CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No. 500-11-036133-094

SUPERIOR COURT

Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

ABITIBIBOWATER INC.

and

ABITIBI-CONSOLIDATED INC.

and

BOWATER CANADIAN HOLDINGS INC.
and the other Petitioners listed on the motion

Petitioners

and

ERNST & YOUNG INC.

Monitor

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVICE OF BRITISH COLUMBIA

Respondent on the Motion

BOOK OF AUTHORITIES ON BEHALF OF HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF OF BRITISH COLUMBIA

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MIDLANTIC NATIONAL BANK v. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

No. 84-801

SUPREME COURT OF THE UNITED STATES

474 U.S. 494; 106 S. Ct. 755; 88 L. Ed. 2d 859; 1986 U.S. LEXIS 50; 54 U.S.L.W. 4138; 23 ERC (BNA) 1913; Bankr. L. Rep. (CCH) P70,923; 13 Collier Bankr. Cas. 2d (MB) 1355; 13 Bankr. Ct. Dec. 1262; 16 ELR 20278

October 16, 1985, Argued
January 27, 1986, Decided *

* Together with No. 84-805, O'Neill, Trustee in Bankruptcy of Quanta Resources Corp., Debtor v. City of New York et al., and O'Neill, Trustee in Bankruptcy of Quanta Resources Corp., Debtor v. New Jersey Department of Environmental Protection, also on certiorari to the same court.

SUBSEQUENT HISTORY: 739 F.2d 912 and 739 F.2d 927, affirmed.

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner trustee sought review of a decision of the United States Court of Appeals for the Third Circuit that the Bankruptcy Code, 11 U.S.C.S. § 554(a), did not authorize a trustee in bankruptcy to abandon property in contravention of state laws or regulations that were reasonably designed to protect the public's health or safety.

OVERVIEW: The debtor processed waste oil at two facilities. Petitioner bank had provided debtor with a loan secured by inventory, accounts receivable, and certain equipment. Respondent discovered that debtor had violated a specific prohibition in its operating permit and ordered cleanup of the site. The debtor later filed for liquidation under Chapter 7 before the site was cleaned up. Petitioner trustee was appointed and subsequently oversaw abandonment of both facilities. A decision that the trustee could not abandon the property under the Bankruptcy Code, 11 U.S.C.S. § 554(a), in contravention of environmental laws was affirmed. The trustees were not granted bankruptcy powers that would lend support to a right to abandon property in contravention of state or local laws designed to protect public health or safety. Congress was undisputedly concerned over the risks of the improper storage and disposal of hazardous and toxic substances. The Bankruptcy Court did not have the power to authorize an abandonment without formulating conditions that would adequately protect the public's health and safety.

OUTCOME: The court affirmed, holding that the court did not have the power to authorize the abandonment.

CORE TERMS: abandonment, abandon, site, public's health and safety, legislative history, cleanup, intend, local laws, oil, state laws, burdensome, designed to protect, environmental, judge-made, hazardous, pre-empt, commencement, inconsequential, liquidation, authorize, environmental protection, contravention, notice, clean, Bankruptcy Act, federal laws, trustee in bankruptcy, public interests, automatic stay, deteriorating

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HN1 See 11 U.S.C.S. § 554(a).

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HN5 The trustee is not to have carte blanche to ignore nonbankruptcy law. Where the Bankruptcy Code has conferred special powers upon the trustee and where there was no common-law limitation on that power, Congress has expressly provided that the efforts of the trustee to marshal and distribute the assets of the estate must yield to governmental interest in public health and safety.

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HN6 Where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay.

Bankruptcy Law > Case Administration > Administrative Powers > Stays > General Overview
HN7 See 11 U.S.C.S. § 362(a).

Bankruptcy Law > Case Administration > Examiners, Officers & Trustees > Duties & Functions > Reorganizations

Bankruptcy Law > Estate Property > Abandonment > Trustee Action

HN8 11 U.S.C.S. § 959(b) commands the trustee to manage and operate the property in his possession according to the requirements of the valid laws of the state.

Bankruptcy Law > Case Administration > Examiners, Officers & Trustees > Duties & Functions > Reorganizations

HN9 See 11 U.S.C.S. § 959(b).

Bankruptcy Law > Estate Property > Abandonment > Trustee Action

HN10 A trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards.

Available Briefs and Other Documents Related to this Case:

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DECISION: Bankruptcy trustee held not empowered under 11 USCS 554(a) to abandon toxic wastes in contravention of state environmental protection laws.

SUMMARY: A corporation engaged in processing waste oil filed for bankruptcy after it was discovered that it had illegally stored oil contaminated with a carcinogen at a New Jersey site, which state environmental protection officials ordered cleaned up, and similar waste was subsequently discovered in deteriorating and leaking containers at a site in New York. The trustee in bankruptcy proposed to abandon both sites under 11 USCS 554(a) on the grounds that they were burdensome and of inconsequential value to the estate, and the United States Bankruptcy Court for the District of New Jersey approved the abandonment, over the states' objections that abandonment would threaten the public health and safety and that the bankruptcy estate should be required to pay for a clean-up. The United States District Court for the District of New Jersey affirmed. The United States Court of Appeals for the Third Circuit reversed, holding that Congress, in enacting 554, did not intend to permit the abandonment of property of a bankrupt estate in contravention of state environmental protection laws (739 F2d 912; 739 F2d 927).

On certiorari, the United States Supreme Court affirmed. In an opinion by Powell, J., joined by Brennan, Marshall, Blackmun, and Stevens, JJ., it was held that a bankruptcy trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards.

Rehnquist, J., joined by Burger, Ch. J., and White and O'Connor, JJ., dissented, expressing the view that the broad abandonment power conferred on the trustee by 554 was not intended to be qualified in such a manner, though abandonment might be barred under narrower conditions where it might create a genuine emergency that the trustee would be uniquely able to guard against.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]

BANKRUPTCY §305

abandonment -- violation of state law --

Headnote:
LEdHN[1A][1A]*LEdHN[1B]*[1B]*LEdHN[1C]*[1C]

A trustee in bankruptcy may not abandon property under 11 USCS 554(a) in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards; this exception to the abandonment power does not encompass a speculative or indeterminate future violation of such laws that may stem from abandonment; thus, the trustee for a bankrupt corporation may not abandon facilities containing waste oil contaminated with toxic chemicals, in violation of state environmental laws and administrative orders thereunder, which required that the sites be cleaned up. (Rehnquist, J., Burger, Ch. J., and White and O'Connor, JJ., dissented from this holding.)

[***LEdHN2]

STATUTES §87

construction -- law at time of passage --

Headnote:
LEdHN[2][2]

The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific.

[***LEdHN3]

BANKRUPTCY §15

pre-emption of state laws --

Headnote:
LEdHN[3A][3A]*LEdHN[3B]*[3B]

The Bankruptcy Code is not intended to pre-empt all state laws which otherwise constrain the exercise of the powers of a trustee in bankruptcy, and 554(a) of the Code (11 USCS 554(a)), which authorizes a trustee to abandon any of the estate's property which is burdensome to the estate or which is of inconsequential value to the estate, is not intended to pre-empt all state and local laws.

[***LEdHN4]

BANKRUPTCY §305

abandonment -- protection of public health and safety --

Headnote:
LEdHN[4][4]

The bankruptcy court does not have the power to authorize an abandonment without formulating conditions that will adequately protect the public's health and safety.

SYLLABUS

Quanta Resources Corp. (Quanta) processed waste oil at facilities located in New York and New Jersey. The New Jersey Department of Environmental Protection (NJDEP) discovered that Quanta had violated a provision of the operating permit for the New Jersey facility by accepting oil contaminated with a toxic carcinogen. During negotiations with NJDEP for the cleanup of the New Jersey site, Quanta filed a petition for reorganization under Chapter 11 of the Bankruptcy Code, and after NJDEP had issued an order requiring cleanup, Quanta converted the action to a liquidation proceeding under Chapter 7. An investigation of the New York facility then revealed that Quanta had also accepted similarly contaminated oil at that site. The trustee notified the creditors and the Bankruptcy Court that he intended to abandon the property under § 554(a) of the Bankruptcy Code, which authorizes a trustee to "abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate." The City and the State of New York objected, contending that abandonment would threaten the public's health and safety, and would violate state and federal environmental law. The Bankruptcy Court approved the abandonment, and, after the District Court affirmed, an appeal was taken to the Court of Appeals for the Third Circuit. Meanwhile, the Bankruptcy Court also approved the trustee's proposed abandonment of the New Jersey facility over NJDEP's objection, and NJDEP took a direct appeal to the Court of Appeals. In separate judgments, the Court of Appeals reversed, holding that the Bankruptcy Court erred in permitting abandonment.

Held: A trustee in bankruptcy may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards. Congress did not intend for § 554(a) to pre-empt all state and local laws. A bankruptcy court does not have the power to authorize an abandonment without formulating conditions that will adequately protect the public's health and safety. Pp. 500-507.

(a) Before the 1978 revisions of the Bankruptcy Code, which codified in § 554 the judicially developed rule of abandonment, the trustee's abandonment power had been limited by a judicially developed doctrine intended to protect legitimate state and federal interests. In codifying the rule of abandonment, Congress also presumably included the corollary that a trustee could not exercise his abandonment power in violation of certain state and federal laws. Pp. 500-501.

(b) Neither this Court's decisions nor Congress has granted a trustee in bankruptcy powers that would lend support to a right to abandon property in contravention of state or local laws designed to protect public health or safety. Where the Bankruptcy Code has conferred other special powers upon the trustee and where there was no common-law limitation on such powers, Congress has expressly provided that the trustee's efforts to marshal and distribute the estate's assets must yield to governmental interests in public health and safety. It cannot be assumed that Congress, having placed such limitations upon other aspects of trustees' operations, intended to discard the well-established judicial restriction on the abandonment power. Moreover, 28 U. S. C. § 959(b), which commands the trustee to "manage and operate the property in his possession . . . according to the requirements of the valid laws of the State," provides additional evidence that Congress did not intend for the Bankruptcy Code to pre-empt all state laws. Pp. 502-505.

(c) Additional support for restricting the abandonment power is found in repeated congressional emphasis, in other statutes, on the goal of protecting the environment against toxic pollution. Pp. 505-506.

COUNSEL: A. Dennis Terrell argued the cause for petitioner in No. 84-801. With him on the brief was Kenneth S. Kasper. William F. McEnroe argued the cause for petitioner in No. 84-805. With him on the brief was Thomas J. O'Neill, pro se.

Mary C. Jacobson, Deputy Attorney General of New Jersey, argued the cause for respondent in No. 84-801. With her on the brief were Irwin I. Kimmelman, Attorney General, James J. Ciancia, Assistant Attorney General, and Richard F. Engel and Ross A. Lewin, Deputy Attorneys General. Robert Hermann, Solicitor General of New York, argued the cause for respondents in No. 84-805. With him on the brief were Robert Abrams, Attorney General, Nancy Stearns, Norman Spiegel, and Christopher Keith Hall, Assistant Attorneys General, Frederick A. O. Schwarz, Jr., and Leonard Koerner. *

* Thomas H. Jackson, pro se, filed a brief as amicus curiae urging reversal.

Briefs of amici curiae urging affirmance were filed for the United States by Acting Solicitor General Fried, Assistant Attorney General Habicht, Deputy Solicitor General Claiborne, Kathryn A. Oberly, and Dirk D. Snel; for the State of California by John K. Van de Kamp, Attorney General, Theodora Berger, Assistant Attorney General, and Reed Sato, Lisa S. Trankley, and Craig C. Thompson, Deputy Attorneys General; and for the State of West Virginia et al. by Charlie Brown, Attorney General of West Virginia, Steven Johnston Knopp, Assistant Attorney General, James D. Morris, and Howard J. Wein.

Ronald A. Zumbrun and Robert K. Best filed a brief for the Pacific Legal Foundation as amicus curiae.

JUDGES: POWELL, J., delivered the opinion of the Court, in which BRENNAN, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. REHNQUIST, J., filed a dissenting opinion, in which BURGER, C. J., and WHITE and O'CONNOR, JJ., joined, post, p. 507.

OPINION BY: POWELL

OPINION

[*496] [***862] [**757] JUSTICE POWELL delivered the opinion of the Court.

[***LEdHR1A] *LEdHN[1A]*[1A]These petitions for certiorari, arising out of the same bankruptcy proceeding, present the question whether § 554(a) of the Bankruptcy [***863] Code, 11 U. S. C. § 554(a), [1] authorizes a trustee in bankruptcy to abandon property in contravention of state laws or regulations that are reasonably designed to protect the public's health or safety.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

1 Section 554(a) reads:

HN1"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate."

Technical amendments in the Bankruptcy Amendments and Federal Judgeship Act of 1984 added the words "and benefit" after "value" in § 554(a). Pub. L. 98-353, Tit. III, § 468(a), 98 Stat. 380.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

I

Quanta Resources Corporation (Quanta) processed waste oil at two facilities, one in Long Island City, New York, and [*497] the other in Edgewater, New Jersey. At the Edgewater facility, Quanta handled the oil pursuant to a temporary operating permit issued by the New Jersey Department of Environmental Protection (NJDEP), respondent in No. 84-801. In June 1981, Midlantic National Bank, petitioner in No. 84-801, provided Quanta with a $ 600,000 loan secured by Quanta's inventory, accounts receivable, and certain equipment. The same month, NJDEP discovered that Quanta had violated a specific prohibition in its operating permit by accepting more than 400,000 gallons of oil contaminated with PCB, a highly toxic carcinogen. NJDEP ordered Quanta to cease operations at Edgewater, and the two began negotiations concerning the cleanup of the Edgewater site. But on October 6, 1981, before the conclusion of negotiations, Quanta filed a petition for reorganization under Chapter 11 of the Bankruptcy Code. The next day, NJDEP issued an administrative order requiring Quanta to clean up the site. Quanta's financial condition remained perilous, however, and the following month, it converted the action to a liquidation proceeding under Chapter 7. Thomas J. O'Neill, petitioner in No. 84-805, was appointed trustee in bankruptcy, and subsequently oversaw abandonment of both facilities.

After Quanta filed for bankruptcy, an investigation of the Long Island City facility revealed that Quanta had accepted and stored there over 70,000 gallons of toxic, PCB-contaminated oil in deteriorating and leaking containers. Since the mortgages on that facility's real property exceeded the property's value, the estimated cost of disposing of the waste oil plainly rendered the property a net burden to the estate. After trying without success to sell the Long Island City property for the benefit of Quanta's creditors, the trustee notified the creditors and the Bankruptcy Court for the District of New Jersey that he intended to abandon the property pursuant to § 554(a). No party to the bankruptcy proceeding disputed the trustee's allegation that the site was "burdensome" and of "inconsequential value to the estate" within the meaning of § 554.

[*498] The City and the State of New York (collectively New York), respondents in No. [**758] 84-805, nevertheless objected, contending that abandonment would threaten the public's health and safety, and would violate state and federal environmental law. New York rested its objection on "public policy" considerations reflected in applicable local laws, and on the requirement of 28 U. S. C. [***864] § 959(b) that a trustee "manage and operate" the property of the estate "according to the requirements of the valid laws of the State in which such property is situated." New York asked the Bankruptcy Court to order that the assets of the estate be used to bring the facility into compliance with applicable law. After briefing and argument, the court approved the abandonment, noting that "[the] City and State are in a better position in every respect than either the Trustee or debtor's creditors to do what needs to be done to protect the public against the dangers posed by the PCB-contaminated facility." The District Court for the District of New Jersey affirmed, and New York appealed to the Court of Appeals for the Third Circuit.

