

Insolvency Bulletin

Bulletin sur l'insolvabilité

Issued by the Office of the
Superintendent of Bankruptcy

Publié par le Bureau du
Surintendant des faillites

December 1983 Vol. 3 No. 12

Décembre 1983 vol. 3 n° 12

Canada

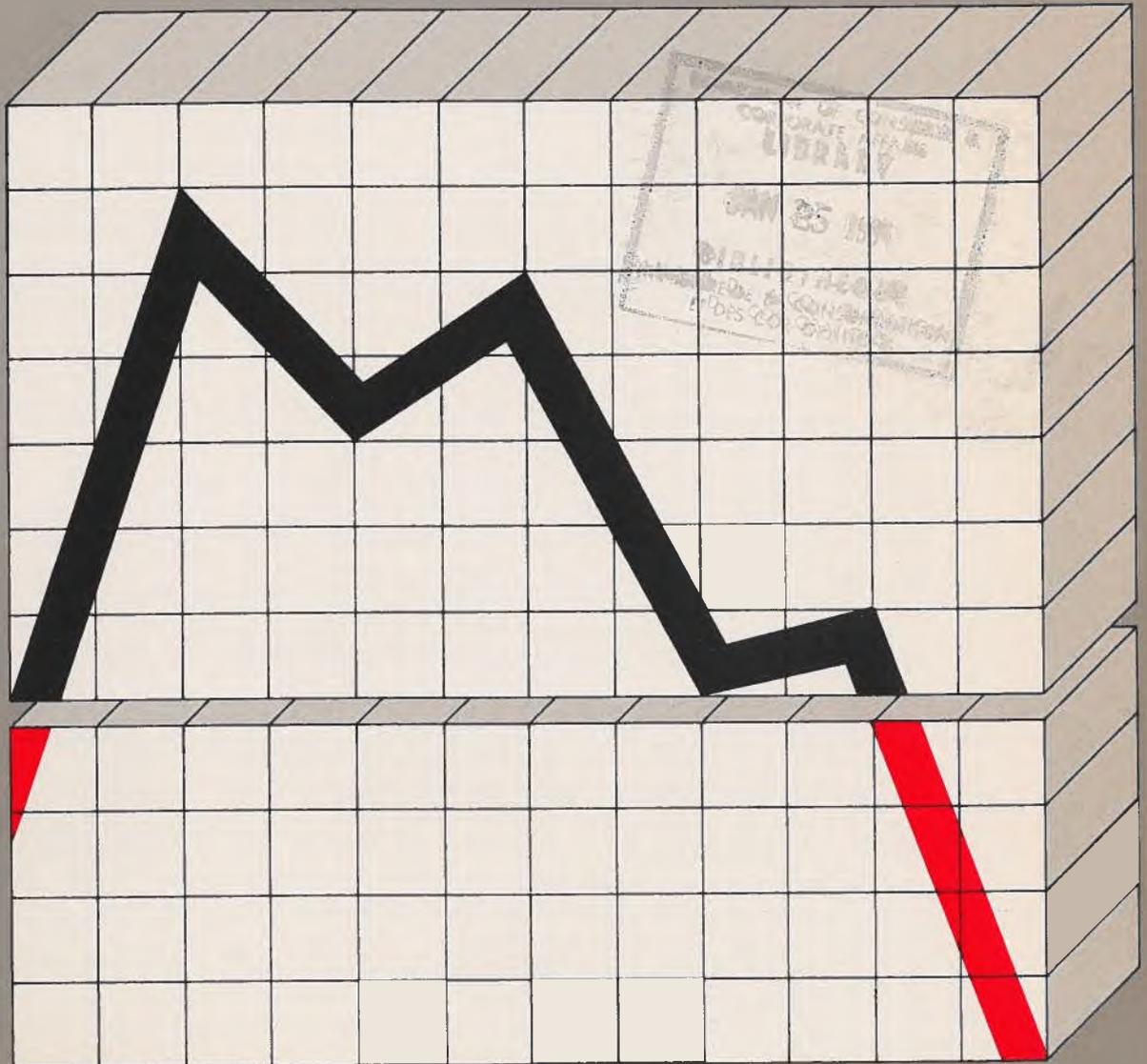


Table of Contents

BANKRUPTCY AND INSOLVENCY

| | |
|-------------------------------------------------------------------------------------------------|---|
| Priority of Dissolution of the Sale over other moveable securities by Jean-Yves Fortin | 2 |
| Address of Offices where Bankruptcy Proceedings are Filed | 8 |
| Statistics | 9 |

Schéma du contenu

FAILLITE ET INSOLVABILITÉ

| | |
|---------------------------------------------------------------------------------------------------------|---|
| Priorité de la Résolution de la Vente sur les autres sécurités mobilières par Jean-Yves Fortin | 2 |
| Adresse des bureaux où les procédures de faillites sont déposées | 8 |
| Statistiques | 9 |

The following article by Mr. Jean-Yves Fortin of the Montreal law firm of Lamoureux, Fortin, Rousseau, Cossette is reprinted here with the kind permission of the author and of the Canadian Insolvency Association.

This article was presented during the recent Montreal seminar on "Advanced Topic in Insolvency Practice" which was organized and presented by the Canadian Insolvency Association.

PRIORITY OF DISSOLUTION OF THE SALE OVER OTHER MOVEABLE SECURITIES

by Jean-Yves Fortin

Section 179(1) of the *Banks and Banking Law Revision Act, 1980* creates for the bank a priority over the claim of any unpaid vendor, unless at the time it acquired the security, the bank had knowledge of such a claim's existence.

Already at this point, we can draw attention to the fact that the English version of the Act, which speaks of priority "...over the claim of any unpaid vendor...", creates a problem of interpretation, "claim" in the singular and "créances" in the plural having not at all the same significance.

This duality, as we shall see further on, may suggest a new construction of section 179.

Let us now examine the different categories of unpaid vendor:

1. the vendor by conditional sale, who has reserved ownership of the goods until paid in full;
2. the vendor who has given up ownership of the object at the time of sale, and who thereby enjoys the rights provided by the Civil Code, namely:
 - (a) the right of retention of the object that has been sold;
 - (b) the rights of dissolution in the cases contemplated by article 1543 C.C.;
 - (c) the right to revendicate, 1998 C.C.;
 - (d) the right of preference upon the price, 1998 C.C..

Today, the priority of a vendor who has reserved property of the object is no longer in question, be it with regard to a bank, a trustee in bankruptcy or a trustee for a bondholder under the *Special Corporate Powers Act*.

Section 178(2) read alone is sufficient to clarify this question:

"Delivery of a document giving security on property to a bank under the authority of this section vests in the bank in respect of the property therein described

- (a) of which the person giving security is the owner at the time of the delivery of the document, or
- (b) of which that person becomes the owner at any time thereafter before the release of the security by the bank, whether or not the property is in existence at the time of the delivery. . ."

This delivery confers upon the bank what the courts have qualified as a proprietary right *sui generis*, but only, as s. 178(2) indicates, when the borrower is the owner.

L'article qui suit est de M. Jean-Yves Fortin, de la firme légale de Lamoureux, Fortin, Rousseau, Cossette de Montréal. Cet article est publié avec la permission de l'auteur et du Conseil Canadien d'Insolvabilité.

Cet article était soumis lors du récent colloque national tenu à Montréal relativement à «Les Spécialistes de l'Insolvabilité» qui fut organisé par le Conseil Canadien d'Insolvabilité.

PRIORITÉ DE LA RÉOLUTION DE LA VENTE SUR LES AUTRES SÉCURITÉS MOBILIÈRES

par Jean-Yves Fortin

L'article 179(1) de la *Loi de 1980 remaniant la législation bancaire*, crée en faveur de la banque une priorité sur la créance de tout vendeur impayé, sauf si au moment de l'acquisition de la garantie, la banque avait connaissance de l'existence d'une telle créance.

Nous pouvons déjà à ce stade souligner que la version anglaise de la *Loi* parle de priorité . . . «over the claim of any unpaid vendor». . . ce qui fait apparaître une difficulté d'interprétation, le mot «claim» au singulier et le mot «créances» au pluriel n'ayant pas du tout la même signification.

Cette dualité, nous le verrons plus loin, sera peut-être l'ouverture à une nouvelle interprétation de l'article 179.

