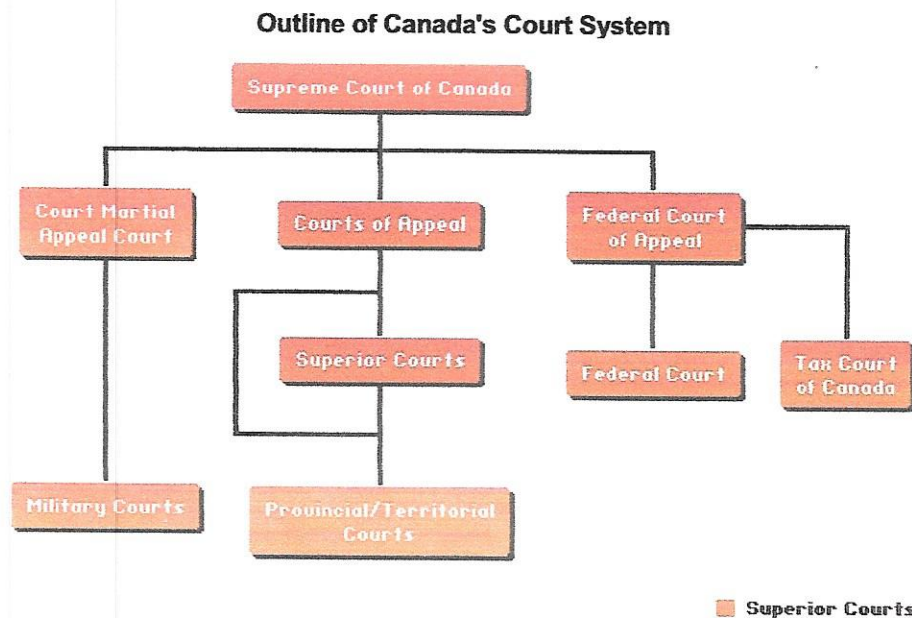


Structure of the Courts



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

BIA

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Prescribed date	137		136(1)(H) & (j);154(2)	

CAIRP 2018 Process Worksheet

	Ordinary Administration	Summary Administration	Div I Proposal	Div II Proposal	Interim Receiver	Court Appt's Receiver	CCAA 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							

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	✓	✓	✓
Identify all creditors	✓	✓	✓
Determine any security interests	✓	✓	✓
Determine any exemptions	No 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	✓	✓	✓
Prepare/Send Notice to Creditors of Bankruptcy	✓	✓	Single notice - S. 155 (h)
Prepare send notice of creditors meeting	✓	✓	No meeting unless requested - S. 155(d.1)
Publish Notice to Creditors in Newspaper	✓	✓	No publication - S. 155 (c)
Review PoC's; disallow if/as necessary	✓	✓	
Attend/Chair Meeting of Creditors	✓	✓	No meeting unless requested - S. 155(d.1)
Attend to Appointment of Inspectors	✓	✓	No Inspectors unless requested - S. 155(e)
Meet with Inspectors to obtain action authorization	✓	✓	Only if Inspectors appointed - S. 155(e)
Deal with settlements, preferences, fraudulent transactions	✓	✓	✓
Attend to realization of assets	✓	✓	✓
Obtain Court authorization to sell to related parties	✓	✓	Only if required by creditors - S. 155(k)
Attend to estate trust banking	✓	✓	See Consolidated account - S. 155(g)
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	✓	✓	✓
R&D approved by Inspectors	✓	✓	No Inspectors unless requested - S. 155(e)
Send Notice of Taxation	✓	✓	S. 155(i); Rules 62-66
R&D Taxed by Court	✓	✓	S. 155(i); Rules 62-67
Distribute dividends	✓	✓	✓
Apply for Trustee Discharge	✓	✓	S. 155(j); Rule 67
Send appropriate notice of Discharge	✓	✓	S. 155(j); Rule 68

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 2018 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
- 149 - 30 days to prove
- 155 – Summary Administration [Rules 62 – 67]
- 161/163 –Examination of the bankrupt and others
- 168.1(2) – Nothing precludes a bankrupt applying
- 169(2) – no earlier than 3 months, no later than 12 months
- 169(3) – repealed – waiver of application for discharge
- 169(6) – The Trustee, upon being served a notice....
- 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

CAIRP 2018 Tutorial Competency Worksheet

	Ordinary Administration	Summary Administration	Div I Proposal	Div II Proposal	Interim Receiver	Court Appt'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.

Effective Judgment and Strategic Thinking

Implies the ability, in a bankruptcy and an insolvency context, to identify problems and issues, confirm facts, seek specialist advice as required and identify feasible courses of action taking into account the positions of various stakeholders and the appropriate legislative framework. Recommend and support a strategy given the data available and state any assumptions.

A candidate response that demonstrates effective judgment and strategic thinking may include the following proficiency markers:

- Defining and confirming the nature of a problem, looking at it from different angles and considering alternative solutions and the positions of the relevant stakeholders before moving forward with a plan to resolve it
- Recognizing and reviewing the relevant factors of a situation or problem, and seeking and validating additional information as needed
- Applying relevant legislation in an accurate and appropriate fashion
- Knowing when it is appropriate to seek advice from, consult with or collaborate with others
- Assessing the strengths and weaknesses of a situation to support the merits or validity of the actions to be taken
- Anticipating the risks or implications inherent in a suggested plan of action and devising appropriate strategies to mitigate their impact
- Reaching an appropriate conclusion even when faced with incomplete or contradictory data

Business Ethics and Professional Skills

Implies the ability to perform the required functions with competence, excellence, efficiency, objectivity and impartiality while acting in accordance with established rules and/or standards governing the conduct of the members of the insolvency profession. This would include acting and reacting in a timely manner and cooperating with members of the public and regulatory bodies, as well as balancing transparency and providing sufficient disclosure while recognizing the need to respect the confidentiality of other information.

A candidate response that demonstrates business ethics and professional skills may include the following proficiency markers:

- Applying specific standards by formulating, analyzing and processing transactions in accordance with established conventions and applicable legislation
- Applying due care in professional engagements to uphold the integrity of the bankruptcy and insolvency process
- Identifying the situations that require referral to or consultation with other professionals or experts
- Planning and exercising due care and diligence so as to withstand scrutiny in decision making with a high degree of responsibility and accountability
- Acting competently with honesty, integrity, transparency and confidentiality
- Addressing and resolving disputes and complaints in a proactive manner
- Anticipating and avoiding exhibiting real or perceived influence, interest or relationships that might impair professional judgment

Ability to Communicate Orally

Implies the ability to transmit and receive information clearly and communicate effectively with others, and respond appropriately using tact, diplomacy and persuasiveness in an insolvency or a restructuring context.

A candidate response that demonstrates the ability to communicate orally may include the following proficiency markers:

- Listening and responding appropriately by delivering information or facts in a logical, clear and coherent manner
- Adapting language to various audiences
- Demonstrating the capacity to understand the sensitivity of a particular situation
- Communicating effectively to achieve desired results
- Interpreting and reacting appropriately to complex or contradictory information