Upon abandonment, the trustee removed the 24-hour guard service and shut down the fire-suppression system. It became necessary for New York to decontaminate the facility, with the exception of the polluted subsoil, at a cost of about $ 2.5 million. [2]

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

2 The sole issue presented by these petitions is whether a trustee may abandon property under § 554 in contravention of local laws designed to protect the public's health and safety. New York is claiming reimbursement for its expenditures as an administrative expense. That question, however, like the question of the ultimate disposition of the property, is not before us.

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - -

On April 23, 1983, shortly after the District Court had approved abandonment of the New York site, the trustee gave notice of his intention to abandon the personal property at the Edgewater site, consisting principally of the contaminated oil. The Bankruptcy Court approved the abandonment on May 20, over NJDEP's objection that the estate had [*499] sufficient funds to protect the public from the dangers posed by the hazardous waste. [3]

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

3 The trustee was not required to take even relatively minor steps to reduce imminent danger, such as security fencing, drainage and diking repairs, sealing deteriorating tanks, and removing explosive agents. Moreover, the trustee's abandonment at both sites aggravated already existing dangers by halting security measures that prevented public entry, vandalism, and fire. Joint Appendix in No. 83-5142 (CA3), pp. 11-12 (affidavit of Richard Docyk, Deputy Chief Inspector for N. Y. City Fire Department); *Id.*, at 26 (transcript of proceedings before DeVito, J.). The 470,000 gallons of highly toxic

and carcinogenic waste oil in unguarded, deteriorating containers "present risks of explosion, fire, contamination of water supplies, destruction of natural resources, and injury, genetic damage, or death through personal contact." Brief for United States as *Amicus Curiae* 4, 23; see Joint Appendix, *supra*, at 17 (70,000 gallons at New York site); Appendix in No. 83-5730 (CA3), p. A7 (400,000 gallons at New Jersey site); *id.*, at A46 (deteriorating containers); Joint Appendix, *supra*, at 11 (deteriorating tanks); *id.*, at 26 (guard service); *id.*, at 12 (risk of fire); *id.*, at 11 (contamination of adjacent areas); *id.*, at 20 (health effects of exposure to PCBs and their derivatives).

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Because the abandonments of the New Jersey and New York facilities presented identical issues, the parties in the New Jersey litigation consented to NJDEP's taking a direct appeal from the Bankruptcy Court to the Court of Appeals pursuant to § 405(c)(1)(B) of the Bankruptcy Act of 1978.

A divided panel of the Court of Appeals for the Third Circuit reversed. *In re Quanta Resources Corp.*, 739 F.2d 912 (1984); *In re Quanta Resources Corp.*, 739 F.2d 927 (1984). Although the court found little guidance in the legislative history of § 554, it concluded that Congress had intended to codify the judge-made [***865] abandonment practice developed under the previous Bankruptcy Act. Under that law, where state law or general equitable principles protected certain public interests, those interests were not overridden by the judge-made abandonment power. The court also found evidence in other provisions of the Bankruptcy Code that Congress did not intend to pre-empt all state regulation, but only that grounded on policies outweighed by the relevant federal interests. [*500] Accordingly, [**759] the Court of Appeals held that the Bankruptcy Court erred in permitting abandonment, and remanded both cases for further proceedings. [4]

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

4 Judge Gibbons dissented, arguing that § 554 permits abandonment without any exception analogous to that provided to the automatic stay. The dissent further contended that the majority's interpretation of § 554 raised substantial questions under the Takings Clause by potentially destroying the interest of secured creditors, see *United States* v. *Security Industrial Bank*, 459 U.S. 70 (1982), and that the majority had failed to address the important underlying issue of the priority of the States' claims for reimbursement.

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We granted certiorari and consolidated these cases to determine whether the Court of Appeals properly construed § 554, 469 U.S. 1207 (1985). We now affirm.

II

Before the 1978 revisions of the Bankruptcy Code, the trustee's abandonment power had been limited by a judicially developed doctrine intended to protect legitimate state or federal interests. This was made clear by the few relevant cases. In *Ottenheimer* v. *Whitaker*, 198 F.2d 289 (CA4 1952), the Court of Appeals concluded that a bankruptcy trustee, in liquidating the estate of a barge company, could not abandon several barges when the abandonment would have obstructed a navigable passage in violation of federal law. The court stated:

"The judge-made [abandonment] rule must give way when it comes into conflict with a statute enacted in order to ensure the safety of navigation; for we are not dealing with a burden imposed upon the bankrupt or his property by contract, but a duty and a burden imposed upon an owner of vessels by an Act of Congress in the public interest." *Id.*, at 290.

In *In re Chicago Rapid Transit Co.*, 129 F.2d 1 (CA7), cert. denied *sub nom. Chicago Junction R. Co.* v. *Sprague*, 317 U.S. 683 (1942), the Court of Appeals held that the trustee of a debtor transit company could not cease its operation [*501] of a branch railway line when local law required continued operation. While the court did not forbid the trustee to abandon property (*i. e.*, to reject an unexpired lease), it conditioned his actions to ensure compliance with state law. Similarly, in *In re Lewis Jones, Inc.*, 1 BCD 277 (Bkrtcy Ct. ED Pa. 1974), the Bankruptcy Court invoked its equitable power to "safeguard the public interest" by requiring the debtor public utilities to seal underground steam lines before abandoning them.

[***LEdHR2] *LEdHN[2]*[2]Thus, when Congress enacted § 554, there were well-recognized restrictions on a trustee's abandonment power. In codifying the judicially developed rule of abandonment, Congress also presumably included the established corollary that *HN2*a trustee could not exercise his [***866] abandonment power in violation of certain state and federal laws. The normal rule of statutory construction is that *HN3*if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific. *Edmonds* v. *Compagnie Generale Transatlantique*, 443 U.S. 256, 266-267 (1979). The Court has followed this rule with particular care in construing the scope of bankruptcy codifications. *HN4*If Congress wishes to grant the trustee an extraordinary exemption from nonbankruptcy law, "the intention would be clearly expressed, not left to be collected or inferred from disputable considerations of convenience in administering the estate of the bankrupt." *Swarts* v. *Hammer*, 194 U.S. 441, 444 (1904); see *Palmer* v. *Massachusetts*, 308 U.S. 79, 85 (1939) ("If this old and familiar power of the states [over local railroad service] was withdrawn when Congress gave district courts bankruptcy powers over railroads, we ought to find language fitting for so drastic a change"). Although these cases do not define for us the exact contours of the trustee's abandonment power, they do make clear that this power was subject to [**760] certain restrictions when Congress enacted § 554(a).

[*502] III

Neither the Court nor Congress has granted a trustee in bankruptcy powers that would lend support to a right to abandon property in contravention of state or local laws designed to protect public health or safety. As we held last Term when the State of Ohio sought compensation for cleaning the toxic waste site of a bankrupt corporation:

"Finally, we do not question that anyone in possession of the site -- whether it is [the debtor] or another in the event the receivership is liquidated and the trustee abandons the property, or a vendee from the receiver *or the bankruptcy trustee* -- must comply with the environmental laws of the State of Ohio. Plainly, that person or firm may not maintain a nuisance, pollute the waters of the State, or refuse to remove the source of such conditions." *Ohio* v. *Kovacs*, 469 U.S. 274, 285 (1985) (emphasis added).

Congress has repeatedly expressed its legislative determination that *HN5*the trustee is not to have *carte blanche* to ignore nonbankruptcy law. Where the Bankruptcy Code has conferred special powers upon the trustee and where there was no common-law limitation on that power, Congress has expressly provided that the efforts of the trustee to marshal and distribute the assets of the estate must yield to governmental interest in public health and safety. *Infra*, at 503-504. One cannot assume that Congress, having placed these limitations upon other aspects of trustees' operations, intended to discard a well-established judicial restriction on the abandonment power. As we held nearly two years ago in the context of the National Labor Relations Act, "the debtor-in-possession is not relieved of all obligations under the [Act] simply by filing a petition for bankruptcy." *NLRB* v. *Bildisco & Bildisco*, 465 U.S. 513, 534 (1984).

[*503] [***867] The automatic stay provision of the Bankruptcy Code, § 362(a), [5] has been described as "one of the fundamental debtor protections provided by the bankruptcy laws." S. Rep. No. 95-989, p. 54 (1978); H. R. Rep. No. 95-595, p. 340 (1977). Despite the importance of § 362(a) in preserving the debtor's estate, Congress has enacted several categories of exceptions to the stay that allow the Government to commence or continue legal proceedings. For example, § 362(b)(5) permits the Government to enforce "nonmonetary" judgments against a debtor's

estate. It is clear from the legislative history that one of the purposes of this exception is to protect public health and safety:

[*504] [**761] "Thus, HN6 where a governmental unit is suing a debtor to prevent or stop violation of fraud, *environmental protection*, consumer protection, *safety*, or *similar police or regulatory laws*, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay." H. R. Rep. No. 95-595, *supra*, at 343 (emphasis added); S. Rep. No. 95-989, *supra*, at 52 (emphasis added).

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

5 Section 362(a) provides:

HN7 "(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U. S. C. 78eee(a)(3)), operates as a stay, applicable to all entities, of --

"(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

"(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

"(3) any act to obtain possession of property of the estate or of property from the estate;

"(4) any act to create, perfect, or enforce any lien against property of the estate;

"(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

"(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

"(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

"(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor."

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Petitioners have suggested that the existence of an express exception to the automatic stay undermines the inference of a similar exception to the abandonment power: had Congress sought to restrict similarly the scope of § 554, it would have enacted similar limiting provisions. This argument, however, fails to acknowledge the differences between the predecessors of §§ 554 and 362. As we have noted, the exceptions to the judicially created abandonment power were firmly established. But in enacting § 362 in 1978, Congress significantly broadened the scope of the automatic stay, see 1 W. Norton, Bankruptcy Law and Practice § 20.03, pp. 5-6 (1981), an expansion that had begun only five years earlier with the adoption of the Bankruptcy Rules in 1973, see *id.*, § 20.02, at 4-5. Between 1973 and 1978, some courts had stretched the expanded automatic stay to foreclose States' efforts to enforce their antipollution [***868] laws, [6] and Congress wanted to overrule these interpretations in its 1978 revision. See H. R. Rep. No. 95-595, *supra*, at 174-175. In the face of the greatly increased scope of § 362, it was necessary for Congress to limit this new power expressly.

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6 See, *e. g.*, *In re Hillsdale Foundry Co.*, 1 BCD 195 (Bkrtcy Ct. WD Mich. 1974) (action by Michigan Attorney General to enforce State's antipollution laws held subject to automatic stay). The House Report also referred to an unreported case from Texas where a stay prevented the State of Maine from closing down a debtor's plant that was polluting a river in violation of the State's environmental protection laws. H. R. Rep. No. 95-595, pp. 174-175 (1977).

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[*505] [***LEdHR3A] LEdHN[3A][3A]Title 28 U. S. C. § 959(b) [7] provides additional evidence that Congress did not intend for the Bankruptcy Code to pre-empt all state laws. Section 959(b) HN8commands the trustee to "manage and operate the property in his possession . . . according to the requirements of the valid laws of the State." Petitioners have contended that § 959(b) is relevant only when the trustee is actually operating the business of the debtor, and not when he is liquidating it. Even though § 959(b) does not directly apply to an abandonment under § 554(a) of the Bankruptcy Code -- and therefore does not delimit the precise conditions on an abandonment -- the section nevertheless supports our conclusion that Congress did not intend for the Bankruptcy Code to pre-empt all state laws that otherwise constrain the exercise of a trustee's powers.

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7 Section 959(b) provides:

HN9"Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof."

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IV

Although the reasons elaborated above suffice for us to conclude that Congress did not intend for the abandonment power to abrogate certain state and local laws, we find additional support for restricting that power in repeated congressional emphasis on its "goal of protecting the environment against toxic pollution." *Chemical Manufacturers Assn., Inc.* v. *Natural Resources Defense Council, Inc.*, 470 U.S. 116, 143 (1985). Congress has enacted a Resource Conservation and Recovery Act, 42 U. S. C. §§ 6901-6987, to regulate the treatment, storage, and disposal of hazardous wastes [**762] by monitoring wastes from their creation until after their permanent disposal. That Act authorizes the United States to seek judicial or administrative restraint of activities involving [*506] hazardous wastes that "may present an imminent and substantial endangerment to health or the environment." 42 U. S. C. § 6973; see also S. Rep. No. 98-284, p. 58 (1983). Congress broadened the scope of the statute and tightened the regulatory restraints in 1984. [8] In the Comprehensive Environmental [***869] Response, Compensation, and Liability Act, as amended by Pub. L. 98-80, § 2(c)(2)(B), Congress established a fund to finance cleanup of some sites and required certain responsible parties to reimburse either the fund or the parties who paid for the cleanup. The Act also empowers the Federal Government to secure such relief as may be necessary to avert "imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance." 42 U. S. C. § 9606. In the face of Congress' undisputed concern over the risks of the improper storage and disposal of hazardous and toxic substances, we are unwilling to presume that by enactment of § 554(a), Congress implicitly overturned longstanding restrictions on the common-law abandonment power.

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8 Congress eliminated the small generator exception and subjected many more facilities to the regulations. Pub. L. 98-616, 98 Stat. 3221, 3248-3272 (codified at 42 U. S. C. § 6921(d) (1982 ed., Supp. III)). Another provision automatically broadens the Act's coverage by automatically assigning a hazardous rating to substances that the Environmental Protection Agency does not classify by a set deadline. 98 Stat. 3227-3231 (codified at 42 U. S. C. §§ 6924(d), (e), (f)(3), (g)(6) (1982 ed., Supp. III)). Amended enforcement provisions allow more citizen suits, 98 Stat. 3271-3272 (codified at 42 U. S. C. § 6973 (1982 ed., Supp. III)), and authorize administrative orders or suits to compel "corrective action" after a leak has occurred. 98 Stat. 3257-3258 (codified at 42 U. S. C. § 6928(h) (1982 ed., Supp. III)).

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V

[***LEdHR1B] *LEdHN[1B]*[1B] [***LEdHR3B] *LEdHN[3B]*[3B] [***LEdHR4] *LEdHN[4]*[4]In the light of the Bankruptcy trustee's restricted pre-1978 abandonment power and the limited scope of other Bankruptcy Code provisions, we conclude that Congress did not intend for § 554(a) to pre-empt all state and local laws. The [*507] Bankruptcy Court does not have the power to authorize an abandonment without formulating conditions that will adequately protect the public's health and safety. Accordingly, without reaching the question whether certain state laws imposing conditions on abandonment may be so onerous as to interfere with the bankruptcy adjudication itself, we hold that *HN10*a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards. [9] Accordingly, we affirm the judgments of the Court of Appeals for the Third Circuit.

