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

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 LIQUIDATOR, DUFF & PHELPS CANADA RESTRUCTURING INC.
(Motion Returnable December 14, 2012)

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PART I ~ OVERVIEW

1. Duff & Phelps Canada Restructuring Inc. ("**D&P**") in its capacity as the liquidator (the "**Liquidator**") of Coventree Inc. ("**Coventree**" or the "**Company**") makes this motion for, among other things:

(a) an order declaring that neither the Liquidator nor Coventree is required to comply, or otherwise effect compliance, with the annual shareholder meeting requirement under section 94 of the *Business Corporations Act* (Ontario) (the "**OBCA**" or the "**Act**");

(b) an order exempting the Company from complying with the provisions of Part XII of the OBCA regarding the appointment and duties of an auditor; and

(c) an order declaring that neither the Liquidator nor the Company is required to produce or place before Coventree's shareholders (the "**Shareholders**") any financial statements and an auditor's report thereon as required under section 154 of the OBCA or otherwise.

2. As discussed below, the relief requested on this motion is in furtherance of the objective of winding up the business and affairs of Coventree in an orderly and efficient manner. As a practical matter, it is unclear whether sections 94 and 154 of the OBCA apply when, as with this case, all of the directors of the corporation are deemed to have resigned. Instead, it appears that this void is filled by Part XVI of the OBCA which supplants, among other things, sections 94 and 154 of the Act during a liquidation. Furthermore, the Shareholders will not suffer any prejudice if the requested relief is granted because the holding of extra annual meetings and the presenting of financial statements and an auditor's report at such meetings will have limited, if any, relevance in this case as Coventree is not carrying on any business and its only material assets are cash and cash equivalents. Moreover, it would be costly and time consuming if Coventree or the Liquidator is required to hold extra shareholders' meetings and prepare and produce audited financial statements, and such costs would only serve to reduce the distributions available to the Shareholders. Finally, if it is determined that neither the Liquidator nor Coventree has to comply with sections 94 and 154 of the OBCA, then the provisions of Part XII of the Act would no longer be applicable to the Company. Accordingly, this relief should be granted.

PART II ~ THE FACTS

A. Background

3. Coventree is an Ontario corporation that formerly operated as a specialized financial intermediary. As a core aspect of its business, the Company established special purpose trusts funded by asset-backed commercial paper ("**ABCP**") through which it provided structuring and funding solutions for clients.

Third report of the Liquidator dated December 3, 2012 [**Third Report**], Motion Record, Tab 2, p. 18

4. Coventree has been winding up its business since shortly after the market disruption in the Canadian ABCP market that occurred in August 2007. The Company's primary source of revenue since May 2009 has been limited to interest income earned on cash and cash equivalents held by the Company.

Third Report, Motion Record, Tab 2, p. 19

B. The Liquidation Plan and the Appointment of the Liquidator

5. On June 30, 2010, the Shareholders passed a special resolution authorizing, among other things, the voluntary winding up of Coventree pursuant to section 193 of the OBCA and the distribution of its remaining assets to the Shareholders pursuant to a draft plan of liquidation and distribution.

Third Report, Motion Record, Tab 2, p. 16

6. On January 23, 2012, the board of directors of the Company adopted a final plan of liquidation and distribution (the "**Liquidation Plan**") and subsequently determined that the effective date of the Liquidation Plan and, by extension, the commencement of the winding up of the Company, would be February 15, 2012 (the "**Effective Date**").

Third Report, Motion Record, Tab 2, p. 16

7. Pursuant to the Liquidation Plan, among other things:

(a) D&P was appointed as the Liquidator for the purpose of winding up the Company's business and affairs and distributing its assets;

(b) consistent with section 221 of the OBCA and section 3.3 of the Liquidation Plan, all of the powers of the board of directors of Coventree ceased and the directors were deemed to have resigned on the Effective Date; and

(c) pursuant to section 194 of the OBCA and section 6.1 of the Liquidation Plan, certain individuals were appointed as inspectors (collectively, the "**Inspectors**") of the Company's liquidation.

Third Report, Motion Record, Tab 2A, pp. 47, 52

Business Corporations Act (Ontario), R.S.O. 1990, c. B.16, ss. 194, 221

8. On the Effective Date, the Ontario Superior Court of Justice – Commercial List (the "**Court**") made the following orders: (a) an order (the "**Winding-Up Order**") to have the winding up of Coventree supervised by the Court; and (b) a claims procedure order (the "**Claims Procedure Order**"). Pursuant to the terms of the Winding-Up Order, the Liquidation Plan and the appointment of the Liquidator and Inspectors thereunder were approved and affirmed by the Court.

Third Report, Motion Record, Tab 2, p. 17; Tab 2A, p. 31

9. Since the Effective Date, the Liquidator has conducted a claims process in accordance with the Claims Procedure Order and continues to work towards the

resolution of certain claims. The claims (collectively, the "**Unresolved Claims**") that are still to be resolved are as follows: (a) claims of the Ontario Securities Commission against certain former executives of the Company and corresponding indemnity claims filed by such former executives; (b) a claim relating to the cancellation of a share allocation plan by the Company; and (c) claims of the Canada Revenue Agency against the Company and certain of its subsidiaries, relating to sales, payroll and income taxes.

Third Report, Motion Record, Tab 2, pp. 20-21

10. Coventree's material assets are comprised of cash and cash equivalents in the amount of approximately $17.5 million and a consent to judgment of $5 million against Navigators, the former insurance provider for the Company's directors' and officers' insurance (the "**D&O Claim**").

Third Report, Motion Record, Tab 2, pp. 21-22

C. Delisting of the Common Shares and Reporting Exemptions

11. Prior to the commencement of the liquidation, Coventree's common shares (the "**Shares**") were publicly traded on the NEX, a board of the TSX Venture Exchange. However, the Shares ceased trading on February 14, 2012. There are currently 15,157,138 outstanding Shares.

Third Report, Motion Record, Tab 2, p. 18

12. Until recently, Coventree was a reporting issuer in each of the provinces and has, through the actions of the Liquidator, complied with its reporting obligations in connection therewith. On November 13, 2012, the Ontario Securities Commission (on

its own behalf and on behalf of the other provinces) issued an order deeming Coventree to have ceased being a reporting issuer in each of the provinces in Canada (the "**Reporting Issuer Exemption**"). The Ontario Securities Commission also issued a separate order on November 13, 2012 deeming Coventree to have ceased to be offering its securities to the public for the purposes of the OBCA (together with the Reporting Issuer Exemption, the "**Exemptions**").

Third Report, Motion Record, Tab 2, p. 23; Tab 2F

13. As a result of the Exemptions, Coventree is no longer required to comply with the continuous disclosure and similar provisions under Canadian securities legislation, which previously required it to prepare and file, among other things, annual audited financial statements.

Third Report, Motion Record, Tab 2, p. 24; Tab 2F, pp. 94, 98

14. In light of the Exemptions and the reasons that follow, the Liquidator considers it advisable that the Court make an order declaring that neither it nor the Company is required to comply, or otherwise effect compliance, with the provisions of sections 94 and 154 of the OBCA and exempting the Company from complying with the requirements of Part XII of the OBCA. As discussed below, the Liquidator is of the view that the requested relief will contribute to the orderly and efficient winding up of Coventree and will not cause any prejudice to the Shareholders. In further support of this motion, the Inspectors support the relief sought.

Third Report, Motion Record, Tab 2, pp. 18, 25-26

PART III ~ ISSUES

15. This motion raises three issues:

(a) whether the Liquidator or the Company should be required to comply, or otherwise effect compliance, with the annual shareholders meeting requirement under section 94 of OBCA;

(b) whether the Company should be exempted from the requirements of Part XII of the OBCA regarding the appointment and duties of an auditor; and

(c) whether the Company or the Liquidator should be required to produce or place before the Shareholders any financial statements and an auditor's report thereon as required under section 154 of the OBCA or otherwise.

PART IV ~ LAW AND ARGUMENT

A. The Liquidator and the Company are Unable to Comply, or Otherwise Effect Compliance, with the Requirements of Sections 94 and 154 and Part XII of the OBCA

16. The OBCA sets out certain core obligations of a corporation to its shareholders including the obligation to hold an annual meeting and provide the shareholders at such meeting with a report of the corporation's financial position in the form of financial statements and an auditor's report thereon. These obligations are reflected in sections 94, 154 and Part XII of the OBCA.

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 94, 154

17. Subsection 94(1) of the OBCA provides that the *directors* must call a general annual meeting of all shareholders entitled to vote not later than 15 months after holding the last annual meeting. Alternatively, holders of not less than five percent of the issued voting shares of a corporation may requisition the *directors* to call a meeting of shareholders pursuant to subsection 105(1) of the OBCA.

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 94(1), 105(1)

18. Pursuant to section 149 of Part XII of the OBCA, it is at the annual meeting of shareholders where the shareholders appoint one or more auditors to hold office until the close of the next annual meeting, failing which the *directors* shall forthwith appoint an auditor.

Business Corporations Act, R.S.O. 1990, c. B.16, s. 149

19. The requirement to produce financial statements arises pursuant to subsection 154(1) of the OBCA, which requires the *directors* to place certain information before the shareholders at every annual meeting. This information includes recent financial statements, the report of the auditor and any further information respecting the financial position of the corporation. The *directors* of the corporation must approve the financial statements and the approval must be evidenced by the signature of either one or two directors thereon.

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 154(1), 159(1)

20. The above referenced provisions of the OBCA embody certain duties and powers of *directors* relating to corporate governance including the duty to report to shareholders to account for the manner in which the corporation has performed and the power to manage or supervise the management of the corporation. However, where a liquidator has been appointed, subsection 222(1)(c) of the OBCA stipulates that all the

powers of the directors cease except insofar as the liquidator may sanction the continuance of such powers.

