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• *BLOOM LAKE* DECISION: A RESTRUCTURING COMPANY OBLIGATION TO PAY ITS INSURANCE PREMIUMS •

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Can a company required to provide its former employees with post-employment benefits be allowed to stop paying its insurance premium during its restructuration?

This question, amongst others, was answered on June 26, 2015, by the Honourable Stephen W. Hamilton of the Superior Court of Québec in the decision *Bloom Lake General Partner Limited.*[1]

Prior to the filing of a Motion for the Issuance of an Initial Order under the *Companies' Creditors Arrangement Act* ("**CCAA**"), Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively "**Wabush**") negotiated the terms and conditions of an interim financing with Cliffs Mining Company (the "**Interim Lender**"), a subsidiary of the ultimate parent of Wabush. In order to satisfy the conditions precedent to this interim financing, Wabush asked the Court:

1. to suspend Wabush's obligation to pay post-employment benefits ("**PEB**") to certain former employees;
2. that the Interim Lender be granted a super priority, which would have prior ranking over the statutory deemed trust of the pension plans of certain Wabush employees (the "**Pension Plans**"); and,
3. for the suspension of Wabush's obligation to pay monthly amortization payments and a lump sum catch up amortization payment destine to fund the Pension Plans deficit (the "**Special Payments**").

SUSPENSION OF THE PEB PAYMENTS

Although this decision raises a number of interesting questions, the Court ventured in less chartered territory mainly on this question.

Wabush was arguing that it did not have the funding necessary to continue making the PEB's payments

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and that the interim financing conditions prohibited such payments.

The beneficiaries of the PEB mainly argued that the suspension of the payments was equivalent to a termination of the insurance contract by Wabush and that such a termination was invalid because the formalities of section 32(1) CCAA were not followed and the criteria of section 32(4) CCAA were not met. Section 32(1) CCAA requires a prior notice and the agreement of the monitor for the termination of an agreement and section 32(4) sets out criteria to be evaluated by the Court in rendering an order, namely approbation of the monitor, impact on the possibility of a viable arrangement and significant financial hardship on the parties to the agreement.

The Court noted that the PEB payments were related to services provided pre-filing and were unsecured. The Court analysis was that, although the employer has obligations to the beneficiaries of the PEB, said obligations were not affected by the termination of the insurance contract. The Court concluded that the contract being terminated was the contract between Wabush and the insurer, not the contract between Wabush and the beneficiaries. The beneficiaries would simply be left with Wabush as an insolvent debtor of its obligation to provide PEB instead of the insurer.

In addition, the Court concluded that Wabush was not actually terminating the insurance contract, but stopping the payments pursuant to said contract which could result in its termination. Therefore, the Court concluded that Wabush did not have to follow the formalities and pass the test of section 32 CCAA.

Essentially, the Court agreed with the beneficiaries of the PEB that Wabush was the debtor of the obligation to provide them with PEB. However, when looking at Wabush's obligations regarding the insurance contract, the Court considered the beneficiaries of said contract a third party.

Furthermore, even if the Court knew that the only foreseeable outcome of the suspension of the payments to the insurer would be the termination of the insurance contract, it did not considered the suspension as a termination.

THE SUPERPRIORITY OVER THE PENSION PLANS

The Pension Plans were subject to provincial regulation under the *Newfoundland and Labrador Pension Benefits* Act, 1977[2] (the "**PBA**") and federal regulations under the *Pension Benefits Standards Act* 1985[3] (the "**PBSA**"). The Court first relied on existing jurisprudence discussing the conflict between section 6(6) and 36(7) CCAA and section 8(2) PBSA which reads:

> In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estates.

The Court essentially rejected the argument that the proceedings in this matter were a liquidation because of the high probability that they would result in the sale of all of the assets of Wabush. The Court, relying on the decisions *Century Services*[4] and *Indalex*[5], amongst others, concluded that even if the proceedings in this matter would result in the liquidation of Wabush, said liquidation would not fall under the definition of "liquidation" in section 8(2) PBSA. Therefore, there was no triggering event under the PBSA that would result in the creation of a deemed trust.

The analysis regarding the PBA was similar but the Court also considered the criteria of section 11.2(4) CCAA - i.e. duration of the CCAA proceedings, management of the company's affairs, position of the major creditors, prospect of viable arrangement, company's property, prejudice to creditors and monitor's report — to decide if it was appropriate to give the Interim Lender a super priority.

