receipt of a dividend in the bankruptcy constitutes a partial payment and thus restarting limitation period from date of trustee's discharge. Canada Revenue Agency was able to rely on limitation period in s. 222 of *Income Tax Act*. Limitation period for Canada Revenue Agency extended by number of days bankrupt remains in bankruptcy and would be further extended by any collection efforts.

Disclaimer

This letter is designed to inform readers of various matters relating to insolvency. The comments provided are, of necessity, brief and should not be relied upon as legal advice. We encourage you to contact your lawyer for advice in the context of a particular situation.

Should you have any questions relating to this topic or any other insolvency matter that you may have, please contact Stephen Boale, John McEown or David Wood at:

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