

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

DUFF & PHELPS CANADA RESTRUCTURING INC. IN ITS
CAPACITY AS LIQUIDATOR OF
COVENTREE INC.

Applicant

APPLICATION UNDER SECTION 207 OF THE *BUSINESS*
CORPORATIONS ACT, R.S.C. 1990, c. B.16, AS
AMENDED

IN THE MATTER OF THE WINDING-UP OF
COVENTREE INC.

FACTUM OF THE APPLICANT
(Application Returnable February 15, 2012)

DAVIES WARD PHILLIPS & VINEBERG LLP
Barristers & Solicitors
44th Floor, 1 First Canadian Place
Toronto, ON M5X 1B1

Robin B. Schwill (LSUC #38452I)
Natasha J. MacParland (LSUC#: 42383G)
Steven G. Frankel (LSUC #58892E)

Tel: 416.863.0900
Fax: 416.863.0871

Lawyers for the Applicant

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PART I ~ OVERVIEW

1. Duff & Phelps Canada Restructuring Inc. in its capacity as the liquidator of Coventree Inc. (the "**Liquidator**") makes this application for:

- (a) an order continuing the voluntary winding-up of Coventree Inc. ("**Coventree**" or the "**Company**") as a court-supervised winding-up under section 207(1) of the Ontario *Business Corporations Act* (the "**OBCA**"); and
- (b) the other relief requested in the draft Winding-Up Order and draft Claims Procedure Order attached as Tabs 3 and 4 of the Application Record.

2. The Liquidation Plan (as defined below) contemplates this application and mandates it with respect to implementing the Claims Process (as defined in the Liquidation Plan). Furthermore, a court-supervised winding-up is in the interest of Coventree's creditors and shareholders and would be just and equitable in the circumstances. The other relief requested in the draft Winding-Up Order and draft

Claims Procedure Order is ancillary to and in furtherance of the winding-up. Accordingly, this application should be granted.

PART II ~ THE FACTS

A. The Voluntary Winding-Up and the Liquidation Plan

3. On June 30, 2010, Coventree's shareholders passed a special resolution approving the voluntary winding-up of the Company pursuant to section 193 of the OBCA in accordance with a plan of liquidation and distribution substantially in the form attached to the special resolution (the "**Form of Liquidation Plan**").

First Report of the Liquidator, p. 1; Application Record, Tab 2, p. 14

Press Release dated June 30, 2010 together with the form of resolution as contained in Coventree's management information circular dated May 25, 2010; Application Record, Tab 2A, p. 31

4. The special resolution authorizes any officer or director of Coventree to execute and deliver the Form of Liquidation Plan. Furthermore, section 9.1(a) of the Liquidation Plan specifically authorizes the Liquidator and Inspectors appointed pursuant thereto to make amendments in order to correct any clerical or typographical error or that, in the opinion of the Inspectors, are administrative in nature and do not materially alter the terms of the Plan. This provision was unaltered from the Form of Liquidation Plan.

Press Release dated June 30, 2010 together with the form of resolution as contained in Coventree's management information circular dated May 25, 2010; Application Record, Tab 2A, p. 32

Liquidation Plan, Appendix "B" to the First Report of the Liquidator, p. 14; Application Record, Tab 2B, p. 49

5. On January 23, 2012, the Board of Directors adopted a finalized Form of Liquidation Plan (the "**Liquidation Plan**"), which is substantially in the form of the Form of Liquidation Plan. Only minor clerical and typographical changes were made, including changing the name of the liquidator to Duff & Phelps Canada Restructuring Inc. (the successor of RSM Richter Inc., which was originally named as the liquidator in the Form of Liquidation Plan) ("**Duff & Phelps**"). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Liquidation Plan.

First Report of the Liquidator, pp. 1-2; Application Record,
Tab 2, pp. 14-15

6. Pursuant to section 2.2 of the Liquidation Plan, the winding-up of Coventree commences on and as of the Effective Date. Pursuant to sections 4.1 and 6.1 of the Liquidation Plan, respectively, on the Effective Date Duff & Phelps is appointed the Liquidator and Brendan Calder, Geoffrey Cornish and G. Wesley Voorheis are appointed as Inspectors of the Company's liquidation pursuant to section 194 of the OBCA.¹

First Report of the Liquidator, pp. 2, 12; Application Record,
Tab 2, pp. 15, 25

Liquidation Plan, Appendix "B" to the First Report of the
Liquidator, pp. 6, 7, 12; Application Record, Tab 2B, pp. 41,
42, 47

¹ Mr. Calder resigned as a director of Coventree on December 16, 2011. He is expected to resign as an Inspector on or shortly after February 15, 2012, at which point Messrs. Cornish and Voorheis intend to appoint a third Inspector pursuant to section 6.5 of the Liquidation Plan.

7. By resolution of the Board of Directors of Coventree, February 15, 2012 was determined to be the Effective Date and therefore the date upon which the implementation of the Liquidation Plan will commence.

First Report of the Liquidator, p. 2; Application Record, Tab 2, p. 15

Resolution of the Board of Directors of Coventree dated February 7, 2012, Appendix "C" to the First Report of the Liquidator; Application Record, Tab 2C, p. 56

8. Section 4.3(k) of the Liquidation Plan expressly authorizes and empowers the Liquidator to at any time apply to this Court under section 207 of the OBCA to have the liquidation of Coventree supervised by the Court, if the Liquidator considers such an application advisable under the circumstances then existing.