The Court concluded that, considering the circumstances of the matter, it was indeed appropriate.

SUSPENSION OF THE SPECIAL PAYMENTS TO THE PENSION PLANS

The Court, applying the existing jurisprudence, concluded that the Special Payments would constitute payments to a non-secured pre-filing creditor and would be qualified as preferential. Considering the facts of the matter, the Court was of the opinion that the suspension of the Special Payments would not be prejudicial to the beneficiaries of the Pension Plans because although their position would not be improved, it would not be worsen by the suspension.

Therefore, the Court ruled that it was appropriate to order the suspension of the Special Payments to the Pension Plans.

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1 *Bloom Lake g.p.l. (Arrangement relatif à)*, [2015] Q.J. No. 6111, 2015 QCCS 3064 (QSC), leave to appeal refused [2015] Q.J. No. 7736, 2015 QCCA 1351.

2 S.N.L. 1996, c. P-4.01, as amended.

3 R.S.C. 1985, c. 32 (2nd Supp.) as amended.

4 *Century Services Inc. v. Canada (Attorney General)*, [2010] S.C.J. No. 60, 2010 SCC 60.

5 *Sun Indalex Finance, LLC v. United Steelworkers*, [2013] S.C.J. No. 6, 2013 SCC 6.

• FARMERS, DRIVERS, DEBTORS AND THE *BIA*: WHERE CONFLICT MEETS FRUSTRATION[1] •

Laurence Bich-Carrière, Lawyer and Jonathan Warin, Partner, Lavery de Billy SRL

***On** November 14, 2015, the Supreme Court of Canada rendered three decisions on the application of the Bankruptcy and Insolvency Act,2 and its interaction with certain provincial statutes. Twenty years after Husky Oil Operations Ltd. v. Canada (Minister of National Revenue – M.N.R.),[3] are the parameters of paramountcy of the federal regime cast in stone?*

OVERVIEW OF THE FACTS

In *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*,[4] the Court, sitting as a bench of seven judges, considered the conflict between a provincial statute, which imposes a 150-day notice period before instituting any action relating to farm land,[5] and the *BIA*, which permits a secured creditor to apply for the appointment of a receiver for the property of a debtor upon the expiry of a 10-day notice period under section 244 *BIA*.

In *Alberta (Attorney General) v. Moloney*,[6] and *407 ETR Concession Co. v. Canada (Superintendent of Bankruptcy)*,[7] the nine judges considered the conflict between a provincial statute which allowed for the revocation or suspension of the motor vehicle permits or driver's licences of persons who failed to pay certain driving-related debts,[8] even where these drivers were discharged bankrupts and the debt targeted by the provincial statute was a provable claim in bankruptcy.

The validity of the acts themselves was nor contested, nor was the jurisdiction of Parliament over bankruptcy (conferred upon it by subsection 91(21) of the *Constitution Act*, 1867, 30 & 31 Victoria, c. 3 (UK)) or that of provincial legislatures with respect to property and civil rights (as per subsection 92 (13) of the same constitutional act). The issue therefore was therefore limited to whether both laws could coexist or whether the federal law should take precedence pursuant to the principle of federal paramountcy.

CONFLICT OF NORMS 101

The legislative powers of the federal and provincial levels are exclusive, and one government is not subordinate to the other. However, the subjects over which each level has jurisdiction may overlap in practice, and affect matters that are within the other level's jurisdiction. Canadian courts have developed a number of rules of interpretation to solve those cases where the legislative overlap leads to a conflict between otherwise valid federal and provincial laws. One of these rules is that of *paramountcy*, where the norms of one legal orders are declared inoperative, so that only those of the other level are then applicable, such an "eclipse" however being declared only to the exact extent of the inconsistency of the two norms. In Canada, it is usually the provincial law that will give way to the federal law.[9] First applied rigorously,[10] flexibility was gradually instilled in the rule of federal paramountcy, which now only applies where there is an actual functional conflict, that is to say, a conflict in the implementation, in the simultaneous application of both norms under consideration.[11]

Against the background of cooperative federalism, often invoked to provide flexibility in separation of powers doctrines, and construed to facilitate the integration of federal and provincial legislative schemes and avoid imposing unnecessary burdens on provincial legislative interventions,[12] the rule of federal paramountcy one of last resort, to be applied with restraint. Thus, the provincial law will be declared inoperative to the extent of its inconsistency with federal law and only to that extent. More fundamentally, however, it means that courts must seek to promote an interpretation reconciling the obligations involved and passing over the provincial law only where the incompatibility is unavoidable.