[***LEdHR1C] *LEdHN[1C]*[1C]

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9 This exception to the abandonment power vested in the trustee by § 554 is a narrow one. It does not encompass a speculative or indeterminate future violation of such laws that may stem from abandonment. The abandonment power is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm.

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It is so ordered.

DISSENT BY: REHNQUIST

DISSENT

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE O'CONNOR join, dissenting.

The Court today concludes that Congress did not intend the abandonment provision of the Bankruptcy Code, 11 U. S. C. § 554(a), to pre-empt "certain state and local laws." In something of a surprise ending, the Court limits the class of laws that can prevent an otherwise authorized abandonment by a trustee to those "reasonably designed to protect the public health or safety from identified hazards." While this limitation reduces somewhat the scope of my disagreement with the result reached, it renders both the *ratio decidendi* and the import of the Court's opinion quite [***870] unclear. More important, I remain unconvinced by the Court's arguments supporting state power to bar abandonment. [**763] The principal and only independent ground offered -- that Congress codified "well-recognized restrictions of a trustee's abandonment power" -- is particularly unpersuasive. It rests on a misreading of three pre-Code cases, the elevation of that [*508] misreading into a "well-recognized" exception to the abandonment power, and the unsupported assertion that Congress must have meant to codify the exception (or something like it). These specific shortcomings in the Court's analysis, which are addressed in greater detail below, stem at least in part from the Court's failure to discuss even in passing either the nature of abandonment or its role in federal bankruptcy.

Abandonment is "the release from the debtor's estate of property previously included in that estate." 2 W. Norton, Bankruptcy Law and Practice § 39.01 (1984), citing *Brown* v. *O'Keefe*, 300 U.S. 598, 602-603 (1937). Prior to enactment of the Bankruptcy Code in 1978, there was no statutory provision specifically authorizing abandonment in liquidation cases. By analogy to the trustee's statutory power to reject executory contracts, courts had developed a rule permitting the trustee to abandon property that was worthless or not expected to sell for a price sufficiently in excess of encumbrances to offset the costs of administration. 4 L. King, Collier on Bankruptcy para. 554.01 (15th ed. 1985) (hereinafter Collier). [1] This judge-made rule served the overriding purpose of bankruptcy liquidation: the expeditious reduction of the debtor's property to money, for equitable distribution to creditors, *Kothe* v. *R. C. Taylor Trust*, 280 U.S. 224, 227 (1930). 4 Collier para. 554.01. Forcing the trustee to administer burdensome property would contradict this purpose, slowing the administration of the estate and draining its assets.

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1 Under the former Bankruptcy Act, title to the debtor's property vested in the trustee. Abandonment divested the trustee of title and revested it in the debtor. 4 Collier para. 554.02[2]. Under the Code, the trustee no longer takes title to the debtor's property, and he is simply divested of control over the property by the abandonment. *Ibid.* Although § 554 does not specify to whom the property is abandoned, the legislative history suggests that it is to the person having a possessory interest in the property. S. Rep. No. 95-989, p. 92 (1978); *Ohio* v. *Kovacs*, 469 U.S. 274, 284-285, n. 12 (1985).

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[*509] The Bankruptcy Code expressly incorporates the power of abandonment into federal bankruptcy legislation for the first time. The relevant provision bears repeating:

"(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate." 11 U. S. C. § 554(a) (amended 1984).

This language, absolute in its terms, suggests that a trustee's power to abandon is limited only by considerations of the property's value to the estate. It makes no mention of other factors to be balanced or weighed and permits no easy inference that Congress was concerned about state environmental regulations. [2] Indeed, [***871] as the Court notes, when Congress *was* so concerned [**764] it expressed itself clearly, specifically exempting some environmental injunctions from the automatic stay provisions of § 362 of the Code, 11 U. S. C. §§ 362(b)(4), (5) (1982 ed. and Supp. II). See *Ohio* v. *Kovacs,* 469 U.S. 274 (1985).

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2 Last Term in *Ohio* v. *Kovacs, supra*, which involved the dischargeability of certain environmental injunctions in bankruptcy, we briefly addressed the abandonment of hazardous waste sites:

"After notice and hearing, the trustee many abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate. 11 U. S. C. § 554. Such abandonment is to the person having the possessory interest in the property. S. Rep. No. 95-989, p. 92 (1978). . . . If the site at issue were [the debtor's] property, the trustee would shortly determine whether it was of value to the estate. If the property was worth more than the costs of bringing it into compliance with state law, the trustee would undoubtedly sell it for its net value, and the buyer would clean up the property, in which event whatever obligation [the debtor] might have had to clean up the property would have been satisfied. If the property were worth less than the cost of cleanup, the trustee would likely abandon it to its prior owner, who would have to comply with the state environmental law to the extent of his or its ability." *Id.*, at 284-285, n. 12.

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Nor does the scant legislative history of § 554 support the Court's interpretation. Nowhere does that legislative history [*510] suggest that Congress intended to limit the trustee's authority to abandon burdensome property where abandonment might be opposed by those charged with the exercise of state police or regulatory powers.

The Court seeks to turn the seemingly unqualified language and the absence of helpful legislative history to its advantage. Adopting the reasoning of the Court of Appeals, the Court argues that in light of Congress' failure to elaborate, § 554 must have been intended to codify prior "abandonment" case law, and that under prior law "a trustee could not exercise his abandonment power in violation of certain state and federal laws," *ante*, at 501. I disagree. We have previously expressed our unwillingness to read into unqualified statutory language exceptions or limitations based upon legislative history unless that legislative history demonstrates with extraordinary clarity that this was indeed the intent of Congress. *E. g., Garcia* v. *United States*, 469 U.S. 70, 75 (1984). I think that upon analysis the "legislative history" relied upon by the Court here falls far short of this standard.

The Court relies on just three cases for its claimed "established corollary" to the pre-Code abandonment power. A close reading of those cases, however, reveals that none supports the rule announced today. In *Ottenheimer* v. *Whitaker*, 198 F.2d 289 (CA4 1952), the Court of Appeals held that a trustee could not abandon worthless barges obstructing traffic in Baltimore Harbor when the abandonment would have violated federal law. The Court concluded that the "judge-made rule [of abandonment] must give way" to "an Act of Congress in the public interest." *Id.*, at 290. *Ottenheimer* thus depended on the need to reconcile a conflict between a judicial gloss on the Bankruptcy Act and the commands of another federal statute. We implicitly confirmed the validity of such an approach two Terms ago in *NLRB* v. *Bildisco & Bildisco*, 465 U.S. 513, 523-524 (1984). Here, by contrast, the "conflict" is with the uncertain commands of [*511] state laws that the [***872] Court declines to identify. [3] In addition, the Court of Appeals relied heavily on the fact that the pre-Code law of abandonment was judge-made, which in turn raises the somewhat Delphic inquiry as to whether that court would have decided the case the same way under the present Code.

-------------- Footnotes ---------------

3 The Court finds "additional support" for its restriction of the abandonment power in recent federal statutes concerned with protecting the environment. If these statutes operated to bar abandonment here -- something neither respondents nor the Court suggests -- then this might be a different case. See *NLRB* v. *Bildisco & Bildisco*, 465 U.S. 513 (1984). But the statutes do not bar abandonment, and the majority's reference to their obvious concern over the risks of storing hazardous substances is little more than a makeweight.

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In re Lewis Jones, Inc., 1 BCD 277 (Bkrtcy Ct. ED Pa. 1974), was a Bankruptcy Court decision concluding that the principle of *Ottenheimer* did not apply because there was no conflicting statute. But because the right to abandon was based on judge-made law, the court nonetheless found itself free to protect the public interest by requiring a trustee seeking abandonment to first spend funds of the estate to seal manholes and vents in an underground pipe network. While this case admittedly comes closer to supporting the Court's position than does *Ottenheimer*, it too turns on the judge-made nature of the abandonment power. Moreover, I do not believe that the isolated decision of a single Bankruptcy Court rises to the level of "established law" that we can fairly assume Congress intended to incorporate. See *Merrill* [**765] *Lynch, Pierce, Fenner & Smith, Inc.* v. *Curran*, 456 U.S. 353, 379-382 (1982).

In *In re Chicago Rapid Transit Co.*, 129 F.2d 1 (CA7), cert. denied *sub nom. Chicago Junction R. Co.* v. *Sprague*, 317 U.S. 683 (1942), the District Court sitting in bankruptcy had authorized the bankrupt to abandon a lease of a rail line, and a lessor appealed. The bankrupt did not appeal the District Court's imposition of conditions on the abandonment; the propriety of those conditions thus was not before the [*512] Court of Appeals, which affirmed the District Court's *authorization* of abandonment. So while there may be dicta in the Court of Appeals' opinion that would support some limitation on the power of abandonment, the holding of the case certainly does not. In short, none of these cases supports the Court's view that § 554(a) contains an implicit exception for "certain state and local laws."

Even assuming these cases stand for the proposition ascribed to them in the Court's opinion, that opinion's brief discussion of the cases, *ante*, at 500-501, certainly does not support the claim that they reflect an "established corollary" to pre-Code abandonment law. Generally speaking, three rather isolated cases do not constitute the sort of settled law that we can fairly assume Congress intended to codify absent some expression of its intent to do so. Perhaps recognizing this, respondents place substantial reliance for their view that the exception was "well settled" on the following statement in the (pre-Code) 14th edition of Collier on Bankruptcy, accompanying a citation to *Ottenheimer* and *Chicago Rapid Transit*: "Recent cases illustrate, [***873] however, that the trustee in the exercise of the power to abandon is subject to the application of general regulations of a police nature." 4A J. Moore, Collier on Bankruptcy para. 70.42[2], pp. 502-504 (14th ed. 1978); see also *In re Quanta Resources Corp.*, 739 F.2d 912, 916 (1984) (quoting same language from Collier). Respondents further observe that the section of this treatise addressing abandonment was cited in a note to an early precursor of § 554, § 4-611 of the proposed Bankruptcy Act of 1973, H. R. Doc. No. 93-137, Part II, p. 181, reprinted in A. Resnick & E. Wypyski, 2 Bankruptcy Reform Act of 1978: A Legislative History, Doc. No. 22 (1979). While resourceful, this argument is wholly unpersuasive.

The reference to Collier is not part of the Code's "'legislative history' in any meaningful sense of the term," *Board of Governors, FRS* v. *Dimension Financial Corp.*, *ante*, at 372. And the proposition for which the section in Collier is cited is [*513] not the view that authority for abandonment is qualified by state police power, but instead the much less remarkable proposition that "[the] concept of abandonment is well recognized in the case law. See 4A Collier para. 70.42 [3]." In order to divine that the statutory power to abandon in the proposed Code was to be conditioned on compliance with state police power regulations, therefore, a Senator or Congressman would not merely have had to look at the legislative history of the precursor to the Code, but also would have had to read the several-page treatise section cited in that earlier legislative history.

Neither the three cases cited by the Court nor the attenuated reference to the since superseded version of Collier supports the inference that Congress, while writing § 554 in unqualified terms, intended to incorporate so ill-defined and uncertain an exception to the abandonment authority of the trustee. After suggesting that "if Congress intends for legislation to change the interpretation of a judicially created concept" it should do so expressly, *ante*, at 501, the Court concedes that these cases "do not define for us the exact contours of the trustee's abandonment power," *ibid.* The Court never identifies the source from which it draws the "exact contours" of the rule it announces today; congressional intent does not appear to be a likely candidate. Congress knew how to [**766] draft an exception covering the exercise of "certain" police powers when it wanted to. See 11 U. S. C. §§ 362(b)(4), (5) (1982 ed. and Supp. II); *supra*, at 509. It also knew how to draft a qualified abandonment provision. See § 1170(a)(2) (abandonment of railroad lines permitted only if "consistent with the public interest"). Congress' failure to so qualify § 554 indicates that it intended the relevant inquiry at an abandonment hearing to be limited to whether the property is burdensome and of inconsequential value to the estate.

I find the Court's discussion of 28 U. S. C. § 959(b) somewhat difficult to fathom. After suggesting that § 959(b) [*514] "provides additional evidence" for the self-evident proposition "that Congress did not intend for the Bankruptcy Code to pre-empt all state laws," *ante*, at 505, the Court concedes that the provision "does [***874] not *directly* apply to an abandonment under § 554(a) of the Bankruptcy Code," *ibid.* (emphasis added). The precise nature of its *indirect* application, however, is left unclear. Respondents contend that § 959(b) operates to bar abandonment in these cases. Assuming that temporary management or operation of a facility during liquidation is governed by § 959(b), I believe that a trustee's filing of a petition to abandon, as opposed to continued operation of a site pending a decision to abandon, does not constitute "[management]" or "[operation]" under that provision. Not only would a contrary reading strain the language of § 959(b), cf. *In re Adelphi Hospital Corp.*, 579 F.2d 726, 729, n. 6 (CA2 1978) *(per curiam)* (in pre-Code liquidation proceeding trustee "is in no sense a manager of an institution's operations"), it also would create an exception to the abandonment power without a shred of evidence that Congress intended one. As one commentator has noted, § 554(a) "is among the few provisions in the Bankruptcy Code that do not contain explicit exceptions." Note, 85 Colum. L. Rev. 870, 883 (1985). I would not read 28 U. S. C. § 959(b) as creating an implicit exception.

Citing *SEC* v. *United Realty & Improvement Co.*, 310 U.S. 434, 455 (1940), respondents argue that the Bankruptcy Court's equitable powers support the result reached below. I disagree. While the Bankruptcy Court is a court of equity, the Bankruptcy Code "does not authorize freewheeling consideration of every conceivable equity." *Bildisco & Bildisco*, 465 U.S., at 527. The Bankruptcy Court may not, in the exercise of its equitable powers, enforce its view of sound public policy at the expense of the interests the Code is designed to protect. In these cases, it is undisputed that the properties in question were burdensome and of inconsequential value to the estate. Forcing the trustee to expend estate [*515] assets to clean up the sites would plainly be contrary to the purposes of the Code.

I fully appreciate the Court's concern that abandonment may "[aggravate] already existing dangers by halting security measures that [prevent] public entry, vandalism, and fire." *Ante*, at 499, n. 3. But in almost all cases, requiring the trustee to notify the relevant authorities before abandoning will give those authorities adequate opportunity to step in and provide needed security. As the Bankruptcy Court noted in No. 84-805: "The City and State are in a better position in every respect than either the Trustee or debtor's creditors to do what needs to be done to protect the public against the dangers posed by the PCB-contaminated facility." App. to Pet. for Cert. 73a. And requiring notice before abandonment in appropriate cases is perfectly consistent with the Code. It advances the State's interest in protecting the public health and safety, and, unlike the rather uncertain exception to the abandonment power propounded by the Court, at the same time allows for the orderly liquidation and distribution of the estate's assets. Here, of course, the trustee provided such notice and the relevant authorities were afforded an opportunity to take appropriate preventative and remedial measures.

I likewise would not exclude the possibility that there may be a far narrower condition [**767] on the abandonment [***875] power than that announced by the Court today, such as where abandonment by the trustee itself might create a genuine emergency that the trustee would be uniquely able to guard against. The United States in its brief as *amicus curiae* suggests, for example, that there are limits on the authority of a trustee to abandon dynamite sitting on a furnace in the basement of a schoolhouse. Although I know of no situations in which trustees have sought to abandon dynamite under such circumstances, the narrow exception that I would reserve surely would embrace that situation.