Business Corporations Act, R.S.O. 1990, c. B.16, s. 222(1)(c)

21. In the present case, all of the directors of the Company were deemed to have resigned as of the Effective Date pursuant to the terms of the Liquidation Plan and subsection 221(1) of the OBCA. As a result, there are no directors to call an annual meeting of shareholders as contemplated by subsection 94(1) of the OBCA or to approve and place the financial statements at such meeting as required by subsections 159(1) and 154(1), respectively, of the Act. Given that there are no directors of the Company, the Liquidator cannot even sanction the continuance of the powers of any directors for such a purpose. Furthermore, neither section 94 nor section 154 of the Act contemplate that a person other than the directors of a corporation can fulfill such obligations in the absence of directors.

Third Report, Motion Record, Tab 2, p. 26

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 94, 154, 159(1), 221(1)

22. In fact, it has been held that where a shareholders' meeting is convened by a person other than the directors of a corporation the business conducted at such meeting is void. In *South Shore Development Ltd. v. Snow*, the Nova Scotia Supreme Court made the following statement when considering whether a meeting of shareholders had been properly convened in accordance with the provisions of Nova

Scotia *Companies Act* in light of the fact that all of the directors of the corporation had resigned:

> I am unable to say that the presence of all registered shareholders at the meeting on October 1, 1970 had the effect of overcoming the failure to comply with the explicit requirement of the *Companies Act* for the convening of a meeting in this instance. Any action taken at that meeting was therefore a nullity and this action was not properly authorized.
>
> *South Shore Development Ltd. v. Snow,* [1971] N.S.J. No. 172 at para. 19 (QL), Book of Authorities, Tab 1

23. While subsection 115(4) of the OBCA deems any person who manages the business or the affairs of the corporation to be a director for the purposes of the Act, subsection 115(4) of the OBCA presumes that there is still a business to be managed; whereas in the case of a liquidation, the corporation ceases active operations effective immediately upon it being wound up. Section 198 of the OBCA reflects this fact in providing, in part, that "A corporation being wound up voluntarily shall, from the commencement of its winding up, *cease to carry on its undertaking, except in so far as may be required for the winding up thereof* [...]" (emphasis added). Accordingly, it is submitted that subsection 115(4) does not apply to the present case or the Liquidator.

> *Business Corporations Act,* R.S.O. 1990, c. B.16, ss. 115(4), 198

B. Sections 94, 154 and Part XII of the Act do not Apply in a Liquidation due to the Interrelated Provisions of the OBCA Found in Part XVI of the Act

24. It is reasonable to conclude that the requirement for calling an annual shareholders' meeting, appointing an auditor and the tabling of the audited financial

statements, do not apply in the circumstances of this case because Part XVI of the OBCA contains a self-contained set of requirements that govern the liquidation of Coventree.

> *Business Corporations Act,* R.S.O. 1990, c. B.16, ss. 94, 149, 154

25. Part XVI of the OBCA is comprised of sections 192 through 236, which provide a comprehensive set of rights and obligations that apply when a corporation is being wound up. Section 192 of the Act explicitly provides that sections 193 to 205 apply to a corporation being wound up voluntarily. In the case of a corporation being wound up pursuant to a court order, section 206 of the Act specifically mandates that sections 207 to 218 apply to such corporation. Finally, section 219 of the Act provides that sections 220 to 236 apply to corporations being wound up voluntarily or by order of the court. Nowhere in Part XVI of the Act does it provide that a corporation that is being wound up is required to hold an annual shareholders meeting and present financial statements and an auditor's report at such meeting pursuant to subsections 94(1) and 154(1) of the Act, respectively, or ensure compliance with Part XII of the OBCA.

> *Business Corporations Act,* R.S.O. 1990, c. B.16, Part XVI, ss. 94, 154

26. In fact, when Part XVI of Act is read with sections 94 and 154 of the Act, it becomes apparent that Part XVI of the OBCA is intended to operate in exclusion to, rather than in addition to, such sections of the Act. For example, similar to subsection 94(1) of the Act, where a winding up continues for more than one year, subsection 201(2) requires the liquidator to call a meeting of the shareholders at the end of the first

year and of each succeeding year from the commencement of the winding up. No shareholders resolutions or approvals, however, are required at such a meeting.

Business Corporations Act, R.S.O. 1990, c. B.16, s. 201

27. Similarly, subsection 201(2) of the Act, comparable to subsection 154(1) of the OBCA, directs the liquidator to place specific information before the meeting of shareholders. Instead of placing financial statements and an auditor's report at such meeting, however, the liquidator is required by subsection 201(2) to lay before the meeting an account showing the liquidator's acts and dealings and the manner in which the winding up has been conducted during the immediately preceding year.

Business Corporations Act, R.S.O. 1990, c. B.16, s. 201

28. In compliance with section 201(2) of the OBCA, the Liquidator will be calling an annual meeting of the Shareholders on or before February 15, 2013 where it will provide the Shareholders with information pertaining to its acts and dealings and the manner in which Coventree has been wound up since the Effective Date.

Third Report, Motion Record, Tab 2, p. 26

29. Section 205 of the OBCA also imposes obligations on a liquidator that are analogous to sections 94 and 154 of the Act. Once the winding up of a corporation has been completed, the liquidator is required by section 205 of the OBCA to hold a meeting to make a final accounting to the shareholders and allow the shareholders to hear any explanations that may be given by the liquidator with respect to accounts presented at such meeting.

Business Corporations Act, R.S.O. 1990, c. B.16, s. 205

30. Section 205 of the Act also provides that any shareholders meeting called pursuant thereto shall be called in the manner prescribed by the articles or by-laws or, in default thereof, *in the manner prescribed by the Act for the calling of meetings of shareholders* (emphasis added). In light of the fact that the Act prescribes that shareholders meetings are called by pursuant to section 94 thereof, this language could be interpreted as incorporating section 94 into section 205 of the OBCA. However, section 205 of the OBCA only incorporates section 94 as a default if the articles or by-laws don't provide for such rules and for the limited purpose of prescribing a methodology for calling a meeting of shareholders. In fact, the foregoing language in section 205 lends support to the view that a corporation being wound up is not required to call a shareholders' meeting pursuant to section 94 of the OBCA, or otherwise comply with the other parts of the Act; if it was intended that a corporation being wound up would be required to comply with these obligations, there would be explicit language to that effect in Part XVI of the Act.

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 94, 205

31. Although there is no case law that addresses whether a corporation that is being wound up must adhere to sections 94, 154 and Part XII of the OBCA, it is submitted that in absence of case law and given the comprehensive language in Part XVI of the OBCA, the only commercially reasonable interpretation of Part XVI of the Act and, in particular sections 201 and 205, is that it supplants the provisions of the OBCA imposing obligations on an active, operating company to hold annual shareholders'

meetings, place financial statements and an auditor's report before such meetings and comply with Part XII of the Act.

C. The Shareholders Will Not Suffer any Prejudice if the Relief Sought is Granted

32. The OBCA protects the interests of the shareholders of an active corporation by providing them with certain interrelated rights, including the right to vote and the right to receive information concerning the corporation. It is typically at the annual meeting where these rights are exercised. Specifically, the OBCA permits various aspects of the affairs of the corporation to be decided by a resolution formally submitted to, and voted upon, at a meeting of shareholders. The shareholders generally exercise their vote on the basis of information that they have received about the performance of the corporation. As a result, the shareholders are entitled to receive an accounting from the directors concerning the manner in which they have conducted the business and affairs of the corporation. Such an accounting is provided when the financial statements, together with the auditor's report verifying the accuracy of such financial statements, are presented at the annual meeting of the shareholders.

> Igor Ellyn & Karine de Champlain, "Shareholders' Remedies in Canada" (Paper delivered at the Conference of the Centre for International Legal Studies, Whistler, April 2005) at 4-5, Book of Authorities, Tab 2
>
> *Business Corporations Act,* R.S.O. 1990, c. B.16, ss. 115, 119(4), 149, 154

33. The Supreme Court of Canada in *Hercules Managements Ltd. v. Ernst & Young* made the following observations about the rights exercisable by shareholders at an annual meeting:

> [T]he directors of a corporation are required to place the auditor's report before the shareholders at the annual meeting in order to permit the shareholders, as a body, to make decisions as to the manner in which they want the corporation to be managed, to assess the performance of the directors and officers, and to decide whether or not they wish to retain the existing management or to have them replaced.
>
> *Hercules Managements Ltd. v. Ernst & Young*, [1997] 2 S.C.R. 165 at para. 49 (QL), Book of Authorities, Tab 3

34. In a liquidation, such oversight and shareholder rights in this regard no longer have any meaning. As noted by Kevin McGuiness in *Canadian Business Corporations Law* :

> The two basic rights of the shareholders in a liquidation of a corporation are: (1) to insist upon an accounting by the liquidator of his or her conduct of the liquidation and the property of the corporation disposed of; and (2) after application of the property of the corporation in satisfaction of all of its debts, obligations and other liabilities, to receive a ratable distribution among themselves of the remaining property of the corporation, according to the rights and interests of each shareholder concerned in the corporation.
>
> Kevin P. McGuinness, *Canadian Business Corporations Law*, 2d ed. (Markham: LexisNexis, 2007) at 1597, Book of Authorities, Tab 4

35. Part XVI of the Act explicitly provides for these two basic rights and also contains certain provisions to promote their realization, including the requirement that the liquidator obtain shareholder approval of any sale of the property or business of the corporation where it will accept shares or other like interest as consideration for the transaction.

Business Corporations Act, R.S.O. 1990, c. B.16, ss. 201, 204-205, 221

36. In the present case, the Shareholders have received, and will continue to receive throughout the course of the liquidation, information relating to the conduct of the Liquidator and the property of Coventree disposed of. Specifically, the Liquidator is required by section 4.4 of the Liquidation Plan to report to the Shareholders at such times as it deems appropriate with respect to all matters relating to the assets, the Company and such other matters as may be relevant to the Liquidation Plan. In fact, the Liquidator has established a website in respect of Coventree where it regularly posts information pertaining to the liquidation, including all material court filings, press releases and notices. In addition, the Liquidator is required to report to the Court on matters relating to the liquidation of Coventree from to time, which reports are made publicly available on the Liquidator's website. Lastly, as described above, the Liquidator will be holding an annual meeting of the Shareholders in accordance with section 201(2) of the OBCA where it will, among other things, provide an account of the Liquidator's acts and dealings and the manner in which the winding up has been conducted since the Effective Date.