Liquidation Plan, Appendix "B" to the First Report of the Liquidator, p. 10; Application Record, Tab 2B, p. 45

9. Section 4.2(d) of the Liquidation Plan expressly directs the Liquidator to establish and implement a Claims Process. The Liquidation Plan defines "Claims Process" as the process established by the Liquidator and approved by this Court for identifying, resolving and barring certain Claims, including among other things the issuance of a final order of this Court establishing the Claims. The purpose of the Claims Process is to reduce, to the extent possible, the risk that any claims arise following the winding-up and dissolution of Coventree.

Liquidation Plan, Appendix "B" to the First Report of the Liquidator, pp. 2, 8; Application Record, Tab 2B, pp. 37, 43

First Report of the Liquidator, p. 13; Application Record, Tab 2, p. 26

B. Coventree's Current Status and Financial Position

10. Since around May 21, 2009, Coventree has had no ongoing operating activities and its primary source of revenue has simply been interest income earned on cash and short-term investments. A special committee of Coventree's Board of Directors has concluded that none of the Company's business units is viable. The Company currently has only two employees.

First Report of the Liquidator, pp. 4, 7; Application Record,
Tab 2, pp. 17, 20

11. Coventree's principal asset consists of cash and short-term investments with a value of approximately \$66 million as of January 31, 2012. The Company's principal liabilities are its indemnification obligations in respect of the OSC Penalty² (\$1 million), the Tai Action³ (\$3-4 million) and amounts owing under employment contracts (\$1.2 million).

First Report of the Liquidator, pp. 9-11; Application Record,
Tab 2, pp. 22-24

C. The Claims Process

12. In the course of its more than 10 years of operations, Coventree entered into numerous contractual and other relationships with employees, customers and suppliers. In light of this history and the Market Disruption⁴ (and related events pertaining to the asset-backed commercial paper market), it is simply impossible to know with certainty whether certain claims, contingent or otherwise, exist against Coventree or any of its subsidiaries.

² As defined on page 6 of the First Report of the Liquidator.

³ As described at pages 10 and 11 of the First Report of the Liquidator.

⁴ As defined on page 3 of the First Report of the Liquidator.

First Report of the Liquidator, p. 11; Application Record, Tab 2, p. 24

13. Coventree has also indemnified the past and present directors and officers of the Company and its subsidiaries. It is similarly unknown whether there are any possible claims against such directors and officers that might give rise to a claim over against Coventree.

First Report of the Liquidator, p. 11; Application Record, Tab 2, p. 24

14. Under section 242 of the OBCA, despite the dissolution of a corporation, an action or proceeding may be brought against the corporation as if it had not been dissolved. Any property that would have been available to satisfy a judgment or order but for the dissolution remains available for that purpose. Further, section 243 provides that each shareholder to whom any of the corporation's property is ultimately distributed is liable to any person claiming under section 242 to the extent of the amount received by that shareholder, and an action to enforce this liability may be brought.

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 242- , 243

First Report of the Liquidator, p. 13; Application Record, Tab 2, p. 26

15. Given the materiality of the aggregate quantum of the distributions to be made to the holders of over 15 million common shares of Coventree, the Claims Process is a necessary element of the Liquidation Plan so that the risk of any future disgorgement of distributions received is eliminated to the greatest extent possible.

D. The Liquidator Considers it Advisable to Make this Application

16. The Liquidator considers that it is advisable in the circumstances that the winding-up of Coventree be continued under the supervision of the Court, because a court-supervised winding-up will:

- (a) permit the Liquidator to effect the Claims Process, which the Liquidator is required to do pursuant to section 4.2(d) of the Liquidation Plan;
- (b) facilitate the Liquidator's ability to implement all other aspects of the Liquidation Plan;
- (c) enable the Liquidator to enforce efficiently the terms of the Liquidation Plan and any corresponding ancillary relief provided in the OBCA as against third parties; and
- (d) provide the Liquidator with certain protections in implementing the Liquidation Plan.

First Report of the Liquidator, pp. 13-16; Application Record, Tab 2, pp. 26-29

17. The Liquidator understands that the Inspectors support this application.

First Report of the Liquidator, p. 2; Application Record, Tab 2, p. 15

PART III ~ ISSUES

18. This application raises the following issues:

- (a) whether the voluntary winding-up of Coventree should be continued as a court-supervised winding-up under section 207(1) of the OBCA; and
- (b) whether the relief requested in the draft Winding-Up Order and draft Claims Procedure Order should be granted.

PART IV ~ LAW AND ARGUMENT

A. The Voluntary Winding-Up Should be Continued as a Court-Supervised Winding-Up

19. Section 208(1) of the OBCA provides that, where a corporation is being wound up voluntarily, a winding-up order may be made upon the application of the liquidator. There is accordingly no doubt that the Liquidator is entitled to make this application.

Business Corporations Act, R.S.O. 1990, c. B.16, s. 208(1)

20. Pursuant to section 207(1) of the OBCA, a corporation may be wound up by order of the Court in the following circumstances:

...

(b) where the court is satisfied that,

...

(ii) proceedings have been begun to wind up voluntarily and it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court,

...

(iv) it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up; or

(c) where the shareholders by special resolution authorize an application to be made to the court to wind up the corporation.

Business Corporations Act, R.S.O. 1990, c. B.16, s. 207(1)

21. Each of these independent grounds for ordering a court-supervised winding-up is applicable to Coventree, as explained below.

(i) Coventree's Shareholders have Authorized this Application

22. Where the shareholders have by special resolution authorized an application to wind-up the corporation, the Court's discretion to refuse to grant the order is extremely limited.