In this regard, Canadian constitutional law recognizes two types such of "real conflicts." First, there are the "operational conflicts" (or "conflicts in operation"), *i.e.*, these explicit contradictions where one law prohibits what the other commands or, as the now-classic formulation goes, "where one enactment says 'yes' and the other says 'no' [...] compliance with one is defiance of the other."[13] In addition to these are the conflicts of objectives, where the effects of a law "frustrates" the purposes of the other, that is, where obeying the norm established by the provincial legislature thwarts the intention of Parliament.

In short, in the three cases, the Supreme Court had to determine whether the *BIA* and the provincial statutes could coexist or whether an actual operational conflict existed, and give way to the *BIA*. In order to identify the nature of the conflict, if any, the Court had to assess the rationale for the acts under consideration, or the mechanisms set forth therein. As such, it was an opportunity to recall the guiding principles of the Canadian bankruptcy regime.

APPLICATION

In *Lemare*, the review was limited to the purposes which underlie the existence of the 150-day notice period in favour of the debtor/owner of farm land under the provincial statute, which protects farms and farming operations, and to the purposes of the 10-day notice period provided in section 244 *BIA* before the appointment of a receiver can be required under section 243 *BIA*. For the majority of the Court, the time period in the provincial statute constitutes a grace period,[14] whereas the purpose of the 10-day notice period in section 244 *BIA* is to avoid the multiplication of proceedings.[15] The *BIA* does not require the appointment of a receiver upon the expiry of the 10 days. Quite the contrary, some provisions envisage the extension or abridgment of this time period, depending on the circumstances.[16] In addition, the creditor's right to obtain the appointment of a receiver is in all cases subject to the authorization of the court.[17] According to the majority of the Court, there is therefore no inconsistency between the two regimes: in complying with the 150-day time period under the provincial statute, one is by the same token also only exercising one's option to apply to the courts beyond the 10-day time period under the *BIA*. Bottom line, " [t]hat a recourse may take longer, or may have additional requirements, does not render it automatically ineffective or untimely, particularly when the assets at stake are farm lands."[18] Justice Côté dissented: for her, timeliness and effectiveness were also purposes of the *BIA* and the objective of protecting farm land must therefore yield to this imperative and the "acute need to have a receiver appointed promptly" which may arise "[i]n the often frenzied rush of insolvency."[19] She would have declared the provincial law inoperative.

In *Moloney* and *ETR*, the Court considered the purposes of the *BIA* as a whole. In this regard, the Court is unanimous: on the one hand, the bankruptcy and insolvency regime avows the principle of the equitable distribution of the bankrupt's assets among his or their creditors, ensured by the collective nature of the claims process, and, on the other hand, the principle of the financial rehabilitation of the bankrupt, which is achieved through his or her discharge from all provable claims at the end of the process. The Court also unequivocally found that there was a conflict between the fact that the bankrupt could be discharged of his debts under the *BIA* and the fact that a provincial statute could continue to attach sanctions to one of these debts. However, the seven majority judges diverged from their two dissenting colleagues on how this conflict was to be characterized. For the majority, there is a true operational conflict between the *BIA* and the provincial statutes — which, in context, must be characterized as, "in substance, a debt collection mechanism"[20] — because the *BIA* neutralizes the debt while the provincial statutes continued to give some effect to the debt. To benefit from the privileges afforded by the provincial law, the bankrupt must renounced the protection afforded to him by the federal act. In other words, that person "is still compel[led to the] payment of a provable claim that [from which he or she] has been released."[21] This is a direct contradiction.

According to Justices McLachlin and Côté, the provincial laws at issue would be more properly characterized as regulatory in nature, and no operational conflict arises in the cases under consideration between the *BIA* and the provincial statutes for a bankrupt could always renounce the privilege of which the provincial statute seeks to deprive him (e.g., by choosing not to drive) or to voluntarily pay the discharged debt (the discharge in the literal sense of the words of s. 178(2) *BIA* still stands).[22] However by conferring effects to a debt beyond discharge, the provincial statutes frustrated the rehabilitative purpose of the *BIA*, and for that reason, should be declared inoperative in the insolvency context.