Third Report, Motion Record, Tab 2, pp. 25-26

Business Corporations Act, R.S.O. 1990, c. B.16, s. 201(2)

37. Moreover, at this juncture the only financial information that is relevant for the Shareholders relates to the estimated amount of any future distribution; specifically, the value of the assets held by the Company and the status of any Unresolved Claims. The assets and liabilities of the Company can easily be determined for this purpose

without the need to engage an auditor to verify the accuracy of such information. As described above, Coventree has ceased any active business operations and the Company's only assets consist of cash, cash equivalents and the D&O Claim. Furthermore, as a result of the claims process, any claims of the Company's creditors are known to the Liquidator or have been barred pursuant to the Claims Procedure Order. Moreover, the Shareholders will receive reports on the status of Unresolved Claims as a result of the Liquidator's ongoing reporting obligations described above. Consequently, the analysis or verification involved with an auditor's report is no longer appropriate or applicable in the case of Coventree.

38. It is reasonable, therefore, to conclude that the rights ordinarily afforded to the Shareholders under sections 94, 154 and Part XII of the OBCA are either wholly supplanted by Part XVI of the Act or no longer relevant due to the liquidation. As a result, if the order requested on this motion was granted, it would not prejudice the Shareholders.

D. It Would Not be Commercially Reasonable to Require the Company or the Liquidator to Comply, or Effect Compliance, with Sections 94 and 154 of the OBCA

39. While no party would suffer prejudice if the relief sought is granted, the Shareholders will suffer prejudice if the motion is dismissed and the Company or the Liquidator is required to expend considerable time and expense in calling extra shareholders' meetings and preparing financial statements and an auditor's report thereon.

40. In the present case, the Liquidator has estimated expenses of at least $150,000 per year to engage the Company's auditor to review Coventree's financial statements and issue a report in connection therewith.

Third Report, Motion Record, Tab 2, p. 26

41. Kevin McGuinness in *Canadian Business Corporations Law* notes that one of the objectives of the winding up provisions of the OBCA is "The minimization of the administrative and professional costs associated with resolving all outstanding issues relating to the business and affairs of the corporation [...]" He also makes the following observation with respect to costs of a liquidation: "There is an implicit intent in any liquidation proceeding that it be concluded as quickly as the circumstances will allow – ideally with the minimum of expense consistent with the prudent administration of the corporation and the closure of its estate."

Kevin P. McGuinness, *Canadian Business Corporations Law*, 2d ed. (Markham: LexisNexis, 2007) at 1579, 1584, Book of Authorities, Tab 4

42. As described above, the business and financial affairs of Coventree have evolved to the point where a shareholders meeting held pursuant to subsection 94(1) of the Act and the presenting of financial statements and an auditor's report at such meeting have limited relevance, if any, to the Shareholders. As a result, the cost and time involved with complying with such obligations are no longer commercially reasonable and would only serve to diminish the amounts available for distribution to the Shareholders.

E. It is not Appropriate or Necessary to Require the Appointment of an Auditor or Ensure Compliance with Part XII of the Act in the Circumstances

43. For the reasons described in paragraphs 32 through 42 above, the Liquidator is of the view that there would be no prejudice to the Shareholders if the Liquidator and Coventree were exempted from the requirement to prepare and produce financial statements and an auditor's report and it would be commercially unreasonable to enforce such requirement in the circumstances of this case. If it is determined that neither the Liquidator nor Coventree has to comply with sections 94 and 154 of the OBCA, the Company would no longer require the services of an auditor and, as a result, the provisions of Part XII of the Act would not be applicable to Coventree.

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

44. Section 229 of the Act authorizes the Liquidator to bring applications to the Court for orders and directions in any matter arising in the winding up of the Company. The ability for the Liquidator to apply to this Court for advice and directions is also contained in paragraph 21 of the Winding-Up Order.

Third Report, Motion Record, Tab 2A, p. 36

Business Corporations Act, R.S.O. 1990, c. B.16, s. 229

45. 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". Subsection 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, 248(3)

46. 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

47. Canadian Courts have interpreted this provision and an equivalent provision in the *Winding-up and Restructuring 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 Hillcrest Housing Ltd., [1992] P.E.I.J. No. 17 at 4-5 (S.C. (T.D.)) (QL), aff'd [1992] P.E.I.J. No. 83 (C.A.) at 5-7; Book of Authorities, Tab 5

48. The relief requested in the draft Order is in furtherance of the objective of effecting the winding up in an orderly and efficient manner. In the circumstances, it would be just and equitable to grant the relief sought, and the Court should do so under its subsection 207(2) powers.

PART V ~ CONCLUSION

49. For all of the foregoing reasons, the Liquidator respectfully requests that this motion be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

December 12, 2012

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Tab A

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Business Corporations Act*, R.S.O 1980, c. 54

2. *South Shore Development Ltd. v. Snow*, [1971] N.S.J. No. 172 (QL)

3. Igor Ellyn & Karine de Champlain, "Shareholders' Remedies in Canada" (Paper delivered at the Conference of the Centre for International Legal Studies, Whistler, April 2005)

4. *Hercules Managements Ltd. v. Ernst & Young*, [1997] 2 S.C.R. 165 (QL)

5. Kevin P. McGuinness, *Canadian Business Corporations Law*, 2d ed. (Markham: LexisNexis, 2007)

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)

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 VII
SHAREHOLDERS

...

Shareholders' meetings

94. (1) Subject to subsection 104 (1), the directors of a corporation,

(a) shall call an annual meeting of shareholders not later than eighteen months after the corporation comes into existence and subsequently not later than fifteen months after holding the last preceding annual meeting; and

(b) may at any time call a special meeting of shareholders. R.S.O. 1990, c. B.16, s. 94.

Meeting by electronic means

(2) Unless the articles or the by-laws provide otherwise, a meeting of the shareholders may be held by telephonic or electronic means and a shareholder who, through those means, votes at the meeting or establishes a communications link to the meeting shall be deemed for the purposes of this Act to be present at the meeting. 2001, c. 9, Sched. D, s. 2 (3).

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Requisition for shareholders meeting

105. (1) The holders of not less than 5 per cent of the issued shares of a corporation that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition. R.S.O. 1990, c. B.16, s. 105 (1).

Idem

(2) The requisition referred to in subsection (1) shall state the business to be transacted at the meeting and shall be sent to the registered office of the corporation. R.S.O. 1990, c. B.16, s. 105 (2).

Duty of directors to call meeting

(3) Upon receiving the requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition unless,

(a) a record date has been fixed under subsection 95 (2) and notice thereof has been given under subsection 95 (4);

(b) the directors have called a meeting of shareholders and have given notice thereof under section 96; or

(c) the business of the meeting as stated in the requisition includes matters described in clauses 99 (5) (b) to (d). R.S.O. 1990, c. B.16, s. 105 (3).

Where requisitionist may call meeting

(4) Subject to subsection (3), if the directors do not within twenty-one days after receiving the requisition referred to in subsection (1) call a meeting, any shareholder who signed the requisition may call the meeting. R.S.O. 1990, c. B.16, s. 105 (4).

Calling of meeting

(5) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called under the by-laws, this Part and Part VIII. R.S.O. 1990, c. B.16, s. 105 (5).

Repayment of expenses

(6) The corporation shall reimburse the shareholders for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting unless the shareholders have not acted in good faith and in the interest of the shareholders of the corporation generally. R.S.O. 1990, c. B.16, s. 105 (6).

...

PART IX
DIRECTORS AND OFFICERS

Directors

115. (1) Subject to any unanimous shareholder agreement, the directors shall manage or supervise the management of the business and affairs of a corporation. R.S.O. 1990, c. B.16, s. 115 (1).

Board of directors

(2) A corporation shall have a board of directors which shall consist of,

(a) in the case of a corporation that is not an offering corporation, at least one individual; and

(b) in the case of a corporation that is an offering corporation, not fewer than three individuals. R.S.O. 1990, c. B.16, s. 115 (2); 1994, c. 27, s. 71 (11).

Idem

(3) At least one-third of the directors of an offering corporation shall not be officers or employees of the corporation or any of its affiliates. R.S.O. 1990, c. B.16, s. 115 (3).

Deemed directors

(4) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the corporation shall be deemed to be a director for the purposes of this Act. 1994, c. 27, s. 71 (12).

Exceptions

(5) Subsection (4) does not apply to,

(a) an officer who manages the business of the corporation under the direction or control of a shareholder or other person;

(b) a lawyer, accountant or other professional who participates in the management of the corporation solely for the purposes of providing professional services; or

(c) a trustee in bankruptcy, receiver, receiver-manager or secured creditor who participates in the management of the corporation or exercises control over its property solely for the purposes of enforcement of a security agreement or administration of a bankrupt's estate, in the case of a trustee in bankruptcy. 1994, c. 27, s. 71 (12).

...

First directors

119. (1) Each director named in the articles shall hold office from the date of endorsement of the certificate of incorporation until the first meeting of shareholders. R.S.O. 1990, c. B.16, s. 119 (1).

Resignation

(2) Until the first meeting of shareholders, the resignation of a director named in the articles shall not be effective unless at the time the resignation is to become effective a successor has been elected or appointed. 1994, c. 27, s. 71 (13).

Powers and duties

(3) The first directors of a corporation named in the articles have all the powers and duties and are subject to all the liabilities of directors. R.S.O. 1990, c. B.16, s. 119 (3).

Election of directors

(4) Subject to clause 120 (a), shareholders of a corporation shall elect, at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, directors to hold office for a term expiring not later than the close of the third annual meeting of shareholders following the election. R.S.O. 1990, c. B.16, s. 119 (4).

