

TAB 3

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36.

MONITORS

Duties and functions

23. (1) The monitor shall

- (a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,
 - (i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and
 - (ii) within five days after the day on which the order is made,
 - (A) make the order publicly available in the prescribed manner,
 - (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and
 - (C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;
- (b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;
- (c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;
- (d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —
 - (i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,
 - (ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and
 - (iii) at any other time that the court may order;
- (d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any,

to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the Bankruptcy and Insolvency Act, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

Monitor not liable

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

2005, c. 47, s. 131; 2007, c. 36, s. 72.

Right of access

24. For the purposes of monitoring the company's business and financial affairs, the monitor shall have access to the company's property, including the premises, books, records, data, including data in electronic form, and other financial documents of the company, to the extent that is necessary to adequately assess the company's business and financial affairs.

2005, c. 47, s. 131.

Obligation to act honestly and in good faith

25. In exercising any of his or her powers or in performing any of his or her duties and functions, the monitor must act honestly and in good faith and comply with the Code of Ethics referred to in section 13.5 of the Bankruptcy and Insolvency Act.

2005, c. 47, s. 131.

POWERS, DUTIES AND FUNCTIONS OF SUPERINTENDENT OF BANKRUPTCY

Public records

26. (1) The Superintendent of Bankruptcy must keep, or cause to be kept, in the form that he or she considers appropriate and for the prescribed period, a public record of prescribed information relating to proceedings under this Act. On request, and on payment of the prescribed fee, the Superintendent of Bankruptcy must provide, or cause to be provided, any information contained in that public record.

Other records

- (2) The Superintendent of Bankruptcy must keep, or cause to be kept, in the form that he or she considers appropriate and for the prescribed period, any other records relating to the administration of this Act that he or she considers appropriate.

Agreement to provide compilation

- (3) The Superintendent of Bankruptcy may enter into an agreement to provide a compilation of all or part of the information that is contained in the public record.

2005, c. 47, s. 131; 2007, c. 36, s. 73.

Applications to court and right to intervene

27. The Superintendent of Bankruptcy may apply to the court to review the appointment or conduct of a monitor and may intervene, as though he or she were a party, in any matter or proceeding in court relating to the appointment or conduct of a monitor.

2005, c. 47, s. 131.

Complaints

28. The Superintendent of Bankruptcy must receive and keep a record of all complaints regarding the conduct of monitors.

2005, c. 47, s. 131.

Investigations

29. (1) The Superintendent of Bankruptcy may make, or cause to be made, any inquiry or investigation regarding the conduct of monitors that he or she considers appropriate.

Rights

- (2) For the purpose of the inquiry or investigation, the Superintendent of Bankruptcy or any person whom he or she appoints for the purpose

(a) shall have access to and the right to examine and make copies of the books, records, data, documents or papers — including those in electronic form — in the possession or under the control of a monitor under this Act; and

(b) may, with the leave of the court granted on an ex parte application, examine the books, records, data, documents or papers — including those in electronic form — relating to any compromise or arrangement in respect of which this Act applies that are in the possession or under the control of any other person designated in the order granting the leave, and for that purpose may under a warrant from the court enter and search any premises.

Staff

- (3) The Superintendent of Bankruptcy may engage the services of persons having technical or specialized knowledge, and persons to provide administrative services, to assist the Superintendent of Bankruptcy in conducting an inquiry or investigation, and may establish the terms and conditions of their engagement. The remuneration and expenses of those persons, when certified by the Superintendent of Bankruptcy, are payable out of the appropriation for the office of the Superintendent.

2005, c. 47, s. 131; 2007, c. 36, s. 74.

Powers in relation to licence

30. (1) If, after making or causing to be made an inquiry or investigation into the conduct of a monitor, it appears to the Superintendent of Bankruptcy that the monitor has not fully complied with this Act and its regulations or that it is in the public interest to do so, the Superintendent of Bankruptcy may

(a) cancel or suspend the monitor's licence as a trustee under the Bankruptcy and Insolvency Act; or

(b) place any condition or limitation on the licence that he or she considers appropriate.

Notice to trustee

- (2) Before deciding whether to exercise any of the powers referred to in subsection (1), the Superintendent of Bankruptcy shall send the monitor written notice of the powers that the

Superintendent may exercise and the reasons why they may be exercised and afford the monitor a reasonable opportunity for a hearing.

Summons

(3) The Superintendent of Bankruptcy may, for the purpose of the hearing, issue a summons requiring the person named in it

- (a) to appear at the time and place mentioned in it;
- (b) to testify to all matters within their knowledge relative to the subject matter of the inquiry or investigation into the conduct of the monitor; and
- (c) to bring and produce any books, records, data, documents or papers — including those in electronic form — in their possession or under their control relative to the subject matter of the inquiry or investigation.

Effect throughout Canada

(4) A person may be summoned from any part of Canada by virtue of a summons issued under subsection (3).

Fees and allowances

(5) Any person summoned under subsection (3) is entitled to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

Procedure at hearing

(6) At the hearing, the Superintendent of Bankruptcy

- (a) has the power to administer oaths;
- (b) is not bound by any legal or technical rules of evidence in conducting the hearing;
- (c) shall deal with the matters set out in the notice of the hearing as informally and expeditiously as the circumstances and a consideration of fairness permit; and
- (d) shall cause a summary of any oral evidence to be made in writing.