EFFECTS AND LESSONS

A number of constitutional scholars have criticized the approach of the Supreme Court to the doctrine of federal paramountcy, some casting doubt on the usefulness, if not the existence, of the two branches of the analysis, others fearing "the danger of an impressionistic interpretation."[23] Some might smile to see the seven majority judges and their two colleagues reciprocally accusing each other of rendering one of the branches of the paramountcy test meaningless. For Justice Gascon indeed, Justice Côté's approach is unduly restrictive, too "literal"[24], even superficial;[25] it would sterilize the usefulness of the very notion of "operational conflict" to limit the analysis to a mere literal reading of the provisions at issue, not to mention going against the modern approach to statutory interpretation. For Justice Côté, on the contrary, considers that considering context when assessing the impossibility of dual compliance as a result of an express conflict "conflates the two branches of the federal paramountcy test, or at a minimum blurs the difference between them."[26]

Beyond the grist such divergences are bound to bring to the mill of Canadian federalism, one may wonder how this new vision of the paramountcy test will influence *BIA* proceedings and, more generally, the exercise by secured creditors of their remedies in an insolvency context. Indeed, while *Moloney* and *ETR*, by reaffirming known concepts, are unlikely to revolutionize insolvency practice, the same cannot be said of the Court's decision in *Lemare*. On the contrary, that decision could potentially change how receivers are appointed as per section 243 *BIA*, by forcing practitioners to consider the time periods and other restrictions provided in any provincial statute. Naturally, one will look for such restrictions in the general security regime of each province, but — and *Lemare* illustrates that point — unexpected limitations might be lurking in more specific provincial statutes. Such a line of thinking could find support in a pre-existing line of cases to the effect that where a delay in a provincial law could be seen as substantive and not merely procedural, for instance, which is the case with certain recourses only a portion of which are subject to delays, it should apply even to guaranteed creditors acting under the *BIA*.[27]

Other requirements found in provincial law might also percolate within the federal regime: what will be the consequences of sending a notice that meets the requirements of the *BIA* but not those of a provincial act? One might also consider the hypothesis of a multi-jurisdictional business, and wonder how to treat provincial formalities not only varying from those of the *BIA* but also from one another.

In short, *Lemare* suggests that some provincial rules have percolated into the federal regime. It remains to be seen whether current insolvency practices will hold the road or take the field.

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[1] Adapted from Laurence Bich-Carrière and Jonathan Warin, "Farmers, drivers and debtors: The Supreme Court considers the conflicts between the Bankruptcy and Insolvency Act and several provincial statutes" (December 2015), Lavery, de Billy SRL *Need to Know* bulletin series.

[2] R.S.C. 1985, c. B-3 [*BIA*].

[3] [1995] S.C.J. No. 77, [1995] 3 S.C.R. 453 (SCC).

[4] [2015] S.C.J. No. 53, 2015 SCC 53 [*Lemare*].

[5] *The Saskatchewan Farm Security Act*, S.S. 1988-89, c. S-17.1, part II, ss. 3, 4, 9-22.

[6] [2015] S.C.J. No. 51, 2015 SCC 51 [*Moloney*].

[7] [2015] S.C.J. No. 52, 2015 SCC 52 [*ETR*].

[8] Namely the compensation due to the victim injured in a road accident under the *Traffic Safety Act*, RSA 2000, c. T-6, ss. 54, 102, 103 in *Moloney* and the toll fees on highway 407 as per the mechanism set up by the *Highway 407 Act,* 1998, S.O. 1998, c. 28, ss. 13(3), 15(1), 16(1), 22 in *ETR.*

[9] By way of exception, section 94A of the *Constitution Act*, 1867, 30 & 31 Victoria, c. 3 (UK) calls for provincial paramountcy in matters regarding old-age pensions.

[10] One of the earliest iteration of the doctrine is found in *Grand Trunk Railway Co of Canada v. Canada (AG)*, [1906] J.C.J. No. 3, [1907] A.C. 65, at pp. 67-68: "[t]here can be a domain in which provincial and Dominion legislation may overlap, in which case neither legislation will be ultra vires if the field is clear, but if the field is not clear and the two legislations meet the Dominion legislation must prevail."

[11] *R. v. Smith*, [1960] S.C.R. 776; *Multiple Access Ltd. v. McCutcheon*, [1982] S.C.J. No. 66, [1982] 2 S.C.R. 161, at pp. 187-188.

[12] *Quebec (Attorney General) v. Canada (Attorney General),* [2015] SCJ No 14, 2015 SCC 14 (SCC), at para. 17.

[13] *Multiple Access Ltd. v. McCutcheon*, [1982] S.C.J. No. 66, [1982] 2 S.C.R. 161, at p. 191.

