

## Re Gary Man Kin Ng, 2026 ONSC 1418 (CanLII)

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**COURT FILE NO.:** Court No. 31-459531

**DATE:** March 2, 2026

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY OF GARY MAN KIN NG  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**BEFORE:** Associate Justice Ilchenko, Registrar in Bankruptcy

**COUNSEL:**

Gary Ng, Bankrupt, self-represented (the “**Bankrupt**”)

Daniel Rosenbluth, for KSV Restructuring Inc. (“**Rosenbluth**”)

Mitch Stephenson and Julia Chung, for KSV Restructuring Inc. (“**Stephenson**”)

Robert Harlang, LIT (“**Harlang**”) representative of KSV Restructuring Inc., Trustee in Bankruptcy of the Bankrupt (“**KSV**” or the “**Trustee**”)

Kate Costin, (“**Costin**”) for FUNG-BC Holdings Ltd. (“**FUNG**”)

Erin Pleet, for PricewaterhouseCoopers Inc. as Receiver for Bridging Finance Inc. (“**Bridging**”) et al (“**PWC**” or the “**Receiver**”)

Ankita Gupta, for Blackrock (“**Blackrock**”)

**HEARD:** Motion by Bankrupt initially before AJ Rappos on December 2, 2025, who recused himself as having previously acting as counsel for Bridging while in practice. On the same day I set a case timetable for the hearing date that was ultimately selected by the Parties of February 12, 2026. Post-hearing Costs submissions were due on February 24<sup>th</sup> for the Trustee, and on

February 26<sup>th</sup> for the Bankrupt, so that I could release this endorsement prior to the March 6<sup>th</sup> Case Conference convened by Kimmel, J.

### ENDORSEMENT

[1] When this motion was initially brought by the Bankrupt, the Bankrupt was seeking the following relief in his Notice of Motion dated November 8, 2025:

“1. Primary relief - (if s.116(2) of the BIA engaged):

1. An order declaring Mr. Krebs ineligible to act as an inspector, and in the alternative, directions that the Trustee convene a creditors’ meeting or that any creditor (or the Trustee) bring a s.116(5) revocation motion to fill the vacancy;

2. CV-25-00740468-0000 guardrails (s.37/s.119(2)):

(a) The Trustee shall take no further step in CV-25-00740468-0000 (save to comply with a court order or prescribed deadline) pending these directions;

(b) The Trustee shall deliver a cost-benefit report identifying the expected net recovery to the estate, litigation budget, timing, and risks across all four actions; and

(c) The parties may return for directions on whether (and on what terms) that action should continue; and

[2] In his Aide Memoire dated November 28, 2025 the Bankrupt added the following relief:

“• Vacancy mechanics: The vacancy is to be filled per s.116(4)–(5); Mr. Krebs shall not participate in the replacement process.

• Interim independence (if declaration deferred): Until replacement, the trustee shall not consult Mr. Krebs on any RC-Morris-related matter (service, prosecution, settlement, s.38 terms); the remaining inspectors constitute a quorum for those matters; liberty to seek directions.

• s.38 guardrail: Any s.38 assignment of RC-Morris claims must be brought for court approval on notice to all inspectors and the OSB, with an affidavit confirming no participation by Mr. Krebs in the decision or terms.”

[3] The Bankrupt in his draft Order uploaded to Case Centre on or about January 8 was now asking for relief described as:

“1. Withdrawal of inspector-related relief

The Bankrupt withdraws and does not pursue the relief sought at paragraphs 1 and 2 of the draft order previously served on January 7, 2026 (declaration re inspector eligibility and vacancy directions). Those aspects of the motion are dismissed as moot, without prejudice to any party’s rights in any other proceeding.

2. Stay / adjournment of the section 38 motion (Main Action)

Pending further order of this Court, the motion brought by FUNG-BC Holdings Ltd. pursuant to section 38 of the Bankruptcy and Insolvency Act in relation to Court File No.CV-25-00740468-0000 (the “Main Action”) is stayed and shall not be heard or determined (including on consent) unless and until any objections served in response to that motion are heard and determined, or the Court orders otherwise.