Record

(7) The notice referred to in subsection (2) and, if applicable, the summary of oral evidence referred to in paragraph (6)(d), together with any documentary evidence that the Superintendent of Bankruptcy receives in evidence, form the record of the hearing, and that record and the hearing are public unless the Superintendent of Bankruptcy is satisfied that personal or other matters that may be disclosed are of such a nature that the desirability of avoiding public disclosure of those matters, in the interest of a third party or in the public

interest, outweighs the desirability of the access by the public to information about those matters.

Decision

(8) The decision of the Superintendent of Bankruptcy after the hearing, together with the reasons for the decision, must be given in writing to the monitor not later than three months after the conclusion of the hearing, and is public.

Review by Federal Court

(9) A decision of the Superintendent of Bankruptcy given under subsection (8) is deemed to be a decision of a federal board, commission or other tribunal that may be reviewed and set aside under the Federal Courts Act.

2005, c. 47, s. 131; 2007, c. 36, s. 75.

Delegation

31. (1) The Superintendent of Bankruptcy may, in writing, authorize any person to exercise or perform, subject to any terms and conditions that he or she may specify in the authorization, any of the powers, duties or functions of the Superintendent of Bankruptcy under sections 29 and 30.

Notification to monitor

(2) If the Superintendent of Bankruptcy delegates in accordance with subsection (1), the Superintendent or the delegate must give notice of the delegation in the prescribed manner to any monitor who may be affected by the delegation.

2005, c. 47, s. 131.

TAB 4

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3.

CONDUCT OF TRUSTEES

Where trustee is not qualified to act

13.3 (1) Except with the permission of the court and on such conditions as the court may impose, no trustee shall act as trustee in relation to the estate of a debtor

- (a) where the trustee is, or at any time during the two preceding years was,
 - (i) a director or officer of the debtor,
 - (ii) an employer or employee of the debtor or of a director or officer of the debtor,
 - (iii) related to the debtor or to any director or officer of the debtor, or
 - (iv) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the debtor; or
- (b) where the trustee is
 - (i) the trustee under a trust indenture issued by the debtor or any person related to the debtor, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Québec* that is granted by the debtor or any person related to the debtor, or
 - (ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Copy of application to Superintendent

(1.1) A trustee who applies for the permission of the court for the purposes of subsection (1) shall without delay send a copy of the application to the Superintendent.

Where disclosure required

- (2) No trustee shall act as a trustee in relation to the estate of a debtor where the trustee is already
- (a) the trustee in the bankruptcy of, or in a proposal concerning, any person related to the debtor, or
 - (b) the receiver, within the meaning of subsection 243(2), or the liquidator of the property of any person related to the debtor,

without making, at the time of being appointed as trustee in relation to the estate of the debtor and at the first meeting of creditors, full disclosure of that fact and of the potential conflict of interest.

1992, c. 27, s. 9; 1997, c. 12, s. 9(F); 2004, c. 25, s. 13; 2005, c. 47, s. 11; 2007, c. 36, s. 4(F).

Trustee may act for secured creditor

13.4 (1) No trustee may, while acting as the trustee of an estate, act for or assist a secured creditor to assert a claim against the estate or to realize or otherwise deal with a security that the secured creditor holds, unless the trustee has obtained a written opinion from independent legal counsel that the security is valid and enforceable against the estate.

Notification by trustee

(1.1) Forthwith on commencing to act for or assist a secured creditor of the estate in the manner set out in subsection (1), a trustee shall notify the Superintendent and the creditors or the inspectors

- (a) that the trustee is acting for the secured creditor;
- (b) of the basis of any remuneration from the secured creditor; and
- (c) of the opinion referred to in subsection (1).

Trustee to provide opinion

(2) Within two days after receiving a request therefor, a trustee shall provide the Superintendent with a copy of the opinion referred to in subsection (1) and shall also provide a copy to each creditor who has made a request therefor.

1992, c. 27, s. 9; 1997, c. 12, s. 10; 2004, c. 25, s. 14(E); 2005, c. 47, s. 12; 2007, c. 36, s. 5.

Code of Ethics

13.5 A trustee shall comply with the prescribed Code of Ethics.

1992, c. 27, s. 9; 2005, c. 47, s. 13.

Persons disqualified from working for trustee

13.6 A trustee shall not engage the services of a person

- (a) whose trustee licence has been cancelled under paragraph 13.2(5)(a) or subsection 14.01(1); or
- (b) who is the subject of a direction made by the Superintendent under paragraph 14.03(1)(d).

1997, c. 12, s. 11; 2005, c. 47, s. 13.

TAB 5

Bankruptcy and Insolvency General Rules (C.R.C., c. 368)

CODE OF ETHICS FOR TRUSTEES

34. Every trustee shall maintain the high standards of ethics that are central to the maintenance of public trust and confidence in the administration of the Act.

SOR/98-240, s. 1.

35. For the purposes of sections 39 to 52, "professional engagement" means any bankruptcy or insolvency matter in respect of which a trustee is appointed or designated to act in that capacity pursuant to the Act.