23. In *Fallis v. United Fuel Investments, Ltd.*, the Supreme Court of Canada considered the interpretation of section 10(b) of what was then the federal *Winding-up Act*, a provision that is very similar to section 207(1)(c) of the OBCA. Section 10(b) authorized the Court to make a winding-up order where the company at a special meeting of the shareholders passed a resolution requiring the company to be wound up. The Court of Appeal for Ontario had granted the winding-up order, holding that where such a resolution has been passed, any discretion to refuse the winding-up order should only be exercised if it could be shown that the "action of the majority shareholders was fraudulent or equivalent to bad faith". The Supreme Court dismissed the appeal. Among other things, the Supreme Court noted that there were only "minor examples of the exercise of discretion" under section 10(b).

Fallis v. United Fuel Investments, Ltd., [1963] S.C.J. No. 39
at 8, 9; Book of Authorities, Tab 1

24. Given the similarity between section 10(b) of the old *Winding-up Act* and section 207(1)(c) of the OBCA, the holding in *Fallis* is applicable in the instant case.

25. Coventree's shareholders have passed a special resolution that authorizes an application to wind up the corporation. Specifically, the Company's shareholders approved the Form of Liquidation Plan, and both the Form of Liquidation Plan and the Liquidation Plan expressly empower the Liquidator to make such an application if it

believes that it is advisable in the circumstances to do so. As discussed above, the Liquidator considers it advisable to make this application, in part because the Liquidation Plan mandates that it must implement the Claims Process which, by its definition, requires this Court's supervision.

26. There can be no suggestion that any action of Coventree's shareholders was fraudulent or done in bad faith. Nor is there any other reason for the Court to exercise any discretion not to give effect to the clear voice of the shareholders. Accordingly, this Court should grant a winding-up order pursuant to section 207(1)(c) of the OBCA.

(ii) *It is in the Interest of Creditors and Shareholders that the Voluntary Winding-Up Proceedings be Continued under the Supervision of the Court*

27. A "contributory" is defined in section 191 of the OBCA as "a person who is liable to contribute to the property of the corporation in the event of the corporation being wound up under this Act". Coventree has no contributories.

Business Corporations Act, R.S.O. 1990, c. B.16, s. 191

28. It is clearly in the interest of Coventree's creditors that the winding-up proceedings be continued under the supervision of this Court. The Claims Process will (assuming it is approved) provide a mechanism for currently unknown creditors to make claims. Among other things, the Claims Process contemplates providing written notice to known and unknown creditors, thereby facilitating the making of claims.

First Report of the Liquidator, pp. 14-16; Application Record,
Tab 2, pp. 27-29

Draft Claims Procedure Order, p. 6; Application Record, Tab 4, p. 96

29. A court-supervised winding-up is also in the interest of Coventree's shareholders. As explained above, the Claims Process will reduce, if not eliminate, the possibility of claims (or claims over) against the Company arising following the winding-up and dissolution. It will therefore reduce the possibility that shareholders will be liable for such claims to the extent that a distribution to the shareholders is made. Indeed, the fact that a supermajority of Coventree's shareholders voted to approve the Form of Liquidation Plan, which expressly authorized the making of this application and specifically required the Liquidator to effect and implement the Claims Process, demonstrates that the relief requested is in the shareholders' interest.

30. The Court should therefore grant a winding-up order pursuant to section 207(1)(b)(ii) of the OBCA.

(iii) It is Just and Equitable that Coventree be Wound Up

31. This Court has held that the words "just and equitable" in section 207(1)(b)(iv) "are words of the widest significance that must be given a broad interpretation". Whether it is, in fact, just and equitable that a corporation be wound up will depend on the facts of a given case.

West Van Inc. v. Beswick Group Holdings Ltd., [2008] O.J. No. 3119 at para. 22 (S.C.J. (Commercial List)) (QL); Book of Authorities, Tab 2

32. A corporation may be wound up under section 207(1)(b)(iv) where the corporation's "substratum", or purpose, has disappeared or been exhausted. Put

simply, where it is impossible for a corporation to carry on the real business for which it was formed, a winding-up order may be appropriate.

Sound Advice Inc. (Trustee of) v. 358074 Ontario Ltd.,
[1984] O.J. No. 2505 at paras. 14, 18 (Div. Ct.) (QL); Book of
Authorities, Tab 3

33. It is beyond dispute that Coventree's substratum has disappeared and that the Company cannot carry on the business for which it was formed. As noted above, after the Market Disruption a special committee of Coventree's Board of Directors concluded that none of the Company's business units was viable. Since May 21, 2009, Coventree's primary source of revenue has been interest income earned on cash and cash equivalents.

34. Further, the Claims Process is essential to the Liquidation Plan and to effecting an efficient and orderly winding-up of Coventree. The Claims Process cannot be implemented without this Court's approval.

35. Given that Coventree has no ongoing operations, that the Court's approval is required in order to effect the Claims Process, and that a court-supervised winding-up would benefit shareholders and creditors, it would be just and equitable to grant the requested relief. A winding-up order should thus be granted pursuant to section 207(1)(b)(iv) of the OBCA.

B. The Relief Requested in the Draft Winding-Up Order and Draft Claims Procedure Order Should be Granted

(i) The Court has the Authority to Grant the Relief Requested under Sections 207(2) and 209 of the OBCA

36. Section 207(2) of the OBCA provides the Court with the power to "make such order under this section or section 248 as it thinks fit". Section 248(3) states that "[i]n connection with an application under this section, the court may make any interim or final order it thinks fit ..." and sets out a non-exhaustive list of the types of orders the Court may make.

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 207 and 248(3)

37. There is authority for the proposition that on an application for a winding-up order, the Court can grant both the winding-up order under section 207(1) and other relief under section 248. There need not be a finding of oppression in order for the Court to make any order it considers just and equitable in the circumstances.