For greater certainty, during the stay the Trustee shall not consent to the granting of any order under section 38 in respect of the Main Action.

### 3. Interim litigation pause (Main Action)

Pending further order of this Court, the Trustee shall take no further step in the Main Action, except as necessary to comply with existing court orders or deadlines, or to preserve the status quo.

### 4. Timetable and notice

Court File No.: BK-23-00459531-0031 Draft Order

2 The parties shall confer and, within 10 days of the date of this Order, deliver to the Court a joint (or separate, if necessary) proposed timetable for the service and filing of materials and for the hearing of the section 38 motion and any objections, including a proposed service list for notice.

### 5. Liberty to apply

The Bankrupt, the Trustee, the inspectors, and any other interested person shall have liberty to apply to this Court on 5 days' notice (or such other notice as this Court may order) for directions regarding the section 38 motion and/or the conduct of the Main Action pending the determination of that motion.

### 6. Costs

The costs of this motion are reserved.”

[4] On February 10, 2026, Kimmel, J. at a scheduling conference issued a scheduling Order for various actions relating to the Bridging Finance insolvency, in Order to reduce the duplication of effort, document production and to coordinate discoveries relating to a series of Actions, including two actions referred to as the “KSV Main Action” and the “Whitehorse Action”.

[5] In her endorsement of February 10, 2026 (the “**Kimmel, J. Endorsement**”) Kimmel, J. makes the following findings of Fact and Law relevant to the Motion(s) before me brought by the Bankrupt:

“[5]There was general acknowledgment at the last case conference that there are overlapping issues and likely to be overlapping production and discovery between the Bridging Receiver Actions and two actions commenced by KSV Restructuring Inc. in its capacity as Mr. Ng's trustee-in-bankruptcy (one referred to as the KSV Main Action and the other referred to as the KSV Whitehorse Action). These actions have not yet been served on all defendants and defences have not been delivered, nor have any productions been exchanged. Since the last case conference it has been confirmed that KSV will proceed with the KSV Whitehorse Action (with funding) and that FUNG BC Holdings will take carriage of the KSV Main Action pursuant to a [s. 38 BIA](#) order. Blackrock had originally filed a notice of objection to this s. 38 motion, but that has since been withdrawn. KSV is consenting to this order. The KSV Main Action and KSV Whitehorse Action may be referred to as the KSV Actions. KSV has indicated that other proceedings that it commenced will be abandoned or withdrawn.

[6]Mr. Ng indicated that he continues to have concerns about a conflict with the funding source of the KSV Whitehorse Action (that he says is the subject of a motion for directions that he has pending before Associate Justice Ilchenko returnable on February 12, 2026) and that he has concerns about FUNG BC assuming carriage of the KSV Main Action and intends to bring a motion to stay the [s. 38 BIA](#) order if it is granted.

[7] Counsel provided me with authority from the Court of Appeal that indicates that Mr. Ng (the debtor/defendant) does not have standing to object to the [s. 38 BIA](#) order granting carriage of his trustee's(KSV's) Main Action to FUNG BC Holdings (see *Shaw Estate v. Nicol Island Development Incorporated*, [2009 ONCA 276](#), at para. 44 ). On the strength of that authority, I have signed the s. 38 BIA order in respect of the KSV Main Action today and that order may issue.

[8] If Mr. Ng wishes to bring a stay motion regarding the [s. 38 BIA](#) order granted today, he may serve his notice of motion and supporting affidavit prior to the next scheduled case conference and the

court will consider his request to schedule that motion at or after that next case conference. It is not clear what relief remains to be sought in Mr. Ng's motion returnable on February 12, 2026 before Associate Justice Ilchenko, but counsel participating in that attendance are asked to ensure that AJ Ilchenko is made aware of this case management endorsement and the prior endorsement of January 26, 2026."