SOR/98-240, s. 1.

36. Trustees shall perform their duties in a timely manner and carry out their functions with competence, honesty, integrity and due care.

SOR/98-240, s. 1.

37. Trustees shall cooperate fully with representatives of the Superintendent in all matters arising out of the Act, these Rules or a directive.

SOR/78-389, s. 2; SOR/98-240, s. 1.

38. Trustees shall not assist, advise or encourage any person to engage in any conduct that the trustees know, or ought to know, is illegal or dishonest, in respect of the bankruptcy and insolvency process.

SOR/98-240, s. 1.

39. Trustees shall be honest and impartial and shall provide to interested parties full and accurate information as required by the Act with respect to the professional engagements of the trustees.

SOR/81-646, s. 2; SOR/98-240, s. 1.

40. Trustees shall not disclose confidential information to the public concerning any professional engagement, unless the disclosure is

(a) required by law; or

(b) authorized by the person to whom the confidential information relates.

SOR/81-646, s. 3; SOR/98-240, s. 1.

41. Trustees shall not use any confidential information that is gathered in a professional capacity for their personal benefit or for the benefit of a third party.

SOR/98-240, s. 1.

42. Trustees shall not purchase, directly or indirectly,

- (a) property of any debtor for whom they are acting with respect to a professional engagement; or
- (b) property of any estates in respect of which the Act applies, for which they are not acting, unless the property is purchased
 - (i) at the same time as it is offered to the public,
 - (ii) at the same price as it is offered to the public, and
 - (iii) during the normal course of business of the bankrupt or debtor.

SOR/98-240, s. 1.

43. (1) Subject to subsection (2), if trustees have a responsibility to sell property in connection with a proposal or bankruptcy, they shall not sell the property, directly or indirectly,

- (a) to their employees, agents or mandataries, or persons not dealing at arms' length with the trustees;
- (b) to other trustees or, knowingly, to employees of other trustees; or
- (c) to related persons of the trustees or, knowingly, to related persons of the persons referred to in paragraph (a) or (b).

(2) If trustees have a responsibility to act in accordance with subsection (1), they may sell property in connection with a proposal or bankruptcy to the persons set out in paragraph (1)(a), (b) or (c), if the property is offered for sale

- (a) at the same time as it is offered to the public;
- (b) at the same price as it is offered to the public; and
- (c) during the normal course of business of the bankrupt or debtor.

SOR/98-240, s. 1; SOR/2007-61, ss. 9(E), 63(E).

44. Trustees who are acting with respect to any professional engagement shall avoid any influence, interest or relationship that impairs, or appears in the opinion of an informed person to impair, their professional judgment.

SOR/98-240, s. 1.

45. Trustees shall not sign any document, including a letter, report, statement, representation or financial statement that they know, or reasonably ought to know, is false or misleading, and

shall not associate themselves with such a document in any way, including by adding a disclaimer of responsibility after their signature.

SOR/98-240, s. 1; SOR/2005-284, s. 4.

46. Trustees may transmit information that they have not verified, respecting the financial affairs of a bankrupt or debtor, if

(a) the information is subject to a disclaimer of responsibility or an explanation of the origin of the information; and

(b) the transmission of the information is not contrary to the Act, these Rules or any directive.

SOR/98-240, s. 1.

46.1 [Repealed, SOR/98-240, s. 1]

47. Trustees shall not engage in any business or occupation that would compromise their ability to perform any professional engagement or that would jeopardize their integrity, independence or competence.

SOR/98-240, s. 1.

48. Trustees who hold money or other property in trust shall

(a) hold the money or property in accordance with the laws, regulations and terms applicable to the trust; and

(b) administer the money or property with due care, subject to the laws, regulations and terms applicable to the trust.

SOR/98-240, s. 1.

49. Trustees shall not, directly or indirectly, pay to a third party a commission, compensation or other benefit in order to obtain a professional engagement or accept, directly or indirectly from a third party, a commission, compensation or other benefit for referring work relating to a professional engagement.

SOR/98-240, s. 1.

50. Trustees shall not obtain, solicit or conduct any engagement that would discredit their profession or jeopardize the integrity of the bankruptcy and insolvency process.

SOR/98-240, s. 1.

51. Trustees shall not, directly or indirectly, advertise in a manner that

(a) they know, or should know, is false, misleading, materially incomplete or likely to induce error; or

(b) unfavourably reflects on the reputation or competence of another trustee or on the integrity of the bankruptcy and insolvency process.

SOR/98-240, s. 1.

52. Trustees, in the course of their professional engagements, shall apply due care to ensure that the actions carried out by their employees, agents or mandataries or any persons hired by the trustees on a contract basis are carried out in accordance with the same professional standards that those trustees themselves are required to follow in relation to that professional engagement.

SOR/98-240, s. 1; SOR/2007-61, s. 10(E).

53. Any complaint that relates to a contravention of any of sections 36 to 52 must be sent to the Division Office in writing.

SOR/98-240, s. 1.

TAB 6

or decision appealed from, or within such further time as the judge stipulates.

(3) The notice of motion or the motion must set out the grounds of the appeal.

SOR/98-240, s. 1.