2011680 Ontario Inc. v. 968831 Ontario Inc., [2011] O.J. No. 3537 at paras. 52-54, 60 (S.C.J.); Book of Authorities, Tab 4

38. Furthermore, pursuant to section 209 of the OBCA, this Court has the authority to make any order as is considered just:

The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally **or may make any interim or other order as is considered just**, and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding up to an officer of the court for inquiry and report and may authorize the officer to exercise such powers of the court as are necessary for the reference. [emphasis added]

Business Corporations Act, R.S.O. 1990, c. B.16, s. 209

39. Canadian Courts have interpreted this provision and an equivalent provision in the *Winding-up Act* as conferring on the Court a broad discretion to make orders in furtherance of or otherwise in connection with a present or prospective winding-up order.

Re R.J. Jowsey Mining Co. Ltd., [1969] O.J. No. 1358 at para. 4 (C.A.), per Laskin J.A. (QL), aff'd [1970] S.C.R. v; Book of Authorities, Tab 5

Re Hillcrest Housing Ltd., [1992] P.E.I.J. No. 17 at 3, 4 (S.C. (T.D.)) (QL), aff'd [1992] P.E.I.J. No. 83 (C.A.) at 4, 5; Book of Authorities, Tab 6

40. In addition to an order that the winding-up of Coventree be continued under the supervision of the Court, the draft Winding-Up Order contains a number of other orders. Some of the relief requested, including the order appointing the Liquidator and the order staying all actions against Coventree, is specifically authorized by the OBCA.

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 210 and 216

41. All of the remaining relief requested in the draft Winding-Up Order and draft Claims Procedure Order is ancillary to the winding-up and is necessary in order to effect the winding-up in an orderly and efficient manner. The draft Claims Procedure Order, in particular, is a critical component of the Liquidation Plan, as explained above. The requirement to implement the Claims Process is in fact one of the primary reasons for which the Liquidator has made this application. In the circumstances, it would be just and equitable to grant the relief sought, and the Court should do so under its section 207(2) powers.

42. Additionally, there can be no question that all of the relief in the draft Winding-Up Order and draft Claims Procedure Order that is not otherwise specifically authorized by statute relates to matters in furtherance of or in connection with the winding-up of Coventree. Thus, to the extent necessary, the relief sought should be granted under the Court's section 209 powers.

(ii) Sections 221(2) and 228 of the OBCA Provide Further Support for the Draft Claims Procedure Order

43. In addition to sections 207(2) and 209, sections 221(2) and 228 of the OBCA provide ample statutory basis for the draft Claims Procedure Order.

44. Section 221(2) of the OBCA provides that section 53 of the *Trustee Act* applies with necessary modifications to liquidators. Among other things, section 53 of the *Trustee Act* contemplates the provision of notice to creditors, as well as the making of distributions upon the expiry of the time specified in the notice for sending in claims. The draft Claims Procedure Order addresses exactly these types of issues – it simply sets out a more formal and comprehensive process for making (and ultimately barring) claims against Coventree.

Business Corporations Act, S.O. 1990, c. B.16, s. 221(2)

Trustee Act, R.S.O. 1990, c. T.23, s. 53

45. Section 228 of the OBCA also supports the draft Claims Procedure Order.

This provision states the following:

For the purpose of proving claims, sections 23, 24 and 25 of the *Assignments and Preferences Act* apply with necessary modifications, except that where the word "judge" is used therein, the word "court" as used in this Act shall be substituted.

Business Corporations Act, S.O. 1990, c. B.16, s. 228

46. It is clear that the reference to sections 23 to 25 of the *Assignments and Preferences Act* (the "**APA**") is erroneous and that the reference should be to sections 25 to 27 of the APA. Sections 25 to 27 are the provisions of the APA that deal with proving claims; sections 23 and 24, by contrast, have nothing to do with proving claims. The error appears to have occurred in or around 1982, when the OBCA was repealed and replaced. Until that time, the provision that is now section 228 referred to sections 25 to 27 of the APA. The numbering of the relevant sections of the APA did not change in 1982, and in fact has been the same since at least 1927.

Assignments and Preference Act, R.S.O. 1990, c. A.33, ss.
23-27

Business Corporations Act, R.S.O. 1980, c. 54, s. 229,
Business Corporations Act, S.O. 1982, c. 4, s. 227,
Assignments and Preferences Act, R.S.O. 1927, c. 134, ss.
23-27; Book of Authorities, Tab 7

47. Sections 25 to 27 of the APA set out a process for proving claims; among other things, they acknowledge that there should be a limited time in which to furnish satisfactory proofs of claim, and deal with the contesting of claims. As with section 53 of the *Trustee Act*, the draft Claims Procedure Order establishes a formal process for addressing these and related issues.

48. Furthermore, section 26(4) of the APA provides that where a claim has been commenced against the assignor prior to the assignment, the assignee may require the plaintiff to proceed with the action:

Where prior to the assignment an action has been commenced against the assignor and is pending at the time

of the assignment, the assignee may, by notice served upon the plaintiff in the action, require the plaintiff to proceed, and the plaintiff is bound to proceed in that action to establish the claim, instead of bringing an action against the assignee as provided for by subsection (2), and the plaintiff may thereupon apply to the court in which the action is brought for an order adding the assignee as a party defendant in the action, and the assignee may be so added upon such terms as to the costs that may be subsequently incurred as the court or a judge thereof, or the judge making the order, directs.

Assignments and Preference Act, R.S.O. 1990, c. A.33, s. 26(4)

49. Section 26(4) of the APA is the basis for, and provides the Court with the authority to grant, paragraph 14 of the draft Claims Procedure Order. That paragraph would allow the Inspectors to require that any Company Claim (as defined in the draft Claims Procedure Order) commenced prior to the Effective Date by the issuance of an originating process be determined in the context of those proceedings, rather than in the context of the winding-up.