[6] As part of the relief granted by Kimmel, J., on February 10, 2026 was a Order under s.38 of the BIA (the "Section 38 Order") in relation to the "KSV Main Action" that is identified in the Section 38 Order as Court File No.: 25-00740468-0000 (the "KSV Main Action"), which is one of the actions challenged by the Bankrupt at some point in his motion materials, where he seeks to have "guardrails" for the conduct of the Action imposed on the Trustee. This action was assigned to FUNG under the Section 38 Order, and whatever other creditors choose to participate.

[7] As was explained by counsel for the Trustee, the Trustee commenced 4 actions that the Bankrupt initially challenged in his motion, in order to preserve limitation periods. Two were discontinued, and the remaining actions are the KSV Main Action, now assigned to FUNG under the terms of the Section 38 Order, and the KSV Whitehorse Action, Court File No. CV-25-00740516-0000 (the "Whitehorse Action") which the Trustee continues to prosecute.

[8] On February 11, 2026, the evening before I was to hear his Motion, the Bankrupt filed additional materials, including an Order uploaded to Case-Centre at 11:30 PM for the following, completely different, relief:

"1. For greater certainty, the issues concerning the resignation of Conrad Krebs as an inspector have been addressed by his resignation and replacement, and no further relief is granted in relation to the appointment or removal of inspectors on this motion.

2. Pursuant to sections 37 and/or 119(2) of the [Bankruptcy and Insolvency Act](#) (the "BIA"), the Trustee shall, within ten (10) days of the date of this Order, deliver and file a report (the "Funding, Control and Conflict Report") addressing the Trustee's prosecution of Court File No. CV-25-00740516-0000 (the "Whitehorse Action"), including:

(a) the identity of all persons or entities funding, indemnifying, or paying the Trustee's legal fees, disbursements, or adverse cost exposure in the Whitehorse Action;

(b) copies of all agreements, side letters, amendments, or understandings relating to such funding or indemnities (including the January 25, 2026 indemnity agreement exhibited to the Watters Affidavit), to be provided unredacted to the Court and the Office of the Superintendent of Bankruptcy (the "OSB"), with any further directions regarding redactions or confidentiality for other parties to be determined by the Court;

(c) a description of any approval, consultation, reporting, or information rights held by any funder (including any right to approve pleadings, steps, strategy, or settlement), and a description of the protocol used by the Trustee and counsel to ensure that litigation instructions and settlement authority come solely from the Trustee;

(d) the Trustee's conflict analysis, including the relationship (if any) between any funder and any defendant (or defendant affiliate) in the Whitehorse Action, and the steps taken to manage or eliminate any real or apparent conflict of interest;

(e) confirmation whether any privileged or confidential litigation strategy information has been provided to any funder or any defendant (or defendant affiliate), and if so, particulars and the steps taken to protect privilege and confidentiality going forward; and

(f) a concise cost-benefit and proportionality analysis ([BIA s. 37\(2\)](#)) identifying expected recovery, material risks (including collection risk and adverse costs risk), and a high-level budget and timeline.

3. Pending delivery of the Funding, Control and Conflict Report and further order of the Court, the Trustee shall take no further step in the Whitehorse Action, except as necessary to

comply with an existing court order, procedural deadline, or to preserve rights.

4. This matter is adjourned to a continuation hearing / case conference on a date to be fixed by the Court (not later than twenty-one (21) days from the date of this Order) to consider further directions arising from the Funding, Control and Conflict Report.

5. The Bankrupt, the Trustee, any inspector, the OSB, and any other person interested shall have liberty to apply on five (5) days' notice (or such other notice as the Court may order) for directions relating to the relief in this Order.

6. The costs of this motion are reserved to the Court hearing the continuation.”

[9] However, in the aide-memoire filed for the Motion after 11PM on February 11, 2026, for the Motion returnable on February 12, 2026 at 10 AM, the Bankrupt stated he was asking for the following relief, which still included relief relating to Conrad Krebs as inspector, despite his draft Order having no such relief:

1. This motion was originally brought to address concerns regarding the integrity of the administration of this estate and the supervision of estate litigation. Since the motion was served, Conrad Krebs resigned as an inspector effective December 1, 2025 and a replacement inspector (Dominique Michaud) was appointed at an inspectors' meeting on the same date (the “Resignation and Replacement”). (Resignation letter dated Dec. 1, 2025; Resolution #1 of the Eleventh Meeting of Inspectors dated Dec. 1, 2025.)