Appeal to Court of Appeal

31 (1) An appeal to a court of appeal referred to in subsection 183(2) of the Act must be made by filing a notice of appeal at the office of the registrar of the court appealed from, within 10 days after the day of the order or decision appealed from, or within such further time as a judge of the court of appeal stipulates.

(2) If an appeal is brought under paragraph 193(e) of the Act, the notice of appeal must include the application for leave to appeal.

SOR/98-240, s. 1; SOR/2007-61, s. 63(E).

32 The registrar of the court appealed from shall transmit to the court of appeal the notice of appeal and the file.

SOR/98-240, s. 1.

Official Receiver

33 The official receiver may request instructions from the registrar or, if the official receiver is the registrar, from the judge, in case of doubt respecting any matter arising out of the Act, these Rules or a directive.

SOR/98-240, s. 1.

Code of Ethics for Trustees

34 Every trustee shall maintain the high standards of ethics that are central to the maintenance of public trust and confidence in the administration of the Act.

SOR/98-240, s. 1.

35 For the purposes of sections 39 to 52, *professional engagement* means any bankruptcy or insolvency matter in respect of which a trustee is appointed or designated to act in that capacity pursuant to the Act.

SOR/98-240, s. 1.

36 Trustees shall perform their duties in a timely manner and carry out their functions with competence, honesty, integrity and due care.

SOR/98-240, s. 1.

date de l'ordonnance ou de la décision faisant l'objet de l'appel, ou dans tel autre délai fixé par le juge.

(3) L'avis de requête ou de motion ou la requête ou la motion énonce les motifs de l'appel.

DORS/98-240, art. 1.

Appels devant la cour d'appel

31 (1) Un appel est formé devant une cour d'appel visée au paragraphe 183(2) de la Loi par le dépôt d'un avis d'appel au bureau du registraire du tribunal ayant rendu l'ordonnance ou la décision portée en appel, dans les 10 jours qui suivent le jour de l'ordonnance ou de la décision, ou dans tel autre délai fixé par un juge de la cour d'appel.

(2) En cas d'application de l'alinéa 193e) de la Loi, l'avis d'appel est accompagné de la demande d'autorisation d'appel.

DORS/98-240, art. 1; DORS/2007-61, art. 63(A).

32 Le registraire du tribunal ayant rendu l'ordonnance ou la décision portée en appel transmet à la cour d'appel l'avis d'appel et le dossier.

DORS/98-240, art. 1.

Séquestre officiel

33 Le séquestre officiel peut demander des consignes au registraire ou, s'il agit en qualité de registraire, au juge, en cas de doute au sujet de toute question relevant de la Loi, des présentes règles ou des instructions.

DORS/98-240, art. 1.

Code de déontologie des syndics

34 Le syndic se conforme à des normes élevées de déontologie, lesquelles sont d'une importance primordiale pour le maintien de la confiance du public dans la mise en application de la Loi.

DORS/98-240, art. 1.

35 Pour l'application des articles 39 à 52, *activité professionnelle* s'entend de toute affaire de faillite ou d'insolvabilité dans laquelle le syndic est nommé ou désigné pour exercer ses fonctions dans le cadre de la Loi.

DORS/98-240, art. 1.

36 Le syndic s'acquitte de ses obligations dans les meilleurs délais et exerce ses fonctions avec compétence, honnêteté, intégrité, prudence et diligence.

DORS/98-240, art. 1.

37 Trustees shall cooperate fully with representatives of the Superintendent in all matters arising out of the Act, these Rules or a directive.

SOR/78-389, s. 2; SOR/98-240, s. 1.

38 Trustees shall not assist, advise or encourage any person to engage in any conduct that the trustees know, or ought to know, is illegal or dishonest, in respect of the bankruptcy and insolvency process.

SOR/98-240, s. 1.

39 Trustees shall be honest and impartial and shall provide to interested parties full and accurate information as required by the Act with respect to the professional engagements of the trustees.

SOR/81-646, s. 2; SOR/98-240, s. 1.

40 Trustees shall not disclose confidential information to the public concerning any professional engagement, unless the disclosure is

(a) required by law; or

(b) authorized by the person to whom the confidential information relates.

SOR/81-646, s. 3; SOR/98-240, s. 1.

41 Trustees shall not use any confidential information that is gathered in a professional capacity for their personal benefit or for the benefit of a third party.

SOR/98-240, s. 1.

42 Trustees shall not purchase, directly or indirectly,

(a) property of any debtor for whom they are acting with respect to a professional engagement; or

(b) property of any estates in respect of which the Act applies, for which they are not acting, unless the property is purchased

(i) at the same time as it is offered to the public,

(ii) at the same price as it is offered to the public, and

(iii) during the normal course of business of the bankrupt or debtor.

SOR/98-240, s. 1.

43 (1) Subject to subsection (2), if trustees have a responsibility to sell property in connection with a proposal or bankruptcy, they shall not sell the property, directly or indirectly,

(a) to their employees, agents or mandataries, or persons not dealing at arms' length with the trustees;

37 Le syndic coopère entièrement avec les représentants du surintendant dans toute affaire qui relève de la Loi, des présentes règles ou des instructions.

DORS/78-389, art. 2; DORS/98-240, art. 1.

