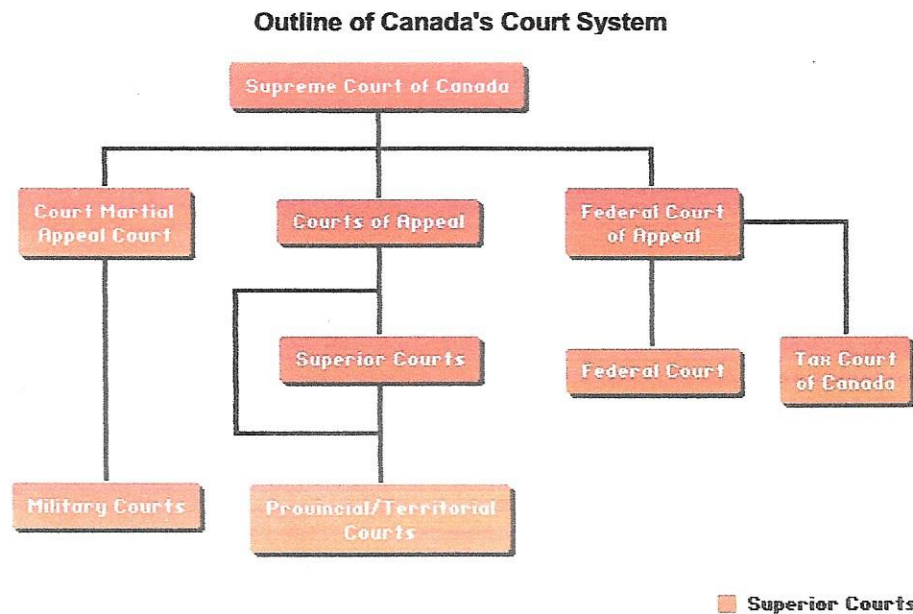


## Structure of the Courts



**Supreme Court of Canada:** The Supreme Court of Canada, our highest court, is based in Ottawa and consists of nine judges chosen to represent the country's regions. The Supreme Court has the power to review lower-court rulings on any legal issue but limits its docket to about 100 cases a year that involve issues of national importance.

**Superior Courts:** Each province and territory has two levels of superior court, one to hear trials and the other to hear appeals. Superior courts handle criminal offences, divorces, civil cases involving large amounts of money and Charter challenges, and review the decisions of administrative tribunals and some lower courts. The trial court has various names - it is the Superior Court in Quebec and the Superior Court of Justice in Ontario, but is known as the Court of Queen's Bench in Alberta, Manitoba, New Brunswick and Saskatchewan, and as the Court of Justice in Nunavut. In all other provinces and territories, it is called the Supreme Court. Rulings made by judges at the trial level can be appealed to the appellate level, either called the Court of Appeal or the Appeal Division, which is the highest court within the province or territory.

The Federal Court and the Federal Court of Appeal handle issues that arise under federal laws and appeals from the decisions of federal tribunals. The Tax Court deals specifically with disputes between taxpayers and the federal government over tax assessments. The Court Martial Appeal Court of Canada hears appeals from military courts which are known as "courts martial."

Judges on each of these courts are eligible to become members of the Canadian Superior Court Judges Association. Judges of the Supreme Court of Canada have declined to join since cases involving judicial organizations like the Association may come before their court.

The federal government appoints and pays the superior court judges. Provinces and territories, however, provide courthouses and other facilities and support staff for the trial and appeal divisions of their jurisdiction's superior court.

**Provincial and Territorial Courts:** The provinces and territories appoint and pay judges who serve in the courts that form the lower tier of the court system. These courts have the power to deal with every criminal offence except the most serious offences, such as murder and piracy, and conduct pre-trial hearings, called preliminary hearings, in criminal cases destined for trial in superior court. They also handle violations of provincial laws. In Quebec, this level of court also deals with civil matters involving up to \$70,000 and disputes over provincial taxes. Provinces and territories have established Small Claims Courts to resolve civil actions

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# The Process

Preliminary Considerations

Appointment Documentation

Notice to Stakeholders

Admin Matters/Asset Identification &  
Possession Taking & Evaluation

Interim Reporting

Obtaining Authorization/Directions

Administer Operation/Realization  
Process

Administer Competing Claims

Finalize the Asset Disposition

Finalize the Reporting to Stakeholders

Obtain Discharge

# The Process(es)

## CAIRP 2018 Tutorial Worksheet

	Ordinary Administration	Summary Administration	Div I Proposal	Div II Proposal	Interim Receiver	Court Apt's Receiver	CCA Monitor
Preliminary Considerations							
Appointment Documentation							
Notice to Stakeholders							
Admin Matters/Asset Identification & Possession Taking & Evaluation							
Interim Reporting							
Obtaining Authorization/Directions							
Administer Operation/Realization Process							
Administer Competing Claims							
Finalize the Asset Disposition							
Finalize the Reporting to Stakeholders							
Obtain Discharge							