2. In light of the Resignation and Replacement, I do not pursue the relief formerly sought to remove Mr. Krebs or to fill any resulting vacancy (former paragraphs 1 and 2 of my draft order).

3. The motion nonetheless remains live because new evidence demonstrates an operative litigation-funding conflict that goes to the integrity of the bankruptcy administration. In its responding motion record, the Trustee files an indemnity agreement dated January 25, 2026 under which FUNG-BC Holdings Ltd. (“FUNG”) agrees to pay the Trustee's and its counsel's invoices and unconditionally indemnify the Trustee for liabilities (including adverse costs) arising from the Whitehorse Action (CV-25-00740516-0000). The indemnity is executed by “Conrad Krebs” as “Director” of FUNG. (Watters Affidavit, Ex. B.)

4. The Whitehorse Action names, among other defendants, R.C. Morris & Partners LLP, R.C. Morris Capital Management Ltd., and RCM Capital Fund Management Ltd. (the “RCM Defendants”). (Statement of Claim, Whitehorse Action, Ng Affidavit, Ex. D.) Mr. Krebs is publicly identified as a principal of RC Morris and a director of FUNG. (Ng Affidavit, paras. 5-8 and Exs. A-B.) The result is that a principal of a defendant group in the Whitehorse Action is funding and indemnifying the plaintiff Trustee in that same action.

5. This is not a theoretical concern. A funding/indemnity arrangement of this nature can change the adversarial landscape, raise an appearance of compromised independence, and create a real risk that litigation strategy, settlement positions, and access to confidential information may be distorted - whether or not any bad faith is ultimately proven.

6. Accordingly, pursuant to [sections 37 and 119\(2\)](#) of the [Bankruptcy and Insolvency Act](#) (the “BIA”) and the Court's supervisory jurisdiction, I seek targeted directions, not a determination of the merits of any civil claim. I request an order substantially in the form of the attached draft order, which would:

(a) require the Trustee to deliver a short Funding, Control and Conflict Report regarding the Whitehorse Action, and to produce the relevant funding/indemnity agreement(s) and any related side letters or amendments (with confidentiality protections as necessary);(b) pending that report and further order, direct that the Trustee take no further step in the Whitehorse Action except as necessary to comply with a court order or to preserve rights; and

(c) fix a short return date so the Court can give further directions (including, if appropriate, litigation guardrails to ensure independence and transparency).

[10] Having been advised by the Bankrupt, 10 minutes into the hearing of the Motion that he had filed an entirely different set of materials, requesting entirely different relief, 11 hours prior to the time the Motion was scheduled to be heard, the easy answer would have been to simply strike all of the Bankrupt’s materials as not having been filed in accordance with the Commercial List Practice Direction, the Toronto Bankruptcy Court Practice Direction, the *Rules of Civil Procedure* and my Order of December 2, 2026 setting the timetable for the exchange of materials, which they certainly were not, and then proceeding to dealing with the assessment of costs against the Bankrupt.

[11] But that would not have assisted any future proceedings dealing with this Bankrupt before the Bankruptcy Court, or more particularly the Commercial List Proceedings relating to the Bankrupt and Bridging Finance being case managed currently by Kimmel, J.

[12] It was also apparent, and was confirmed by the Bankrupt, that he had used AI to generate his materials, and it was apparent that there could be hallucinatory citations in the materials, which were not hyperlinked appropriately as required, in any event.

[13] Accordingly, with the agreement of all of the half-dozen or so gowned counsel appearing before me, and Harlang, we proceeded with the hearing of the (latest) motion(s) brought by the Bankrupt, without counsel for any other party being able to properly file any responding materials.

[14] When we completed the hearing some 3 hours later, I issued the following endorsement, for the Bankrupt to fix his materials (the “**February 12 Endorsement**”):

“Motion adjourned pending receipt of further written materials from the Bankrupt and costs submissions of the Parties.