38 Le syndic n'aide, ne conseille ni n'encourage quiconque à accomplir un acte qu'il sait — ou devrait savoir — être illégal ou malhonnête dans le contexte du régime de la faillite et de l'insolvabilité.

DORS/98-240, art. 1.

39 Le syndic est honnête et impartial et fournit, conformément aux exigences de la Loi, des renseignements exacts et complets aux parties intéressées au sujet de ses activités professionnelles.

DORS/81-646, art. 2; DORS/98-240, art. 1.

40 Le syndic ne divulgue aux membres du public aucun renseignement confidentiel relatif à ses activités professionnelles, sauf dans les cas suivants :

a) il y est tenu par la loi;

b) il a obtenu le consentement de la personne visée par le renseignement confidentiel.

DORS/81-646, art. 3; DORS/98-240, art. 1.

41 Le syndic n'utilise ni pour son propre bénéfice ni pour celui d'un tiers les renseignements confidentiels recueillis dans le cadre de ses fonctions professionnelles.

DORS/98-240, art. 1.

42 Le syndic n'achète, ni directement ni indirectement :

a) les biens d'un débiteur pour lequel il agit dans le cadre d'une activité professionnelle;

b) les biens des actifs régis par la Loi et auxquels il n'est pas commis, à moins que ces biens ne soient achetés :

(i) en même temps qu'ils sont offerts au public,

(ii) à un prix égal à celui auquel ils sont offerts au public,

(iii) dans le cours normal des affaires du failli ou du débiteur.

DORS/98-240, art. 1.

43 (1) Sous réserve du paragraphe (2), lorsque le syndic a la responsabilité de vendre des biens dans le cadre d'une proposition ou d'une faillite, il ne les vend, ni directement ni indirectement :

a) à ses employés, à ses mandataires ou à des personnes ne traitant pas à distance avec lui;

(b) to other trustees or, knowingly, to employees of other trustees; or

(c) to related persons of the trustees or, knowingly, to related persons of the persons referred to in paragraph (a) or (b).

(2) If trustees have a responsibility to act in accordance with subsection (1), they may sell property in connection with a proposal or bankruptcy to the persons set out in paragraph (1)(a), (b) or (c), if the property is offered for sale

(a) at the same time as it is offered to the public;

(b) at the same price as it is offered to the public; and

(c) during the normal course of business of the bankrupt or debtor.

SOR/98-240, s. 1; SOR/2007-61, ss. 9(E), 63(E).

44 Trustees who are acting with respect to any professional engagement shall avoid any influence, interest or relationship that impairs, or appears in the opinion of an informed person to impair, their professional judgment.

SOR/98-240, s. 1.

45 Trustees shall not sign any document, including a letter, report, statement, representation or financial statement that they know, or reasonably ought to know, is false or misleading, and shall not associate themselves with such a document in any way, including by adding a disclaimer of responsibility after their signature.

SOR/98-240, s. 1; SOR/2005-284, s. 4.

46 Trustees may transmit information that they have not verified, respecting the financial affairs of a bankrupt or debtor, if

(a) the information is subject to a disclaimer of responsibility or an explanation of the origin of the information; and

(b) the transmission of the information is not contrary to the Act, these Rules or any directive.

SOR/98-240, s. 1.

46.1 [Repealed, SOR/98-240, s. 1]

47 Trustees shall not engage in any business or occupation that would compromise their ability to perform any professional engagement or that would jeopardize their integrity, independence or competence.

SOR/98-240, s. 1.

b) à un autre syndic ou, sciemment, aux employés de ce dernier;

c) aux personnes liées à lui ou, sciemment, aux personnes liées à celles mentionnées aux alinéas a) ou b).

(2) Lorsque le syndic a la responsabilité d'agir conformément au paragraphe (1), il peut vendre des biens dans le cadre d'une proposition ou d'une faillite aux personnes mentionnées aux alinéas (1)a), b) ou c), dans la mesure où ces biens sont offerts en vente :

a) en même temps qu'ils sont offerts au public;

b) à un prix égal à celui auquel ils sont offerts au public;

c) dans le cours normal des affaires du failli ou du débiteur.

DORS/98-240, art. 1; DORS/2007-61, art. 9(A) et 63(A).

44 Dans toute activité professionnelle, le syndic évite les influences, les intérêts et les relations qui compromettent son jugement professionnel ou qui, aux yeux d'une personne avisée, donnent à croire qu'ils ont un tel effet.

DORS/98-240, art. 1.

45 Le syndic ne signe aucun document, notamment une lettre, un rapport, une déclaration, un exposé et un état financier, qu'il sait ou devrait raisonnablement savoir être faux ou trompeur, ni ne s'associe de quelque manière à un tel document, y compris en y joignant sous sa signature un déni de responsabilité.

DORS/98-240, art. 1; DORS/2005-284, art. 4.

46 Le syndic peut communiquer des renseignements financiers concernant le failli ou le débiteur sans les avoir vérifiés si :

a) d'une part, ils font l'objet d'un déni de responsabilité ou d'une explication de leur origine;

b) d'autre part, cette communication n'est pas contraire à la Loi, aux présentes règles et aux instructions.