**CAIRP Tutorial 2019 - Comparison Summary and Ordinary Administration**

	<u>Ordinary Administration</u>		<u>Summary Administration</u>
	<i>Corporation</i>	<i>Individual</i>	<i>Individual</i>
Perform Assessment of Individual Debtor	✓	✓	✓
Identify & Value Assets	✓	✓	✓
Determine any security interests	✓	✓	✓
Determine any exemptions	✓	✓	✓
Obtain Directors' Resolution (only if Corporation)	✓	✓	✓
Prepare documents (SOA, Assignment, Form 65)	✓	✓	✓
File "Joint Estate" if appropriate	✓	✓	Joint filing allowed S. 155 (f)
File documents with O.R.	✓	✓	✓
Receive and file Certificate of Appointment	✓	✓	Single notice - S. 155 (h)
Prepare/Send Notice to Creditors of Bankruptcy	✓	✓	No meeting unless requested - S. 155(d.1)
Prepare send notice of creditors meeting	✓	✓	No publication - S. 155 (e)
Publish Notice to Creditors in Newspaper	✓	✓	✓
Review PoC's; disallow if/as necessary	✓	✓	No meeting unless requested - S. 155(d.1)
Attend/Chair Meeting of Creditors	✓	✓	No Inspectors unless requested - S. 155(e)
Attend to Appointment of Inspectors	✓	✓	Only if Inspectors appointed - S. 155(e)
Meet with Inspectors to obtain action authorization	✓	✓	✓
Deal with settlements, preferences, fraudulent transactions	✓	✓	Only if required by creditors - S. 155(k)
Attend to realization of assets	✓	✓	See Consolidated account - S. 155(g)
Obtain Court authorization to sell to related parties	✓	✓	✓
Attend to estate trust banking	✓	✓	✓
Attend to Consolidated Account banking	✓	✓	✓
Attend to tax returns prep and filing	✓	✓	✓
Attend to receive and review monthly Income and expense	✓	✓	✓
Finalize and disputed/disallowed claims	✓	✓	✓
Apply for Directions as necessary	✓	✓	✓
Utilize S. 37/ S. 38 as necessary	✓	✓	✓
Attend to Bankrupt's Automatic discharge as appropriate	✓	✓	✓
Finalize asset realizations/Banking	✓	✓	✓
Prepare R&D	✓	✓	No Inspectors unless requested - S. 155(e)
R&D approved by Inspectors	✓	✓	S. 155(i): Rules 62-66
Send Notice of Taxation	✓	✓	S. 155(i): Rules 62-67
R&D Taxed by Court	✓	✓	✓
Distribute dividends	✓	✓	S. 155(j): Rule 67
Apply for Trustee Discharge	✓	✓	S. 155(j): Rule 68
Send appropriate notice of Discharge	✓	✓	

**DISCLAIMER:** This is not an exhaustive list relating to the administration of estates but rather is prepared to demonstrate that the administration of bankrupt estates, whether Summary or Ordinary, are very similar, with exceptions set out in s. 155. of the BIA.



## **CAIRP 2019 Tutorial**

### **Some of my Favourite Sections**

- 4 - related parties
- 34 - Apply for Directions
- 37 – Where bankrupt, any creditor or anyone else is aggrieved....
- 38 – Proceeding by creditor where Trustee refuses to act
- 40 – Disposal of unrealizable property
- 50.4(7) - Material Adverse Change
- 59(3) – Reasonable Security for \$.50 or such other amount
- 62.1 - Waiver of Default
- 63 – The Court MAY on application, annul the Proposal
- 67 – Exempt & Non-Exempt Property of the Bankrupt
- 68(3)(a) & (b), (4), (6), (7), (10), (11); Rule 105 – Calculation of Surplus & Mediation 170.1 (173(m), (n))
- 69.3(1.1) – Cessation of Stay upon Trustee's discharge
- 75 – Agreement of Purchase and Sales taking precedence
- 95 – the language of Settlements/preferences – meeting the test
- 135 – Determination of secured claims & disallowances
- 136 – Subject to the rights of secured creditors
- 144 – Right of Bankrupt to Surplus
- 149 - 30 days to prove a claim
- 155 – Summary Administration [Rules 62 – 67]
- 161/163 –Examination of the bankrupt and others
- 168.1(2) – Nothing precludes a bankrupt applying
- 169(1) Bankruptcy operates as an application for discharge
- 169(2) – no earlier than 3 months, no later than 12 months
- 169(6) – The Trustee, upon being served a notice....
- 169(7) What if Trustee is unavailable ....
- 172(1) – On hearing application the Court may....
- 172(2) – On proof of any of the facts ... the Court SHALL ...
- 173 – Facts for which discharge may be refused, suspended or granted conditionally
- 178 – Debts not released by an order of discharge