Term for directors

(5) It is not necessary that all directors elected at a meeting of shareholders hold office for the same term. R.S.O. 1990, c. B.16, s. 119 (5).

Idem

(6) A director not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his or her election. R.S.O. 1990, c. B.16, s. 119 (6).

Idem

(7) Despite this section, if directors are not elected at a meeting of shareholders the incumbent directors continue in office until their successors are elected. R.S.O. 1990, c. B.16, s. 119 (7).

Failure to elect required number of directors

(8) If a meeting of shareholders fails to elect the number of directors required by the articles or by section 125 by reason of the disqualification, incapacity or death of one or more candidates, the directors elected at that meeting, if they constitute a quorum, may exercise all the powers of the directors of the corporation pending the holding of a meeting of shareholders in accordance with subsection 124 (3). R.S.O. 1990, c. B.16, s. 119 (8).

Consent required

(9) Subject to subsection (10), the election or appointment of a director under this Act is not effective unless the person elected or appointed consents in writing before or within 10 days after the date of the election or appointment. 1999, c. 12, Sched. F, s. 8.

Later consent

(10) If the person elected or appointed consents in writing after the time period mentioned in subsection (9), the election or appointment is valid. 1999, c. 12, Sched. F, s. 8.

Exception

(11) Subsection (9) does not apply to a director who is re-elected or re-appointed where there is no break in the director's term of office. 1999, c. 12, Sched. F, s. 8.

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PART XII
AUDITORS AND FINANCIAL STATEMENTS

Exemption from audit requirements

148. In respect of a financial year of a corporation, the corporation is exempt from the requirements of this Part regarding the appointment and duties of an auditor if,

(a) the corporation is not an offering corporation; and

(b) all of the shareholders consent in writing to the exemption in respect of that year. 1998, c. 18, Sched. E, s. 23.

Auditors

149. (1) The shareholders of a corporation at their first annual or special meeting shall appoint one or more auditors to hold office until the close of the first or next annual meeting, as the case may be, and, if the shareholders fail to do so, the directors shall forthwith make such appointment or appointments. R.S.O. 1990, c. B.16, s. 149 (1).

Idem

(2) The shareholders shall at each annual meeting appoint one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed. R.S.O. 1990, c. B.16, s. 149 (2).

Casual vacancy

(3) The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act. R.S.O. 1990, c. B.16, s. 149 (3).

Removal of auditor

(4) The shareholders may, except where the auditor has been appointed by order of the court under subsection (8), by resolution passed by a majority of the votes cast at a special meeting duly called for the purpose, remove an auditor before the expiration of the auditor's term of office, and shall by a majority of the votes cast at that meeting appoint a replacement for the remainder of the auditor's term. R.S.O. 1990, c. B.16, s. 149 (4).

Notice to auditor

(5) Before calling a special meeting for the purpose specified in subsection (4) or an annual or special meeting where the board is not recommending the reappointment of the incumbent auditor, the corporation shall, fifteen days or more before the mailing of the notice of the meeting, give to the auditor,

(a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and

(b) a copy of all material proposed to be sent to shareholders in connection with the meeting. R.S.O. 1990, c. B.16, s. 149 (5).

Right of auditor to make representations

(6) An auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing, concerning,

(a) the auditor's proposed removal as auditor;

(b) the appointment or election of another person to fill the office of auditor; or

(c) the auditor's resignation as auditor,

and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholders entitled to receive notice of the meeting. R.S.O. 1990, c. B.16, s. 149 (6).

Remuneration

(7) The remuneration of an auditor appointed by the shareholders shall be fixed by the shareholders, or by the directors if they are authorized so to do by the shareholders, and the remuneration of an auditor appointed by the directors shall be fixed by the directors. R.S.O. 1990, c. B.16, s. 149 (7).

Appointment by court

(8) If a corporation does not have an auditor, the court may, upon the application of a shareholder or the Director, appoint and fix the remuneration of an auditor to hold office until an auditor is appointed by the shareholders. R.S.O. 1990, c. B.16, s. 149 (8).

Notice of appointment

(9) The corporation shall give notice in writing to an auditor of the auditor's appointment forthwith after the appointment is made. R.S.O. 1990, c. B.16, s. 149 (9).

Resignation of auditor

150. A resignation of an auditor becomes effective at the time a written resignation is sent to the corporation or at the time specified in the resignation, whichever is later. R.S.O. 1990, c. B.16, s. 150.

Auditor's attendance at shareholders' meetings

151. (1) The auditor of a corporation is entitled to receive notice of every meeting of shareholders and, at the expense of the corporation, to attend and be heard thereat on matters relating to the auditor's duties. R.S.O. 1990, c. B.16, s. 151 (1).

Auditor's attendance may be required

(2) If any director or shareholder of a corporation, whether or not the shareholder is entitled to vote at the meeting, gives written notice, not less than five days or more before a meeting of shareholders, to the auditor or a former auditor of the corporation, the auditor or former auditor shall attend the meeting at the expense of the corporation and answer questions relating to the auditor's duties. R.S.O. 1990, c. B.16, s. 151 (2).

Notice to corporation

(3) A director or shareholder who sends a notice referred to in subsection (2) shall send concurrently a copy of the notice to the corporation. R.S.O. 1990, c. B.16, s. 151 (3).

Replacing auditor

(4) No person shall accept appointment or consent to be appointed as auditor of a corporation if the person is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire until the person has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, that auditor is to be replaced. R.S.O. 1990, c. B.16, s. 151 (4).

Idem

(5) Despite subsection (4), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a corporation if, within fifteen days after making the request referred to in that subsection, the person does not receive a reply. R.S.O. 1990, c. B.16, s. 151 (5).

Idem

(6) Any interested person may apply to the court for an order declaring an auditor to be disqualified and the office of auditor to be vacant if the auditor has not complied with subsection (4), unless subsection (5) applies with respect to the appointment of the auditor. R.S.O. 1990, c. B.16, s. 151 (6).

Statement by auditor privileged

(7) Any oral or written statement or report made under this Act by the auditor or former auditor of the corporation has qualified privilege. R.S.O. 1990, c. B.16, s. 151 (7).

Disqualification as auditor

152. (1) Subject to subsection (5), a person is disqualified from being an auditor of a corporation if the person is not independent of the corporation, all of its affiliates, or of the directors or officers of the corporation and its affiliates. R.S.O. 1990, c. B.16, s. 152 (1).

Independence

(2) For the purposes of this section,

(a) independence is a question of fact; and

(b) a person is deemed not to be independent if the person or the person's business partner,

(i) is a business partner, director, officer or employee of the corporation or any of its affiliates, or a business partner of any director, officer or employee of the corporation or any of its affiliates,

(ii) beneficially owns directly or indirectly or exercises control or direction over a material interest in the securities of the corporation or any of its affiliates, or

(iii) has been a receiver, receiver and manager, liquidator or trustee in bankruptcy of the corporation or any of its affiliates within two years of the person's proposed appointment as auditor of the corporation. R.S.O. 1990, c. B.16, s. 152 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 152 is amended by adding the following subsection:

Business partners

(2.1) For the purposes of subsection (2), a person's business partner includes a shareholder of the person. 2011, c. 1, Sched. 2, s. 1 (8).

See: 2011, c. 1, Sched. 2, ss. 1 (8), 9 (2).

Resignation by auditor

(3) An auditor who becomes disqualified under this section shall, subject to subsection (5), resign forthwith upon becoming aware of such disqualification. R.S.O. 1990, c. B.16, s. 152 (3).

Application to court

(4) An interested person may apply to the court for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant. R.S.O. 1990, c. B.16, s. 152 (4).

(5) Repealed: 2004, c. 19, s. 3 (4).

(6) Repealed: 2004, c. 19, s. 3 (4).

Examination by auditor

153. (1) An auditor of a corporation shall make such examination of the financial statements required by this Act to be placed before shareholders as is necessary to enable the auditor to report thereon and the auditor shall report as prescribed and in accordance with generally accepted auditing standards. R.S.O. 1990, c. B.16, s. 153 (1).

Reporting error

(2) A director or an officer of a corporation shall forthwith notify the audit committee and the auditor or the former auditor of any error or misstatement of which he or she becomes aware in a financial statement that the auditor or the former auditor has reported upon if the error or misstatement in all the circumstances appears to be significant. R.S.O. 1990, c. B.16, s. 153 (2).

Idem

(3) If the auditor or former auditor of a corporation is notified or becomes aware of an error or misstatement in a financial statement upon which he or she has reported, and if in his or her opinion the error or misstatement is material, the auditor or former auditor shall inform each director accordingly. R.S.O. 1990, c. B.16, s. 153 (3).

Amendment of auditor's report

(4) When under subsection (3) the auditor or former auditor informs the directors of an error or misstatement in a financial statement, the directors shall within a reasonable time,

(a) prepare and issue revised financial statements; or

(b) otherwise inform the shareholders. R.S.O. 1990, c. B.16, s. 153 (4).

Right of access

(5) Upon the demand of an auditor of a corporation, the present or former directors, officers, employees or agents of the corporation shall furnish such,

(a) information and explanations; and

(b) access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under this section and that the directors, officers, employees or agents are reasonably able to furnish. R.S.O. 1990, c. B.16, s. 153 (5).

Furnishing information

(6) Upon the demand of the auditor of a corporation, the directors of the corporation shall,

(a) obtain from the present or former directors, officers, employees and agents of any subsidiary of the corporation the information and explanations that the present or former directors, officers, employees and agents are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under this section; and

(b) furnish the information and explanations so obtained to the auditor. R.S.O. 1990, c. B.16, s. 153 (6).

Idem

(7) Any oral or written communication under this section between the auditor or former auditor of a corporation and its present or former directors, officers, employees or agents or those of any subsidiary of the corporation, has qualified privilege. R.S.O. 1990, c. B.16, s. 153 (7).