DORS/98-240, art. 1.

46.1 [Abrogé, DORS/98-240, art. 1]

47 Le syndic ne se livre à aucune occupation ni aucune activité commerciale qui compromettraient son intégrité, son indépendance et sa compétence ou qui le gêneraient dans l'exercice de ses activités professionnelles.

DORS/98-240, art. 1.

48 Trustees who hold money or other property in trust shall

- (a)** hold the money or property in accordance with the laws, regulations and terms applicable to the trust; and
- (b)** administer the money or property with due care, subject to the laws, regulations and terms applicable to the trust.

SOR/98-240, s. 1.

49 Trustees shall not, directly or indirectly, pay to a third party a commission, compensation or other benefit in order to obtain a professional engagement or accept, directly or indirectly from a third party, a commission, compensation or other benefit for referring work relating to a professional engagement.

SOR/98-240, s. 1.

50 Trustees shall not obtain, solicit or conduct any engagement that would discredit their profession or jeopardize the integrity of the bankruptcy and insolvency process.

SOR/98-240, s. 1.

51 Trustees shall not, directly or indirectly, advertise in a manner that

- (a)** they know, or should know, is false, misleading, materially incomplete or likely to induce error; or
- (b)** unfavourably reflects on the reputation or competence of another trustee or on the integrity of the bankruptcy and insolvency process.

SOR/98-240, s. 1.

52 Trustees, in the course of their professional engagements, shall apply due care to ensure that the actions carried out by their employees, agents or mandataries or any persons hired by the trustees on a contract basis are carried out in accordance with the same professional standards that those trustees themselves are required to follow in relation to that professional engagement.

SOR/98-240, s. 1; SOR/2007-61, s. 10(E).

53 Any complaint that relates to a contravention of any of sections 36 to 52 must be sent to the Division Office in writing.

SOR/98-240, s. 1.

48 Le syndic qui détient de l'argent ou d'autres biens en fiducie ou en fidécommiss :

- a)** se conforme aux lois, règlements et conditions applicables à la fiducie ou au fidécommiss;
- b)** sous réserve des lois, règlements et conditions applicables à la fiducie ou au fidécommiss, administre l'argent et les biens avec prudence et diligence.

DORS/98-240, art. 1.

49 Le syndic ne verse, ni directement ni indirectement, de commission, de rémunération ou d'autre avantage à un tiers en vue d'exercer une activité professionnelle et il n'accepte, ni directement ni indirectement, le versement par un tiers d'une commission, d'une rémunération ou de tout autre avantage pour lui avoir confié un travail lié à une activité professionnelle.

DORS/98-240, art. 1.

50 Le syndic n'accepte, ne sollicite ni n'exerce d'activité qui tendrait à discréditer la profession de syndic ou à compromettre l'intégrité du régime de la faillite et de l'insolvabilité.

DORS/98-240, art. 1.

51 Le syndic ne fait, ni directement ni indirectement :

- a)** de la publicité qu'il sait — ou devrait savoir — être fausse, trompeuse, substantiellement incomplète ou susceptible d'induire en erreur;
- b)** de la publicité qui porte atteinte à la réputation ou à la compétence d'un autre syndic ou à l'intégrité du régime de la faillite et de l'insolvabilité.

DORS/98-240, art. 1.

52 Dans toute activité professionnelle, le syndic veille avec prudence et diligence à ce que les actes accomplis par ses mandataires, ses employés ou toute personne engagée par lui à contrat respectent les mêmes normes professionnelles qu'il aurait lui-même à appliquer relativement à cette activité.

DORS/98-240, art. 1; DORS/2007-61, art. 10(A).

53 Les plaintes relatives à la violation d'un des articles 36 à 52 sont envoyées par écrit au bureau de division.

DORS/98-240, art. 1.

TAB 7

Rules of Professional Conduct and Interpretation

The CAIRP Rules of Professional Conduct and Interpretations were first enacted in 1981.

These Rules were approved by mail ballot and came into force on September 4, 1985.

The Foreword was approved on February 1, 1993.

The Interpretations were last amended November 27, 1997.

FOREWORD

In order to qualify as professionals in the eyes of the public and other professional and governmental bodies, Chartered Insolvency and Restructuring Professionals (CIRPs) must set for themselves high standards of conduct. The Rules of Professional Conduct (the Rules) which set these high standards are, first and foremost, to protect the public. Secondly, they are to ensure that we treat each other with due respect, courtesy and integrity. Thirdly, a profession must monitor its members and provide sanctions when necessary to preserve the integrity and relevance of the profession.

The Rules of the Canadian Association of Insolvency and Restructuring Professionals (CAIRP) have evolved from a number of important influences. These include the other professional bodies to which most CIRPs belong and federal and provincial legislation. Most importantly, they have evolved from the reliance of the public and private sectors on us to provide sound, fair and uncompromised advice and service on insolvency matters. There are a number of principles upon which the Rules are based.

