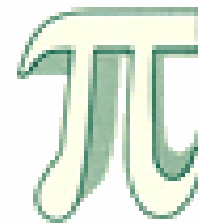


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An Introduction to Receiverships

“The best things in life are free,
but you can keep them for the birds and bees”

Brett Harrison
Partner, *McMillan LLP*

John Page
President, *A. John Page & Associates Inc.*

Why appoint a receiver?

- To enable a secured creditor to realize upon its security
- To put a third party in control of a troubled business
- To quickly restructure



Types of receivers

- Four general types:
 - Private
 - Interim
 - National
 - Provincial



Private Receivership

- Secured creditor's contractual remedy to realize upon its security
- Usually no court involvement
- Can be quick and cost-effective
- Most common for small files



Interim Receivership

Court appointment under the Bankruptcy and Insolvency Act (“BIA”)

- s. 46 – after filing application for bankruptcy order
- s. 47 – protect creditors during 10-day period before exercising security
- s. 47.1 – covers period after filing of proposal or NOI to make a proposal
- Powers are usually limited to watchdog role, debtor often still in charge

Likely to become less common, due to new limits on term of appointment.



New: National Receivership

– BIA s. 243

- Usually Receiver takes control of assets/business
- Authority throughout Canada
- Significant powers
- Court appointment, available only on application by secured creditor



Provincial Receivership

- *Courts of Justice Act*, s. 101
 - “just or convenient”
 - 30-day appeal period
- Other Statutes
 - e.g., *Securities Act*, s. 129
- Applicant does not need to be a secured creditor
 - i.e., shareholder or other interested parties



Appointment process for Court Receiver

- Content of the supporting affidavit
- Who should be on the service
- Receiver almost always a licensed Trustee





Key elements of model Receivership Order

- Stay of proceedings
- Powers of the receiver
 - impact of the amendments

Stages of a typical Receivership

- Beginning
 - Take possession
- Middle
 - Operating vs. Non-operating
 - Sale, orderly wind-down, or liquidation?
- End
 - File returns, settle receiver's liabilities
 - Distribute funds





Seeking direction from the Court / Reporting to the Court

- Why?
- When?
- How?



Tricks of the trade

- ...and other things they wouldn't teach you in law school.



Questions?

Brett Harrison

Partner, *McMillan LLP*

(416) 865-7932

brett.harrison@mcmillan.ca

John Page

President, *A. John Page & Associates Inc.*

(416) 364-4894

ajpage@ajohnpage.com

mcmillan

 *A.
John
Page
& Associates Inc.*