[*516] What the Court fails to appreciate is that respondents' interest in these cases lies not just in protecting public health and safety but also in protecting the public fisc. In No. 84-805, before undertaking cleanup efforts, New York unsuccessfully sought from the Bankruptcy Court a first lien on the Long Island City property to the extent of any expenditures it might make to bring the site into compliance with state and local law. New York did not appeal the court's denial of a first lien, and proceeded to clean up the site (except for the contaminated subsoil). It now presses a claim for reimbursement, maintaining that the trustee should not have been allowed to abandon the site. The New Jersey Department of Environmental Protection, in No. 84-801, apparently seeks to undo the abandonment and force the trustee to expend the estate's remaining assets cleaning up the site, thereby reducing the cleanup costs that must ultimately be borne by the State. [4]

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4 NJDEP does not contend that the estate, including any assets otherwise subject to Midlantic's secured claim, contains sufficient assets to complete the cleanup.

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The Court states that the "abandonment power is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm." *Ante*, at 507, n. 9. Because the Court declines to identify those laws that it deems so "reasonably calculated," I can only speculate about its view of respondents' claim that abandonment can be conditioned on a total cleanup. One might assume, however, that since it affirms the judgments below the Court means to adopt respondents' position. The Court of Appeals, as I read its opinions in these cases, apparently would require the trustee to expend all of Quanta's available assets to clean up the sites. [5] But barring abandonment and forcing a cleanup would effectively [*517] place respondents' interest in protecting the public fisc ahead of the claims of other creditors. Congress simply did not intend that § 554 abandonment hearings would be used to establish the priority of particular claims in bankruptcy. While States retain considerable latitude to ensure that priority status is allotted to their cleanup claims, see *Ohio* v. *Kovacs*, 469 U.S., at 285-286 (O'CONNOR, J., concurring), I believe that the Court errs by permitting them to impose conditions on the abandonment power that Congress [***876] never contemplated. Accordingly, in each of these cases I would reverse the judgment of the Court of Appeals.

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5 I would think that this command qualifies, in the words of the Court, as a "[condition] on abandonment . . . so onerous as to interfere with the bankruptcy adjudication itself," *ante*, at 507.

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REFERENCES

9 Am Jur 2d, Bankruptcy 26, 253-257

5 Federal Procedure, L Ed, Bankruptcy 9:333-9:336

4 Federal Procedural Forms, L Ed, Bankruptcy 9:751-9:758

4 Am Jur Pl & Pr Forms (Rev), Bankruptcy, Forms 257, 258

11 USCS 554(a), 959(b)

1 Bankruptcy Service, L Ed, 4:17-4:21; 3 Bankruptcy Service, L Ed, 23:110-23:115; 8 Bankruptcy Service, L Ed, 71:139.7-71:141.5 (Supp.)

US L Ed Digest, Bankruptcy 15, 305; Statutes 87

L Ed Index to Annos, Bankruptcy; Pollution

ALR Quick Index, Bankruptcy or Insolvency; Pollution; Waste Materials

Federal Quick Index, Bankruptcy; Pollution

(2)

Indexed as:

Royal Bank of Canada v. Sun Squeeze Juices Inc.

Between
Royal Bank of Canada, Plaintiff, and
Sun Squeeze Juices Inc. and Beit-Kirur Ltd., Defendants

[1994] O.J. No. 567
24 C.B.R. (3d) 302
46 A.C.W.S. (3d) 821

Action No. B253/93

Ontario Court of Justice - General Division
Commercial List - Toronto, Ontario

Farley J.

Heard: February 28, 1994.
Judgment: March 16, 1994.

(16 pp.)

Bankruptcy — Receiving order — Persons entitled to apply — Whether court-appointed receiver/manager entitled to apply — Practice — Jurisdiction — To authorize a court-appointed receiver to seek or consent to a receiving order.

Application for an order authorizing a court-appointed receiver/manager either to assign the debtor company into bankruptcy or to consent to a receiving order being issued against the company. On July 21, 1993, the plaintiff bank had issued a petition for a receiving order against the corporate defendant. The next day, the court appointed CPL Ltd. as receiver/manager on a motion by the bank, a secured creditor of the defendant, to the extent of $16 million. On August 6, 1993, the defendant filed a notice disputing the petition. On August 12, 1993, based on the receiver's report that it was not feasible to continue to carry on the operations of the defendant, the court authorized the receiver to realize upon the defendant's assets. At the time of this application, all the defendant's assets had been sold. Following a final letter of demand by the bank on July 8, 1993, the defendant commenced an action against the bank for $75 million. Also, there were four actions pending against the defendant commenced by three creditors and one supplier. Given that the bank was going to suffer a significant shortfall on its loans to the defendant, there was overwhelming evidence that the defendant was insolvent at all material times, and as it was the defendant's only secured creditor, the receiver did not see any wisdom incurring further costs in defending the pending actions. The main issue was whether the court had jurisdiction to grant the order sought.

HELD: Application allowed. There was no dispute that the court had jurisdiction to authorize a court-appointed receiver/ manager to either file an assignment in bankruptcy or consent to the petition. Where there was a conflict between an assignment and an existing petition, the proper procedure was for a consent to the receivership order being made pursuant to the petition. In the circumstances of this case, it was appropriate to direct the receiver/manager to consent to the receiving order pursuant to the petition. It was an overstatement to assert that where there was outstanding litigation between the petitioner and the debtor company, it was appropriate to stay the bankruptcy petition pending the determination of the various litigation in progress. Rather, such litigation was merely a factor to consider.

STATUTES, REGULATIONS AND RULES CITED:

Bankruptcy and Insolvency Act, S.C. 1990, s. 38. Company Act, R.S.B.C. 1979, c. 59, ss. 110, 111.

J.A. Carfagnini and R. Chadwick, for Coopers & Lybrand Limited, Court-appointed Receiver and Manager.
Paul G. Macdonald, for the Plaintiff.
Edward M. Morgan, for the Defendants.
Ronald M. Moldaver, Q.C., for Josef Blum, majority shareholder of the Defendants.

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1 **FARLEY J.:**— The critical question to be answered is whether this Court has the jurisdiction to authorize a Court-appointed Receiver and Manager ("R/M") either to assign a debtor company into bankruptcy or to consent to a receiving order being issued against the debtor company. The second question is, if so, whether this Court should so authorize this R/M in these circumstances.

2 On July 21, 1993 the Royal Bank of Canada ("Bank") issued a Petition for a Receiving Order ("Petition") against Sun Squeeze Juices Inc. ("Sun") naming Coopers & Lybrand Limited ("Coopers") as the proposed Trustee. The next day the Court appointed Coopers as R/M on a motion by the Bank, Sun's secured creditor to the extent of approximately $16 million. On August 6th Sun filed a Notice Disputing the Petition ("Dispute"). The R/M was to report to the Court as to the feasibility of continuing the operations of Sun. In its report of August 6th the R/M advised that this was unfeasible and recommended that Sun's operations be discontinued. On August 12th this Court authorized the R/M to realize upon Sun's assets. Sun is no longer carrying on business as its assets now have been sold with Court approval.

3 Despite the disarray and gaps in the financial and other records of Sun, has determined that Josef Blum ("Blum"), the majority shareholder of Sun, had withdrawn approximately $1.2 million from bank accounts of Sun during the year prior to the R/M's appointment. Contrary to the arrangement with the Bank, a second (and secret) bank account was opened at the Bank of Nova Scotia ("BNS"). Collections which were not referenced in Sun's accounts receivable sub-ledger were deposited in the BNS. The R/M was unable to determine that the monies withdrawn by Blum were used in the business operations of Sun. The R/M has concluded that Sun was insolvent at all relevant times and it appears that these withdrawals had been made with a view to preferring Blum over other creditors. The R/M considers these payments to be fraudulent preferences as defined under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended ("BIA"). The R/M has similar views as to monies obtained by Blum out of the account at the Bank.

4 Sun's Dispute alleged that Sun was not indebted to the Bank and that it had not, within the 6 months preceding the Petition, failed to meet its liabilities as they generally became due. Given the unchallenged July 8, 1993 letter of Bank counsel to Sun (attention Blum) which recites Blum's request to forbear acting on the demands for payment to afford an opportunity to Sun to submit a proposal for the repayment of the Bank's loans, I am puzzled how Sun can baldly and boldly dispute that it was not indebted to the Bank. Similarly it seems difficult to understand the disagreement concerning the general meeting of its liabilities given the significant number of outstanding accounts and the number of suppliers which had commenced actions against Sun.

5 Actions have been commended and followed up on by three suppliers and one customer. The R/M has examined these claims and concluded that they appear, on their face, to have some basis in law. However, any successful claim would rank only as an unsecured creditor against the estate of Sun. As the Bank will suffer a significant shortfall on its loans, the R/M sees little benefit to incurring further costs to defend these actions given the Bank's priority position. As to Sun's claims in some of these actions, the R/M advises that it does not have sufficient information to prove these claims. The Bank advised the R/M that it had no interest in funding any of the litigation, including, one assumes, the $75 million suit instituted by Sun and Blum against the Bank the day after the July 8th letter setting out their request for forbearance by the Bank so as to allow them to present a repayment proposal. If Sun were put into bankruptcy, then assuming that the Trustee does not pursue any of the litigation (which appears to be a dead certainty), any creditor (including Blum) who wishes to pursue it may do so at his own cost and for his own benefit pursuant to s. 38 of the BIA. See: Re Can Corp Financial Services Ltd. (1991), 4 C.B.R. (3d) 99 (Ont. Gen. Div.) at p. 107.

6 As to the first question, I do not see that there is any dispute that this Court has the power to authorize the Court-appointed R/M to either file an assignment in bankruptcy or consent to the Petition. See: First Treasury Financial Inc. v. Cango Petroleums Inc. (1991), 3 C.B.R. (3d) 232 (Ont. Gen. Div.) at p. 240; Re Brandon Packers Ltd., Ex Parte Row (1962), 33 D.L.R. (2d) 503 (Man. C.A.) at pp. 510-511 and 513; leave to appeal to SCC refused [1962] SCC ix; Prairie Palace Motel Ltd. v. Carlson (1982), 42 C.B.R. (N.S.) 163 (Sask. Q.B.) at p. 165; Chinavision Canada Corporation et al. v. Richard H. Ling (Ont. Gen. Div.) my unreported decision released Jan. 12, 1994. As Freedman J.A. said in Brandon at p. 511:

> The Editor expresses doubt whether a liquidator has power to file an assignment in bankruptcy. With deference, I would suggest that we are concerned not so much with the powers of a liquidator as the powers of a Judge of the Court of Queen's Bench. After all, a liquidator is subject to the jurisdiction of the Court in the same manner as an ordinary officer of the Court (s. 395 of the Companies Act). Here Mr. Flintoft did the wise and proper thing by applying to the Court for directions. The assignment in bankruptcy was not filed on his own motion but by express direction of the Court. Was the Court empowered to direct him? We must bear in mind that we are here concerned with the authority of a superior Court in whose favour jurisdiction should be presumed unless it is expressly or by implication excluded...

7 As to whether a Court-appointed R/M takes precedence over the directors and shareholders of the company as to which it is appointed, I believe this has been adequately canvassed in Walter and Hunter, Kerr on the Law and Practice as to Receivers and Administrators, 17th ed. (London; Sweet & Maxwell, 1989) at p. 219; Re Hat Development Ltd. (1988), 71 C.B.R. (N.S.) 264 (Alta. Q.B.) at p. 268, affirmed without this point (1989), 65 Alta. L.R. (2d) 374 (CA); Nova Metal Products Inc. v. Comiskey (Trustee of) (1990), 1 C.B.R. (3d) 101 (Ont. C.A.) at p. 111.

8 Freedman J.A. in Brandon, supra, observed at p. 511 that it would not be "necessary that the Court should first of all call upon the directors so to act. The Court is not bound to do a futile thing." It would seem to me that the Court in Everex Systems Inc. v. Pride Computer Distributions Ltd. (1988), 68 C.B.R. (N.S.) 24 at 28 (B.C.S.C.) dealt not with the jurisdiction of the Court and the capacity of a Court-appointed R/M, but rather it over concentrated on the wording of sections 110 and 111 of the Company Act, R.S.B.C. 1979, c.59.

9 As Houlden and Morawetz, Bankruptcy and Insolvency Law of Canada 3rd ed., Vol. 1, (Toronto; Carswell, 1992) express it, where there is a conflict between an assignment and an existing petition, the proper procedure is for there to be a consent to the receivership order being made pursuant to the petition. See at pp. 2-48-9 where it is said:

> (a) Conflict Between Assignment and Petition
>
> There has been a great deal of litigation over which has priority if both an assignment and a petition are filed. However, the procedure to be followed appears now to be well established, and it is this: (1) if a petition is filed first

> and the Official Receiver knows of the petition, he should not accept an assignment but should request the debtor to consent to the receiving order being made forthwith; (2) if the Official Receiver accepts the assignment, the court will set it aside and make the receiving order on the petition: Re Lalonde (1924), 4 C.B.R. 416 (Ont. S.C.); Re Lakeshore Golf & Country Club (1933), 19 C.B.R. 127 (Que. S.C.); Re Slavonia SS Agencies (1922), 3 C.B.R. 153 (Ont. S.C.). The reasoning behind these cases is that bankruptcy proceedings are primarily for the benefit of creditors, not debtors, and the trustee selected by the creditors is to be preferred over one selected by the debtor: Re Croteau & Clark Ltd. (1920), 1 C.B.R. 364, 48 O.L.R. 359, 55 D.L.R. 413 (S.C.).

Therefore, if circumstances dictate that Sun be put into bankruptcy, it would appear appropriate for the R/M to consent to a receiving order being made pursuant to the Royal Bank's Petition of July 21, 1993. I followed that course in Chinavision, supra, at p. 4 as well.

10 Courts in Canada have specifically held that the Court has jurisdiction to authorize and direct a Court-appointed R/M or liquidator to put a debtor company into bankruptcy. See Prairie Palace, supra, at p. 65; Re Western Hemlock Products Ltd. (1961), 2 C.B.R. (N.S.) 207 (B.C.S.C.) at p. 210; Chinavision, supra, at pp. 4-5. Freedman J.A. in Brandon, supra, said at p. 513:

> Must the Court then close its eyes to the facts as reported by its own officer? It is my feeling that no amount of bankruptcy or winding-up legislation can fetter the Court to the extent that it must remain blind to the reality of bankruptcy.
>
> In this case the Court directed its appointee to make an assignment in bankruptcy. It is true that the Court might have suggested to a creditor that he launch a petition to have the company declared bankrupt; but this, surely, is asking the Court to shirk its plain responsibility and place that responsibility on some third party. When the affairs of the company are under the jurisdiction of the Court, it must accept and fulfill its duty and give judgment "according to the very right and justice of the case".