[14] *Lemare*, at paras. 70, 72.

[15] *Lemare*, at paras. 1, 68; see also *Moloney,* at para. 34.

[16] *Lemare*, at paras. 46, 69, 72.

[17] *Lemare*, at para. 73.

[18] *Lemare*, at para. 72.

[19] *Lemare*, at para. 85.

[20] *Moloney*, at paras. 47 et 50 ff; *ETR,* at paras. 1, 14, 17, 19, 25-26.

[21] *Moloney*, at para. 60; *ETR*, at para. 33.

[22] *Moloney*, at paras. 97, 123; *ETR*, at para. 39.

[23] As per Justice Deschamps in *Quebec (Attorney General) v. Lacombe*, [2010] S.C.J. No. 38, [2010] 2 S.C.R. 453, at para. 121.

[24] *Moloney*, at para. 20.

[25] *Moloney*, at para. 69.

[26] *Moloney*, at paras. 92 ff.

[27] See *e.g.*, on the delay of 20 days for movable property and 60 days for immovable property of article 2758 of the *Civil Code of Quebec,* CQLR c. C-1991, *Viandes Laroche inc (Avis d'intention de)*, [2015] J.Q. no 13903, 2015 QCCS 5768 (quoting to *Lemare,* at para. 28), *Boréal — Informations stratégiques inc. (Avis d'intention de)*, [2014] J.Q. no 13250, 2014 QCCS 5595, *Corriveau (Séquestre de) et Banque de Montréal*, [2013] J.Q. no 3800, 2013 QCCS 2515 or *Média5 Corporation inc. (séquestre de),* [2011] J.Q. no 19055, 2011 QCCS 6874; *contra 9113-7521 Québec inc. (Syndic de)*, [2011] J.Q. no 8825, 2011 QCCS 3429.

• *AKAGI v. SYNERGY GROUP (2000) INC.*: REMEMBERING THE COMMERCIAL LIST'S 3Cs •

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It has oft been said that a single alliterative phrase guides hearings at the Commercial List: "Communication, Cooperation and Common Sense."[1] These words are typically invoked to direct the conduct of counsel,[2] but in *Akagi v. Synergy Group (2000) Inc.*,[3] the Ontario Court of Appeal recently cautioned the Commercial List for not taking its own watchwords to heart.

The underlying facts in *Akagi* are as follows. Mr. Akagi participated in a tax reduction program operated by a company called Synergy. After investing over $100,000 in the tax program, it backfired, and the CRA assessed Mr. Akagi for improper tax filings. Mr. Akagi sued Synergy and individuals associated with the company, obtaining default judgment against them on the basis of

fraud and conspiracy to defraud. As an unsecured judgment creditor, Mr. Akagi moved *ex parte* for the appointment of receiver in aid of execution over all assets, undertakings and property of Synergy and a related company. The Court granted the receivership order, and over the course of a few months, further *ex parte* orders vastly expanded the receiver's powers. Synergy and several others affected by the orders moved to set them aside. When their request was denied, they appealed.

Justice Blair, writing for the Court of Appeal, allowed the appeal, overturning the set-aside decision and each of the *ex parte* orders. The Court's decision includes important guidance on the scope and utility of investigative receiverships under s. 101 of the *Courts of Justice Act*,[4] but in this comment, I focus on the Justice Blair's comments on Commercial List practice. The process followed in this case was "overly casual" and deserved "a word of caution."[5] The procedural flaws in this *ex parte* process may be best understood through the Commercial List's 3Cs as failures of communication, cooperation and common sense.

Communication

Certainly, a central failing in this case was the lack of communication between the parties – there was no evidence that Mr. Akagi communicated with the judgment debtors before jumping to enforce his judgment through an *ex parte* receivership order. But the Court of Appeal went further in criticizing "the somewhat casual manner" in which the proceedings occurred.[6] The application judges did not demand adequate representations and evidence before granting *ex parte* relief. At the initial receivership application, the Court of Appeal noted that the Mr. Akagi's affidavit included unsworn documents from CRA officers and newspapers.[7] On the three subsequent *ex parte* applications to expand the receiver's powers, the Receiver did not file a notice of motion, notice of application or a factum.[8] The Receiver only filed additional Receiver's Reports at two of the three hearings. Thus, the application judges granted "a breathtakingly broad extension" of the Initial Order without any evidence other than additional Receiver's Reports.[9] In granting the *ex parte* orders, the application judges' reasons were also lacking. In fact, no reasons were provided for granting the second extension, which occurred over e-mail without any evidence of a discussion.[10]