Examinons donc les différentes catégories de vendeur impayé:

1. on retrouve le vendeur par vente conditionnelle qui s'est réservé la propriété des biens jusqu'à parfait paiement;
2. et le vendeur qui s'est départi de la propriété de l'objet dès la vente et qui bénéficie donc des droits prévus par notre code civil, qui sont:
 - a) le droit de rétention de l'objet vendu;
 - b) le droit de résolution de la vente dans les cas prévus à l'article 1543 C.C.;
 - c) le droit de revendication 1998 C.C.;
 - d) le droit d'être préféré sur le prix 1998 C.C.;

Aujourd'hui, la priorité du vendeur, s'étant réservé la propriété de la chose ne fait plus de doute, que ce soit à l'encontre d'une banque, d'un syndic à une faillite ou d'un fiduciaire prenant possession des actifs d'une compagnie en vertu de la *Loi sur les pouvoirs spéciaux des corporations*.

L'article 178(2) à lui seul suffit à nous éclairer sur cette question:

«la remise à une banque d'un document lui accordant en vertu du présent article, une garantie sur des biens dont le donneur de garantie

- a) est propriétaire à l'époque de la remise dudit document;
- b) devient propriétaire avant l'abandon de la garantie par la banque, que ces biens existent ou non à l'époque de cette remise, la banque n'a donc main mise que sur les biens qui appartenaient à son débiteur au moment de la création de la garantie. . .»

Cette remise confère à la banque un droit de propriété qualifié par la jurisprudence de *sui generis* seulement comme le dit l'article 178(2) si l'emprunteur en est propriétaire.

The following observations appear in a study entitled "Taking bank act security under section 177 and 178" by Davies Word & Beck (January 1983), page 21:

"Under section 178, the court found, a bank's security can only attach to the interest of the borrower in the secured property. While a conditional sale is clearly a financing technique, it is unique among financing techniques in that it is based upon the seller of goods retaining legal title until he has been paid in full. Thus the conditional buyer will not acquire legal title (even momentarily) until he has paid for the goods in full, and until that time he has only an equitable interest in the goods to the extent to which he has paid for them".

Ackroyd Bros. (Can) Ltd. v. Brachon Products Inc., (1948) Que. S.C. 406 supports this principle:

"The said bales were simply in storage and the fact that they were on defendant's premises, does not give the *mise en cause* (the bank) the right of obtaining security thereon, for it can obtain it only on goods belonging to its debtor".

See also *La chaîne coopérative du Saguenay Inc. v. Laberge*, (1959) Que. S.C. 320.

Therefore, the vendor who reserves the ownership of the object need not fear the rights of other creditors holding security on the debtor's moveable property, because the debtor cannot grant his creditors a better right than he himself possesses in his own property.

I. Protection of the unpaid vendor by articles 1543, 1998 and 1999 of the Civil Code

The distinction between these different remedies is essential, because article 1543 of the Civil Code, which permits dissolution of the sale, has as its effect the restoring of the parties to the state they were in at the time of the sale. Dissolution voids the sale retroactively; it is presumed to have never taken place.

On the other hand, articles 1998 and 1999 of our Civil Code serve to restore the possession of the object to the vendor, and not the ownership, so as to permit exercise of the lien provided for by law.

Therefore, the vendor who demands dissolution of the sale has priority over the trustee in bankruptcy, who only inherits the rights which the debtor himself possessed over his property. See *In re Rosenzweig*, (1920) 2 C.B.R. 255. This is all subject to the provisions of article 1543 of the Civil Code, requiring that the sale be dissolved within 30 days.

The vendor also has priority over the rights of a bondholder. Section 29 of the *Special Corporate Powers Act* does not create a proprietary right in the goods concerned, but rather accords a privilege ranking after the rights provided by article 1994 of the Civil Code, and therefore after the right of the unpaid vendor. (*Affiliated Factors Corp. and Canada Permanent Trust Co. v. Rosco Metal Products Ltd.*, (1974) 18 C.B.R. 58).

II. Conflict between the rights of the unpaid vendor and those of a bank holding a security provided by sections 178-189

Here the duality cited at the beginning of this study takes on its importance.

Examination of section 179 of the *Bank Act*, and study of legislative intent, allows us to affirm that section 179 gives the bank priority over the unpaid vendor, if the latter exercises his rights under articles 1998 and 1999 of the Civil Code, but cannot override his rights if he exercises them by virtue of article 1543 of the Civil Code.

Dans une étude intitulée «Taking bank act security under section 177 and 178» par Davies Word & Beck (janvier 1983), on note en page 21 le passage suivant:

«Under section 178, the court found, a bank's security can only attach to the interest of the borrower in the secured property. While a conditional sale is clearly a financing technique, it is unique among financing techniques in that it is based upon the seller of goods retaining legal title until he has been paid in full. Thus the conditional buyer will not acquire legal title (even momentarily) until he has paid for the goods in full, and until that time he has only an equitable interest in the goods to the extent to which he has paid for them».

La cause *Ackroyd Bros. (Can.) Ltd. vs. Brachon Products Inc.* (1948) Que. C.S. pages 406 et suivantes appuie ce principe:

«The said bales were simply in storage and the fact that they were on defendant's premises, does not give the *mise en cause* (la banque) the right of obtaining security thereon, for it can obtain it only on goods belonging to its debtor».

Voir aussi *La chaîne coopérative du Saguenay Inc. vs. Laberge* (1959) Que. C.S. page 320.

Nous avons donc vu que le vendeur qui se réserve le droit de propriété de la chose n'a pas à craindre les droits d'autres créanciers possédant une garantie sur les biens meubles du débiteur, car celui-ci ne peut donner à ses créanciers plus de droit qu'il n'en a lui-même sur les biens en sa possession.

I. Qu'en est-il du vendeur impayé protégé par les articles 1543 du code civil, 1998 et 1999 du code civil?

La distinction entre ces divers recours est essentielle en ce que l'article 1543 du code civil, qui permet la résolution de la vente, a pour effet de remettre les parties dans le même état qui les caractérisaient au moment de la vente. La résolution annule donc la vente rétroactivement et celle-ci est réputée alors n'avoir jamais eu lieu.

Par contre les articles 1998 et 1999 de notre code civil ont pour objet de remettre la possession, non la propriété, de la chose entre les mains du vendeur de façon à ce qu'il puisse exercer le privilège prévu par la loi.

Le vendeur qui demande la résolution de la vente a donc priorité sur le syndic à la faillite, celui-ci n'héritant que des droits que possédait le débiteur sur lesdits biens. Voir *In re Rosenzweig* (1920) 2 C.B.R. p. 255. Le tout sujet aux restrictions apportées par l'article 1543 du code civil quant au délai de trente (30) jours pour la demande de résolution.

Le vendeur a aussi priorité sur les droits d'un fiduciaire en vertu d'un acte d'obligation. La *Loi sur les pouvoirs spéciaux des corporations* à l'article 29 ne crée pas un droit de propriété sur les biens grevés, mais accorde un droit de privilège qui est subordonné aux droits prévus à l'article 1994 du code civil et est donc subordonné au droit du vendeur impayé. (*Affiliated Factors Corp. and Canada Permanent Trust Co. vs. Rosco Metal Products Ltd.* (1974) 18 C.B.R. page 58).

II. Qu'en est-il maintenant du droit du vendeur impayé confronté à celui d'une banque détentrice d'une garantie en vertu des articles 178 et ss.?

La dualité invoquée au début de cette étude prend ici toute son importance.

Une lecture approfondie de l'article 179 de la *Loi des banques*, et la recherche de l'intention du législateur nous permet d'affirmer que cet article 179 donne priorité aux banques sur le vendeur impayé si celui-ci exerce son droit en vertu des articles 1998 et 1999 du code civil, mais ne peut surpasser ces droits, s'ils sont exercés en vertu de l'article 1543 du code civil.

This argument was formulated by Yoine Goldstein in his article "New developments in commercial lending: A bird's eye view of conflicting claims".

Mr. Goldstein, studying the English version of the *Act*, attributes to the word "claim" in section 179 the meaning of revendication, or lien, in contrast with "créances" and "réclamation", which appear in the French version of the *Act*.

"The right of dissolution is not, however, merely a "claim" or "lien". It is a right to dissolve the contract with retroactive effect. Giving effect to an implicit statutory available condition and the realization of this condition results in the retroactive re-establishment of the status quo ante. . ."