11 Thus this matter boils down to whether in the circumstances I should authorize the R/M to consent to the receiving order. Each case of course must be determined on its own facts. It seems to me that where there is an obvious insolvency then the Court should examine whether there is a "need" for a bankruptcy and if this need overcomes any contras. For this purpose I will ignore the technicality that given the all encompassing receiver and manager order issued on July 22, 1993, there is reason to question whether the officers and directors had any ability to issue the Dispute. See the discussion of this point above in Kerr, Hat and Nova, supra. The question of "need" for a bankruptcy was canvassed in Prairie Palace, supra, at p. 165 and Chinavision, supra, at pp. 4-5.

12 Sun's counsel submitted that where a Petition was disputed, the trial of the issue must be held. He cited Re Goodis-Wolf Inc. (1990), 50 C.B.R. (N.S.) 146 (Ont. Gen. Div.) as standing for the principle that where there was outstanding litigation between the petitioner and the debtor company it was appropriate to stay the bankruptcy petition pending the determination of the various litigation in progress. I am of the opinion that it is an overstatement. Firstly, it was merely a factor to consider; secondly, it was determined in those circumstances that if the petition were granted, the two commenced actions would be unlikely to go to trial. It was acknowledged therein at pp. 154-5 that:

> The existence of a prior civil action has not always resulted in the court staying or dismissing a petition: see, for example, Re Hutchens (1983), 46 C.B.R. (N.S.) 234 (Ont. S.C.); and Re H.M. Simpson Ltd. (1989), 77 C.B.R.

> (N.S.) 24, 79 Nfld. & P.E.I.R. 307, 246 A.P.R. 307 (sub nom. Jenkins Transfer Ltd. v. H.M. Simpson Ltd.) (P.E.I.C.A.). However, in many cases, petitions have been stayed because of a dispute which the court considered better dealt with by the civil trial process. Here, we have a longstanding civil action and no prejudice shown to other creditors if the petition were to be stayed. The petition is part of the battle between the petitioning creditor and the debtor. There is a question in my mind whether the bankruptcy process should be resorted to in such circumstances. I was told that a pre-trial in the first action was cancelled because of the intervening petition. The action should be able to be tried at an early date. It would be less than satisfactory to all the parties if all the issues in the litigation were not dealt with. While there may be little likelihood of Goodis-Wolf successfully establishing the claim for advertising work, I consider on balance, that it is preferable that the litigation be allowed to take its course. [emphasis added].

13 That case is not this case however. I am of the view that bankruptcy would be a preferable condition for Sun. The trustee could advise creditors (including Blum) that it did not wish to pursue the litigation (including the $75 million claim against the Bank); I am of the view that such a process would maximize the chance of any valid and sustainable litigation being pursued since the undertaking creditor would be financing litigation under which it would be the initial beneficiary (and ultimate as well in the case of Blum pursuing the Bank litigation). It would also allow the Trustee to resolve the question of whether the payments to Blum were fraudulent preferences, thereby keeping an even hand among the creditors. As well it would allow the Trustee to fully investigate the suspicious circumstances of the unauthorized and secret BNS account to which there were deposits of surreptitious collections of some of Sun's accounts receivable. Lastly, it would not appear that any interested party (including Sun itself) would be prejudiced by a receiving order issuing since Sun is merely an insolvent shell, its operations and assets having been sold and its business discontinued. Bankruptcy proceedings are class actions on behalf of all creditors and the Trustee must be mindful of the interests of all parties including the shareholders of the bankrupt company.

14 In conclusion I am of the view that it would be appropriate to direct the R/M to consent to the receiving order pursuant to the Petition and allow the Trustee if it proceeds as expected to advise the creditors of the possibility of one or more of them pursuing the existing litigation pursuant to s. 38 of the BIA. There is to be a receiving order issue in the usual form with Coopers & Lybrand Ltd. as Trustee.

FARLEY J.

* * * * *

FARLEY J.:-- See Receiver's motion and endorsement of even date for disposition of the item under relief (g) requested by Receiver. Payment to Bank of net proceeds subject to agreed Receiver holdback authorized.

FARLEY J.

* * * * *

FARLEY J.:-- This endorsement on the Motion Record deals with all matters in the Motion except for (b) and (c), namely the issuance of the receiving order based on the proposal of the Receiver to consent to same and the proposed cause of action concerning the litigation to which Sun Squeeze and/or BKL is a party and to the extent that these clauses (b) and (c) impinge on (a), then (a) is not dealt with in this endorsement. I am handwriting out on a separate sheet my decision and reasons as to these particular clauses (b), (c) and to the extent impacted (a). The separate endorsement is subject to edit and correction on it being typed up.

There was no realist objection - in fact little or no formalistic objection by the defendants and Blum to the other relief requested except that Blum's position was as to (d) that the Receiver could come and get the truck which was said to be disabled and without keys and as to (e) he observed that it was unusual to require him to prove he or some third party owned it other than the Receiver providing some prima facie evidence of ownership by the defendants.

I am satisfied from my review and the lack of opposition on any meaningful basis that the Receiver's activities (except as impacted by (b) and (c) as set forth in the Third Report should be approved, along with the Receiver's Statement of Receipts and Disbursements as set forth therein (f) and approving of the fees and expenses of the Receiver and its counsel as set forth therein (h).

With respect to the question of payment of proceeds of the realization, namely relief clause (g) this is specifically dealt with directly as well by a Motion of the Bank for the Receiver to pay the Bank the net proceeds of realization of the receivership of Sun Squeeze and BKL, subject to the retention of an adequate reserve to provide for the Receiver's ongoing costs and expenses in an amount to be agreed by the Receiver and the Bank. There does not seem to be any dispute by the defendants or Blum that the Bank held valid security and that it was able to demand repayment having fulfilled the requirements of demand and notices - but subject to the subsequent lawsuit of the defendants. However, subsequent to the Bank's demand letter Blum, principal of the defendants, acknowledged the indebtedness of the defendants and asked the Bank to forbear acting on the demand for payment in order to afford the defendants an opportunity to submit a proposal for repayment. In the belief that Blum's request for forbearance was made in good faith and on the understanding that the defendants in fact intended to secure a repayment proposal, the Bank agreed to forbear until July 19, 1993 on the terms and conditions set out in a letter of July 8/93. One can imagine the Bank's surprise and dismay to find that its gentlemanly behaviour to the defendants was reciprocated not by similar behaviour from them but rather a lawsuit claiming $75 million instituted by the defendants and Blum the next day. No doubt some other customers of the Bank will have greater trouble in the future in attempting to convince the Bank to forbear in similar circumstances. The unliquidated damages claim for $75 million has not been particularized nor has there been any evidence presented to substantiate the allegations. The Bank for its part has had an affidavit sworn that the allegations are unfounded and without merit. The evidence has not been challenged.

In my view this very bald and bold statement of claim in these circumstances should be treated as a "stink bid" in bridge. Clearly the claimants (defendants and Blum) in that action have not taken any positive step since the issue of the Statement of Claim. The Bank's demand is for a liquidated amount with a firm underpinning. The defendants and Blum have not even taken the trouble to attempt to establish whatever basis they could to assert a claim in set-off (legal or equitable) or anything of a similar nature. I do not think that such empty audacity should be rewarded. The Bank in my view should be paid the net proceeds of realization, subject to an agreed holdback to be established by the Receiver and the Bank.

The audacity continues when Blum did not come in until the last minute (i.e. at this hearing) regarding (d) the truck - despite the Receiver showing the ownership which is clearly in the name of Sun Squeeze. The Receiver is to have the truck and, if it requires, it should have the reasonable costs of repossession reimbursed by Blum.

As for the mixing tanks - clause (e), I would observe that all the Receiver wishes is Blum to deliver to it some evidence of ownership of the tanks. I think this quite reasonable in the circumstances since the tank apparently was used in the business of the defendants and it would be inappropriate to require the Receiver to present proof of ownership of the tank when the financial records of the defendants are in such disarray with obvious gaps.

There is to be an order in the form set out in this motion record under tab 3 and to which I have put my fiat in the motion record at p. 149 adjusting the hearing date. If costs are desired I can be spoken to at a convenient 9:30 on the Commercial List.

FARLEY J.

3

Current to November 22, 2010

R.S.C. 1985, c. B-3, s. 14.06

[eff since September 18, 2009](Current Version)

Bankruptcy and Insolvency Act

R.S.C. 1985, c. B-3

PART I
ADMINISTRATIVE OFFICIALS

Appointment and Substitution of Trustees

SECTION 14.06

No trustee is bound to act

14.06 (1) No trustee is bound to assume the duties of trustee in matters relating to assignments, bankruptcy orders or proposals, but having accepted an appointment in relation to those matters the trustee shall, until discharged or another trustee is appointed in the trustee's stead, perform the duties required of a trustee under this Act.

Application

(1.1) In subsections (1.2) to (6), a reference to a trustee means a trustee in a bankruptcy or proposal and includes

(a) an interim receiver;

(b) a receiver within the meaning of subsection 243(2); and

(c) any other person who has been lawfully appointed to take, or has lawfully taken, possession or control of any property of an insolvent person or a bankrupt that was acquired for, or is used in relation to, a business carried on by the insolvent person or bankrupt.

No personal liability in respect of matters before appointment

(1.2) Despite anything in federal or provincial law, if a trustee, in that position, carries on the business of a debtor or continues the employment of a debtor's employees, the trustee is not by reason of that fact personally liable in respect of a liability, including one as a successor employer,

(a) that is in respect of the employees or former employees of the debtor or a predecessor of the debtor or in respect of a pension plan for the benefit of those employees; and

(b) that exists before the trustee is appointed or that is calculated by reference to a period before the appointment.

Status of liability

(1.3) A liability referred to in subsection (1.2) is not to rank as costs of administration.

Liability of other successor employers

(1.4) Subsection (1.2) does not affect the liability of a successor employer other than the trustee.

Liability in respect of environmental matters

(2) Notwithstanding anything in any federal or provincial law, a trustee is not personally liable in that position for any environmental condition that arose or environmental damage that occurred

(a) before the trustee's appointment; or

(b) after the trustee's appointment unless it is established that the condition arose or the damage occurred as a result of the trustee's gross negligence or wilful misconduct or, in the Province of Quebec, the trustee's gross or intentional fault.

Reports, etc., still required

(3) Nothing in subsection (2) exempts a trustee from any duty to report or make disclosure imposed by a law referred to in that subsection.

Non-liability re certain orders

(4) Notwithstanding anything in any federal or provincial law but subject to subsection (2), where an order is made which has the effect of requiring a trustee to remedy any environmental condition or environmental damage affecting property involved in a bankruptcy, proposal or receivership, the trustee is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(a) if, within such time as is specified in the order, within ten days after the order is made if no time is so specified, within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, or during the period of the stay referred to in paragraph (b), the trustee

(i) complies with the order, or

(ii) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property, or any right in any immovable, affected by the condition or damage;

(b) during the period of a stay of the order granted, on application made within the time specified in the order referred to in paragraph (a), within ten days after the order is made or within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, by

(i) the court or body having jurisdiction under the law pursuant to which the order was made to enable the trustee to contest the order, or

(ii) the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(c) if the trustee had, before the order was made, abandoned or renounced or been divested of any interest in any real property, or any right in any immovable, affected by the condition or damage.

Stay may be granted

(5) The court may grant a stay of the order referred to in subsection (4) on such notice and for such period as the court deems necessary for the purpose of enabling the trustee to assess the economic viability of complying with the order.

Costs for remedying not costs of administration

(6) If the trustee has abandoned or renounced any interest in any real property, or any right in any immovable, affected by the environmental condition or environmental damage, claims for costs of remedying the condition or damage shall not rank as costs of administration.

Priority of claims

(7) Any claim by Her Majesty in right of Canada or a province against the debtor in a bankruptcy, proposal or receivership for costs of remedying any environmental condition or environmental damage affecting real property or an immovable of the debtor is secured by security on the real property or immovable affected by the environmental condition or environmental damage and on any other real property or immovable of the debtor that is contiguous with that real property or immovable and that is related to the activity that caused the environmental condition or environmental dam-age, and the security

(a) is enforceable in accordance with the law of the jurisdiction in which the real property or immovable is located, in the same way as a mortgage, hypothec or other security on real property or immovables; and

(b) ranks above any other claim, right, charge or security against the property, despite any other provision of this Act or anything in any other federal or provincial law.

Claim for clean-up costs

(8) Despite subsection 121(1), a claim against a debtor in a bankruptcy or proposal for the costs of remedying any environmental condition or environmental damage affecting real property or an immovable of the debtor shall be a provable claim, whether the condition arose or the damage occurred before or after the date of the filing of the proposal or the date of the bankruptcy.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
14.06	2005 c47 s17	2009 Sep 18	SI/2009-68
14.06	2007 c36 s9	2009 Sep 18	SI/2009-68
14.06(1)	2004 c25 s16	2004 Dec 15	R.A.
14.06(1.1)	1997 c12 s15(1)	1997 Sep 30	SI/97-114
14.06(1.2)	1997 c12 s15(1)	1997 Sep 30	SI/97-114
14.06(1.3)	1997 c12 s15(1)	1997 Sep 30	SI/97-114
14.06(2)	1997 c12 s15(1)	1997 Sep 30	SI/97-114
14.06(2)(b)	2004 c25 s16	2004 Dec 15	R.A.
14.06(3)	1997 c12 s15(1)	1997 Sep 30	SI/97-114
14.06(4)	1997 c12 s15(1)	1997 Sep 30	SI/97-114
14.06(4)(a)(ii)	2004 c25 s16	2004 Dec 15	R.A.
14.06(4)(c)	2004 c25 s16	2004 Dec 15	R.A.
14.06(5)	1997 c12 s15(1)	1997 Sep 30	SI/97-114
14.06(6)	1997 c12 s15(1)	1997 Sep 30	SI/97-114
14.06(6)	2004 c25 s16	2004 Dec 15	R.A.
14.06(7)	1997 c12 s15(1)	1997 Sep 30	SI/97-114
14.06(7)	2004 c25 s16	2004 Dec 15	R.A.
14.06(8)	1997 c12 s15(1)	1997 Sep 30	SI/97-114
14.06(8)	2004 c25 s16	2004 Dec 15	R.A.

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Editor's note: S.C. 2005, c. 47, s. 17, effective September 18, 2009 (SI/2009-68), was amended prior to its coming into force by S.C. 2007, c. 36, s. 9(2), effective December 14, 2007 (R.A.).

Editor's note: S.C. 1997, c. 12, s. 15(2), effective September 30, 1997 (SI/97-114), contained the following provision:

"Application

(2) Subsection (1) applies to bankruptcies, proposals or receiverships in respect of which proceedings are commenced after that subsection comes into force."

S.C. 1992, c. 27, s. 9; S.C. 1997, c. 12, s. 15; S.C. 2004, c. 25, s. 16; S.C. 2005, c. 47, s. 17 as amended by S.C. 2007, c. 36, s. 9; S.C. 2007, c. 36, s. 9(3).

Current to November 22, 2010

R.S.C. 1985, c. B-3, s. 20

[eff since December 15, 2004](Current Version)

Bankruptcy and Insolvency Act

R.S.C. 1985, c. B-3

PART I
ADMINISTRATIVE OFFICIALS

Duties and Powers of Trustees

SECTION 20.

Divesting property by trustee

20. (1) The trustee may, with the permission of the inspectors, divest all or any part of the trustee's right, title or interest in any real property or immovable of the bankrupt by a notice of quit claim or renunciation by the trustee, and the official in charge of the land titles or registry office, as the case may be, where title to the real property or immovable is registered shall accept and register in the land register the notice when tendered for registration.