This sparse record demonstrates that the Receiver failed to communicate any justification for the expansion of its powers, and the application judges failed to communicate or document their reasons for allowing such expansions. As the Court noted that "[t]here is a reason for requiring a proper record of steps taken, including a notice of motion or application, a motion or application record, a proper evidentiary foundation and adequate judicial reasons: it is otherwise impossible to determine subsequently what was at issue and the basis for the order made."[11]

Cooperation

By their very nature, *ex parte* applications are uncooperative. A party to the proceedings is not given notice and can therefore not participate. A cooperative process, one aimed at encouraging efficient use of judicial resources, would not have begun with an *ex parte* application for a receivership order in aid of execution. Yet, Mr. Akagi took no steps to enforce his judgment prior to seeking the appointment of a receiver.[12] The application judge should have demanded that Mr. Akagi first engage with the judgment debtors to seek a resolution of the matter before bringing his motion.

At the very least, the application judges should not have allowed these proceedings to be carried out on an *ex parte* basis. Justice Blair noted that "had [this matter] not proceeded through the numerous steps on an *ex parte* basis, as it did, it would have been less likely to have gone astray, as it did."[13] The participation of the judgment debtors in the hearings may have also led to a swifter, more cooperative resolution to the matter.

Common Sense

Centrally, the Court of Appeal's reasons allude to the failure of common sense throughout the proceedings. The proceedings were based on a "fundamentally flawed premise": as an unsecured judgment creditor, the relief sought by Mr. Akagi "was intended to reach far beyond his interests in that capacity."[14] The Court repeated that Mr. Akagi never presented evidence as to why he took no steps to recover his judgment.[15] Certificates of pending litigation were registered despite the fact that Mr. Akagi had not asserted an interest in land or even sought a certificate of pending litigation.[16] There was no evidence of any urgency or reason to disband with notice to the other parties.[17] There was no evidence that judgment debtors were insolvent.[18] There was no evidence that Synergy or any of the judgment debtors might take steps to undermine Mr. Akagi's recovery.[19] After all, the Commercial List Practice Direction states that *ex parte* matters "will be rare" and that parties "shall be required to justify the reason for not notifying the respondents."[20] No justification was given in this case.

The Court of Appeal ostensibly decided this appeal on the substantive errors regarding the impermissible scope of this investigative receivership. However, the procedure followed in this case was equally to blame. Justice Blair, who presided over the Commercial List for several years as a trial judge, observed that "[h]ad the normally salutary processes of the Commercial List – carefully designed to permit the parties to get to the merits of a dispute and resolve them in 'real time' without trampling their procedural rights – not been permitted to become overly casual, as they did, the galloping nature of the receivership may well have been reined in."[21] This case serves as a reminder that even the Commercial List's process must be imbued with the 3Cs.

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1 Justice James M. Farley, "The pursuit of justice" (2002) 20:4 Advocates' Society Journal 10; *Bosworth v. Coleman*, [2014] O.J. No. 4983, 2014 ONSC 6135 at para. 11; *Kushevsky v. Tulman*, [2014] O.J. No. 6432, 2014 ONSC 1734 at para. 37; *Waldman v. Waldman Estate*, [2013] O.J. No. 5516, 2013 ONSC 7441 at para. 2.

2 Fred Myers, "Justice Farley in Real Time" in Janis P. Sarra, ed., *Annual Review of Insolvency Law 2006* (Toronto: Thomson Carswell, 2007).

3 [2015] O.J. No. 2603, 2015 ONCA 368 [*Akagi*].

4 R.S.O. 1990, c. C.43, s. 101.

5 *Akagi*, at paras. 59, 94.

6 *Akagi*, at para. 59.

7 *Akagi*, at para. 26.

8 *Akagi*, at paras. 34, 37, 41.

9 *Akagi*, at para. 41.

10 *Akagi*, at para. 40.

11 *Akagi*, at para. 96.

12 *Akagi*, at para. 24, 44.

13 *Akagi*, at para. 94.

14 *Akagi*, at paras. 59, 7.

15 *Akagi*, at para. 24, 44.

16 *Akagi*, at para. 111.

17 *Akagi*, at para. 107.

18 *Akagi*, at para. 44.

19 *Akagi*, at para. 107.

20 Commercial List Practice Direction, at para. 26.

21 *Akagi*, at para. 94.

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