"But to suggest that Parliament, in using the restrictive word claim meant to obviate all of the rights which an unpaid vendor is able to assert, is extending the wording of the statute beyond its own terms. This kind of security being exceptional, and being a derogation from the general law, the rights of a bank must be restrictively interpreted. . ."

We submit, then, despite abundant case law to the contrary, that section 179, according to this new construction, was not enacted in order to deprive the vendor of his right to dissolve the sale.

Article 1543 of the Civil Code reads as follows:

"In the sale of moveable things the right of dissolution by reason of non-payment of the price can only be exercised while the thing sold remains in the possession of the buyer, without prejudice to the seller's right of revendication as provided in the title of *Privileges and Hypothecs*. In the case of insolvency such right can only be exercised during the thirty days next after the delivery".

Thus, this article declares that the vendor no longer has a right to dissolve the sale once the buyer is no longer in possession of the effects sold. This obliges us to consider the nature of the bank's security on the property of its debtor.

The courts have long pondered the nature of the right created in favour of the bank, which section 178(2) says is comparable to those of a warehouse receipt or bill of lading. *Falconbridge on Banking and Bills of Exchange*, 7th ed., p. 202, defines a bill of lading as follows:

"A bill of lading is a receipt for goods shipped on board a ship, signed by the person who contracts to carry them, or his agent, and stating the terms on which the goods were delivered to and received by the ship. It is not the contract, for that has been made before the bill of lading was signed and delivered, but it is excellent evidence of the terms of the contract".

In *Banque Canadienne Nationale v. Lefavre*, (1951) Que K.B. 83, the bank was accorded a proprietary right *sui generis* in the secured goods.

It is therefore a proprietary right used as security for a bank loan, but nevertheless a proprietary right subject to certain restrictions:

- 1) reimbursement of the debt frees the goods of all liens and retransfers property to the borrower;
- 2) section 179(4) provides that any surplus from the sale shall be returned to the borrower;
- 3) just as the bank is responsible for any surplus resulting from the sale, the borrower is responsible if the sale does not succeed in covering the entire debt.

These are, then, the limitations on the bank's proprietary right that convince us it is a restricted right.

Cet argument a été formulé par Me Yoine Goldstein dans un texte intitulé «New developments in commercial lending: A bird's eye view of conflicting claims».

Me Goldstein, étudiant la version anglaise de la *Loi* attribue au mot «claim» de l'article 179, le sens de revendication, privilège, par opposition à créances, et réclamation que l'on retrouve dans la version française de la *Loi*.

«The right of dissolution is not, however, merely a «claim» or «lien». It is a right to dissolve the contract with retroactive effect. Giving effect to an implicit statutory available condition and the realization of this condition results in the retroactive re-establishment of the status quo ante. . .»

«But to suggest that Parliament, in using the restrictive word claim meant to obviate all of the rights which an unpaid vendor is able to assert, is extending the wording of the statute beyond its own terms. This kind of security being exceptional, and being a derogation from the general law, the rights of a bank must be restrictively interpreted. . .»

Nous soumettons donc que, malgré une jurisprudence abondante à l'effet contraire, à la lumière de cette nouvelle approche interprétative de l'article 179, celui-ci n'a pas été édicté pour priver le vendeur de son droit à la résolution de la vente.

L'article 1543 du code civil se lit de la façon suivante:

«Dans les ventes de meubles, le droit de résolution, faute de paiement du prix, ne peut être exercé qu'en autant que la chose reste en la possession de l'acheteur, sans préjudice du droit de revendication du vendeur tel que réglé au titre des *privileges et hypothèques*. Dans le cas de faillite ce droit ne peut être exercé que dans les trente (30) jours de la livraison».

Cet article décrète donc que le vendeur n'a plus droit à la résolution de la vente dès que l'acheteur n'est plus en possession des effets vendus. Ceci nous amène donc à considérer la nature de la garantie obtenue par la banque sur les biens de son débiteur.

La jurisprudence s'est longtemps penchée sur la nature du droit ainsi créé en faveur de la banque, celui-ci étant défini selon l'article 178 alinéa 2, comme étant semblable aux droits acquis en vertu d'un récépissé d'entrepôt ou d'un connaissance. *Falconbridge dans son ouvrage intitulé Banking and Bills of Exchange*, 7e éd. en page 202 définit un connaissance de la façon suivante:

«A bill of lading is a receipt for goods shipped on board a ship, signed by the person who contracts to carry them, or his agent, and stating the terms on which the goods were delivered to and received by the ship. It is not the contract, for that has been made before the bill of lading was signed and delivered, but it is excellent evidence of the terms of the contract».

Dans la cause *Banque Canadienne Nationale vs. Lefavre* (1951) Que. B.R. 83, on a attribué un droit de propriété *sui generis* à la banque sur les biens faisant l'objet de la garantie.

Il s'agit donc d'un droit de propriété, en garantie du prêt concédé par la banque, droit de propriété cependant attaché à certaines restrictions:

- 1) le remboursement de la dette libèrera les biens de toute garantie et retransfèrera la propriété à l'emprunteur;
- 2) l'article 179(4) prévoit que tout surplus dans le cas de vente devra être remis à l'emprunteur;
- 3) autant la banque est-elle redevable pour le surplus engendré par la vente que l'emprunteur le sera si la vente ne réussit pas à couvrir l'ensemble de la dette.

Ce sont donc toutes des restrictions à la propriété de la banque qui contribuent à nous convaincre qu'il s'agit d'un droit de propriété restreint.

In *Holly M. Ward Lumber Co. Inc. v. Amcam Woodcraft Ltd. and Banque de Montréal*, (1977) Que. S.C. 237 and 238. Mr. Justice Toth, citing an unpublished article by Jacques Lemay, characterized the bank's title to the secured moveables as follows:

"I disagree with the theory that there is transfer of ownership in the civilist sense of "absolute ownership". The title is only transferred as a security and not to make the bank the owner of the goods. Section 88 is intended to help the trader and allow a better control by the bank of its claims. I am prepared to accord such title the name of "legal ownership" or right *sui generis* but these qualifications must only allude to a security and not to the client's title. He has not given up his title as in a sale, but only temporarily, on the condition that he reimburse and he is required to reimburse".

Moreover, the title conferred by a bill of lading has never been considered comparable to the title conferred by a bill of exchange. On this subject Falconbridge, on page 203 of the work cited above, says:

"A bill of lading, and a *fortiori* any other document of title to goods, is not negotiable in the same sense as a bill of exchange may be negotiable, and therefore the mere honest possession of a bill of lading endorsed in blank, or in which the goods are made deliverable to the bearer, is not such a title to the goods as the like possession of a bill of exchange would be to the money promised to be paid by the acceptor. *The endorsement of a bill of lading gives no better right to the goods than the endorser himself had except in cases where a mercantile agent, or a person in the position of such agent, may transfer it to a holder in good faith under the Factors Act, so that if the owner should lose or have stolen from him a bill of lading endorsed in blank, the finder or the thief could confer no title upon an innocent third person*".

In addition, section 2 of the federal *Bills of Lading Act*, R.S. c. D6, states:

"Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned passes upon or by reason of such consignment or endorsement, *has and is vested with all such rights of action and is subject to all such liabilities in respect of such goods as if the contract contained in the bill of lading, had been made with himself*".

Quebec's *Bills of Lading Act* is to the same effect, and the Civil Code, article 2421, is even more explicit:

"When by the bill of lading the delivery of the goods is to be made to a person named or to his assigns, such person may transfer his right by endorsement and delivery of the bill of lading, *and the ownership of the goods and all rights and liabilities in respect thereof are held to pass thereby to the endorsee; subject nevertheless to the rights of third persons*".

In *Canadian Pacific Railway Co. v. Hickman Grain Co. Ltd.*, (1928) S.C.R. 170, the Supreme Court of Canada upheld the decision of Mr. Justice Trueman of the Manitoba Court of Appeal, affirming the following:

"Although, in a mercantile sense, a bill of lading to "order" or to "assign" is treated as a document of title by which either the property in or right to possession of the goods can be transferred, in law it does not confer upon a bona fide holder for value a better title than that possessed by the transferor".