These principles are:

1. A member's conduct shall all times maintain the good reputation of the profession.
2. A member shall perform his professional services with integrity and care.
3. A member shall sustain his professional competence by keeping informed of developments in professional standards and legislation.
4. A member, when engaged in an assignment, shall be free of any influence, interest or relationship which impairs professional judgement or objectivity or which, in the view of a reasonable and informed observer, has that effect.
5. A member has a duty of confidence to a client and shall not disclose, without proper cause, any information obtained in the course of an engagement. Nor shall such information be exploited directly or indirectly by a member.
6. A member shall accord to any other member the courtesy and consideration due between professional colleagues.

The Rules which flow from these principles cannot, by their nature, state the most that is expected of members. They can only state the least. Therefore, the Rules define a minimum level of acceptable conduct. It is a strength of our profession that our members strive for a higher level of ethical behaviour than the minimum and that we regularly review our Rules to ensure they meet the current standards and expectations of our profession and the public.

The Rules are to be read giving due consideration to this Foreword to the Rules. To assist in the understanding of the Rules, the CAIRP has developed Interpretations which are printed in conjunction with the Rules. The Interpretations are not to be taken as rules; they are examples of how the rules may be interpreted in some circumstances. If the Interpretations do not cover a particular circumstance, the member should consider the applicable rule in a broad sense and, if necessary, look at the situation from the viewpoint of a creditor or other interested third party. Assistance in the interpretation may also be obtained by contacting either the President, Chairman, or Vice-Chairman of the Professional Conduct Committee. Such assistance will not abrogate any subsequent breach of the Rules.

1. A member shall conduct himself at all times in a manner which will maintain the good reputation of the Association.
2. A member shall perform his professional engagements with integrity and due care.
3. A member shall maintain his professional competence by keeping himself informed of, and complying with, developments in professional standards, including the standards of professional practice from time to time adopted by the Association, in all functions in which he practises or is relied upon because of his calling.
4. A member shall with respect to any professional engagement hold himself free of any influence, interest or relationship which impairs his professional judgement or objectivity or which, in the view of a reasonable and informed observer, has that effect.
5. A member shall not sign or associate himself with any letter, report, statement, representation or financial statement which he knows, or should know, is false or misleading; a member may transmit information which he has not verified provided that such information is subject to a disclaimer of responsibility or an explanation of the source of the material.
6. A member shall not take any action (such as acquiring any interest, property or benefit) by which he makes improper use of confidential knowledge obtained in the course of a professional engagement.
7. A member who handles money or other property in trust shall do so in accordance with the terms of the trust and the applicable law relating to such money or trust property and shall maintain such records as are necessary to account properly for such money or other trust property.
8. A member shall not directly or indirectly pay to any party a commission or other compensation to obtain a professional engagement nor shall he accept directly or indirectly from any party a commission or other compensation for having referred work relating to a professional engagement.
9. A member shall not advertise, directly or indirectly, in any manner:
 - a) which he knows, or should know, is false or misleading;
 - b) which contravenes professional good taste or fails to uphold normal professional courtesy;
 - c) which makes unfavourable reflections on the competence or the integrity of the Association or any member thereof; or
 - d) which refers to him as a specialist in a particular industry or area of insolvency.
10. A member shall not adopt any method of obtaining or attracting professional engagements which tends to bring disrepute on the Association or any of its members.
11. A member who is associated with non-members in professional practice shall be responsible to the Association for any failures of such associates to abide by these Rules of Professional Conduct.
12. A member shall not disclose any confidential information concerning any professional engagement unless required to do so by law.
13. A member shall observe at all times the bylaws, rulings, interpretations, standards and other pronouncements of the Association and, to the extent that they are applicable to the work of trustees, receivers, receiver-managers, agents, liquidators and others involved in the practice of insolvency administration, of:
 - a) The Canadian Institute of Chartered Accountants, and

b) the provincial institute/ordre of chartered accountants of the province in which the member normally resides and, if the member performs an engagement in a province where he does not normally reside, the provincial institute/ordre of chartered accountants of the province in which the engagement is performed.

14. In these Rules, words importing the singular number or the masculine gender only include more persons, parties or things of the same kind than one, and females as well as males and the converse.

15. For the purposes of these Rules:

a) a person shall be deemed to be related to another person if they are related to each other within the meaning of the Bankruptcy and Insolvency Act ; and

b) the word "person" shall have the same definition as it does in the Bankruptcy and Insolvency Act.

16. Any other word or phrase in these Rules shall have the meaning or scope given it from time to time by resolution of Council.

INTERPRETATIONS TO THE RULES

RULES 1 and 2

1. In order to ensure that a member maintains not only his own good professional reputation, but also that of the Association, the member shall always perform his engagement in a conscientious, diligent, and efficient manner and shall provide a quality of professional service which the public can generally and reasonably expect from any member in a like situation.

2. A member is obligated to do his reasonable best in providing prompt professional service on an engagement.

RULE 4

1. A member should be satisfied that his or his associates' relationship with the debtor, any creditor or any other clients having an interest in the professional engagement is not such as to impair his professional judgement or objectivity.

2. A member, his partners, his associates, his staff and their respective household shall not acquire directly or indirectly in any manner whatsoever any assets under the administration of the member, provided that any of the foregoing may acquire assets from a retail operation under administration of the member where those assets are available to the general public for sale and that no special treatment or preference over and above that granted to the public is offered to or accepted by the member, his partners, his associates, his staff and their respective households.