Registration of notice

(2) Registration of a notice under subsection (1) operates as a discharge or release of any documents previously registered in the land register by or on behalf of the trustee with respect to the property referred to in the notice.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
20	1997 c12 s18	1997 Sep 30	SI/97-114
20(1)	2004 c25 s20	2004 Dec 15	R.A.

*****

R.S.C. 1985, c. B-3, s. 20; S.C. 1997, c. 12, s. 18; S.C. 2004, c. 25, s. 20.

Current to November 24, 2010

R.S.C. 1985, c. C-44, s. 1

[eff since December 12, 1988](Current Version)

Canada Business Corporations Act

R.S.C. 1985, c. C-44

SHORT TITLE

SECTION 1.

Short title

1. This Act may be cited as the Canada Business Corporations Act.

R.S.C. 1985, c. C-44, s. 1; S.C. 1994, c. 24, s. 1 (F).

4

PART XVIII LIQUIDATION AND DISSOLUTION

SECTION 207.

Definition of "court"

207. In this Part, "court" means a court having jurisdiction in the place where the corporation has its registered office.

S.C. 1974-75-76, c. 33, s. 200.

SECTION 208.

Application of Part

208. (1) This Part, other than sections 209 and 212, does not apply to a corporation that is an insolvent person or a bankrupt as those terms are defined in subsection 2(1) of the Bankruptcy and Insolvency Act.

Staying proceedings

(2) Any proceedings taken under this Part to dissolve or to liquidate and dissolve a corporation shall be stayed if the corporation is at any time found, in a proceeding under the Bankruptcy and Insolvency Act, to be an insolvent person as defined in subsection 2(1) of that Act.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
208	2001 c14 s101	2001 Nov 24	SI/2001-114

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R.S.C. 1985, c. C-44, s. 208; S.C. 1992, c. 27, s. 90; S.C. 2001, c. 14, s. 101.

SECTION 209.

Revival

209. (1) When a body corporate is dissolved under this Part or under section 268 of this Act, section 261 of chapter 33 of the Statutes of Canada, 1974-75-76, or subsection 297(6) of the Canada Not-for-profit Corporations Act, any interested person may apply to the Director to have the body corporate revived as a corporation under this Act.

Articles of revival

(2) Articles of revival in the form that the Director fixes shall be sent to the Director.

Certificate of revival

(3) On receipt of articles of revival, the Director shall issue a certificate of revival in accordance with section 262, if

> (a) the body corporate has fulfilled all conditions precedent that the Director considers reasonable; and
>
> (b) there is no valid reason for refusing to issue the certificate.

Date of revival

(3.1) A body corporate is revived as a corporation under this Act on the date shown on the certificate of revival.

Rights preserved

(4) Subject to any reasonable terms that may be imposed by the Director, to the rights acquired by any person after its dissolution and to any changes to the internal affairs of the corporation after its dissolution, the revived corporation is, in the same manner and to the same extent as if it had not been dissolved,

> (a) restored to its previous position in law, including the restoration of any rights and privileges whether arising before its dissolution or after its dissolution and before its revival; and
>
> (b) liable for the obligations that it would have had if it had not been dissolved whether they arise before its dissolution or after its dissolution and before its revival.

Legal actions

(5) Any legal action respecting the affairs of a revived corporation taken between the time of its dissolution and its revival is valid and effective.

Definition of "interested person"

(6) In this section, "interested person" includes

> (a) a shareholder, a director, an officer, an employee and a creditor of the dissolved corporation;
>
> (b) a person who has a contractual relationship with the dissolved corporation;
>
> (c) a person who, although at the time of dissolution of the corporation was not a person described in paragraph (a), would be such a person if a certificate of revival is issued under this section; and
>
> (d) a trustee in bankruptcy for the dissolved corporation.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
209	2009 c23 s310	2010 Mar 12	SI/2010-25
209(2)-(6)	2001 c14 s102	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 209; S.C. 2001, c. 14, s. 102; S.C. 2009, c. 23, s. 310.

SECTION 210.

Dissolution before commencing business

210. (1) A corporation that has not issued any shares may be dissolved at any time by resolution of all the directors.

Dissolution if no property

(2) A corporation that has no property and no liabilities may be dissolved by special resolution of the shareholders or, where it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

Dissolution where property disposed of

(3) A corporation that has property or liabilities or both may be dissolved by special resolution of the shareholders or, where it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote, if

(a) by the special resolution or resolutions the shareholders authorize the directors to cause the corporation to distribute any property and discharge any liabilities; and

(b) the corporation has distributed any property and discharged any liabilities before it sends articles of dissolution to the Director pursuant to subsection (4).

Articles of dissolution

(4) Articles of dissolution in the form that the Director fixes shall be sent to the Director.

Certificate of dissolution

(5) On receipt of articles of dissolution, the Director shall issue a certificate of dissolution in accordance with section 262.

Effect of certificate

(6) The corporation ceases to exist on the date shown in the certificate of dissolution.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
210(4)	2001 c14 s103	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 210; S.C. 2001, c. 14, s. 103.

SECTION 211.

Proposing liquidation and dissolution

211. (1) The directors may propose, or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 137, make a proposal for, the voluntary liquidation and dissolution of a corporation.

Notice of meeting

(2) Notice of any meeting of shareholders at which voluntary liquidation and dissolution is to be proposed shall set out the terms thereof.

Shareholders resolution

(3) A corporation may liquidate and dissolve by special resolution of the shareholders or, where the corporation has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

Statement of intent to dissolve

(4) A statement of intent to dissolve in the form that the Director fixes shall be sent to the Director.

Certificate of intent to dissolve

(5) On receipt of a statement of intent to dissolve, the Director shall issue a certificate of intent to dissolve in accordance with section 262.

Effect of certificate

(6) On issue of a certificate of intent to dissolve, the corporation shall cease to carry on business except to the extent necessary for the liquidation, but its corporate existence continues until the Director issues a certificate of dissolution.

Liquidation

(7) After issue of a certificate of intent to dissolve, the corporation shall

(a) immediately cause notice thereof to be sent to each known creditor of the corporation;

(b) without delay take reasonable steps to give notice of it in each province in Canada where the corporation was carrying on business at the time it sent the statement of intent to dissolve to the Director;

(c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge all its obligations and to do all other acts required to liquidate its business; and

(d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

Supervision by court

(8) The Director or any interested person may, at any time during the liquidation of a corporation, apply to a court for an order that the liquidation be continued under the supervision of the court as provided in this Part, and on such application the court may so order and make any further order it thinks fit.

Notice to Director

(9) An applicant under this section shall give the Director notice of the application, and the Director is entitled to appear and be heard in person or by counsel.

Revocation

(10) At any time after issue of a certificate of intent to dissolve and before issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked by sending to the Director a statement of revocation of intent to dissolve in the form that the Director fixes, if such revocation is approved in the same manner as the resolution under subsection (3).

Certificate of revocation of intent to dissolve

(11) On receipt of a statement of revocation of intent to dissolve, the Director shall issue a certificate of revocation of intent to dissolve in accordance with section 262.

Effect of certificate

(12) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the corporation may continue to carry on its business or businesses.

Right to dissolve

(13) If a certificate of intent to dissolve has not been revoked and the corporation has complied with subsection (7), the corporation shall prepare articles of dissolution.

Articles of dissolution

(14) Articles of dissolution in the form that the Director fixes shall be sent to the Director.

Certificate of dissolution

(15) On receipt of articles of dissolution, the Director shall issue a certificate of dissolution in accordance with section 262.

Effect of certificate

(16) The corporation ceases to exist on the date shown in the certificate of dissolution.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
211(4),(7)(b), (10),(14)	2001 c14 s104	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 211; S.C. 2001, c. 14, s. 104.

SECTION 212.

Dissolution by Director

212. (1) Subject to subsections (2) and (3), the Director may

(a) dissolve a corporation by issuing a certificate of dissolution under this section if the corporation

(i) has not commenced business within three years after the date shown in its certificate of incorporation,

(ii) has not carried on its business for three consecutive years,

(iii) is in default for a period of one year in sending to the Director any fee, notice or document required by this Act, or

(iv) does not have any directors or is in the situation described in subsection 109(4); or

(b) apply to a court for an order dissolving the corporation, in which case section 217 applies.

Publication

(2) The Director shall not dissolve a corporation under this section until the Director has

(a) given one hundred and twenty days notice of the decision to dissolve the corporation to the corporation and to each director thereof; and

(b) published notice of that decision in a publication generally available to the public.

Certificate of dissolution

(3) Unless cause to the contrary has been shown or an order has been made by a court under section 246, the Director may, after the expiration of the period referred to in subsection (2), issue a certificate of dissolution in the form that the Director fixes.

Exception - non-payment of incorporation fee

(3.1) Despite anything in this section, the Director may dissolve a corporation by issuing a certificate of dissolution if the required fee for the issuance of a certificate of incorporation has not been paid.

Effect of certificate

(4) The corporation ceases to exist on the date shown in the certificate of dissolution.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
212(1)	2001 c14 s105	2001 Nov 24	SI/2001-114
212(2)(part), (a)	2001 c14 s135 Sch Itm 66	2001 Nov 24	SI/2001-114
212(2)(b)	2001 c14 s105	2001 Nov 24	SI/2001-114
212(3),(3.1)	2001 c14 s105	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 212; S.C. 1994, c. 24, s. 25; S.C. 2001, c. 14, ss. 105, 135 (Sch., Itm. 66) (E).

SECTION 213.

Grounds for dissolution

213. (1) The Director or any interested person may apply to a court for an order dissolving a corporation if the corporation has

(a) failed for two or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders;

(b) contravened subsection 16(2) or section 21, 157 or 159; or

(c) procured any certificate under this Act by misrepresentation.

Notice to Director

(2) An applicant under this section shall give the Director notice of the application, and the Director is entitled to appear and be heard in person or by counsel.

Dissolution order

(3) On an application under this section or section 212, the court may order that the corporation be dissolved or that the corporation be liquidated and dissolved under the supervision of the court, and the court may make any other order it thinks fit.

Certificate

(4) On receipt of an order under this section, section 212 or 214, the Director shall

(a) if the order is to dissolve the corporation, issue a certificate of dissolution in the form that the Director fixes; or

(b) if the order is to liquidate and dissolve the corporation under the supervision of the court, issue a certificate of intent to dissolve in the form that the Director fixes and publish notice of the order in a publication generally available to the public.

Effect of certificate

(5) The corporation ceases to exist on the date shown in the certificate of dissolution.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
213(4)	2001 c14 s106	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 213; S.C. 2001, c. 14, s. 106.

SECTION 214.

Further grounds

214. (1) A court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder,

(a) if the court is satisfied that in respect of a corporation or any of its affiliates

(i) any act or omission of the corporation or any of its affiliates effects a result,

(ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer; or

(b) if the court is satisfied that

(i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or

(ii) it is just and equitable that the corporation should be liquidated and dissolved.

Alternative order

(2) On an application under this section, a court may make such order under this section or section 241 as it thinks fit.

Application of s. 242

(3) Section 242 applies to an application under this section.

R.S.C. 1985, c. C-44, s. 214; S.C. 2001, c. 14, s. 107 (F).

SECTION 215.

Application for supervision

215. (1) An application to a court to supervise a voluntary liquidation and dissolution under subsection 211(8) shall state the reasons, verified by an affidavit of the applicant, why the court should supervise the liquidation and dissolution.

Court supervision

(2) If a court makes an order applied for under subsection 211(8), the liquidation and dissolution of the corporation shall continue under the supervision of the court in accordance with this Act.

S.C. 1974-75-76, c. 33, s. 208.

SECTION 216.

Application to court

216. (1) An application to a court under subsection 214(1) shall state the reasons, verified by an affidavit of the applicant, why the corporation should be liquidated and dissolved.

Show cause order

(2) On an application under subsection 214(1), the court may make an order requiring the corporation and any person having an interest in the corporation or claim against it to show cause, at a time and place specified in the order, within four weeks after the date of the order, why the corporation should not be liquidated and dissolved.

Powers of court

(3) On an application under subsection 214(1), the court may order the directors and officers of the corporation to furnish the court with all material information known to or reasonably ascertainable by them, including

(a) financial statements of the corporation;

(b) the name and address of each shareholder of the corporation; and

(c) the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the corporation has a contract.

Publication

(4) A copy of an order made under subsection (2) shall be

(a) published as directed in the order, at least once in each week before the time appointed for the hearing, in a newspaper published or distributed in the place where the corporation has its registered office; and

(b) served on the Director and each person named in the order.

Person responsible

(5) Publication and service of an order under this section shall be effected by the corporation or by such other person and in such manner as the court may order.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
216(2)	1999 c31 s64	1999 Jun 17	R.A.

*****

R.S.C. 1985, c. C-44, s. 216; S.C. 1999, c. 31, s. 64 (E).

SECTION 217.

Powers of court

217. In connection with the dissolution or the liquidation and dissolution of a corporation, the court may, if it is satisfied that the corporation is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order to liquidate;

(b) an order appointing a liquidator, with or without security, fixing the liquidator's remuneration and replacing a liquidator;

(c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;

(d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

(e) an order determining the validity of any claims made against the corporation;

(f) an order, at any stage of the proceedings, restraining the directors and officers from

(i) exercising any of their powers, or

(ii) collecting or receiving any debt or other property of the corporation, and from paying out or transferring any property of the corporation, except as permitted by the court;

(g) an order determining and enforcing the duty or liability of any present or former director, officer or shareholder

(i) to the corporation, or

(ii) for an obligation of the corporation;

(h) an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of assets for such purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;

(i) an order disposing of or destroying the documents and records of the corporation;

(j) on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;

(k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on such terms as the court thinks fit and confirming any act of the liquidator;

(l) subject to section 223, an order approving any proposed interim or final distribution to shareholders in money or in property;

(m) an order disposing of any property belonging to creditors or shareholders who cannot be found;

(n) on the application of any director, officer, security holder, creditor or the liquidator,

(i) an order staying the liquidation on such terms and conditions as the court thinks fit,

(ii) an order continuing or discontinuing the liquidation proceedings, or

(iii) an order to the liquidator to restore to the corporation all its remaining property; and

(o) after the liquidator has rendered a final account to the court, an order dissolving the corporation.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
217(b)	2001 c14 s108	2001 Nov 24	SI/2001-114
217(o)	2001 c14 s135 Sch Itm 67	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 217; S.C. 2001, c. 14, ss. 108, 135 (Sch., Itm. 67) (E).

SECTION 218.

Effect of order

218. The liquidation of a corporation commences when a court makes an order therefor.

S.C. 1974-75-76, c. 33, s. 211.

SECTION 219.

Cessation of business and powers

219. (1) If a court makes an order for liquidation of a corporation,

(a) the corporation continues in existence but shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and

(b) the powers of the directors and shareholders cease and vest in the liquidator, except as specifically authorized by the court.

Delegation by liquidator

(2) The liquidator may delegate any powers vested in the liquidator by paragraph (1)(b) to the directors or shareholders.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
219(2)	2001 c14 s135 Sch Itm 68	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 219; S.C. 2001, c. 14, s. 135 (Sch., Itm. 68) (E).