Mr. Justice Gibsons commented, in *In re Wm. A. Marsh Co. Ltd.* (1929-30) 11 C.B.R. 453:

Dans l'affaire *Holly M. Ward Lumber Co. Inc. vs. Amcam Woodcraft Ltd. et Banque de Montréal* opposante 1977 Qué. C.S. 237 et 238. Monsieur le juge Toth, citant un article inédit de Me Jacques Lemay, qualifie le titre de la banque sur les biens mobiliers faisant l'objet de la garantie de la façon suivante:

«Je suis en désaccord avec la théorie voulant qu'il y ait transfert de la propriété au sens civiliste «d'absolute ownership». Le titre de propriété n'est transféré qu'à titre de garantie et non pour faire de la banque la propriétaire des biens. L'article 88 a pour but d'aider le commerçant et permettre un meilleur contrôle de la banque sur ces créances. Ce titre de propriété, je suis prêt à lui reconnaître le nom de «legal ownership» ou de droit *sui generis* mais ces qualifications ne doivent faire allusion qu'à une sûreté et non le titre de propriété que le client a. Celui-ci se départit de son titre non comme dans une vente mais temporairement, conditionnellement à ce qu'il rembourse et il est obligé de rembourser».

D'ailleurs le titre que confère un connaissance n'a jamais été réputé comparable au titre que confère un effet de commerce. A ce sujet Falconbridge dans l'ouvrage cité plus haut en page 203 nous dit:

«A bill of lading, and a *fortiori* any other document of title to goods, is not negotiable in the same sense as a bill of exchange may be negotiable, and therefore the mere honest possession of a bill of lading endorsed in blank, or in which the goods are made deliverable to the bearer, is not such a title to the goods as the like possession of a bill of exchange would be to the money promised to be paid by the acceptor. *The endorsement of a bill of lading gives no better right to the goods than the endorser himself had except in cases where a mercantile agent, or a person in the position of such agent, may transfer it to a holder in good faith under the Factors Act, so that if the owner should lose or have stolen from him a bill of lading endorsed in blank, the finder or the thief could confer no title upon an innocent third person*».

D'ailleurs la *Loi fédérale concernant les connaissances* chapitre D6 status refundus du Canada nous dit à l'article 2:

«Tout consignataire de marchandises, nommé dans un connaissance, et tout endossataire d'un connaissance qui devient propriétaire de la marchandise y mentionnée par suite ou en vertu de la consignation de l'endossement, *entre en possession et sont saisies des mêmes droits d'actions et assujettis aux mêmes obligations à l'égard de cette marchandise* que si les conventions contenues dans le connaissance eussent été arrêtées avec ce consignataire ou cet endossataire».

Au Québec la *Loi provinciale sur les connaissances* est au même effet et l'article 2421 du code civil est encore plus explicite; il dit:

«Lorsque d'après les termes du connaissance la délivrance de la marchandise doit être faite à une personne ou à ses ayants cause, cette personne peut transporter son droit par endossement et délivrance du connaissance, *et la propriété de la marchandise ainsi que tous les droits et obligations y relatifs sont par là censés passer au porteur, sauf néanmoins les droits des tiers tel que pourvu dans ce Code*».

Voici ce que dit la jurisprudence sur ce sujet, dans la cause *Hickman Grain Co. Ltd. vs. C.P.R.* (1928) S.C.R. 170, les juges de la Cour suprême ont entériné le jugement du juge Trueman siégeant devant la Cour d'appel du Manitoba affirmant la chose suivante:

«Although, in a mercantile sense, a bill of lading to «order» or to «assign» is treated as a document of title by which either the property in or right to possession of the goods can be transferred, in law it does not confer upon a bona fide holder for value a better title than that possessed by the transferor».

Dans l'affaire *In re Wm. A. Marsh Co. Ltd.* (1929-30) 11 C.B.R. page 453, juge Gibsons:

"It is neither the purpose nor the effect of The Bank Act, sec. 88, to make the security receipt effective to transfer to the bank more rights in the merchandise, etc., than the customer himself has; in other words it is only the rights in the merchandise which the customer himself has which are transferred to the bank by the security, the rights which third persons may have in the merchandise are not affected or diminished by the act of the customer in giving the security receipt to the bank".

Considering the nature of the bank's title, can we continue to maintain that it has priority over the unpaid vendor who demands the sale's dissolution?

Mignault says the purpose of article 1543 of the Civil Code is to protect third parties who have purchased the object in good faith. Should such protection be extended to a bank holding a security under sections 178-189 of the *Bank Act*? Can we not compare the rights of the bank to those of a trustee in bankruptcy who takes possession of the bankruptcy's goods?

Mr. Justice Tellier's comments in a bankruptcy case, *In re Rosenzweig* (1921-22), 2 C.B.R. 255, compare the powers of the unpaid vendor under article 1543 of the Civil Code with those of a trustee in bankruptcy:

"If there was in his estate something which did not belong to him, he has not become the proprietor of same by the fact of his bankruptcy. Equally if his property right was subject to a resolutive condition before his bankruptcy, bankruptcy does not make that right absolute."

"The bankrupt had only a resolvable right in same, the resolutive condition being always implied in all moveable sales. His right remains after bankruptcy what it was before".

It seems beyond question that the right of the unpaid vendor to dissolve the sale must by its very nature prevail over that of the bank.

It can be affirmed without hesitation that such a construction of section 179(2) does not encompass all rights of the unpaid vendor, but only those provided for in articles 1998 and 1999 of the Civil Code. Furthermore, it seems illogical and contrary to the intention of the codifiers to consider the bank as a third party with regard to its debtor.

To settle the debate, it suffices to analyse the argument raised in certain cases, specifically *BCN v. Lefavre*, in which the Court ruled that the bank's proprietary right, having been created by an Act of the Parliament of Canada, should be interpreted "... only in light of the Bank Act, and not with regard to the Civil Code".

Banque Provinciale du Canada v. Dionne, (1957), Que. S.C. 167, dealt with whether a person who buys in good faith from a vendor in similar articles obtains a clear title, despite the securities that the bank may hold on the same object. The Court dismissed the above-mentioned arguments, and stated:

"Unquestionably, the Bank Act gives the lender a title or security that is unknown in our civil law. It is perhaps inexact to say that in such a case, federal legislation prevails over civil law because, strictly speaking, it does not give to the lender something that the civil law could give him, but which would consist of a priority".

And further on, the Court added:

"When dealing with banks, the statute recognizes that the bank which lends may obtain such a title *sui generis*. It cannot in any way take precedence over the title created by our civil law, but it exists alongside when the various provisions of the federal statute take effect".

"It is neither the purpose nor the effect of The Bank Act, sec. 88, to make the security receipt effective to transfer to the bank more rights in the merchandise, etc., than the customer himself has; in other words it is only the rights in the merchandise which the customer himself has which are transferred to the bank by the security, the rights which third persons may have in the merchandise are not affected or diminished by the act of the customer in giving the security receipt to the bank".

Compte tenu de la qualité de son titre de propriété pouvons-nous toujours affirmer que la banque a priorité sur le vendeur impayé qui demande la résolution?

Mignault nous dit que le but de l'article 1543 du code civil est d'assurer la protection des tiers qui ont acheté le bien étant de bonne foi. Cette protection doit-elle s'étendre à la banque détentrice de la garantie des articles 178 et suivants de la *Loi sur les banques*? Ne pouvons-nous pas comparer le pouvoir de la banque à celui d'un syndic à la faillite qui prendrait possession des biens du failli?

Dans l'affaire de la faillite de *Rosenzweig*, (1921-22) vol. 2 C.B.R. 255, le juge Tellier considère dans son jugement les pouvoirs du vendeur impayé sous 1543 du code civil par opposition à ceux du syndic à la faillite:

"If there was in his estate something which did not belong to him, he has not become the proprietor of same by the fact of his bankruptcy. Equally if his property right was subject to a resolutive condition before his bankruptcy, bankruptcy does not make that right absolute."

"The bankrupt had only a resolvable right in same, the resolutive condition being always implied in all moveable sales. His right remain after bankruptcy what it was before".

Il nous paraît donc indiscutable que le droit du vendeur impayé, de demander la résolution de la vente, doive par son caractère intrinsèque surpasser celui de la banque.

Je crois pouvoir affirmer sans hésitation que l'interprétation de l'article 179 par. 2 n'a pas pour effet d'inclure tous les droits du vendeur impayé, mais bien seulement ceux prévus aux articles 1998 et 1999 du code civil. De plus, il me paraît illogique et contraire à l'intention des codificateurs que de considérer la banque comme un tiers par rapport à son débiteur.