In the Bankrupt’s first Book of Authorities, Factum and Aide Memoire are cited the following authorities and paragraph references:

1	<i>Galty B.V. (Re)</i> , 2021 ONSC 1250	Inspectors are fiduciaries; real or perceived conflict can disqualify; no bad faith required (paras. 21–22, 27–28).
2	<i>Rizzo &amp; Rizzo Shoes Ltd. (Bankruptcy of)</i> (1998), 38 O.R. (3d) 280 (C.A.), 1998 CanLII 2673 (ON CA)	Deference to inspectors absent fraud/bad faith; cited in <i>Galty</i> (para. 28).
3	<i>Roberts v. E. Sands &amp; Associates Inc.</i> , 2013 BCSC 902	Court will generally not interfere with trustee/inspectors unless excess of power, fraud, lack of bona fides, or unreasonableness (paras. 40–41).
4	<i>Samji (Re)</i> , 2013 BCSC 2101	Discretionary relief: consider whether benefit outweighs prejudice (para. 20).
5	<i>Residential Warranty Company of Canada Inc. (Bankrupt)</i> , 2006 ABQB 236, aff’d 2006 ABCA 293	Balancing / expedient relief cited in <i>Samji</i> (para. 26).
6	<i>Borowski v. Canada (Attorney General)</i> , [1989] 1 S.C.R. 342	Mootness discretion framework (SCC).

In the Bankrupts Second Book of Authorities, and Aide Memoire are cited the following authorities and paragraph references:

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Aecon Buildings, a Division of Aecon Construction Group Inc. v. Stephenson Engineering Limited, <a href="#">2010 ON CA 898</a>	Ontario Court of Appeal	paras. 13-16
Handley Estate v. DTE Industries Limited, <a href="#">2018 ONCA 324</a>	Ontario Court of Appeal	paras. 39, 45
9354-9186 Québec inc. v. Callidus Capital Corp., <a href="#">2020 SCC 10</a>	Supreme Court of Canada	paras. 65-66

Galty B.V. (Re), 2021 ONSC 7250	Ontario Superior Court of Justice (Commercial List)	paras. 2-3, 24, 28
Indcondo Building Corp. v. Sloan, 2012 ONCA 502	Ontario Court of Appeal	para. 27
W. Hanson Holdings Ltd. v. Wolrige Mahon Ltd. (Trustee of Intercoast Lumber Co.), 1995 CanLII 2479 (BCCA)	British Columbia Court of Appeal	para. 11
Tirecraft Group Inc. (Re), 2009 ABQB 281	Court of King's Bench of Alberta (formerly ABQB)	para. 10
Adler (Re), 2008 CanLII 47017 (ONSC)	Ontario Superior Court of Justice	para. 32

No hyperlinks to the cases and paragraphs cited were present in the Bankrupt's Materials.

Rule 4.06.1 of the [Rules of Civil Procedure](#) state with respect to Facta and Books of Authorities:

### ***Factums***

**4.06.1** (1) A factum that is required to be filed by these rules shall consist of a concise argument stating the facts and law relied on by the party filing the factum. O. Reg. 300/24, s. 3.

### ***Citations***

(2) Each citation to an authority in a factum must include a reference to the relevant paragraph, provision or page number of the authority. O. Reg. 300/24, s. 3.

(2.1) A factum shall include a statement signed by the party's lawyer, or on the lawyer's behalf by someone the lawyer has specifically authorized, certifying that the person signing the statement is satisfied as to the authenticity of every authority cited in the factum. O. Reg. 384/24, s. 1.

(2.2) An authority that is published on a government website or otherwise by a government printer, on the Canadian Legal Information Institute website (CanLII), on a court's website or by a commercial publisher of court decisions is presumed to be authentic for the purposes of subrule (2.1), absent evidence to the contrary. O. Reg. 384/24, s. 1.

### ***If Filed Electronically***

(3) A factum that is filed electronically must meet the following requirements:

1. The factum must include bookmarks, as appropriate, for each section.

2. Each citation to an authority that is published on a website referred to in subrule 4.05.3 (7.1) must be hyperlinked to the published authority or, if possible, to the relevant provision or portion of the published authority. O. Reg. 300/24, s. 3.