Draft Claims Procedure Order, pp. 8-9; Application Record, Tab 4, pp. 98-99

50. Put simply, section 228 of the OBCA, by incorporating by reference sections 25 to 27 of the APA, contemplates the granting of precisely the type of relief that the Liquidator is seeking in the draft Claims Procedure Order. Indeed, this Court has held that a claims bar order can be issued pursuant to section 25 of the APA.

Re Fund of Funds, Ltd., [2004] O.J. No. 2580 at paras. 9, 10 (S.C.J.); Book of Authorities, Tab 8

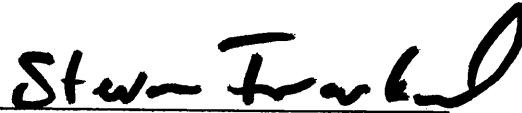
51. This Court should therefore grant the draft Claims Procedure Order in its entirety.

PART V ~ CONCLUSION

52. For all of the foregoing reasons, the Liquidator respectfully requests that this application be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

February 10, 2012



DAVIES WARD PHILLIPS & VINEBERG LLP
44TH FLOOR, 1 FIRST CANADIAN PLACE
TORONTO CANADA M5X 1B1

Robin B. Schwill (LSUC#: 38452I)
Natasha J. MacParland (LSUC#: 42383G)
Steven G. Frankel (LSUC#: 58892E)

Tel: 416.367.6961
Fax: 416.863.0871

Lawyers for the Applicant

Tab A

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Fallis v. United Fuel Investments, Ltd.*, [1963] S.C.J. No. 39 (QL)
2. *West Van Inc. v. Beswick Group Holdings Ltd.*, [2008] O.J. No. 3119 (S.C.J. (Commercial List)) (QL)
3. *Sound Advice Inc. (Trustee of) v. 358074 Ontario Ltd.*, [1984] O.J. No. 2505 (Div. Ct.) (QL)
4. *2011680 Ontario Inc. v. 968831 Ontario Inc.*, [2011] O.J. No. 3537 (S.C.J.) (QL)
5. *Re R.J. Jowsey Mining Co. Ltd.*, [1969] O.J. No. 1358 (C.A.) (QL), aff'd [1970] S.C.R. v
6. *Re Hillcrest Housing Ltd.*, [1992] P.E.I.J. No. 17 (S.C. (T.D.)) (QL), aff'd [1992] P.E.I.J. No. 83 (C.A.) (QL)
7. *Business Corporations Act*, R.S.O. 1980, c. 54, s. 229; *Business Corporations Act*, S.O. 1982, c. 4, s. 227; *Assignments and Preferences Act*, R.S.O. 1927, c. 134, ss. 23-27
8. *Re Fund of Funds, Ltd.*, [2004] O.J. No. 2580 (S.C.J.) (QL)

Tab B

SCHEDULE "B"
RELEVANT STATUTES

Business Corporations Act

R.S.O. 1990, CHAPTER B.16

Consolidation Period: From December 31, 2011 to the e-Laws currency date.

Last amendment: See Table of Public Statute Provisions Repealed Under Section 10.1 of the Legislation Act, 2006 – December 31, 2011.

PART XVI
LIQUIDATION AND DISSOLUTION

Definition

191. In sections 193 to 236,

"contributory" means a person who is liable to contribute to the property of a corporation in the event of the corporation being wound up under this Act. R.S.O. 1990, c. B.16, s. 191.

Application of ss. 193-205

192. Sections 193 to 205 apply to corporations being wound up voluntarily. R.S.O. 1990, c. B.16, s. 192.

Voluntary winding up

193. (1) The shareholders of a corporation may, by special resolution, require the corporation to be wound up voluntarily. R.S.O. 1990, c. B.16, s. 193 (1).

Appointment of liquidator

(2) At such meeting, the shareholders shall appoint one or more persons, who may be directors, officers or employees of the corporation, as liquidator of the estate and effects of the corporation for the purpose of winding up its business and affairs and distributing its property, and may at that or any subsequent meeting fix the liquidator's remuneration and the costs, charges and expenses of the winding up. R.S.O. 1990, c. B.16, s. 193 (2).

Review of remuneration by court

(3) On the application of any shareholder or creditor of the corporation or of the liquidator, the court may review the remuneration of the liquidator and, whether or not the remuneration has been fixed in accordance with subsection (2), the court may fix and determine the remuneration at such amount as it thinks proper. R.S.O. 1990, c. B.16, s. 193 (3).

Publication of notice

(4) A corporation shall file notice, in the prescribed form, of a resolution requiring the voluntary winding up of the corporation with the Director within ten days after the

resolution has been passed and shall publish the notice in *The Ontario Gazette* within twenty days after the resolution has been passed. R.S.O. 1990, c. B.16, s. 193 (4).

...

Application of ss. 207-218

206. Sections 207 to 218 apply to corporations being wound up by order of the court. R.S.O. 1990, c. B.16, s. 206.

Winding up by court

207. (1) A corporation may be wound up by order of the court,

(a) where the court is satisfied that in respect of the corporation or any of its affiliates,

(i) any act or omission of the corporation or any of its affiliates effects a result,

(ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer; or

(b) where the court is satisfied that,

(i) a unanimous shareholder agreement entitled a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred,

(ii) proceedings have been begun to wind up voluntarily and it is in the interest of contributories and creditors that the proceedings should be continued under the supervision of the court,

(iii) the corporation, though it may not be insolvent, cannot by reason of its liabilities continue its business and it is advisable to wind it up, or

(iv) it is just and equitable for some reason, other than the bankruptcy or insolvency of the corporation, that it should be wound up; or

(c) where the shareholders by special resolution authorize an application to be made to the court to wind up the corporation. R.S.O. 1990, c. B.16, s. 207 (1).