Pour clore le débat il nous suffit maintenant d'analyser l'argument soulevé dans la jurisprudence et particulièrement dans la cause *BCN vs. Lefavre* où les juges ont décidé que le droit de propriété de la banque étant créé par une Loi du Parlement du Canada ne devait être interprété "... qu'à la seule lumière de la Loi des Banques et non en regard du code civil".

Dans la cause *Banque Provinciale du Canada vs. Dionne* (1957) Qué. C.S. 167 où il s'agissait de savoir si une personne qui achète un objet de bonne foi et d'un vendeur en semblable matière obtient un titre valide en l'encontre des garanties que la banque peut détenir sur ce même objet. La cour a mis de côté l'argument ci-haut mentionné et s'est exprimée de la façon suivante:

"Incontestablement, la loi sur les banques donne au prêteur un titre ou un privilège que notre loi civile ne connaît pas. Il n'est peut être pas exact de dire que, dans un tel cas, la législation fédérale prime le droit civil car, à vrai dire, elle ne donne pas au prêteur quelque chose que le droit civil pourrait lui donner mais qui comporterait une priorité.

Et plus loin la cour ajoute:

"Lorsqu'il s'agit des banques, la loi reconnaît que la banque qui prête peut obtenir un tel titre de propriété *sui generis*. Il ne prime aucunement le titre créé par notre loi civile, mais il existe à ses côtés lorsque ses dispositions particulières de la loi fédérale entrent en application".

I believe that the Court's construction in this case, permitting the parallel existence of federal and provincial legislation, should be considered as the most coherent one, best reflecting the true spirit of the legislation.

In addition, it is clear that in constitutional law, federal legislation cannot restrict the legislative powers of a province unless clear and precise legislative provisions leave no doubt about the true intention of the legislator.

Our strict construction of section 179(2) does not allow such intention to be presumed. Numerous decisions have, until recently, consistently defended the rights of the banks against those of unpaid vendors demanding the dissolution of the sale. In light of the arguments cited above, we believe that this tendency should be rethought, and that the courts should reconsider the status of the bank's proprietary right, and grant it the same effect as the right of property created by a bill of lading or a warehouse receipt, that is, a right analogous to that of the owner of the goods.

Thus, the bank is not, according to our construction, a third party for the purposes of article 1543 of the Civil Code, and is consequently subject to its application.

Je crois que l'interprétation faite par la cour en cette affaire, qui permet l'existence parallèle à la législation fédérale et à la législation provinciale, est celle qui doit retenir notre attention comme étant la plus cohérente et reflétant le véritable esprit de la loi.

De plus, il est clair qu'en droit constitutionnel toute loi fédérale ne peut restreindre les pouvoirs législatifs d'une province à moins que des textes de lois clairs et précis ne laissent aucun doute quant à la véritable intention du législateur.

L'interprétation, par nous, faite de l'article 179(2) ne permet plus de faire présumer cette intention et doit donc être interprétée restrictivement. De nombreuses décisions ont été rendues, qui à ce jour, ont toujours défendu les droits des banques, contre ceux des vendeurs impayés demandant la résolution de la vente. A la lumière des arguments invoqués plus haut, nous croyons que cette tendance devrait être réétudiée et que les cours devraient reconsidérer la valeur du droit de propriété de la banque et lui donner la même force que le droit de propriété provenant d'un connaissement ou d'un récépissé d'entrepôt, soit un droit semblable à celui du propriétaire desdits biens.

La banque n'est donc pas, selon notre interprétation, un tiers sous l'article 1543 du code civil et est donc soumise à son application.

Address of Offices where Bankruptcy Proceedings are Filed
Adresse des bureaux où les procédures de faillites sont déposées

British Columbia
Colombie Britannique

Dept. of CCA
Bankruptcy
1400-800 Burrard Street,
Vancouver, B.C.
V6Z 2H8

Tel: 604/666-5007

Alberta

Dept. of CCA
Bankruptcy
2919 - 5th Avenue N.E.
Calgary, Alberta
T2A 6T8

Tel: 403/231-5607

Dept. of CCA
Bankruptcy
10225 - 100th Avenue
Edmonton, Alberta
T5J 0A1

Tel: 403/420-2476

Saskatchewan

Dept. of CCA
Bankruptcy
2212 Scarth Street
Regina, Saskatchewan
S4P 2J6

Tel: 306/359-5391

Dept. of CCA
Bankruptcy
3421 - 8th Street East
Saskatoon, Saskatchewan
S7H 0W5

Tel: 306/665-4298

Manitoba

Dept. of CCA
Bankruptcy
203 - 260 St. Mary Avenue
Winnipeg, Manitoba
R3C 0M6

Tel: 204/949-3229

Ontario

Dept. of CCA
Bankruptcy
3rd Floor
Union Gas Building
20 Hughson St. S.
Hamilton, Ontario
L8N 2A1

Tel: 416/523-2991

Dept. of CCA
Bankruptcy
217 York Street
Third Floor
London, Ontario
N6A 1B7

Tel: 519/679-4034

Dept. of CCA
Bankruptcy
240 Bank Street
Brunswick Building
P.O. Box 2009
Station "D"
Ottawa, Ontario
K1P 6A8

Tel: 613/995-2994

Dept. of CCA
Bankruptcy
767 Barrydowne Rd.
Sudbury, Ontario
P3A 3T6

Tel: 705/675-0636

Dept. of CCA
Bankruptcy
7th Floor
25 St. Clair Avenue East
Toronto, Ontario
M4T 1M2

Tel: 416/966-6486

Québec

Min. C & C
Faillites
1410, rue Stanley
9e étage
Montréal, Québec
H3A 1P8

Tél: 514/283-6192

Min. C & C
Faillites
410, boul. Charest est,
4e étage
Québec, Québec
G1K 8G3

Tél: 418/694-4280

Min. C & C
Faillites
1335 King ouest
Bureau 402
Sherbrooke, Québec
J1J 2B8

Tél: 819/565-4724

Atlantic Provinces
Provinces de l'Atlantique

Dept. of CCA
Bankruptcy
17th Floor, Queen Square
45 Alderney Drive
Dartmouth, Nova Scotia
B2Y 2N6
Tel: 902/426-2900

Statistics**BANKRUPTCIES**

November 1983

Statistiques**FAILLITES**

novembre 1983

| | Current Month <i>Mois courant</i> | | | Yearly to date <i>Cumul pour l'année</i> | | |
|----------------|--------------------------------------|---------------------|----------------|---------------------------------------------|---------------------|----------------|
| | Consumer Consommateur | Business Affaire | Total Total | Consumer Consommateur | Business Affaire | Total Total |
| Nfld./T.-N. | 28 | 6 | 34 | 352 | 80 | 432 |
| N.S./N.-É. | 57 | 20 | 77 | 874 | 206 | 1,080 |
| P.E.I./I.P.-É. | 4 | 0 | 4 | 27 | 16 | 43 |
| N.B./N.-B. | 11 | 2 | 13 | 223 | 91 | 314 |
| Québec | 672 | 318 | 990 | 7,054 | 3,602 | 10,656 |
| Ontario | 860 | 259 | 1,119 | 10,327 | 2,794 | 13,121 |
| Manitoba | 102 | 34 | 136 | 964 | 286 | 1,250 |
| Saskatchewan | 40 | 35 | 75 | 553 | 294 | 847 |
| Alberta | 194 | 92 | 286 | 2,214 | 945 | 3,159 |
| B.C./C.B. | 199 | 100 | 299 | 2,477 | 1,201 | 3,678 |
| N.W.T./T.N.-O. | 0 | 1 | 1 | 3 | 3 | 6 |
| Yukon | 0 | 0 | 0 | 3 | 2 | 5 |
| Canada | 2,167 | 867 | 3,034 | 25,071 | 9,520 | 34,591 |

PROPOSALS

November 1983

PROPOSITIONS

novembre 1983

| | Current Month <i>Mois courant</i> | Yearly to date <i>Cumul pour l'année</i> |
|----------------|--------------------------------------|---------------------------------------------|
| | Nfld./T.-N. | 0 |
| N.S./N.-É. | 3 | 22 |
| P.E.I./I.P.-É. | 0 | 3 |
| N.B./N.-B. | 1 | 28 |
| Québec | 12 | 124 |
| Ontario | 5 | 79 |
| Manitoba | 1 | 19 |
| Saskatchewan | 0 | 2 |
| Alberta | 2 | 17 |
| B.C./C.B. | 16 | 145 |
| N.W.T./T.N.-O. | 0 | 0 |
| Yukon | 0 | 1 |
| Canada | 40 | 445 |

FURTHER DETAILED INFORMATION CAN BE OBTAINED FROM **INSOLVENCY BULLETIN** ISSUED BY THE OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY.
PLUS AMPLES INFORMATIONS PEUVENT ÊTRE OBTENUES EN CONSULTANT LE **BULLETIN SUR L'INSOLVABILITÉ** DU BUREAU DU SURINTENDANT DES FAILLITES.