Information to be laid before annual meeting

154. (1) The directors shall place before each annual meeting of shareholders,

(a) in the case of a corporation that is not an offering corporation, financial statements for the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting;

(b) in the case of a corporation that is an offering corporation, the financial statements required to be filed under the *Securities Act* and the regulations thereunder relating separately to,

(i) the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, and

(ii) the immediately preceding financial year, if any;

(c) the report of the auditor, if any, to the shareholders; and

(d) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement. R.S.O. 1990, c. B.16, s. 154 (1).

Auditor's report

(2) Except as provided in subsection 104 (1), the report of the auditor to the shareholders shall be open to inspection at the annual meeting by any shareholder. R.S.O. 1990, c. B.16, s. 154 (2).

Copy of documents to shareholders, offering corporations

(3) Not less than 21 days before each annual meeting of shareholders or before the signing of a resolution under clause 104 (1) (b) in lieu of the annual meeting, an offering corporation shall send a copy of the documents referred to in this section to all shareholders who have informed the corporation that they wish to receive a copy of those documents. 2006, c. 34, Sched. B, s. 30.

Non-offering corporations

(4) Not less than 10 days before each annual meeting of shareholders or before the signing of a resolution under clause 104 (1) (b) in lieu of the annual meeting, a corporation that is not an offering corporation shall send a copy of the documents

referred to in this section to all shareholders other than those who have informed the corporation in writing that they do not wish to receive a copy of those documents. 2006, c. 34, Sched. B, s. 30.

Preparation of financial statements

155. The financial statements required under this Act shall be prepared as prescribed by regulation and in accordance with generally accepted accounting principles. R.S.O. 1990, c. B.16, s. 155.

Filing by offering corporation

156. An offering corporation shall prepare and file with the Commission the financial statements required under Part XVIII of the *Securities Act*. R.S.O. 1990, c. B.16, s. 156.

Financial statements of subsidiaries

157. (1) True copies of the latest financial statements of each subsidiary of a holding corporation shall be kept on hand by the holding corporation at its registered office and shall be open to examination by the shareholders of the holding corporation and their agents and legal representatives who may make extracts therefrom free of charge on request during the normal business hours of the holding corporation. R.S.O. 1990, c. B.16, s. 157 (1).

Application to court

(2) A corporation may, within fifteen days after a request to examine under subsection (1), apply to the court for an order barring the right of any person to so examine, and the court may, if satisfied that such examination would be detrimental to the corporation or a subsidiary body corporate, bar such right and make any further order it thinks fit. R.S.O. 1990, c. B.16, s. 157 (2).

Audit committee

158. (1) A corporation that is an offering corporation shall, and any other corporation may, have an audit committee composed of not fewer that three directors of the corporation, a majority of whom are not officers or employees of the corporation or any of its affiliates, to hold office until the next annual meeting of the shareholders. R.S.O. 1990, c. B.16, s. 158 (1).

Exemption

(1.1) The Commission may, on the application of a corporation, authorize the corporation to dispense with an audit committee, and the Commission may, if satisfied that the shareholders will not be prejudiced, permit the corporation to dispense with an audit committee on any reasonable conditions that the Commission thinks fit. 2006, c. 34, Sched. B, s. 31.

Idem

(2) An audit committee shall review the financial statements of the corporation and shall report thereon to the board of directors of the corporation before such financial statements are approved under section 159. R.S.O. 1990, c. B.16, s. 158 (2).

Auditor may attend committee meetings

(3) The auditor of a corporation is entitled to receive notice of every meeting of the audit committee and, at the expense of the corporation, to attend and be heard thereat,

and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor. R.S.O. 1990, c. B.16, s. 158 (3).

Calling meetings of committee

(4) The auditor of a corporation or a member of the audit committee may call a meeting of the committee. R.S.O. 1990, c. B.16, s. 158 (4).

Right of auditor to be heard

(5) The auditor of a corporation shall be entitled to attend at the expense of the corporation and be heard at meetings of the board of directors of the corporation on matters relating to the auditor's duties. R.S.O. 1990, c. B.16, s. 158 (5).

Approval by directors

159. (1) The financial statements shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign or by the director where there is only one, and the auditor's report, unless the corporation is exempt under section 148, shall be attached to or accompany the financial statements. R.S.O. 1990, c. B.16, s. 159 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "by two of the directors duly authorized to sign or by the director where there is only one" and substituting "of any director authorized to sign". See: 2010, c. 16, Sched. 5, ss. 1 (2), 7 (2).

Publishing, etc., copies of financial statements

(2) A corporation shall not issue, publish or circulate copies of the financial statements, referred to in section 154 unless the financial statements are,

(a) approved and signed in accordance with subsection (1); and

(b) accompanied by the report of the auditor of the corporation, if any. R.S.O. 1990, c. B.16, s. 159 (2).

Interim financial statement

160. (1) Within 60 days after the date that an interim financial statement required to be filed under the *Securities Act* and the regulations made under that Act is prepared, an offering corporation shall send a copy of the interim financial statement to all shareholders who have informed the corporation that they wish to receive a copy. 2006, c. 34, Sched. B, s. 32.

Address

(2) The interim financial statement referred to in subsection (1) shall be sent to a shareholder's latest address as shown on the records of the corporation. 2006, c. 34, Sched. B, s. 32.

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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).

Inspectors

194. The shareholders of a corporation being wound up voluntarily may delegate to any committee of shareholders, contributories or creditors, hereinafter referred to as inspectors, the power of appointing the liquidator and filling any vacancy in the office of liquidator, or may enter into any arrangement with creditors of the corporation with respect to the powers to be exercised by the liquidator and the manner in which they are to be exercised. R.S.O. 1990, c. B.16, s. 194.

Vacancy in office of liquidator

195. If a vacancy occurs in the office of liquidator by death, resignation or otherwise, the shareholders may, subject to any arrangement the corporation may have entered into with its creditors upon the appointment of inspectors, fill such vacancy, and a meeting for that purpose may be called by the continuing liquidator, if any, or by any shareholder or contributory, and shall be deemed to have been duly held if called in the manner prescribed by the articles or by-laws of the corporation, or, in default thereof, in the manner prescribed by this Act for calling meetings of the shareholders of the corporation. R.S.O. 1990, c. B.16, s. 195.

Removal of liquidator

196. The shareholders of a corporation may by ordinary resolution passed at a meeting called for that purpose remove a liquidator appointed under section 193, 194 or 195, and in such case shall appoint a replacement. R.S.O. 1990, c. B.16, s. 196.

Commencement of winding up

197. A voluntary winding up commences at the time of the passing of the resolution requiring the winding up or at such later time as may be specified in the resolution. R.S.O. 1990, c. B.16, s. 197.

Corporation to cease business

198. A corporation being wound up voluntarily shall, from the commencement of its winding up, cease to carry on its undertaking, except in so far as may be required as beneficial for the winding up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidator taking place after the commencement of its winding up, are void, but its corporate existence and all its corporate powers, even if it is otherwise provided by its articles or by-laws, continue until its affairs are wound up. R.S.O. 1990, c. B.16, s. 198.

No proceedings against corporation after voluntary winding up except by leave

199. After the commencement of a voluntary winding up,

(a) no action or other proceeding shall be 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. 199.

List of contributories and calls

200. (1) Upon a voluntary winding up, the liquidator,

(a) shall settle the list of contributories; and

(b) may, before the liquidator has ascertained the sufficiency of the property of the corporation, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay any sum that the liquidator considers necessary for satisfying the liabilities of the corporation and the costs, charges and expenses of winding up and for adjusting the rights of the contributories among themselves. R.S.O. 1990, c. B.16, s. 200 (1).

List is proof

(2) A list settled by the liquidator under clause (1) (a) is, in the absence of evidence to the contrary, proof of the liability of the persons named therein to be contributories. R.S.O. 1990, c. B.16, s. 200 (2).

Default on calls

(3) The liquidator in making a call under clause (1) (b) may take into consideration the probability that some of the contributories upon whom the call is made may partly or wholly fail to pay their respective portions of the call. R.S.O. 1990, c. B.16, s. 200 (3).

Meetings of corporation during winding up

201. (1) The liquidator may, during the continuance of the voluntary winding up, call meetings of the shareholders of the corporation for any purpose the liquidator thinks fit. R.S.O. 1990, c. B.16, s. 201 (1).

Where winding up continues more than one year

(2) Where a voluntary winding up continues for more than one year, the liquidator shall call a meeting of the shareholders of the corporation at the end of the first year and of each succeeding year from the commencement of the winding up, and the liquidator shall lay before the meeting an account showing the liquidator's acts and dealings and the manner in which the winding up has been conducted during the immediately preceding year. R.S.O. 1990, c. B.16, s. 201 (2).

Arrangements with creditors

202. The liquidator, with the approval of the shareholders of the corporation or the inspectors, may make such compromise or other arrangement as the liquidator thinks expedient with any creditor or person claiming to be a creditor or having or alleging that he, she or it has a claim, present or future, certain or contingent, liquidated or unliquidated, against the corporation or whereby the corporation may be rendered liable. R.S.O. 1990, c. B.16, s. 202.

Power to compromise with debtors and contributories

203. The liquidator may, with the approval referred to in section 202, compromise all debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the corporation and any contributory, alleged contributory or other debtor or person who may be liable to the corporation and all questions in any way relating to or affecting the property of the corporation, or the winding up of the corporation, upon the receipt of such sums payable at such times and generally upon such terms as are agreed, and the liquidator may take any security for the discharge of such debts or liabilities and give a complete discharge in respect thereof. R.S.O. 1990, c. B.16, s. 203.

Power to accept shares, etc., as consideration for sale of property to another body corporate

204. (1) Where a corporation is proposed to be or is in the course of being wound up voluntarily and it is proposed to transfer the whole or a portion of its business or property to another body corporate, the liquidator, with the approval of a resolution of the shareholders of the corporation conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, may receive, in compensation or in part-compensation for the transfer, cash or shares or other like interest in the purchasing body corporate or any other body corporate for the purpose of distribution among the creditors or shareholders of the corporation that is being wound up in the manner set forth in the arrangement, or may, in lieu of receiving cash or shares or other like interest, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing body corporate or any other body corporate. R.S.O. 1990, c. B.16, s. 204 (1).