# Competency/Role Chart

CAIRP 2018 Tutorial Competency Worksheet

	Ordinary Administration	Summary Administration	Div I Proposal	Div II Proposal	Interim Receiver	Court App't'd Receiver	CCAA Monitor	Consultant
A. Ethical Behaviour & Professionalism 10% - 12%	✓	✓	✓	✓	✓	✓	✓	✓
D. Insolvency Philosophy & Practice 2% - 4%	✓	✓	✓	✓		✓		✓
E. Insolvency Law & Practice 41% - 47%	✓	✓	✓	✓	✓	✓	✓	
F. Taxation 7% - 9%	✓	✓	✓	✓		✓		✓
G. General Business Law 7% - 11%	✓		✓		✓			
H. Financing 7% - 9%			✓			✓		✓
I. Managing Business Operations 7% - 11%	✓				✓	✓		✓
J. Financial Analysis & Reporting 7% - 9%	✓	✓	✓		✓	✓	✓	✓

Disclaimer: This is a study guide only!

Review the Competency Profiles with this guide and consider the appointed capacity in which you might encounter any of the competencies described in the Competency Profile.

## Directive 11R

- Paragraph 5 (1) Bankrupt completes a Form 65 monthly
- (4) Trustee verifies accuracy information:
- (4)(a) obtain proof of income
- (4)(b) proof of payments referred to in 5(2) and 5(3)
- (2) Start with Bankrupt's Gross Income
- (2)(a) deduct statutory deductions MADE ( )
- (2)(b) deduct business expenses and taxes relative to self employment PAID ( )
- Bankrupt's Net Income  B %
- (2) Other Household Member's Net Income
- (2)(a) Statutory deductions MADE ( )
- (2)(b) Business expenses and taxes PAID ( )
- Other Household Member Net Income  F %
- Total Household Income  100%
- Nondiscretionary expenses
- (3)(a) child support payments ( )
- (3)(b) spousal support payments ( )
- (3)(c) child care expenses ( )
- (3)(d) expenses associated with a medical condition ( )
- (3)(e) court imposed fines that are being PAID ( )
- (3)(f) expenses incurred as a condition of employment ( )
- (3)(g) any other debt where a stay has been lifted and recourse authorized ( )
- interest paid on debts that are not dischargeable
- (3)(h) under 178(1)(g) ( )
- Total non-discretionary expenses
- (5) Family income subject to surplus
- Superintendent standard - family of \_\_\_\_ ( )
- Surplus
- (6) If 'surplus is less than \$\$200, then "\$0.00"
- (7) If surplus is greater than \$200, surplus x B%

Partnerships

Partnership of A and B and C

Assets of Partnership \$ \_\_\_\_\_  
First pays liabilities of partnership (\$ \_\_\_\_\_)  
Surplus (shortfall) \$ \_\_\_\_\_

IF "Surplus", surplus is distributed in accordance with proportional right and interest in partnership  
IF "shortfall", and surplus of the estates of the individual partners is applied.

<u>Partner A</u>	<u>Partner B</u>	<u>Partner C</u>
Assets of Partner A \$ _____	Assets of Partner B \$ _____	Assets of Partner C \$ _____
First pays liabilities of Partner A (\$ _____)	First pays liabilities of Partner B (\$ _____)	First pays liabilities of Partner C (\$ _____)
Surplus (shortfall)	Surplus (shortfall)	Surplus (shortfall)
If "Surplus", surplus flows, firstly to partnership shortfall (joint and several liability), secondly S. 144	If "Surplus", surplus flows, firstly to partnership shortfall (joint and several liability), secondly S. 144	If "Surplus", surplus flows, firstly to partnership shortfall (joint and several liability), secondly S. 144