Court order

(2) Upon an application under this section, the court may make such order under this section or section 248 as it thinks fit. R.S.O. 1990, c. B.16, s. 207 (2).

Who may apply

208. (1) A winding-up order may be made upon the application of the corporation or of a shareholder or, where the corporation is being wound up voluntarily, of the liquidator or of a contributory or of a creditor having a claim of \$2,500 or more. R.S.O. 1990, c. B.16, s. 208 (1).

Notice

(2) Except where the application is made by the corporation, four days' notice of the application shall be given to the corporation before the making of the application. R.S.O. 1990, c. B.16, s. 208 (2).

Power of court

209. The court may make the order applied for, may dismiss the application with or without costs, may adjourn the hearing conditionally or unconditionally or may make any interim or other order as is considered just, and upon the making of the order may, according to its practice and procedure, refer the proceedings for the winding up to an officer of the court for inquiry and report and may authorize the officer to exercise such powers of the court as are necessary for the reference. R.S.O. 1990, c. B.16, s. 209.

Appointment of liquidator

210. (1) The court in making the winding-up order may appoint one or more persons as liquidator of the estate and effects of the corporation for the purpose of winding up its business and affairs and distributing its property. R.S.O. 1990, c. B.16, s. 210 (1).

Remuneration

(2) The court may at any time fix the remuneration of the liquidator. R.S.O. 1990, c. B.16, s. 210 (2).

Vacancy

(3) If a liquidator appointed by the court dies or resigns or the office becomes vacant for any reason, the court may by order fill the vacancy. R.S.O. 1990, c. B.16, s. 210 (3).

...

Proceedings against corporation after court winding up

216. After the commencement of a winding up by order of the court,

- (a) no action or other proceeding shall be proceeded with or commenced against the corporation; and
- (b) no attachment, sequestration, distress or execution shall be put in force against the estate or effects of the corporation,

except by leave of the court and subject to such terms as the court imposes. R.S.O. 1990, c. B.16, s. 216.

...

Consequences of winding up

221. (1) Upon a winding up,

- (a) the liquidator shall apply the property of the corporation in satisfaction of all its debts, obligations and liabilities and, subject thereto, shall distribute the property rateably among the shareholders according to their rights and interests in the corporation;

- (b) in distributing the property of the corporation, debts to employees of the corporation for services performed for it due at the commencement of the winding up or within one month before, not exceeding three months' wages and vacation pay accrued for not more than twelve months, shall be paid in priority to the claims of the ordinary creditors, and such persons are entitled to rank as ordinary creditors for the residue of their claims;
- (c) all the powers of the directors cease upon the appointment of a liquidator, except in so far as the liquidator may sanction the continuance of such powers. R.S.O. 1990, c. B.16, s. 221 (1).

Distribution of property

(2) Section 53 of the *Trustee Act* applies with necessary modifications to liquidators. R.S.O. 1990, c. B.16, s. 221 (2).

...

Proving claim

228. For the purpose of proving claims, sections 23, 24 and 25 of the *Assignments and Preferences Act* apply with necessary modifications, except that where the word "judge" is used therein, the word "court" as used in this Act shall be substituted. R.S.O. 1990, c. B.16, s. 228.

...

Oppression remedy

248. (1) A complainant and, in the case of an offering corporation, the Commission may apply to the court for an order under this section. 1994, c. 27, s. 71 (33).

Idem

(2) Where, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates,

- (a) any act or omission of the corporation or any of its affiliates effects or threatens to effect a result;
- (b) the business or affairs of the corporation or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner; or
- (c) the powers of the directors of the corporation or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer of the corporation, the court may make an order to rectify the matters complained of. R.S.O. 1990, c. B.16, s. 248 (2).

Court order

(3) In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order restraining the conduct complained of;

- (b) an order appointing a receiver or receiver-manager;
- (c) an order to regulate a corporation's affairs by amending the articles or by-laws or creating or amending a unanimous shareholder agreement;
- (d) an order directing an issue or exchange of securities;
- (e) an order appointing directors in place of or in addition to all or any of the directors then in office;
- (f) an order directing a corporation, subject to subsection (6), or any other person, to purchase securities of a security holder;
- (g) an order directing a corporation, subject to subsection (6), or any other person, to pay to a security holder any part of the money paid by the security holder for securities;
- (h) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;
- (i) an order requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 154 or an accounting in such other form as the court may determine;
- (j) an order compensating an aggrieved person;
- (k) an order directing rectification of the registers or other records of a corporation under section 250;
- (l) an order winding up the corporation under section 207;
- (m) an order directing an investigation under Part XIII be made; and
- (n) an order requiring the trial of any issue. R.S.O. 1990, c. B.16, s. 248 (3).

Idem

(4) Where an order made under this section directs amendment of the articles or by-laws of a corporation,

- (a) the directors shall forthwith comply with subsection 186 (4); and
- (b) no other amendment to the articles or by-laws shall be made without the consent of the court, until the court otherwise orders. R.S.O. 1990, c. B.16, s. 248 (4).

Shareholder may not dissent

(5) A shareholder is not entitled to dissent under section 185 if an amendment to the articles is effected under this section. R.S.O. 1990, c. B.16, s. 248 (5).

Where corporation prohibited from paying shareholder

(6) A corporation shall not make a payment to a shareholder under clause (3) (f) or (g) if there are reasonable grounds for believing that,

- (a) the corporation is or, after the payment, would be unable to pay its liabilities as they become due; or

(b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities. R.S.O. 1990, c. B.16, s. 248 (6).

Trustee Act

R.S.O. 1990, CHAPTER T.23

Consolidation Period: From December 15, 2009 to the e-Laws currency date.