### ***When Book of Authorities is Also Required***

(4) Except in a proceeding in the Court of Appeal, if a factum is filed electronically and contains one or more cited authorities that cannot be hyperlinked in accordance with subrule (3), or is filed in paper format, a book of authorities that meets the requirements of subrule (5) shall be served and filed together with the factum. O. Reg. 300/24, s. 3.

### ***Contents***

(5) Unless the court orders otherwise, a book of authorities shall contain the following information and documents:

1. A table of contents listing each authority cited in the factum.

2. If the book of authorities is being filed in electronic format,

i. for each cited authority that is published on a website referred to in subrule 4.05.3 (7.1), a hyperlink from the table of contents to that document, and

ii. for each cited authority that is not published on a website referred to in subrule 4.05.3 (7.1), a copy of that authority with a hyperlink to it from the table of contents.

3. If the book of authorities is being filed in paper format, a copy of each cited authority. O. Reg. 300/24, s. 3.

The Bankrupt filed the Second Book of Authorities, Draft Order and Aide-Memoire for today's motions was filed late last night, not filed through the Portal, for relief completely different from the relief initially sought.

On my review of the authorities, it became apparent that at least that the following case appearing in both sets of materials:

*Galty B.V. (Re)*, 2021 ONSC 7250 Ontario Superior Court of Justice (Commercial List) paras. 2-3, 24, 28

did not exist in CanLii at that citation, with the two “Galty” decisions in CanLii being my decision *Re Galty B.V.*, [2024 ONSC 57 \(CanLII\)](#) or the decision of AJ Abrams *Seabrook v. Galty*, [2018 ONSC 7306](#).

There is also no additional “Galty” decision in Westlaw Edge Canada.

Penny, J. in a 2021 endorsement in *Galty* cited at para 22 within my decision *Galty B.V.*, [2024 ONSC 57 \(CanLII\)](#), did make a decision allowing a Trustee to disregard the vote of a conflicted inspector, it does not appear that the Decision of Penny, J. is reported in CanLii, and cannot be the decision cited in the Books of Authorities, and the paragraph numbers in 2021 Penny, J. *Galty* decision and my 2025 *Galty* decision are still different.

On questioning by me, the Bankrupt admitted using AI to generate his materials, and that he did not actually read the cases and paragraph references cited in his materials for the propositions he put forward, but relied on AI to do it for him.

As stated by Myers, J. in *Ko v. Li*, [2025 ONSC 2766](#):

[14] This occurrence seems similar to cases in which people have had factums drafted by generative artificial intelligence applications (like ChatGPT). Some of these applications have been found to sometimes create fake legal citations that have been dubbed “hallucinations.” It appears that Ms. Lee’s factum may have been created by AI and that before filing the factum and relying on it in court, she might not have checked to make sure the cases were real or supported the propositions of law which she submitted to the court in writing and then again orally.

[15] All lawyers have duties to the court, to their clients, and to the administration of justice.

[16] It is the lawyer’s duty to faithfully represent the law to the court.

[17] It is the lawyer’s duty not to fabricate case precedents and not to mis-cite cases for propositions that they do not support.

[18] It is the lawyer’s duty to use technology, conduct legal research, and prepare court documents competently.

[19] It is the lawyer’s duty to supervise staff and review material prepared for her signature.

[20] It is the lawyer’s duty to ensure human review of materials prepared by non-human technology such as generative artificial intelligence.

[21] It should go without saying that it is the lawyer’s duty to read cases before submitting them to a court as precedential authorities. At its barest minimum, it is the lawyer’s duty not to submit case authorities that do not exist or that stand for the opposite of the lawyer’s submission.

[22] It is the litigation lawyer’s most fundamental duty not to mislead the court.

[23] In *Zhang v Chen*, [2024 BCSC 285 \(CanLII\)](#) Masuhara J. dealt with a similar issue. Masuhara J. held:

Citing fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice.