**BUSINESS BANKRUPTCIES REPORTED IN THE MONTH OF NOVEMBER 1983, BY PROVINCE, BY TYPE OF
INDUSTRY WITH LIABILITIES AND CUMULATIVE FIGURES**

**FAILLITES COMMERCIALES SIGNALÉES AU COURS DU MOIS DE NOVEMBRE 1983, PAR PROVINCE, PAR GENRE
D'INDUSTRIE AVEC PASSIFS ET DONNÉES CUMULATIVES**

| | Current Month <i>Mois Courant</i> | | Yearly to Date <i>Cumul pour l'année</i> | |
|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-------------------------------------|---------------------------------------------|-------------------------------------|
| | Number <i>Nombre</i> | Liabilities* <i>Passif</i> \$ | Number <i>Nombre</i> | Liabilities* <i>Passif</i> \$ |
| NEWFOUNDLAND/TERRE-NEUVE | | | | |
| Primary Industries <i>Industries primaires</i> | 2 | 70,000 | 11 | 461,500 |
| Manufacturing Industries <i>Industries manufacturières</i> | 0 | 0 | 3 | 308,000 |
| Construction Industries <i>Industries de la Construction</i> | 1 | 9,500 | 10 | 1,361,000 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 0 | 0 | 4 | 230,500 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 2 | 83,500 | 33 | 2,079,000 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 0 | 0 | 4 | 534,000 |
| Services | 1 | 1,500,000 | 15 | 2,802,000 |
| Total | 6 | 1,663,000 | 80 | 7,776,000 |
| NOVA SCOTIA/NOUVELLE-ÉCOSSE | | | | |
| Primary Industries <i>Industries primaires</i> | 6 | 722,000 | 31 | 3,739,000 |
| Manufacturing Industries <i>Industries manufacturières</i> | 1 | 23,000 | 21 | 2,503,500 |
| Construction Industries <i>Industries de la Construction</i> | 3 | 57,000 | 18 | 1,216,000 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 1 | 63,000 | 15 | 536,500 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 5 | 311,500 | 55 | 12,497,000 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 0 | 0 | 11 | 7,479,000 |
| Services | 4 | 211,500 | 55 | 5,841,500 |
| Total | 20 | 1,388,000 | 206 | 33,812,500 |
| PRINCE EDWARD ISLAND/ILE DU PRINCE-ÉDOUARD | | | | |
| Primary Industries <i>Industries primaires</i> | 0 | 0 | 2 | 337,000 |
| Manufacturing Industries <i>Industries manufacturières</i> | 0 | 0 | 2 | 307,000 |
| Construction Industries <i>Industries de la Construction</i> | 0 | 0 | 1 | 35,000 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 0 | 0 | 0 | 0 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 0 | 0 | 8 | 281,500 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 0 | 0 | 1 | 410,000 |
| Services | 0 | 0 | 2 | 96,500 |
| Total | 0 | 0 | 16 | 1,467,000 |

* As declared by Debtors

*Tel que déclarés par les débiteurs

| | Current Month <i>Mois Courant</i> | | Yearly to Date <i>Cumul pour l'année</i> | |
|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|-------------------------------------|---------------------------------------------|-------------------------------------|
| | Number <i>Nombre</i> | Liabilities* <i>Passif</i> \$ | Number <i>Nombre</i> | Liabilities* <i>Passif</i> \$ |
| NEW BRUNSWICK / NOUVEAU-BRUNSWICK | | | | |
| Primary Industries <i>Industries primaires</i> | 1 | 1,500,000 | 8 | 6,288,000 |
| Manufacturing Industries <i>Industries manufacturières</i> | 0 | 0 | 13 | 3,073,000 |
| Construction Industries <i>Industries de la Construction</i> | 1 | 190,000 | 13 | 1,153,000 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 0 | 0 | 6 | 364,000 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 0 | 0 | 26 | 3,499,500 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 0 | 0 | 4 | 1,560,000 |
| Services | 0 | 0 | 21 | 3,069,150 |
| Total | 2 | 1,690,000 | 91 | 19,006,650 |
| QUÉBEC | | | | |
| Primary Industries <i>Industries primaires</i> | 20 | 5,053,500 | 162 | 30,061,000 |
| Manufacturing Industries <i>Industries manufacturières</i> | 26 | 5,464,000 | 396 | 110,308,500 |
| Construction Industries <i>Industries de la Construction</i> | 34 | 5,279,000 | 430 | 66,022,500 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 17 | 1,136,500 | 175 | 25,684,000 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 115 | 13,600,000 | 1,202 | 202,145,150 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 10 | 916,500 | 122 | 32,478,500 |
| Services | 96 | 24,178,500 | 1,115 | 161,409,000 |
| Total | 318 | 55,628,000 | 3,602 | 628,108,650 |
| ONTARIO | | | | |
| Primary Industries <i>Industries primaires</i> | 21 | 3,094,000 | 182 | 31,678,000 |
| Manufacturing Industries <i>Industries manufacturières</i> | 20 | 7,718,000 | 261 | 113,818,000 |
| Construction Industries <i>Industries de la Construction</i> | 48 | 14,046,000 | 471 | 96,564,000 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 21 | 1,499,500 | 198 | 23,080,500 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 60 | 5,661,500 | 826 | 129,934,700 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 7 | 6,670,000 | 142 | 81,010,000 |
| Services | 82 | 8,761,500 | 714 | 97,688,000 |
| Total | 259 | 47,450,500 | 2,794 | 573,773,200 |

* As declared by Debtors

*Tel que déclarés par les débiteurs

| | Current Month Mois Courant | | Yearly to Date Cumul pour l'année | |
|-----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|------------------------------|--------------------------------------|------------------------------|
| | Number Nombre | Liabilities* Passif \$ | Number Nombre | Liabilities* Passif \$ |
| MANITOBA | | | | |
| Primary Industries <i>Industries primaires</i> | 7 | 707,000 | 62 | 11,512,500 |
| Manufacturing Industries <i>Industries manufacturières</i> | 1 | 190,000 | 25 | 9,141,500 |
| Construction Industries <i>Industries de la Construction</i> | 5 | 523,500 | 40 | 2,930,000 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 2 | 47,500 | 20 | 1,339,500 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 8 | 841,500 | 76 | 15,554,000 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 0 | 0 | 13 | 19,461,500 |
| Services | 11 | 1,930,000 | 50 | 7,610,000 |
| Total | 34 | 4,239,500 | 286 | 67,549,000 |
| SASKATCHEWAN | | | | |
| Primary Industries <i>Industries primaires</i> | 5 | 1,186,500 | 45 | 6,833,500 |
| Manufacturing Industries <i>Industries manufacturières</i> | 1 | 105,000 | 17 | 3,963,000 |
| Construction Industries <i>Industries de la Construction</i> | 6 | 431,500 | 54 | 7,617,000 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 4 | 142,000 | 23 | 1,552,500 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 11 | 2,415,500 | 81 | 11,666,050 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 0 | 0 | 10 | 4,476,000 |
| Services | 8 | 822,000 | 64 | 6,844,000 |
| Total | 35 | 5,102,500 | 294 | 42,952,050 |
| ALBERTA | | | | |
| Primary Industries <i>Industries primaires</i> | 8 | 1,985,000 | 76 | 40,062,000 |
| Manufacturing Industries <i>Industries manufacturières</i> | 6 | 6,836,000 | 41 | 22,058,500 |
| Construction Industries <i>Industries de la Construction</i> | 17 | 2,688,500 | 215 | 38,711,850 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 9 | 702,000 | 112 | 12,666,000 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 20 | 5,828,000 | 204 | 52,924,000 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 12 | 11,833,000 | 80 | 88,396,500 |
| Services | 20 | 5,545,500 | 217 | 64,399,500 |
| Total | 92 | 35,418,000 | 945 | 319,218,350 |