Last amendment: 2009, c. 34, Sched. T, s. 5.

Distribution of assets under trust deeds for benefit of creditors, or of the assets of intestate

53. (1) A trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally, or of a particular class or classes of creditors, where the creditors are not designated by name therein, or a personal representative who has given such or the like notices as, in the opinion of the court in which such trustee, assignee or personal representative is sought to be charged, would have been directed to be given by the Superior Court of Justice in an action for the execution of the trusts of such deed or assignment, or in an administration suit, for creditors and others to send in to such trustee, assignee or personal representative, their claims against the person for the benefit of whose creditors such deed or assignment is made, or against the estate of the testator or intestate, as the case may be, at the expiration of the time named in the notices, or the last of the notices, for sending in such claims, may distribute the proceeds of the trust estate, or the assets of the testator or intestate, as the case may be, or any part thereof among the persons entitled thereto, having regard to the claims of which the trustee, assignee or representative has then notice, and is not liable for the proceeds of the trust estate, or assets, or any part thereof so distributed to any person of whose claim there was no notice at the time of the distribution. R.S.O. 1990, c. T.23, s. 53 (1); 2000, c. 26, Sched. A, s. 15 (2).

Right of creditor to follow assets not affected

(2) Nothing in this section prejudices the right of any creditor or claimant to follow the proceeds of the trust estate, or assets, or any part thereof into the hands of persons who have received the same. R.S.O. 1990, c. T.23, s. 53 (2).

Subs. (1) not to apply to heirs, etc.

(3) Subsection (1) does not apply to heirs, next of kin, devisees or legatees claiming as such. R.S.O. 1990, c. T.23, s. 53 (3).

Assignments and Preferences Act

R.S.O. 1990, CHAPTER A.33

Consolidation Period: From October 25, 2010 to the e-Laws currency date.

Last amendment: 2010, c. 16, Sched. 4, s. 23.

Voting at meeting

23. At any meeting of creditors, the creditors may vote in person or by proxy authorized in writing, but no creditor whose vote is disputed is entitled to vote until after filing with the assignee an affidavit in proof of the claim, stating the amount and nature thereof. R.S.O. 1990, c. A.33, s. 23.

Scale of votes

24. (1) Subject to section 10, all questions at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows:

1. For every claim of or over \$100 and not exceeding \$200, one vote.
2. For every claim over \$200 and not exceeding \$500, two votes.
3. For every claim over \$500 and not exceeding \$1,000, three votes.
4. For every additional \$1,000 or fraction thereof, one vote. R.S.O. 1990, c. A.33, s. 24 (1).

Upon claims acquired after assignment

(2) No person is entitled to vote on a claim acquired after the assignment unless the entire claim is acquired, but this does not apply to persons acquiring notes, bills or other securities upon which they are liable. R.S.O. 1990, c. A.33, s. 24 (2).

Casting vote

(3) In the case of a tie, the assignee or, if there are two assignees, the assignee nominated for that purpose by the creditors or by the judge, if none has been nominated by the creditors, has a casting vote. R.S.O. 1990, c. A.33, s. 24 (3).

Valuing securities

(4) Every creditor in the proof of claim shall state whether the creditor holds any security for the claim or any part thereof, and if such security is on the estate of the assignor or on the estate of a third person for whom the assignor is only secondarily liable, the creditor shall put a specified value thereon and the assignee, under the authority of the creditors, may either consent to the creditor ranking for the claim after deducting such valuation or may require from the creditor an assignment of the security at an advance of 10 per cent upon the specified value to be paid out of the estate as soon as the assignee has realized the security, and in such case the difference between the value at which the security is retained and the amount of the gross claim of the

creditor is the amount for which the creditor shall rank and vote in respect of the estate. R.S.O. 1990, c. A.33, s. 24 (4).

Right to revalue in certain cases

(5) If a creditor's claim is based upon a negotiable instrument upon which the assignor is only indirectly or secondarily liable and that is not mature or exigible, the creditor shall be considered to hold security within the meaning of this section and shall put a value on the liability of the person primarily liable thereon as being the security for the payment thereof, but after the maturity of such liability and its non-payment the creditor is entitled to amend the claim and revalue the security. R.S.O. 1990, c. A.33, s. 24 (5).

Where creditor holding security fails to value it

(6) Where a person claiming to be entitled to rank on the estate holds security for the claim, or any part thereof, of such a nature that the person is required by this Act to value the security and fails to value it, the judge, upon summary application by the assignee or by any other person interested in the estate, of which application at least three days notice shall be given to the claimant, may order that, unless a specified value be placed on the security and the assignee is notified in writing within a time to be limited by the order, the claimant is, in respect of the claim, or the part thereof for which the security is held in case the security is held for part only of the claim, wholly barred of any right to share in the proceeds of the estate. R.S.O. 1990, c. A.33, s. 24 (6).

Consequences of neglect of order

(7) If a specified value is not placed on the security or the assignee is not notified in writing according to the exigency of the order or within such further time as the judge by subsequent order allows, the claim, or the part, as the case may be, is wholly barred as against the estate, but without prejudice to the liability of the assignor therefor. R.S.O. 1990, c. A.33, s. 24 (7).

Proof of claim

25. (1) All persons claiming to be entitled to rank on the estate shall furnish to the assignee particulars of their claim proved by affidavit and such vouchers as the nature of the case admits. R.S.O. 1990, c. A.33, s. 25 (1).

Limiting time for proof of claim

(2) Where a person claiming to be entitled to rank on the estate does not, within a reasonable time after receiving notice of the assignment and of the name and address of the assignee, furnish to the assignee satisfactory proofs of claim as provided by this and the preceding sections, the judge upon summary application by the assignee or by any other person interested in the estate, of which application at least three days notice shall be given to the claimant, may order that unless the claim is proved to the satisfaction of the judge within a time to be limited by the order, the claimant shall be deemed to be no longer a creditor of the estate and is wholly barred of any right to share in the proceeds thereof. R.S.O. 1990, c. A.33, s. 25 (2).