Confirmation of sale or arrangement

(2) A transfer made or arrangement entered into by the liquidator under this section is not binding on the shareholders of the corporation that is being wound up unless the transfer or arrangement is approved in accordance with subsections 184 (3), (6) and (7). R.S.O. 1990, c. B.16, s. 204 (2).

Where resolution not invalid

(3) No resolution is invalid for the purposes of this section because it was passed before or concurrently with a resolution for winding up the corporation or for appointing the liquidator. R.S.O. 1990, c. B.16, s. 204 (3).

Account of voluntary winding up to be made by liquidator to a meeting

205. (1) The liquidator shall make up an account showing the manner in which the winding up has been conducted and the property of the corporation disposed of, and thereupon shall call a meeting of the shareholders of the corporation for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidator, and the meeting shall be called in the manner prescribed by the articles or by-laws or, in default thereof, in the manner prescribed by this Act for the calling of meetings of shareholders. R.S.O. 1990, c. B.16, s. 205 (1).

Notice of holding of meeting

(2) The liquidator shall within ten days after the meeting is held file a notice in the prescribed form with the Director stating that the meeting was held and the date thereof and shall forthwith publish the notice in *The Ontario Gazette*. R.S.O. 1990, c. B.16, s. 205 (2).

Dissolution

(3) Subject to subsection (4), on the expiration of three months after the date of the filing of the notice, the corporation is dissolved. R.S.O. 1990, c. B.16, s. 205 (3).

Extension

(4) At any time during the three-month period mentioned in subsection (3), the court may, on the application of the liquidator or any other person interested, make an order deferring the date on which the dissolution of the corporation is to take effect to a date fixed in the order, and in such event the corporation is dissolved on the date so fixed. R.S.O. 1990, c. B.16, s. 205 (4).

Dissolution by court order

(5) Despite anything in this Act, the court at any time after the affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order. R.S.O. 1990, c. B.16, s. 205 (5).

Copy of extension order to be filed

(6) The person on whose application an order was made under subsection (4) or (5) shall within ten days after it was made file with the Director a certified copy of the order and forthwith publish notice of the order in *The Ontario Gazette*. R.S.O. 1990, c. B.16, s. 205 (6).

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).

Notice of appointment

(4) A liquidator appointed by the court under this section shall forthwith give to the Director notice in the prescribed form of the liquidator's appointment and shall, within twenty days after being appointed publish the notice in *The Ontario Gazette*. R.S.O. 1990, c. B.16, s. 210 (4).

Removal of liquidator

211. The court may by order remove for cause a liquidator appointed by it, and in such case shall appoint a replacement. R.S.O. 1990, c. B.16, s. 211.

Costs and expenses

212. The costs, charges and expenses of a winding up by order of the court shall be assessed by an assessment officer of the Superior Court of Justice. R.S.O. 1990, c. B.16, s. 212; 2001, c. 9, Sched. D, s. 2 (4).

Commencement of winding up

213. Where a winding-up order is made by the court without prior voluntary winding-up proceedings, the winding up shall, unless a court otherwise orders, be deemed to commence at the time of the service of notice of the application, and, where the application is made by the corporation, at the time the application is made. R.S.O. 1990, c. B.16, s. 213.

Proceedings in winding up after order

214. Where a winding-up order has been made by the court, proceedings for the winding up of the corporation shall be taken in the same manner and with the like consequences as provided for a voluntary winding up, except that the list of contributories shall be settled by the court unless it has been settled by the liquidator before the winding-up order, in which case the list is subject to review by the court, and

except that all proceedings in the winding up are subject to the order and direction of the court. R.S.O. 1990, c. B.16, s. 214.

Orders following winding-up order
Meetings of shareholders

215. (1) Where a winding-up order has been made by the court, the court may direct meetings of the shareholders of the corporation to be called, held and conducted in such manner as the court thinks fit for the purpose of ascertaining their wishes, and may appoint a person to act as chair of any such meeting and to report the result of it to the court. R.S.O. 1990, c. B.16, s. 215 (1).

Order for delivery by contributories and others of property, etc.

(2) Where a winding-up order has been made by the court, the court may require any contributory for the time being settled on the list of contributories, or any director, officer, employee, trustee, banker or agent of the corporation to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to the liquidator any sum or balance, documents, records, estate or effects that are in his, her or its hands and to which the corporation is apparently entitled. R.S.O. 1990, c. B.16, s. 215 (2).

Inspection of documents and records

(3) Where a winding-up order has been made by the court, the court may make an order for the inspection of the documents and records of the corporation by its creditors and contributories, and any documents and records in the possession of the corporation may be inspected in conformity with the order. R.S.O. 1990, c. B.16, s. 215 (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.

Provision for discharge and distribution by the court

217. (1) Where the realization and distribution of the property of a corporation being wound up under an order of the court has proceeded so far that in the opinion of the court it is expedient that the liquidator should be discharged and that the property of the corporation remaining in the liquidator's hands can be better realized and distributed by the court, the court may make an order discharging the liquidator and for payment, delivery and transfer into court, or to such person as the court directs, of such property, and it shall be realized and distributed by or under the direction of the court among the persons entitled thereto in the same way as nearly as may be as if the distribution were being made by the liquidator. R.S.O. 1990, c. B.16, s. 217 (1).

Disposal of documents and records

(2) In such case, the court may make an order directing how the documents and records of the corporation and of the liquidator are to be disposed of, and may order

that they be deposited in court or otherwise dealt with as the court thinks fit. R.S.O. 1990, c. B.16, s. 217 (2).

Order for dissolution

218. (1) The court at any time after the business and affairs of the corporation have been fully wound up may, upon the application of the liquidator or any other person interested, make an order dissolving it, and it is dissolved on the date fixed in the order. R.S.O. 1990, c. B.16, s. 218 (1).

Copy of dissolution order to be filed

(2) The person on whose application the order was made shall within ten days after it was made file with the Director a certified copy of the order and shall forthwith publish notice of the order in *The Ontario Gazette*. R.S.O. 1990, c. B.16, s. 218 (2).

Application of ss. 220-236

219. Sections 220 to 236 apply to corporations being wound up voluntarily or by order of the court. R.S.O. 1990, c. B.16, s. 219.

Where no liquidator

220. Where there is no liquidator,

(a) the court may by order on the application of a shareholder of the corporation appoint one or more persons as liquidator; and

(b) the estate and effects of the corporation shall be under the control of the court until the appointment of a liquidator. R.S.O. 1990, c. B.16, s. 220.

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).

Payment of costs and expenses

222. The costs, charges and expenses of a winding up, including the remuneration of the liquidator, are payable out of the property of the corporation in priority to all other claims. R.S.O. 1990, c. B.16, s. 222.

Powers of liquidators

223. (1) A liquidator may,

(a) bring or defend any action, suit or prosecution, or other legal proceedings, civil or criminal, in the name and on behalf of the corporation;

(b) carry on the business of the corporation so far as may be required as beneficial for the winding up of the corporation;

(c) sell the property of the corporation by public auction or private sale and receive payment of the purchase price either in cash or otherwise;

(d) do all acts and execute, in the name and on behalf of the corporation, all documents, and for that purpose use the seal of the corporation, if any;

(e) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the corporation;

(f) raise upon the security of the property of the corporation any requisite money;

(g) take out in the liquidator's official name letters of administration of the estate of any deceased contributory and do in the liquidator's official name any other act that is necessary for obtaining payment of any money due from a contributory or from the contributory's estate and which act cannot be done conveniently in the name of the corporation; and

(h) do and execute all such other things as are necessary for winding up the business and affairs of the corporation and distributing its property. R.S.O. 1990, c. B.16, s. 223 (1).

Bills of exchange, etc., to be deemed drawn in the course of business

(2) The drawing, accepting, making or endorsing of a bill of exchange or promissory note by the liquidator on behalf of a corporation has the same effect with respect to the liability of the corporation as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of the corporation in the course of carrying on its business. R.S.O. 1990, c. B.16, s. 223 (2).

Where money deemed to be due to liquidator

(3) Where the liquidator takes out letters of administration or otherwise uses the liquidator's official name for obtaining payment of any money due from a contributory, such money shall be deemed, for the purpose of enabling the liquidator to take out such letters or recover such money, to be due to the liquidator rather than to the corporation. R.S.O. 1990, c. B.16, s. 223 (3).

What liquidator may rely upon

(4) A liquidator who acts in good faith is entitled to rely upon,

(a) financial statements of the corporation represented to the liquidator by an officer of the corporation or in a written report of the auditor of the corporation

to present fairly the financial position of the corporation in accordance with generally accepted accounting principles; or

(b) an opinion, a report or a statement of a lawyer, an accountant, an engineer, an appraiser or other professional adviser retained by the liquidator. R.S.O. 1990, c. B.16, s. 223 (4).

Acts by more than one liquidator

224. Where more than one person is appointed as liquidator, any power conferred by sections 193 to 236 on a liquidator may be exercised by such one or more of such persons as may be determined by the resolution or order appointing them or, in default of such determination, by any number of them not fewer than two. R.S.O. 1990, c. B.16, s. 224.

Nature of liability of contributory

225. The liability of a contributory creates a debt accruing due from the contributory at the time the contributory's liability commenced, but payable at the time or respective times when calls are made for enforcing such liability. R.S.O. 1990, c. B.16, s. 225.

Liability in case of contributory's death

226. If a contributory dies before or after having been placed on the list of contributories, the contributory's personal representative is liable in due course of administration to contribute to the property of the corporation in discharge of the liability of the deceased contributory and shall be a contributory accordingly. R.S.O. 1990, c. B.16, s. 226.

Deposit of money

227. (1) The liquidator shall deposit all money that the liquidator has belonging to the corporation and amounting to $100 or more in a financial institution described in subsection (2). 2007, c. 7, Sched. 7, s. 181 (2).