3. A member shall not permit himself to be placed in a position of conflict of interest; in keeping with this principle, a member shall not accept any appointment;

a) which is prohibited by law, or

b) as a receiver, a receiver-manager, agent for a secured creditor, liquidator or any appointment under the Bankruptcy and Insolvency Act , except as an inspector, in respect of any insolvent person or corporation where the member is, or at any time during the immediately preceding two years was:

i) related to such person or corporation; or

ii) the auditor or accountant of such person or corporation.

[b) amended September 15, 1987; November 27, 1997]

4. The term "accountant" means anyone who has prepared unaudited financial statements in accordance with S.8200 of the CICA Handbook.

[amended February 14, 1994]

5. The two year time period commences at the date of the last audit report or the last review engagement report. The two-year time period must expire on or before the date of bankruptcy, which in the case of a petition, shall be the date of filing of a petition for a receiving order.

6. A member shall not permit himself to be placed or remain in a position where a conflict of interest may exist, or may appear to exist, without making full disclosure to, and obtaining the written consent of all interested parties; in keeping with this principle, a member shall not accept any appointment:

a) as trustee under the Bankruptcy and Insolvency Act where the member has already accepted an appointment as receiver, receiver manager, agent for a secured creditor, liquidator, trustee under a trust indenture issued by the bankrupt corporation or by any corporation related to the bankrupt corporation, or on behalf of any person related to the bankrupt without having first made disclosure of such prior appointment to the Bankruptcy Court or the Official Receiver, as the case may be; following the acceptance of such appointment as trustee under the Bankruptcy and Insolvency Act, the member shall inform the creditors of the bankrupt of his prior appointment as soon as reasonably possible thereafter;

b) as receiver, receiver-manager, agent for a secured creditor or on behalf of any person related to the bankrupt where the member has already accepted an appointment as trustee under the Bankruptcy and Insolvency Act without first obtaining the permission of the inspectors of the bankrupt estate; where inspectors have not been appointed at the time that the second appointment is to be taken, the member shall obtain the approval of the creditors of the bankrupt of having taken the second appointment as soon as reasonably possible thereafter; and if the second appointment is taken before obtaining the approval of the creditors, it should be taken subject to their approval.

c) as receiver, receiver-manager, agent for a secured creditor or trustee under the Bankruptcy and Insolvency Act in respect of any corporation where the member is, or at any time during the immediately preceding two years was, the trustee (or related to such trustee) under a trust indenture issued by such corporation or by any corporation related to such corporation without first obtaining the permission of the creditors secured under such trust indenture; upon the acceptance of an appointment as trustee under the Bankruptcy and Insolvency Act, the member shall inform the creditors of the bankrupt corporation of his prior appointment as (or relationship to) the trustee under a trust indenture or by any corporation related to the bankrupt corporation as soon as reasonably possible thereafter.

d) as receiver, receiver-manager, agent for a secured creditor, liquidator of an insolvent company under the Winding Up Act, or trustee under the Bankruptcy and Insolvency Act, in respect of any corporation where the member is related to an officer or director of such corporation.

e) as receiver, receiver-manager, agent for a secured creditor, or trustee under the Bankruptcy and Insolvency Act in respect of any person or corporation where the member is a creditor, or an officer or director of any corporation that is a creditor, of such person or corporation unless the relationship is sufficiently remote that the member can act with complete objectivity;

f) in any court-appointed capacity under the Companies' Creditors Arrangements Act without disclosing to the Court any professional involvement with the debtor during the immediately preceding two years.

[added February 14, 1994]

RULE 6

1. A member, his partners, his associates, his staff and their respective households shall not acquire directly or indirectly in any manner whatsoever any assets under the administration of the member, provided that any of the foregoing may acquire assets from a retail operation under administration of the member where those assets are available to the general public for sale and that no special treatment or preference over and above that granted to the public is offered to or accepted by the member, his partners, his associates, his staff and their respective households.

RULE 9

1. A member should not use the terms "Bankruptcy Sale" or "Receivership Sale" where he is not the Trustee in Bankruptcy or Receiver respectively, unless he has the approval of the actual respective Trustee in Bankruptcy or Receiver.

2. A member should avoid the use of the term "Trustee(s)" in his advertising or on his professional card or stationery. The term "Trustee(s)" is not deemed appropriate since it is generally perceived by the public to embrace a number of services which are not within the scope of a Trustee in Bankruptcy. The term "trustee in bankruptcy" may be used.

TAB 8

Criminal Code, R.S.C. 1985, c. C-34.

21. (1) Every one is a party to an offence who

- (a) actually commits it;
- (b) does or omits to do anything for the purpose of aiding any person to commit it; or
- (c) abets any person in committing it.

380. (1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty

- (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
- (ii) of an offence punishable on summary conviction, where the value of the subject-matter of the offence does not exceed five thousand dollars.

392. Every one who,

(a) with intent to defraud his creditors,

- (i) makes or causes to be made any gift, conveyance, assignment, sale, transfer or delivery of his property, or
- (ii) removes, conceals or disposes of any of his property, or

(b) with intent that any one should defraud his creditors, receives any property by means of or in relation to which an offence has been committed under paragraph (a), is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.