Consequences of neglect to prove claim

(3) If the claim is not so proved within the time so limited or within such further time as the judge by subsequent order allows, it is wholly barred and the assignee is at

liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the assignor therefor. R.S.O. 1990, c. A.33, s. 25 (3).

Not to interfere with assignees

(4) Subsections (2) and (3) do not interfere with the protection afforded to assignees by section 53 of the *Trustee Act*. R.S.O. 1990, c. A.33, s. 25 (4).

Creditor may prove claim not due

(5) A person whose claim has not accrued due is nevertheless entitled to prove under the assignment and to vote at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time that has to run until the claim becomes due. R.S.O. 1990, c. A.33, s. 25 (5).

Contestation of claim

26. (1) At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of the person's claim, notice of contestation of the claim may be served by the assignee upon the claimant. R.S.O. 1990, c. A.33, s. 26 (1).

Limitation

(2) Within thirty days after the receipt of the notice, or within such further time as the judge allows, an action shall be brought by the claimant against the assignee to establish the claim, and a copy of the statement of claim in the action, or of the claim in case the action is brought in the Small Claims Court, shall be served on the assignee, and in default of such action being brought and statement of claim or claim served within the time limited the claim to rank on the estate is forever barred. R.S.O. 1990, c. A.33, s. 26 (2).

Service on solicitor of assignee

(3) The notice by the assignee shall contain the name and place of business of a solicitor upon whom service of the statement of claim or claim may be made, and service upon the solicitor shall be deemed sufficient service. R.S.O. 1990, c. A.33, s. 26 (3).

Right of assignee to compel plaintiff to proceed with action against assignor

(4) Where prior to the assignment an action has been commenced against the assignor and is pending at the time of the assignment, the assignee may, by notice served upon the plaintiff in the action, require the plaintiff to proceed, and the plaintiff is bound to proceed in that action to establish the claim, instead of bringing an action against the assignee as provided for by subsection (2), and the plaintiff may thereupon apply to the court in which the action is brought for an order adding the assignee as a party defendant in the action, and the assignee may be so added upon such terms as to the costs that may be subsequently incurred as the court or a judge thereof, or the judge making the order, directs. R.S.O. 1990, c. A.33, s. 26 (4).

Procedure where assignee is satisfied but assignor desires to dispute

27. (1) If the assignee is satisfied with the proof adduced in support of a claim but the assignor disputes it, the assignor shall do so by notice in writing to the assignee, stating the grounds of dispute, and the notice shall be given within ten days after the assignor is notified in writing by the assignee that the assignee is satisfied with the proof

adduced and not afterwards unless by leave of the judge. R.S.O. 1990, c. A.33, s. 27 (1).

Where assignee does not require action to be brought

(2) If upon receiving the notice of dispute the assignee does not consider it proper to require the claimant to bring an action to establish the claim, the assignee shall notify the assignor in writing of the fact, and the assignor may thereupon, and within ten days of receiving the notice, apply to the judge for an order requiring the assignee to serve a notice of contestation. R.S.O. 1990, c. A.33, s. 27 (2).

Conditions

(3) The order shall be made only if, after notice to the assignee, the judge is of opinion that there are good grounds for contesting the claim. R.S.O. 1990, c. A.33, s. 27 (3).

Where decision of assignee final

(4) If the assignor does not make such an application, the decision of the assignee is, as against the assignor, final and conclusive. R.S.O. 1990, c. A.33, s. 27 (4).

Decision of judge on validity of claim

(5) If upon the application the claimant consents in writing, the judge may in a summary manner decide the question of the validity of the claim. R.S.O. 1990, c. A.33, s. 27 (5).

Intervention by assignor at trial

(6) If an action is brought by the claimant against the assignee, the assignor may intervene at the trial either personally or by counsel for the purpose of calling and examining or cross-questioning witnesses. R.S.O. 1990, c. A.33, s. 27 (6).

Courts of Justice Act

R.R.O. 1990, REGULATION 194

RULES OF CIVIL PROCEDURE

Consolidation Period: From January 1, 2011 to the e-Laws currency date.

Last amendment: O. Reg. 436/10.

This is the English version of a bilingual regulation.

EXTENSION OR ABRIDGMENT

General Powers of Court

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just. R.R.O. 1990, Reg. 194, r. 3.02 (1).

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed. R.R.O. 1990, Reg. 194, r. 3.02 (2).

Times in Appeals

(3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to an appellate court may be made only by a judge of the appellate court. R.R.O. 1990, Reg. 194, r. 3.02 (3).

Consent in Writing

(4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by filing a consent. O. Reg. 555/96, s. 1; O. Reg. 427/01, s. 2; O. Reg. 438/08, s. 5.

APPLICATION UNDER SECTION 207 OF THE *BUSINESS CORPORATIONS ACT*,
R.S.O. 1990, c. B.16, AS AMENDED

Court File No: CV-12-9594-00CL

IN THE MATTER OF THE WINDING-UP OF COVENTREE INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANT
(Application Returnable February 15, 2012)**

DAVIES WARD PHILLIPS & VINEBERG LLP
44th Floor, 1 First Canadian Place
Toronto Canada M5X 1B1

Robin B. Schwill (LSUC#: 38452I)
Natasha J. MacParland (LSUC#: 42383G)
Steven G. Frankel (LSUC#: 58892E)

Tel: 416.367.6961
Fax: 416.863.0871

Lawyers for the Applicant