SECTION 220.

Appointment of liquidator

220. (1) When making an order for the liquidation of a corporation or at any time thereafter, the court may appoint any person, including a director, an officer or a shareholder of the corporation or any other body corporate, as liquidator of the corporation.

Vacancy

(2) Where an order for the liquidation of a corporation has been made and the office of liquidator is or becomes vacant, the property of the corporation is under the control of the court until the office of liquidator is filled.

S.C. 1974-75-76, c. 33, s. 213; S.C. 1978-79, c. 9, s. 67.

SECTION 221.

Duties of liquidator

221. A liquidator shall

(a) forthwith after appointment give notice thereof to the Director and to each claimant and creditor known to the liquidator;

(b) without delay publish notice by insertion once a week for two consecutive weeks in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice of the appointment in each province where the corporation carries on business, requiring any person

(i) indebted to the corporation, to render an account and pay to the liquidator at the time and place specified any amount owing,

(ii) possessing property of the corporation, to deliver it to the liquidator at the time and place specified, and

(iii) having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present particulars thereof in writing to the liquidator not later than two months after the first publication of the notice;

(c) take into custody and control the property of the corporation;

(d) open and maintain a trust account for the moneys of the corporation;

(e) keep accounts of the moneys of the corporation received and paid out by him;

(f) maintain separate lists of the shareholders, creditors and other persons having claims against the corporation;

(g) if at any time the liquidator determines that the corporation is unable to pay or adequately provide for the discharge of its obligations, apply to the court for directions;

(h) deliver to the court and to the Director, at least once in every twelve month period after appointment or more often as the court may require, financial statements of the corporation in the form required by section 155 or in such other form as the liquidator may think proper or as the court may require; and

(i) after the final accounts are approved by the court, distribute any remaining property of the corporation among the shareholders according to their respective rights.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority

221(a)	2001 c14 s135 Sch Itm 69	2001 Nov 24	SI/2001-114
221(b)(part)	2001 c14 s109	2001 Nov 24	SI/2001-114
221(c)	2001 c14 s135 Sch Itm 69	2001 Nov 24	SI/2001-114
221(h),(i)	2001 c14 s135 Sch Itm 69	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 221; S.C. 2001, c. 14, ss. 109, 135 (Sch., Itm. 69) (E).

SECTION 222.

Powers of liquidator

222. (1) A liquidator may

(a) retain lawyers, accountants, engineers, appraisers and other professional advisers;

(b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the corporation;

(c) carry on the business of the corporation as required for an orderly liquidation;

(d) sell by public auction or private sale any property of the corporation;

(e) do all acts and execute any documents in the name and on behalf of the corporation;

(f) borrow money on the security of the property of the corporation;

(g) settle or compromise any claims by or against the corporation; and

(h) do all other things necessary for the liquidation of the corporation and distribution of its property.

Due diligence

(2) A liquidator is not liable if the liquidator exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on

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

(b) a report of a person whose profession lends credibility to a statement made by the professional person.

Application for examination

(3) If a liquidator has reason to believe that any person has in their possession or under their control, or has concealed, withheld or misappropriated any property of the corporation, the liquidator may apply to the court for an order requiring that person to appear before the court at the time and place designated in the order and to be examined.

Power of court

(4) If the examination referred to in subsection (3) discloses that a person has concealed, withheld or misappropriated property of the corporation, the court may order that person to restore it or pay compensation to the liquidator.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
222(2)	2001 c14 s110	2001 Nov 24	SI/2001-114
222(3)	2001 c14 s135 Sch Itm 70	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 222; S.C. 2001, c. 14, ss. 110, 135 (Sch., Itm. 70) (E).

SECTION 223.

Costs of liquidation

223. (1) A liquidator shall pay the costs of liquidation out of the property of the corporation and shall pay or make adequate provision for all claims against the corporation.

Final accounts

(2) Within one year after appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator shall apply to the court

(a) for approval of the final accounts and for an order permitting the liquidator to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights; or

(b) for an extension of time, setting out the reasons therefor.

Shareholder application

(3) If a liquidator fails to make the application required by subsection (2), a shareholder of the

corporation may apply to the court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

Publication

(4) A liquidator shall give notice of their intention to make an application under subsection (2) to the Director, to each inspector appointed under section 217, to each shareholder and to any person who provided a security or fidelity bond for the liquidation, and shall publish the notice in a newspaper published or distributed in the place where the corporation has its registered office, or as otherwise directed by the court.

Final order

(5) If the court approves the final accounts rendered by a liquidator, the court shall make an order

(a) directing the Director to issue a certificate of dissolution;

(b) directing the custody or disposal of the documents and records of the corporation; and

(c) subject to subsection (6), discharging the liquidator.

Delivery of order

(6) The liquidator shall forthwith send a certified copy of the order referred to in subsection (5) to the Director.

Certificate of dissolution

(7) On receipt of the order referred to in subsection (5), the Director shall issue a certificate of dissolution in accordance with section 262.

Effect of certificate

(8) The corporation ceases to exist on the date shown in the certificate of dissolution.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
223(2)(part), (a)	2001 c14 s135 Sch Itm 71	2001 Nov 24	SI/2001-114
223(4)	2001 c14 s111	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 223; S.C. 2001, c. 14, ss. 111, 135 (Sch., Itm. 71) (E).

SECTION 224.

Right to distribution in money

224. (1) If in the course of liquidation of a corporation the shareholders resolve or the liquidator proposes to

(a) exchange all or substantially all the property of the corporation for securities of another body corporate that are to be distributed to the shareholders, or

(b) distribute all or part of the property of the corporation to the shareholders in kind,

a shareholder may apply to the court for an order requiring the distribution of the property of the corporation to be in money.

Powers of court

(2) On an application under subsection (1), the court may order

(a) all the property of the corporation to be converted into and distributed in money; or

(b) the claims of any shareholder applying under this section to be satisfied by a distribution in money, in which case subsections 190(20) to (22) apply.

S.C. 1974-75-76, c. 33, s. 217.

SECTION 225.

Custody of records

225. (1) A person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce such documents and records for six years following the date of its dissolution or until the expiration of such other shorter period as may be ordered under subsection 223(5).

Offence

(2) A person who, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both.

S.C. 1974-75-76, c. 33, s. 218.

SECTION 226.

Definition of "shareholder"

226. (1) In this section, "shareholder" includes the heirs and personal representatives of a shareholder.

Continuation of actions

(2) Notwithstanding the dissolution of a body corporate under this Act,

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

(b) a civil, criminal or administrative action or proceeding may be brought against the body corporate within two years after its dissolution as if the body corporate had not been dissolved; and

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

Service

(3) Service of a document on a corporation after its dissolution may be effected by serving the document on a person shown in the last notice filed under section 106 or 113.

Idem

(3.1) Service of a document on a company to which the Canada Corporations Act, chapter C-32 of the Revised Statutes of Canada, 1970, applied that has been dissolved by subsection 261(8) of the Canada Business Corporations Act, chapter 33 of the Statutes of Canada, 1974-75-76 and chapter 9 of the Statutes of Canada, 1978-79, may be effected by serving the document on a person shown as a director in the last annual summary filed by the company pursuant to the Canada Corporations Act.

Reimbursement

(4) Notwithstanding the dissolution of a body corporate under this Act, a shareholder to whom any of its property has been distributed is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder on such distribution, and an action to enforce such liability may be brought within two years after the date of the dissolution of the body corporate.

Representative action

(5) A court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to such conditions as the court thinks fit and, if the plaintiff establishes a claim, the court may refer the proceedings to a referee or other officer of the court who may

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

(b) determine, subject to subsection (4), the amount that each person who was a shareholder shall contribute towards satisfaction of the plaintiff's claim; and

(c) direct payment of the amounts so determined.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
226(1)	2001 c14 s112	2001 Nov 24	SI/2001-114
226(5)(part), (a)	2001 c14 s135 Sch Itm 72	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 226; S.C. 1992, c. 1, s. 57; S.C. 2001, c. 14, ss. 112, 135 (Sch., Itm. 72) (E).

SECTION 227.

Unknown claimants

227. (1) On the dissolution of a body corporate under this Act, the portion of the property distributable to a creditor or shareholder who cannot be found shall be converted into money and paid to the Receiver General.

Constructive satisfaction

(2) A payment under subsection (1) is deemed to be in satisfaction of a debt or claim of such creditor or shareholder.

Recovery

(3) A person who establishes an entitlement to any moneys paid to the Receiver General under this Act shall be paid by the Receiver General an equivalent amount out of the Consolidated Revenue Fund.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
227(3)	2001 c14 s135 Sch Itm 73	2001 Nov 24	SI/2001-114

*****

R.S.C. 1985, c. C-44, s. 227; S.C. 2001, c. 14, s. 135 (Sch., Itm. 73) (E).

SECTION 228.

Vesting in Crown

228. (1) Subject to subsection 226(2) and section 227, property of a body corporate that has not been disposed of at the date of its dissolution under this Act vests in Her Majesty in right of Canada.

Return of property on revival

(2) If a body corporate is revived as a corporation under section 209, any property, other than money, that vested in Her Majesty pursuant to subsection (1), that has not been disposed of shall be returned to the corporation and there shall be paid to the corporation out of the Consolidated Revenue Fund

(a) an amount equal to any money received by Her Majesty pursuant to subsection (1); and

(b) where property other than money vested in Her Majesty pursuant to subsection (1) and that property has been disposed of, an amount equal to the lesser of

(i) the value of any such property at the date it vested in Her Majesty, and

(ii) the amount realized by Her Majesty from the disposition of that property.

S.C. 1974-75-76, c. 33, s. 221; S.C. 1978-79, c. 9, s. 70.

(5)

Current to November 16, 2010

B.C. Reg. 375/96 s1

Environmental Management Act

CONTAMINATED SITES REGULATION

B.C. Reg. 375/96 Deposited December 16, 1996

O.C. 1480/96 effective April 1, 1997

[includes amendments up to B.C. Reg. 286/2010]
Part 1 - Interpretation

SECTION 1

Definitions

1 In this regulation:

"agricultural land use" means the use of land for the primary purpose of producing agricultural products for human or animal consumption including, without limitation, livestock raising operations, croplands, orchards, pastures, greenhouses, plant nurseries and farms;

"aquatic life water use" means the use of water as habitat for any component of the freshwater or marine aquatic ecosystem, including phytoplankton, zooplankton, benthos, macrophytes and fish;

"background concentration" means the concentration of a substance in an environmental medium in a geographic area, but does not include any contribution from local human-made point sources, determined by following director's protocols;

"cancer risk" means the probability of the occurrence of cancer from exposure to a carcinogenic substance;

"carcinogenic substance" means any chemical classified by

(a) the International Agency for Research on Cancer as a group 1 or group 2A carcinogen, or

(b) the United States Environmental Protection Agency as a group A or group B1 carcinogen;

"commercial land use" means the use of land for the primary purpose of buying, selling or trading of merchandise or services including, without limitation, shopping malls, office complexes, restaurants, hotels, motels, grocery stores, automobile service stations, petroleum distribution operations, dry cleaning operations, municipal yards, warehouses, law courts, museums, churches, golf courses, government offices, air and sea terminals, bus and railway stations, and storage associated with these uses;

"complex site" Repealed. [B.C. Reg. 201/2007, (b) (Sched., s. 1), effective July 1, 2007 (B.C. Regs. Bull. 23/2007).]

"confirmation of remediation report" means a report under section 49 (2) (b);

"decommission a site" means the removal, destruction or treatment of soil, process equipment or buildings, including the removal of storage tanks, in a manner designed to stop or reduce a significant portion of the operations at a site or to significantly change the use of the site;

"director's interim standards" means the substances and risk based or numerical criteria, standards and conditions prescribed by the director under section 63.1 of the Act;

"director's protocol" means a protocol established by a director under section 64 of the Act;

"drinking water use" means the use of water for the purpose of consumption by humans;

"environmental impact report" Repealed. [B.C. Reg. 322/2004 and 324/2004, s. 1 (c), effective July 8, 2004 (B.C. Gaz. July 13, 2004).]

"environmental media" mean soil, sediments, surface water, groundwater, air, vapour, animals and plants;

"external contract reviewer" means a person with whom a director has entered into a contract under section 10 (1);

"environmental risk assessment report" means a report under section 18 (6) or 18.1 (5);

"generic numerical sediment criterion" means the concentration of a substance specified in Schedule 9 for a particular sediment use;

"generic numerical soil standard" means the concentration of a substance in soil specified for a particular land use in Schedule 4 or Schedule 10;

"generic numerical vapour standards" means the concentration in vapour of a substance specified for a particular land use in Schedule 11;

"generic numerical water standard" means the concentration of a substance in water specified for a particular water use in Schedule 6 or Schedule 10;

"guidelines" includes criteria and objectives;

"hazard index" means the sum of hazard quotients for any substance over all exposure pathways;

"hazard quotient" or "HQ" means the quotient determined from the equation

$$HQ = \frac{EDI}{RfD}$$

[am. B.C. Reg. 322/2004 and 324/2004, s. 25, effective July 8, 2004 (B.C. Gaz. July 13, 2004).]

SECTION 25

Persons not responsible - secured creditors

25 (1) For the purposes of section 46 (1) (n) of the Act, a secured creditor described in section 45 (3) (a) of the Act is designated not responsible for remediation of a contaminated site if the secured creditor does any of the following:

(a) imposes requirements on any person to comply with environmental laws, standards, policies or codes of practice of government or industry, including requirements to perform monitoring tests, scientific studies or to remediate contaminated sites;

(b) participates in loan work out actions, including the giving of financial or other advice to a financially distressed borrower, restructuring or renegotiating the terms of a security interest, requiring additional payments or consideration, or exercising forbearance;

(c) takes steps, whether or not they are part of realization proceedings, to preserve, protect or enhance the value of the secured assets or to reduce or prevent future contamination or the migration of existing contaminants or otherwise conduct any independent remediation;

(d) subject to section 45 (3) (b) of the Act and subsection (2) of this section, undertakes realization proceedings.

(2) Subject to subsection (3), the liability of a secured creditor who becomes a registered owner in fee simple of real property at a contaminated site exists and endures under section 45 (3) (b) of the Act only while the secured creditor is the registered owner in fee simple of the real property.

(3) Subsection (2) does not remove the liability of a secured creditor for remediation of a contaminated site under Part 4 of the Act if the secured creditor who became the registered owner in fee simple of real property at the contaminated site at any time exercised control over or imposed requirements on any person regarding the manner of treatment, disposal or handling of a substance and the control or requirements, in whole or in part, caused the site to become a contaminated site.

[am. B.C. Reg. 322/2004 and 324/2004, s. 26, effective July 8, 2004 (B.C. Gaz. July 13, 2004).]