*As declared by Debtors

*Tel que déclarés par les débiteurs

| | Current Month Mois Courant | | Yearly to Date Cumul pour l'année | |
|-----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|------------------------------|--------------------------------------|------------------------------|
| | Number Nombre | Liabilities* Passif \$ | Number Nombre | Liabilities* Passif \$ |
| BRITISH COLUMBIA / COLOMBIE BRITANNIQUE | | | | |
| Primary Industries <i>Industries primaires</i> | 10 | 1,666,000 | 111 | 41,934,950 |
| Manufacturing Industries <i>Industries manufacturières</i> | 7 | 2,309,000 | 98 | 108,060,000 |
| Construction Industries <i>Industries de la Construction</i> | 17 | 3,626,500 | 207 | 45,256,500 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 6 | 708,000 | 101 | 18,011,500 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 32 | 7,898,500 | 316 | 109,859,950 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 11 | 11,867,500 | 133 | 126,156,500 |
| Services | 17 | 14,669,000 | 235 | 88,423,500 |
| Total | 100 | 42,744,500 | 1,201 | 537,702,900 |
| NORTHWEST TERRITORIES / TERRITOIRES DU NORD-OUEST & YUKON | | | | |
| Primary Industries <i>Industries primaires</i> | 1 | 850,000 | 2 | 1,020,000 |
| Manufacturing Industries <i>Industries manufacturières</i> | 0 | 0 | 0 | 0 |
| Construction Industries <i>Industries de la Construction</i> | 0 | 0 | 2 | 150,000 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 0 | 0 | 1 | 85,000 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 0 | 0 | 0 | 0 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 0 | 0 | 0 | 0 |
| Services | 0 | 0 | 0 | 0 |
| Total | 1 | 850,000 | 5 | 1,255,000 |
| CANADA | | | | |
| Primary Industries <i>Industries primaires</i> | 81 | 16,834,000 | 692 | 173,927,450 |
| Manufacturing Industries <i>Industries manufacturières</i> | 62 | 22,645,000 | 877 | 373,541,000 |
| Construction Industries <i>Industries de la Construction</i> | 132 | 26,851,500 | 1,461 | 261,016,850 |
| Transportation, Communication & Other Utilities <i>Transportation, Communication et autres services d'utilité publique</i> | 60 | 4,298,500 | 655 | 83,550,000 |
| Trade (Wholesale & Retail) <i>Commerce (de gros et de détail)</i> | 253 | 36,640,000 | 2,827 | 540,440,850 |
| Finance, Insurance and Real Estate <i>Finances, Assurance et Immeubles</i> | 40 | 31,287,000 | 520 | 361,962,000 |
| Services | 239 | 57,618,000 | 2,488 | 438,183,150 |
| Total | 867 | 196,174,000 | 9,520 | 2,232,621,300 |

* As declared by Debtors

* Tel que déclarés par les débiteurs

**BANKRUPTCIES
AND PROPOSALS
REPORTED IN NOVEMBER 1983
BY MAJOR URBAN CENTERS**

**FAILLITES
ET PROPOSITIONS
SIGNALÉES EN NOVEMBRE 1983
SELON LES PRINCIPAUX CENTRES URBAINS**

| | Consumer Consommateur | Business Affaire | Proposals Propositions | Total Total | Assets Actif | Liabilities Passif |
|---------------------------|--------------------------|---------------------|---------------------------|----------------|-----------------|-----------------------|
| NFLD/T.-N. | | | | | | |
| ST-JOHN'S | 12 | 0 | 0 | 12 | 1,700 | 85,500 |
| OTHERS/AUTRES | 16 | 6 | 0 | 22 | 53,350 | 1,895,500 |
| TOTAL | 28 | 6 | 0 | 34 | 55,050 | 1,981,000 |
| N.S./N.-E. | | | | | | |
| HALIFAX | 24 | 9 | 1 | 34 | 283,500 | 1,180,500 |
| SYDNEY | 2 | 2 | 2 | 6 | 150,700 | 178,000 |
| SYDNEY MINES | 1 | 0 | 0 | 1 | 450 | 16,500 |
| OTHERS/AUTRES | 30 | 9 | 0 | 39 | 273,700 | 1,219,500 |
| TOTAL | 57 | 20 | 3 | 80 | 708,350 | 2,594,500 |
| P.E.I./I.P.-E. | | | | | | |
| CHARLOTTETOWN | 1 | 0 | 0 | 1 | 750 | 7,500 |
| OTHERS/AUTRES | 3 | 0 | 0 | 3 | 5,000 | 17,000 |
| TOTAL | 4 | 0 | 0 | 4 | 5,750 | 24,500 |
| N.B./N.-B. | | | | | | |
| FREDERICTON | 1 | 0 | 0 | 1 | 2,500 | 10,500 |
| MONCTON | 3 | 0 | 0 | 3 | 3,100 | 69,500 |
| SAINT-JOHN | 4 | 0 | 0 | 4 | 11,800 | 52,000 |
| OTHERS/AUTRES | 3 | 2 | 1 | 6 | 2,800 | 1,748,500 |
| TOTAL | 11 | 2 | 1 | 14 | 20,200 | 1,880,500 |
| QUEBEC | | | | | | |
| CHICOUTIMI-JONQUIERE | 5 | 2 | 0 | 7 | 4,650 | 476,000 |
| DRUMMONDVILLE | 13 | 4 | 0 | 17 | 117,000 | 668,000 |
| GRANBY | 5 | 2 | 0 | 7 | 22,500 | 273,000 |
| HULL/GATINEAU/AYLMER | 36 | 7 | 0 | 43 | 1,808,450 | 2,669,500 |
| MONTREAL | 334 | 143 | 7 | 484 | 9,783,200 | 44,787,000 |
| QUEBEC | 56 | 26 | 2 | 84 | 985,550 | 2,776,500 |
| RIMOUSKI | 4 | 3 | 0 | 7 | 14,350 | 95,000 |
| ROUYN | 1 | 0 | 0 | 1 | 750 | 11,500 |
| SALLABERRY DE VALLEYFIELD | 4 | 3 | 0 | 7 | 2,350 | 210,500 |
| SHAWINIGAN | 1 | 1 | 0 | 2 | 300 | 37,500 |
| SHERBROOKE | 8 | 4 | 0 | 12 | 84,450 | 250,000 |
| SOREL | 3 | 1 | 0 | 4 | 2,900 | 54,000 |
| ST-HYACINTHE | 2 | 2 | 1 | 5 | 4,150 | 289,500 |
| ST-JEAN-SUR-RICHELIEU | 7 | 2 | 0 | 9 | 279,200 | 565,500 |
| ST-JEROME | 1 | 0 | 0 | 1 | 50 | 7,500 |
| THETFORD-MINES | 3 | 0 | 0 | 3 | 21,750 | 66,500 |
| TROIS-RIVIERES | 2 | 3 | 0 | 5 | 10,550 | 480,000 |
| VICTORIAVILLE | 6 | 3 | 0 | 9 | 84,100 | 758,500 |
| OTHERS/AUTRES | 181 | 112 | 2 | 295 | 6,393,300 | 19,381,500 |
| TOTAL | 672 | 318 | 12 | 1,002 | 19,619,550 | 73,857,500 |