Financial institutions

(2) A financial institution referred to in subsection (1) is,

(a) a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada);

(b) a corporation registered under the *Loan and Trust Corporations Act*;

(c) a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*; or

(d) a retail association as defined under the *Cooperative Credit Associations Act* (Canada). 2007, c. 7, Sched. 7, s. 181 (2).

Separate deposit account to be kept; withdrawal from account

(3) Such deposit shall not be made in the name of the liquidator individually, but a separate deposit account shall be kept of the money belonging to the corporation in the liquidator's name as liquidator of the corporation and in the name of the inspectors, if any, and such money shall be withdrawn only by order for payment signed by the liquidator and one of the inspectors, if any. R.S.O. 1990, c. B.16, s. 227 (3).

Liquidator to produce bank pass-book

(4) At every meeting of the shareholders of the corporation, the liquidator shall produce a pass-book, or statement of account showing the amount of the deposits, the dates at which they were made, the amounts withdrawn and the dates of withdrawal, and mention of such production shall be made in the minutes of the meeting, and the absence of such mention is admissible in evidence as proof, in the absence of evidence to the contrary, that the pass-book or statement of account was not produced at the meeting. R.S.O. 1990, c. B.16, s. 227 (4).

Idem

(5) The liquidator shall also produce the pass-book or statement of account whenever so ordered by the court upon the application of the inspectors, if any, or of a shareholder of the corporation. R.S.O. 1990, c. B.16, s. 227 (5).

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.

Application for direction

229. Upon the application of the liquidator or of the inspectors, if any, or of any creditors, the court, after hearing such parties as it directs to be notified or after such steps as the court prescribes have been taken, may by order give its direction in any matter arising in the winding up. R.S.O. 1990, c. B.16, s. 229.

Examination of persons as to estate

230. (1) The court may at any time after the commencement of the winding up summon to appear before the court or liquidator any director, officer or employee of the corporation or any other person known or suspected of having possession of any of the estate or effects of the corporation, or alleged to be indebted to it, or any person whom the court thinks capable of giving information concerning its trade, dealings, estate or effects. R.S.O. 1990, c. B.16, s. 230 (1).

Damages against delinquent directors, etc.

(2) Where in the course of the winding up it appears that a person who has taken part in the formation or promotion of the corporation or that a past or present director, officer, employee, liquidator or receiver of the corporation has misapplied or retained in that person's own hands, or become liable or accountable for, property of the corporation, or has committed any misfeasance or breach of trust in relation to it, the court may, on the application of the liquidator or of any creditor, shareholder or contributory, examine the conduct of that person and order that person to restore the property so misapplied or retained, or for which that person has become liable or accountable, or to contribute such sum to the property of the corporation by way of compensation in respect of such misapplication, retention, misfeasance or breach of trust, or both, as the court thinks just. R.S.O. 1990, c. B.16, s. 230 (2).

Proceedings by shareholders

231. (1) Where a shareholder of the corporation desires to cause any proceeding to be taken that, in the shareholder's opinion, would be for the benefit of the corporation,

and the liquidator, under the authority of the shareholders or of the inspectors, if any, refuses or neglects to take such proceeding after being required so to do, the shareholder may obtain an order of the court authorizing the shareholder to take such proceeding in the name of the liquidator or corporation, but at the shareholder's own expense and risk, upon such terms and conditions as to indemnity to the liquidator or corporation as the court prescribes. R.S.O. 1990, c. B.16, s. 231 (1).

Benefits: when for shareholders

(2) Any benefit derived from a proceeding under subsection (1) belongs exclusively to the shareholder causing the institution of the proceeding for the shareholder's benefit and that of any other shareholder who has joined together in causing the institution of the proceeding. R.S.O. 1990, c. B.16, s. 231 (2).

when for corporation

(3) If, before the order is granted, the liquidator signifies to the court the liquidator's readiness to institute the proceeding for the benefit of the corporation, the court shall make an order prescribing the time within which the liquidator is to do so, and in that case the advantage derived from the proceeding, if instituted within such time, belongs to the corporation. R.S.O. 1990, c. B.16, s. 231 (3).

Rights conferred by Act to be in addition to other powers

232. The rights conferred by this Act are in addition to any other right to institute a proceeding against any contributory, or against any debtor of the corporation, for the recovery of any sum due from such contributory or debtor or an estate thereof. R.S.O. 1990, c. B.16, s. 232.

Stay of winding up proceedings

233. At any time during a winding up, the court, upon the application of a shareholder, creditor or contributory and upon proof to its satisfaction that all proceedings in relation to the winding up ought to be stayed, may make an order staying the proceedings altogether or for a limited time on such terms and subject to such conditions as the court thinks fit. R.S.O. 1990, c. B.16, s. 233.

Where creditor unknown

234. (1) Where the liquidator is unable to pay all the debts of the corporation because a creditor is unknown or a creditor's whereabouts is unknown, the liquidator may, by agreement with the Public Guardian and Trustee, pay to the Public Guardian and Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and thereupon subsections 238 (5) and (6) apply thereto. R.S.O. 1990, c. B.16, s. 234 (1).

Idem

(2) A payment under subsection (1) shall be deemed to be in satisfaction of the debt for the purposes of winding up. R.S.O. 1990, c. B.16, s. 234 (2).

Where shareholder unknown

235. (1) Where the liquidator is unable to distribute rateably the property of the corporation among the shareholders because a shareholder is unknown or a shareholder's whereabouts is unknown, the share of the property of the corporation of such shareholder may, by agreement with the Public Guardian and Trustee, be

delivered or conveyed by the liquidator to the Public Guardian and Trustee to be held in trust for the shareholder, and thereupon subsections 238 (5) and (6) apply thereto. R.S.O. 1990, c. B.16, s. 235 (1).

Idem

(2) A delivery or conveyance under subsection (1) shall be deemed to be a distribution to that shareholder of his, her or its rateable share for the purposes of the winding up. R.S.O. 1990, c. B.16, s. 235 (2).

Disposal of records, etc., after winding up

236. (1) Where a corporation has been wound up under sections 192 to 235 and is about to be dissolved, its documents and records and those of the liquidator may be disposed of as it by resolution directs in case of voluntary winding up, or as the court directs in case of winding up under an order. R.S.O. 1990, c. B.16, s. 236 (1).

When responsibility as to custody of records, etc., to cease

(2) After the expiration of five years after the date of the dissolution of the corporation, no responsibility rests on it or the liquidator, or anyone to whom the custody of the documents and records has been committed, by reason that the same or any of them are not forthcoming to any person claiming to be interested therein. R.S.O. 1990, c. B.16, s. 236 (2).

Voluntary dissolution

237. A corporation may be dissolved upon the authorization of,

(a) a special resolution passed at a meeting of the shareholders of the corporation duly called for the purpose or, in the case of a corporation that is not an offering corporation, by such other proportion of the votes cast as the articles provide, but such other proportion shall not be less than 50 per cent of the votes of all the shareholders entitled to vote at the meeting;

(b) the consent in writing of all the shareholders entitled to vote at such meeting; or

(c) all its incorporators or their personal representatives if the corporation has not commenced business and has not issued any shares. R.S.O. 1990, c. B.16, s. 237; 2006, c. 34, Sched. B, s. 36.

Articles of dissolution where corporation active

238. (1) For the purpose of bringing the dissolution authorized under clause 237 (a) or (b) into effect, articles of dissolution shall follow the prescribed form and shall set out,

(a) the name of the corporation;

(b) that its dissolution has been duly authorized under clause 237 (a) or (b);

(c) that it has no debts, obligations or liabilities or its debts, obligations or liabilities have been duly provided for in accordance with subsection (3) or its creditors or other persons having interests in its debts, obligations or liabilities consent to its dissolution;

(d) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute among its shareholders or that it has distributed its remaining property rateably among its shareholders according to their rights and interests in the corporation or in accordance with subsection (4) where applicable; and

(e) that there are no proceedings pending in any court against it.

(f) Repealed: 1994, c. 27, s. 71 (25).

R.S.O. 1990, c. B.16, s. 238 (1); 1994, c. 27, s. 71 (25).

Articles of dissolution where corporation never active

(2) For the purpose of bringing a dissolution authorized under clause 237 (c) into effect, articles of dissolution shall follow the prescribed form and shall set out,

(a) the name of the corporation;

(b) the date set out in its certificate of incorporation;

(c) that the corporation has not commenced business;

(d) that none of its shares has been issued;

(e) that dissolution has been duly authorized under clause 237 (c);

(f) that it has no debts, obligations or liabilities;

(g) that after satisfying the interests of creditors in all its debts, obligations and liabilities, if any, it has no property to distribute or that it has distributed its remaining property to the persons entitled thereto; and

(h) that there are no proceedings pending in any court against it.

(i) Repealed: 1994, c. 27, s. 71 (26).

R.S.O. 1990, c. B.16, s. 238 (2); 1994, c. 27, s. 71 (26).

Where creditor unknown

(3) Where a corporation authorizes its dissolution and a creditor is unknown or a creditor's whereabouts is unknown, the corporation may, by agreement with the Public Guardian and Trustee, pay to the Public Guardian and Trustee an amount equal to the amount of the debt due to the creditor to be held in trust for the creditor, and such payment shall be deemed to be due provision for the debt for the purposes of clause (1) (c). R.S.O. 1990, c. B.16, s. 238 (3).

Where shareholder unknown

(4) Where a corporation authorizes its dissolution and a shareholder is unknown or a shareholder's whereabouts is unknown, it may, by agreement with the Public Guardian and Trustee, deliver or convey the shareholder's share of the property to the Public Guardian and Trustee to be held in trust for the shareholder, and such delivery or conveyance shall be deemed to be a distribution to that shareholder of his, her or its rateable share for the purposes of the dissolution. R.S.O. 1990, c. B.16, s. 238 (4).

Power to convert

(5) If the share of the property so delivered or conveyed to the Public Guardian and Trustee under subsection (4) is in a form other than cash, the Public Guardian and Trustee may at any time, and within ten years after such delivery or conveyance shall, convert it into cash. R.S.O. 1990, c. B.16, s. 238 (5).