SECTION 26

Persons not responsible - receivers, receiver managers and bankruptcy trustees

26 (1) In this section:

"available funds" means any and all funds realized by a receiver less

(a) the costs of realization and sale of property,

(b) the claims of trade creditors of the receiver,

(c) the claims of the receiver for remuneration and indemnification,

(d) the authorized borrowings of the receiver inclusive of interest, and

(e) the proceeds of property disposed of by the receiver, but only to the extent that those proceeds are required by the receiver to discharge a mortgage, lien, charge or security interest in the property which was filed, perfected or registered before the earlier of

(i) the date when a remediation order or other order under the Act respecting the property was entered on the site registry, or

(ii) the date when the receiver receives a remediation order or other order under the Act respecting the property;

"dispose" includes to transfer by a vesting order issued by a court;

"receiver" means a current or previous receiver, receiver manager, liquidator or bankruptcy trustee who is an owner or operator under the Act.

(2) For the purposes of section 46 (1) (n) of the Act, a receiver is designated not responsible personally under Part 4 of the Act for remediation of a contaminated site and is exempt personally from an order under section 81 or 83 of the Act in relation to the contaminated site, including a site that was a contaminated site on the date that the receiver became an owner or operator of that site, unless it is established that

(a) the receiver at any time exercised control over or imposed requirements on any person regarding the manner of treatment, disposal or handling of a substance,

(b) the receiver was grossly negligent or guilty of wilful misconduct in the exercise of such control over or the imposition of such requirements on a person, and

(c) such control or requirements caused the site to become, in whole or in part, a contaminated site.

in which case, the receiver is designated as responsible personally for remediation of the contaminated site and is not exempt personally from an order under section 81 or 83 of the Act.

(3) For the purposes of section 45 (1) (e) of the Act, a receiver is designated responsible, in his or her role as receiver and to the extent of the receivership, for remediation of a contaminated site, and is subject to an order under section 81 or 83 of the Act in relation to the contaminated site in that role and to that extent.

(3.1) For the purposes of subsection (3), the "extent of the receivership" means

(a) the limit of the available funds, and

(b) the period commencing with the receiver's appointment and ending with a termination under subsection (5).

(4) If a receiver does not have sufficient available funds to comply with applicable remediation requirements under Part 4 of the Act or any other order made under the Act, the receiver must give notice to a director of the lack of available funds as soon as the receiver becomes aware of the fact.

(5) A receiver's obligation under subsection (3) terminates when any of the following occurs:

(a) the receiver gives notice to a director under subsection (4);

(b) the receiver pays all available funds to a director, the minister or the Minister of Finance and Corporate Relations, in trust, for remediation of the contaminated site;

(c) the receiver resigns the appointment;

(d) the receiver is removed or discharged by the court or otherwise ceases to be a receiver;

(e) subject to subsection (6), the receiver disposes of a contaminated site to a person who

(i) agrees, in writing, to accept responsibility for remediation, or

(ii) enters into a voluntary remediation agreement with a director;

(f) subject to subsection (6), the receiver disposes of a contaminated site to a person in circumstances in which, at the time of the disposition,

(i) there is no requirement on the receiver to provide a site profile or, if there is such a requirement, the receiver has complied with it,

(ii) there is no record of contamination at the site on the site registry, and

(iii) the receiver has no knowledge of any contamination at the site.

(6) If a receiver disposes of part of a contaminated site in accordance with subsection (5) (e) or (f), the receiver's obligation under subsection (3) is terminated only with respect to that part.

(7) On application by a receiver or a director, the court may order that the obligation of the receiver is terminated with or without conditions or make any order it considers just, but this subsection does not provide the court with the power to set aside provincial legislation.

(8) A receiver who applies to the court under subsection (7) must give notice to a director, and the director may make representations to the court respecting the application.

(9) A receiver who

(a) has provided a site profile under section 40 (7) of the Act,

(b) is subject to an obligation to provide a site profile under section 40 (8) of the Act, or

(c) is in possession of a site for which there is an entry on the site registry indicating that the site

(i) has been determined, in whole or in part, to be a contaminated site under section 44 of the Act, or

(ii) is otherwise expressly stated to be, in whole or in part, a contaminated site,

must give written notice to a director of

(d) any proposed distribution of available funds at least 15 days before the date of the proposed distribution, or

(e) any proposed abandonment of the site or part of the site by the receiver at least 15 days before the date of the proposed abandonment if the receiver

(i) resigns the appointment, or

(ii) applies to a court for a discharge.

(10) A receiver, within 30 days after receiving a remediation order or a pollution abatement order, may give written notice to a director that, during that 30 day period, the receiver is determining or assessing

(a) the ability and willingness of the receiver to administer the property at the contaminated site,

(b) the responsibilities which would be incurred by the receiver in administering the property, and

(c) whether the receiver should seek to terminate the appointment in accordance with subsection (5) or abandon the contaminated site,

and during that period, subject to subsections (11) to (13), the receiver is not required to comply with the remediation order or the pollution abatement order.

(11) A receiver may, upon giving notice in writing to a director, apply to the court for an extension of the 30 day period described in subsection (10), but this provision does not apply if the director agrees to the extended time proposed by the receiver.

(12) The court, on hearing an application under subsection (11), must not order an extension unless it determines that an extension is reasonably necessary to permit the receiver to

ascertain the environmental condition of the site and the extent and cost of fulfilling the duties arising from the operation or control of the site and compliance with the director's order.

(13) If a director requires compliance with a remediation order or a pollution abatement order within the 30 day period to reduce the threat of a contaminated site, the director may, upon giving written notice to the receiver, seek a court order to reduce the 30 day period described in subsection (10), but this provision does not apply if the receiver agrees to the reduced time proposed by the director.

(14) Despite any other provision in this section, a director may agree to the continued involvement of a receiver in the remediation of a contaminated site even if there are insufficient available funds to satisfy the costs of remediation.

[am. B.C. Reg. 322/2004 and 324/2004, s. 27, effective July 8, 2004 (B.C. Gaz. July 13, 2004).]

SECTION 27

Persons not responsible - trustees, executors, administrators and other fiduciaries

27 (1) In this section:

"available funds" means the net realizable value of the trust property but does not include

(a) the costs of realization and sale of trust property,

(b) the claims of the trustee for remuneration and indemnification,

(c) trust property paid, distributed or transferred to any party by the trustee before receiving a remediation order or other order under the Act, but only if, at the time the trustee paid, distributed or transferred the trust property,

(i) there was no requirement on the trustee to provide a site profile, and

(ii) the trustee had no actual knowledge of any contamination at the site, or

(d) the proceeds of trust property disposed of by the trustee, but only to the extent that those proceeds are required by the trustee to discharge a mortgage, lien, charge or security interest in the property which was filed, perfected or registered before the earlier of

(i) the date when a remediation order or other order under the Act respecting the property is entered on the site registry, or

(ii) the date when the trustee receives a remediation order or other order under the Act respecting the property;

"trustee" includes

(a) an executor or an administrator of the estate of a deceased person,

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Current to November 24, 2010

R.S.C. 1985, c. E-13, Long Title

[eff since December 12, 1988](Current Version)

Escheats Act

R.S.C. 1985, c. E-13

An Act respecting escheats

R.S.C. 1970, c. E-7, Long Title.

SECTION 1.

Short title

1. This Act may be cited as the Escheats Act.

R.S.C. 1970, c. E-7, s. 1.

SECTION 2.

Escheat

2. Where Her Majesty the Queen in right of Canada is entitled to any land or other real or personal property by reason of the person last seised or entitled thereto having died intestate and without lawful heirs or by reason of any corporation, association or society having been finally dissolved or wound up or having ceased to exist, the Attorney General of Canada may cause possession thereof to be taken in the name of Her Majesty, or if possession is withheld, may exhibit an information in the Federal Court for the recovery thereof.

R.S.C. 1970, c. E-7, s. 2; R.S.C. 1970, c. 10 (2nd Supp.), s. 64.

SECTION 3.

Grants of property escheated

3. The Governor in Council may make a grant of any real or personal property that is now or may hereafter become the property of Her Majesty as mentioned in section 2, or any part thereof or any interest therein,

(a) to any person who, in the opinion of the Governor in Council, had a legal or moral claim on the previous owner, or a just or natural right or claim to succeed to the previous owner's property or to any part thereof;

(b) to carry into effect any disposition thereof that the Governor in Council believes the previous owner may have intended;

(c) to reward any person making discovery of that property to Her Majesty.

R.S.C. 1970, c. E-7, s. 3.

SECTION 4.

Recovery of possession

4. Any grant under section 3 may be made without actual entry or taking possession of the property and, where possession is withheld, the person to whom the grant is made may institute proceedings for the recovery thereof in any court of competent jurisdiction.

R.S.C. 1970, c. E-7, s. 4.

SECTION 5.

Time for bringing action for recovery of property

5. No action shall be brought or maintained against Her Majesty the Queen in right of Canada, the Attorney General of Canada or any minister or officer of Her Majesty in right of Canada to recover

> (a) the whole or any part of any property, real or personal, that, by reason of the person last seised or entitled thereto having died intestate and without heirs, or by reason of any corporation, association or society having been finally dissolved or wound up or having ceased to exist, has been judicially declared vested in Her Majesty in right of Canada, or of which the Attorney General of Canada has caused possession to be taken on behalf of Her Majesty, or that has otherwise come into the possession of Her Majesty as escheat or bona vacantia, or
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> (b) any compensation or damages in respect of any property described in paragraph (a) or the taking possession or withholding thereof,

more than five years after the date of the death of the person last seised or entitled to the property, or where the person last seised or entitled to the property was a corporation, association or society, more than five years after the date of the dissolution or winding-up or ceasing to exist of the corporation, association or society.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
5	2000 c12 s110	2000 Jul 31	SI/2000-76

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R.S.C. 1985, c. E-13, s. 5; S.C. 2000, c. 12, s. 110.

(7)

Current to November 23, 2010

R.S.B.C. 1996, c. 448, s. 1

[eff since October 15, 2007](Current Version)

TAXATION (RURAL AREA) ACT

RSBC 1996, CHAPTER 448
SECTION 1

Definitions

1 In this Act:

"assessment roll" has the same meaning as in the Assessment Act;

"assessor" means an assessor appointed under the Assessment Authority Act;

"collector" includes a deputy collector;

"copy taxation notice" means a copy of the taxation notice referred to in section 21 (2);

"farm land" means a farm as defined in the Assessment Act;

"improvements" means improvements as defined in the Assessment Act;

"land" means land as defined in the Assessment Act;

"legal description" means a description sufficient to describe a property for the purpose of its registration in a land title office;

"minister" REPEALED: SBC 2003-3-44 effective January 1, 2003 (Act, s. 60 (6)).

"ministry" means the ministry of the minister responsible for the administration of this Act;

"ministry person" means a person who is employed in, or retained under a contract to perform services for, the ministry;

"occupier" means an occupier as defined in the Assessment Act;

"owner" means an owner as defined in the Assessment Act;

"parcel" means a parcel as defined in the Assessment Act;

"person" means a person as defined in the Assessment Act;

"personal information" means personal information as defined in Schedule 1 of the Freedom of Information and Protection of Privacy Act;

"property" includes land and improvements;

"registered" and "registration", in relation to property, means registration in the records of the land title office of the land title district in which the property is located;

"review panel" means a review panel as defined in the Assessment Act;

"rural land" means land outside a municipality other than farm, forest, timber, tree farm and wild land;

"Surveyor of Taxes" means the Surveyor of Taxes appointed under this Act;

"taxes" includes all taxes on property or other basis of assessment imposed, levied, assessed or assessable under this Act, and all percentage additions, penalties and interest added to taxes under this Act;

"trustee" means a trustee as defined in the Assessment Act.

** Editor's Table **

Provision	Changed by	In force	Authority
"assessment roll"	2004-40-56	2004 May 13	R.A.
"copy taxation notice"	2002-22-23	2002 Apr 30	R.A.
"minister"	2003-3-44	2003 Jan 1	Act, s60(6)
"minstry"	2007-31-47	2007 Oct 15	Act, s69
"minstry person"	2007-31-47	2007 Oct 15	Act, s69
"personal information"	2007-31-47	2007 Oct 15	Act, s69
"review panel"	1998-22-26	1998 Oct 23	BC Reg 367/98

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RSBC 1996-448-1; SBC 1998-22-26; SBC 2002-22-23; SBC 2003-3-44; SBC 2004-40-56; SBC 2007-31-47.

Part 1 -- General Taxation Provisions

SECTION 2

(a) the description of the property taxed,

(b) the amount of due or delinquent taxes remaining unpaid, including interest and penalty,

(c) the years for which the tax is owing, and

(d) the name of the owner, occupier or other person liable for payment.

(2) The Surveyor of Taxes may file the certificate with any district registrar of the Supreme Court, and the filed certificate has the same effect and all proceedings may be taken on it as if it were a judgment of the court for recovery of a simple contract debt of the amount stated in the certificate against the person or persons named in it.

RSBC 1979-400-36; SBC 1989-40-198.

SECTION 38

Right of tenant to deduct taxes from rent

38 A tenant or occupant may deduct, from his or her rent, taxes paid by the tenant or occupant, if those taxes could also have been recovered from the landlord or previous tenant or occupant, unless there is a special agreement to the contrary between the tenant or occupant and the landlord.

RSBC 1979-400-37.

SECTION 39

Forfeiture for unpaid taxes

39 (1) In this section and in section 40, "notice" means notice given under and in accordance with this section or the regulations.

(2) Despite any other action for the recovery of taxes under this Act, if any taxes for a calendar year remain unpaid until the end of November of the second year after that calendar year, the property in respect of which the taxes remain unpaid are, subject to subsections (3) and (4), absolutely forfeited to and vested in the government clear of all charges other than those set out in section 276 (2) of the Land Title Act.

(3) Property does not forfeit under subsection (2) until the Surveyor of Taxes gives notice to the owner of the property and to each registered charge holder who may be affected and, for the purposes of that subsection, if notice has been given, the date on which property forfeits is, for nonpayment of taxes for a calendar year, the later of

(a) December 1 of the second year after that calendar year, and

(b) the 40th day after the date on which the notice was given.

(4) If any taxes for a calendar year remain unpaid on December 1 of the first year after that calendar year, the payment of those taxes does not prevent forfeiture unless the payment

(a) includes all taxes then due and payable, costs and fees, and

(b) is made before forfeiture occurs under this section.

(5) Properties forfeited under this section must be administered by the minister responsible for the administration of the Land Act or another minister designated by the Lieutenant Governor in Council under this subsection for all or particular properties.

(6) The notice must state

(a) that the property is subject to forfeiture under this section,

(b) the amount of all taxes, costs and fees that are due and payable to the date of the notice,

(c) the date on which the property forfeits,

(d) the right to prevent forfeiture by payment under this section, and

(e) that on forfeiture under this section, the property will vest in the government clear of all charges other than those set out in section 276 (2) of the Land Title Act.

(7) The notice must be given by

(a) mailing it to the person entitled to it at that person's last known address or to the address of that person that is specified in the records of the land title office, or

(b) publishing it in the Gazette and in at least one newspaper of general circulation in British Columbia and one newspaper of general circulation in or nearest the area in which the property is located.

(8) This section does not apply in relation to the treaty lands of a treaty first nation if

(a) the treaty first nation enacts a law in accordance with its final agreement restricting alienation of those treaty lands, and

(b) the vesting of those treaty lands in the government is inconsistent with that law.

** Editor's Table **

Provision	Changed by	In force	Authority
39	2007-36-175	2009 Apr 3	BC Reg 55/09
39	BC Reg 5/2010 s2	2010 Jan 14	Deposit Date

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