

1992

C.D. No. 3233

IN THE COUNTY COURT OF DISTRICT NUMBER THREE

IN THE MATTER OF AN APPLICATION FOR A CONSOLIDATION ORDER  
RE: PERRY B. ISLES and DARLA F. ISLES

- and -

IN THE MATTER OF AVCO FINANCIAL SERVICES CANADA LIMITED,  
appearing in opposition by its Counsel,  
Raymond B. Jacquard, Esq.

HEARD: By Motion  
BEFORE: The Honourable Judge Charles E. Haliburton, J.C.C.  
SUBJECT: Orderly Payment of Debts - Application for  
Consolidation Order  
DECISION: The 9th day of June, A.D. 1992

D E C I S I O N

HALIBURTON, J.C.C

In this matter which is normally a peremptory application presented by the Clerk of the Court, one creditor appeared in opposition to this application.

The application is made under Part X of the Bankruptcy Act which provides for the orderly payment of debts.

Sections 218(1)(c) and 218(1)(d) of the Bankruptcy Act read as follows:

218(1) This Part applies only to the following classes of debts:

(c) a claim or demand for or in respect of money, debt, account, covenant or otherwise, not in excess of one thousand dollars; and

(d) a claim or demand for or in respect of money, debt, account, covenant or otherwise, in excess of one thousand dollars if the judgment creditor having the claim consents to come under this Part.

This section appears to govern the jurisdiction of the Court to determine whether or not an application will be granted. It is clear that Section 218(1)(d) would restrict judicial discretion where the amount of the debt claimed by a creditor exceeds one thousand dollars.

Section 240 of the Act also contained within Part X clearly authorizes certain changes in the statute by regulation. The portion of Section 240 relevant to our considerations is Section 240(f):

240 The Governor in Council may make regulations  
(f) changing or prescribing, in respect of any province, the classes of debts to which this Part does not apply;

Pursuant to that section and under the provisions of SOR/81-2, 1991, Canada Gazette, Part II, p. 5, Section 28 of the regulations provides:

28. In a province in which the Act is in force, the Act applies

(a) in respect of debts of the classes referred to in subsection 218(1) of the Act without the monetary limits set out therein...

The effect of this regulation is to remove the monetary limitation which was previously imposed by Section 218(1)(c). It would accurately paraphrase Section 218 to say:

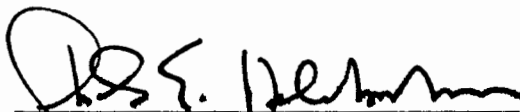
This Part applies to the following classes of debts:

(c) a claim or demand for or in respect of money, debt, account, covenant or otherwise.

On this basis, then, it is clear that the Court does have jurisdiction to grant the application subject to the procedural considerations specified in Sections 220 and following.

Having considered those matters and the materials filed by the Applicant, I am satisfied that the application should succeed and the Order for a consolidated judgment will, accordingly, issue.

DATED at Digby, Nova Scotia, this 9th day of June, A.D. 1992.



CHARLES E. HALIBURTON  
JUDGE OF THE COUNTY COURT  
OF DISTRICT NUMBER THREE