Payment to person entitled

(6) If the amount paid under subsection (3) or the share of the property delivered or conveyed under subsection (4) or its equivalent in cash, as the case may be, is claimed by the person beneficially entitled thereto within ten years after it was so delivered, conveyed or paid, it shall be delivered, conveyed or paid to the person, but, if not so claimed, it vests in the Public Guardian and Trustee for the use of Ontario, and, if the person beneficially entitled thereto at any time thereafter establishes a right thereto to the satisfaction of the Lieutenant Governor in Council, an amount equal to the amount so vested in the Public Guardian and Trustee shall be paid to the person. R.S.O. 1990, c. B.16, s. 238 (6).

Certificate of dissolution

239. (1) Upon receipt of the articles of dissolution, the Director shall endorse thereon in accordance with section 273 a certificate which shall constitute the certificate of dissolution. R.S.O. 1990, c. B.16, s. 239 (1).

Incorporators to sign articles of dissolution

(2) Despite clause 273 (1) (a), articles of dissolution for the purposes of subsection 238 (2) shall be signed by all its incorporators or their personal representatives. R.S.O. 1990, c. B.16, s. 239 (2).

Cancellation of certificate, etc., by Director

240. (1) Where sufficient cause is shown to the Director, despite the imposition of any other penalty in respect thereof and in addition to any rights the Director may have under this or any other Act, the Director may, after having given the corporation an opportunity to be heard, by order, upon such terms and conditions as the Director thinks fit, cancel a certificate of incorporation or any other certificate issued or endorsed under this Act or a predecessor of this Act, and,

(a) in the case of the cancellation of a certificate of incorporation, the corporation is dissolved on the date fixed in the order; and

(b) in the case of the cancellation of any other certificate, the matter that became effective upon the issuance of the certificate ceases to be in effect from the date fixed in the order. R.S.O. 1990, c. B.16, s. 240 (1).

Definition

(2) In this section,

"sufficient cause", with respect to cancellation of a certificate of incorporation, includes,

(a) Repealed: 1994, c. 27, s. 71 (27).

(b) failure to comply with subsection 115 (2) or subsection 118 (3),

(c) Repealed: 1994, c. 27, s. 71 (27).

(d) a conviction of the corporation for an offence under the *Criminal Code* (Canada) or any other federal statute or an offence as defined in the *Provincial Offences Act*, in circumstances where cancellation of the certificate is in the public interest, or

(e) conduct described in subsection 248 (2). R.S.O. 1990, c. B.16, s. 240 (2); 1994, c. 27, s. 71 (27, 28).

Notice of dissolution

241. (1) Where the Director is notified by the Minister of Finance that a corporation is in default of complying with any of the following Acts, the Director may give notice by registered mail to the corporation or by publication once in *The Ontario Gazette* that an order dissolving the corporation will be issued unless the corporation remedies its default within 90 days after the notice is given:

0.1 *Alcohol and Gaming Regulation and Public Protection Act, 1996.*

1. *Corporations Tax Act.*

2. *Employer Health Tax Act.*

3. *Fuel Tax Act.*

4. *Gasoline Tax Act.*

5. *Land Transfer Tax Act.*

6. *Retail Sales Tax Act.*

6.1 *Taxation Act, 2007.*

7. *Tobacco Tax Act.* 2004, c. 31, Sched. 4, s. 1; 2008, c. 19, Sched. V, s. 1; 2010, c. 1, Sched. 1, s. 12.

Idem

(2) Where the Director is notified by the Commission that a corporation has not complied with sections 77 and 78 of the *Securities Act*, the Director may give notice by registered mail to the corporation or by publication once in *The Ontario Gazette* that an order dissolving the corporation will be issued unless the corporation complies with sections 77 and 78 of the *Securities Act* within ninety days after the giving of the notice. R.S.O. 1990, c. B.16, s. 241 (2).

Same, non-filing

(3) Where a corporation fails to comply with a filing requirement under the *Corporations Information Act* or fails to pay a fee required under this Act, the Director may give notice in accordance with section 263 to the corporation or by publication once in *The Ontario Gazette* that an order dissolving the corporation will be issued unless the corporation, within 90 days after the notice is given, complies with the requirement or pays the fee. 1998, c. 18, Sched. E, s. 26 (1).

Order for dissolution

(4) Upon default in compliance with the notice given under subsection (1), (2) or (3), the Director may by order cancel the certificate of incorporation and, subject to

subsection (5), the corporation is dissolved on the date fixed in the order. R.S.O. 1990, c. B.16, s. 241 (4).

Revival

(5) Where a corporation is dissolved under subsection (4) or any predecessor of it, the Director on the application of any interested person, may, in his or her discretion, on the terms and conditions that the Director sees fit to impose, revive the corporation; upon revival, the corporation, subject to the terms and conditions imposed by the Director and to the rights, if any, acquired by any person during the period of dissolution, shall be deemed for all purposes to have never been dissolved. 1999, c. 12, Sched. F, s. 9.

Time limit for application

(5.1) The application referred to in subsection (5) shall not be made more than 20 years after the date of dissolution. 2006, c. 34, Sched. B, s. 37.

Articles of revival

(6) The application referred to in subsection (5) shall be in the form of articles of revival which shall be in prescribed form. R.S.O. 1990, c. B.16, s. 241 (6).

Certificate of revival

(7) Upon receipt of articles of revival and any other prescribed documents, the Director, subject to subsection (5), shall endorse thereon in accordance with section 273 a certificate which shall constitute the certificate of revival. R.S.O. 1990, c. B.16, s. 241 (7).

Actions after dissolution

242. (1) Despite the dissolution of a corporation under this Act,

(a) a civil, criminal or administrative action or proceeding commenced by or against the corporation before its dissolution may be continued as if the corporation had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the corporation as if the corporation had not been dissolved;

(c) any property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available for such purpose; and

(d) title to land belonging to the corporation immediately before the dissolution remains available to be sold in power of sale proceedings. R.S.O. 1990, c. B.16, s. 242 (1); 1998, c. 18, Sched. E, s. 27 (1, 2).

Interpretation

(1.1) In this section and section 244,

"proceeding" includes a power of sale proceeding relating to land commenced pursuant to a mortgage. 1998, c. 18, Sched. E, s. 27 (3).

Service after dissolution

(2) For the purposes of this section, the service of any process on a corporation after its dissolution shall be deemed to be sufficiently made if it is made upon any

person last shown on the records of the Ministry as being a director or officer of the corporation before the dissolution. R.S.O. 1990, c. B.16, s. 242 (2).

Notice of action

(3) A person who commences an action, suit or other proceeding against a corporation after its dissolution, shall serve the writ or other document by which the action, suit or other proceeding was commenced, on the Public Guardian and Trustee in accordance with the rules that apply generally to service on a party to an action, suit or other proceeding. 1998, c. 18, Sched. E, s. 27 (4).

Same, power of sale proceeding

(4) A person who commences a power of sale proceeding relating to land against a corporation after its dissolution shall serve a notice of the proceeding on the Public Guardian and Trustee in accordance with the notice requirements in the *Mortgages Act* that apply with respect to a person with an interest in the land recorded in the records of the appropriate land registry office. 1998, c. 18, Sched. E, s. 27 (4).

Liability of shareholders to creditors

243. (1) Despite the dissolution of a corporation, each shareholder to whom any of its property has been distributed is liable to any person claiming under section 242 to the extent of the amount received by that shareholder upon the distribution, and an action to enforce such liability may be brought. R.S.O. 1990, c. B.16, s. 243 (1); 2002, c. 24, Sched. B, s. 27 (2).

Parties to action and amount of contribution

(2) The court may order an action referred to in subsection (1) to be brought against the persons who were shareholders as a class, subject to such conditions as the court thinks fit and, if the plaintiff establishes his, her or its claim, the court may refer the proceedings to a referee or other officer of the court who may,

(a) add as a party to the proceedings before him or her each person who was a shareholder found by the plaintiff;

(b) determine, subject to subsection (1), the amount that each person who was a shareholder shall contribute towards satisfaction of the plaintiff's claim; and

(c) direct payment of the amounts so determined. R.S.O. 1990, c. B.16, s. 243 (2).

Definition

(3) In this section,

"shareholder" includes the heirs and legal representatives of a shareholder. R.S.O. 1990, c. B.16, s. 243 (3).

Forfeiture of undisposed property

244. (1) Any property of a corporation that has not been disposed of at the date of its dissolution is immediately upon such dissolution forfeit to and vests in the Crown. R.S.O. 1990, c. B.16, s. 244 (1); 1994, c. 27, s. 71 (31).

Exception

(2) Despite subsection (1), if a judgment is given or an order or decision is made or land is sold in an action, suit or proceeding commenced in accordance with section

242 and the judgment, order, decision or sale affects property belonging to the corporation before the dissolution, unless the plaintiff, applicant or mortgagee has not complied with subsection 242 (3) or (4),

(a) the property shall be available to satisfy the judgment, order or other decision; and

(b) title to the land shall be transferred to a purchaser free of the Crown's interest, in the case of a power of sale proceeding. 1998, c. 18, Sched. E, s. 28 (1).

Further exception

(3) A forfeiture of land under subsection (1) or a predecessor of subsection (1) is not effective against a purchaser for value of the land if the forfeiture occurred more than 20 years before the deed or transfer of the purchaser is registered in the proper land registry office. 1994, c. 27, s. 71 (32).

No notice

(4) Despite subsection (2), if a person commences a power of sale proceeding relating to land before the dissolution of a corporation but the sale of the land is not completed until after the dissolution, the person is not required to serve the notice mentioned in subsection 242 (4) and title to the land may be transferred to a purchaser free of the Crown's interest. 1998, c. 18, Sched. E, s. 28 (2).

PART XVII
REMEDIES, OFFENCES AND PENALTIES

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).

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

FACTUM OF THE LIQUIDATOR
(Motion Returnable December 14, 2012)

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