**BANKRUPTCIES
AND PROPOSALS
REPORTED IN NOVEMBER 1983
BY MAJOR URBAN CENTERS**

**FAILLITES
ET PROPOSITIONS
SIGNALÉES EN NOVEMBRE 1983
SELON LES PRINCIPAUX CENTRES URBAINS**

| | Consumer Consommateur | Business Affaire | Proposals Propositions | Total Total | Assets Actif | Liabilities Passif |
|-----------------------|--------------------------|---------------------|---------------------------|----------------|-------------------|-----------------------|
| ONTARIO | | | | | | |
| BARRIE | 7 | 2 | 0 | 9 | 79,350 | 451,000 |
| BELLEVILLE | 4 | 0 | 0 | 4 | 36,500 | 102,500 |
| BRANTFORD | 16 | 3 | 0 | 19 | 135,100 | 787,500 |
| BROCKVILLE | 4 | 2 | 0 | 6 | 53,050 | 186,000 |
| CHATHAM | 6 | 4 | 0 | 10 | 107,250 | 443,000 |
| CORNWALL | 10 | 1 | 0 | 11 | 6,550 | 52,500 |
| GUELPH | 4 | 1 | 0 | 5 | 12,450 | 119,500 |
| HAMILTON | 61 | 13 | 2 | 76 | 241,000 | 1,866,000 |
| KINGSTON | 6 | 1 | 0 | 7 | 4,200 | 77,000 |
| KITCHENER | 25 | 9 | 0 | 34 | 273,400 | 1,017,500 |
| LONDON | 21 | 6 | 0 | 27 | 61,700 | 970,000 |
| MIDLAND | 2 | 0 | 0 | 2 | 29,000 | 37,000 |
| NORTH BAY | 13 | 3 | 0 | 16 | 126,650 | 379,000 |
| ORILLIA | 3 | 2 | 0 | 5 | 1,100 | 111,500 |
| OSHAWA | 16 | 2 | 0 | 18 | 118,400 | 486,000 |
| OTTAWA | 46 | 11 | 0 | 57 | 175,500 | 1,366,000 |
| PETERBOROUGH | 7 | 2 | 0 | 9 | 5,800 | 496,500 |
| SARNIA | 15 | 4 | 0 | 19 | 145,500 | 728,000 |
| SAULT-STE-MARIE | 13 | 1 | 0 | 14 | 135,200 | 346,500 |
| ST-CATHARINES/NIAGARA | 37 | 14 | 0 | 51 | 569,850 | 2,565,000 |
| STRATFORD | 1 | 0 | 0 | 1 | 210,000 | 230,000 |
| SUDBURY | 13 | 4 | 0 | 17 | 62,700 | 490,000 |
| THUNDER BAY | 10 | 1 | 0 | 11 | 66,850 | 322,000 |
| TORONTO | 282 | 73 | 3 | 358 | 4,215,600 | 18,582,000 |
| TRENTON | 3 | 0 | 0 | 3 | 4,000 | 34,500 |
| WINDSOR | 17 | 13 | 0 | 30 | 351,050 | 1,592,500 |
| OTHERS/AUTRES | 218 | 87 | 0 | 305 | 4,793,600 | 33,861,500 |
| TOTAL | 860 | 259 | 5 | 1,124 | 12,021,350 | 67,700,500 |
| MANITOBA | | | | | | |
| WINNIPEG | 82 | 17 | 1 | 100 | 988,400 | 4,027,000 |
| OTHERS/AUTRES | 20 | 17 | 0 | 37 | 722,800 | 1,631,500 |
| TOTAL | 102 | 34 | 1 | 137 | 1,711,200 | 5,658,500 |
| SASKATCHEWAN | | | | | | |
| MOOSE JAW | 2 | 2 | 0 | 4 | 159,150 | 318,000 |
| PRINCE ALBERT | 7 | 5 | 0 | 12 | 70,150 | 369,500 |
| REGINA | 6 | 4 | 0 | 10 | 151,100 | 344,500 |
| SASKATOON | 11 | 10 | 0 | 21 | 1,360,350 | 2,286,000 |
| OTHERS/AUTRES | 14 | 14 | 0 | 28 | 928,950 | 2,394,000 |
| TOTAL | 40 | 35 | 0 | 75 | 2,669,700 | 5,712,000 |

**BANKRUPTCIES
AND PROPOSALS
REPORTED IN NOVEMBER 1983
BY MAJOR URBAN CENTERS**

**FAILLITES
ET PROPOSITIONS
SIGNALÉES EN NOVEMBRE 1983
SELON LES PRINCIPAUX CENTRES URBAINS**

| | Consumer Consommateur | Business Affaire | Proposals Propositions | Total Total | Assets Actif | Liabilities Passif |
|-----------------------|--------------------------|---------------------|---------------------------|----------------|-------------------|-----------------------|
| ALBERTA | | | | | | |
| CALGARY | 68 | 32 | 1 | 101 | 3,425,700 | 18,215,500 |
| EDMONTON | 58 | 27 | 1 | 86 | 2,502,150 | 22,862,000 |
| MEDICINE HAT | 5 | 2 | 0 | 7 | 244,850 | 428,500 |
| OTHERS/AUTRES | 63 | 31 | 0 | 94 | 2,475,250 | 6,239,000 |
| TOTAL | 194 | 92 | 2 | 288 | 8,647,950 | 47,745,000 |
| B.C./C.B. | | | | | | |
| CHILLIWACK | 1 | 0 | 0 | 1 | 450 | 11,500 |
| COURTENAY | 4 | 2 | 0 | 6 | 477,250 | 647,000 |
| KAMLOOPS | 10 | 4 | 0 | 14 | 402,050 | 1,053,000 |
| KELOWNA | 19 | 7 | 0 | 26 | 188,050 | 6,626,500 |
| NANAIMO | 7 | 0 | 1 | 8 | 196,400 | 736,000 |
| PRINCE-GEORGE | 6 | 3 | 1 | 10 | 688,650 | 1,030,000 |
| TERRACE | 2 | 0 | 0 | 2 | 11,500 | 27,000 |
| VANCOUVER | 85 | 36 | 13 | 134 | 6,341,750 | 23,417,500 |
| VERNON | 4 | 3 | 0 | 7 | 121,450 | 421,000 |
| VICTORIA | 1 | 6 | 1 | 8 | 676,000 | 6,697,500 |
| OTHERS/AUTRES | 60 | 39 | 0 | 99 | 3,319,200 | 14,832,000 |
| TOTAL | 199 | 100 | 16 | 315 | 12,422,750 | 55,499,000 |
| N.W.T./T.N.-O. | | | | | | |
| TOTAL | 0 | 1 | 0 | 1 | 210,000 | 850,000 |
| CANADA | | | | | | |
| TOTAL | 2,167 | 867 | 40 | 3,074 | 58,091,850 | 263,503,000 |

ORDERLY PAYMENT OF DEBTS (Part X, Bankruptcy Act) / LE PAIEMENT MÉTHODIQUE DES DETTES (Partie X, Loi sur la faillite)

| Report for the month of October 1983 | Participating Provinces | | | | | | | Total |
|--------------------------------------------------------------------------------------------------------------|---------------------------------------------|------------|--------------|-----------|--------------------------------|-----------------------------------------------------|------------|-------|
| | British Columbia Colombie Britannique | Alberta | Saskatchewan | Manitoba | Nova Scotia Nouvelle-Écosse | Prince Edward Island Île du Prince Édouard | | |
| Rapport du mois d'octobre 1983 | Provinces Participantes | | | | | | | |
| Total number of Consolidation Orders made by the Court during the month | 30 | 21 | 8 | 6 | 19 | 0 | 84 | |
| Nombre total des ordonnances de fusion émises par la cour durant le mois | | | | | | | | |
| Total amount paid into court on all consolidation orders during the month | 239,945.87 | 159,050.05 | 35,665.32 | 25,644.43 | 141,513.16 | 15,482.55 | 617,301.38 | |
| Montant versé à la cour durant le mois relativement à tous les ordonnances de fusion | | | | | | | | |
| Total amount distributed to registered creditors under all consolidation orders during the month | 442,288.99 | 327,098.13 | 3,668.23 | 21,690.97 | 130,216.44 | 15,482.55 | 940,445.31 | |
| Montant distribué durant le mois aux créanciers inscrits sous les ordonnances de fusion | | | | | | | | |
| Total number of terminations and defaults during the month | 41 | 23 | 8 | 4 | 24 | 4 | 104 | |
| Nombre total de cas complétés ou annulés durant le mois | | | | | | | | |



R RG36-4 1299 10013815F
CONS & CORP AFF GS771230-01
LIB
XX
OTTAWA
ON
K1A 0C9

| | | |
|-------------------------------------------------------------------------------------|--------------------------------|-------------------------------|
|  | Canada Post Postage Paid | Postes Canada Post payé |
| Book rate Tarif des livres K1A 0S7 Ottawa, Canada | | |

If undelivered, return COVER ONLY to:
Canadian Government Printing Office,
Supply and Services Canada,
45 Sacré-Coeur Boulevard,
Hull, Québec, Canada, K1A 0S7

En cas de non-livraison,
retourner cette COUVERTURE SEULEMENT
Imprimerie du gouvernement canadien,
Approvisionnement et Services Canada,
45, boulevard Sacré-Coeur,
Hull, Québec, Canada, K1A 0S7



Consumer and
Corporate Affairs
Canada

Consommation
et Corporations
Canada