[24] In that case, the lawyer caught her mistake before the hearing, apologized to all, and withdrew her factum. Here, counsel actively relied on two of the suspicious cases as part of her submissions in open court. In the few days that have past since the oral hearing, I have not received any communication from Ms. Lee explaining, correcting her factum, or otherwise acknowledging an issue.

[25] I do not know the full facts yet. There are cases that are not available on the CanLII.org website. But I have also determined that the three unknown cases discussed above are also not found on any of Westlaw, Quicklaw, or Google. Perhaps wrong hyperlinks were given for cases. Perhaps AI was not used to create the factum and these are not examples of hallucinations. Perhaps counsel misunderstood Johnson.

[26] The court must quickly and firmly make clear that, regardless of technology, lawyers cannot rely on non-existent authorities or cases that say the opposite of what is submitted.

[27] With the sudden advent of AI, this has quickly become a very important issue.

[28] In the US, several cases have been reported in which courts have grappled with issues arising from lawyer's brief containing AI hallucinations. For a very recent case discussing the problem thoroughly, see: *Benjamin v Costco Wholesale Corp.*, No. 2:24-cv-7399, 2025 US Dist. LEXIS 78895 (E.D.N.Y Apr. 24, 2025)

[29] In *R. v. Cohn*, [1984 CanLII 43 \(ON CA\)](#), Goodman JA defined a contempt in the face of the court:

A contempt in the face of the court may be broadly described as any word spoken or act done in, or in the precincts of, the court which obstructs or interferes with the due administration of justice or is calculated so to do.

[30] Ms. Lee may have committed grave breaches of her duties that may amount to contempt in the face of the court.”

In *X.L. v. Z.L. et al*, [2025 ONSC 5880 \(CanLII\)](#) D.A. Jarvis, J. found that the same principles applied to self represented Parties before the Court:

“[91] Before dealing with the substance of the parties’ competing positions, a serious concern involving the use of artificial intelligence requires comment. The parties made written and oral closing submissions. Upon the court’s later review of the respondent’s authorities (not Diquan), it became obvious that Ms. Shek and Mr. Yip (and possibly the husband) used artificial intelligence and cited either fake cases or hyperlinked to cases which did not stand, even remotely, for the propositions submitted.

...

[92] These are but a few examples. All the authorities submitted by Ms. Shek and Mr. Yip were AI hallucinations.

[93] In *Zhang v. Chen*[46], Masuhara J. held:

[29] Citing fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice.

[94] In *Ko v. Li*[47], Myers J. of this court echoed Masuhara J.’s alarm about AI’s potential to mislead a court. Zhang and Ko dealt with lawyers. Even though Ms. Shek and Mr. Yip were self-represented parties when their closing submissions in writing were submitted and later argued, and they are not bound by any professional duty to the court, the risk to the administration of justice is no different.[48] Of concern too is that the written submissions of the husband, Ms. Shek and Mr. Yip all

bore the hallmarks of having been professionally prepared by a third party or parties having some kind of legal training. While there is nothing improper about a litigant choosing to represent themselves at a trial and relying upon off-the-record legal or unbundled legal assistance, the seriousness of making false representations to the court cannot be overlooked. Consequently, no reliance will be made on any of the authorities cited by either Ms. Shek or Mr. Yip for the legal propositions tendered by them. Their reliance on AI generated hallucinations will be addressed when considering costs.”

Mr. Rosenbluth on behalf of the Trustee mentioned that there may be several other hallucinatory AI citations in the Bankrupt’s Materials.

It is not Mr. Rosenbluth’s, or especially my job, to determine which of the cases cited and propositions cited by the Bankrupt are real or fake, and which I can or cannot rely on in my Reasons.

**Bankrupt SHALL upload to Caselines by 4:30PM EST on February 17 2026 full and complete copies of EACH AND EVERY ONE of the cases cited in all of his materials, with each of the cited paragraphs highlighted.**

**If the cases or cited paragraph do not exist then the Bankrupt to provide an admission that it does not exist.**

**If the case exists but AI provided an incorrect paragraph citation Bankrupt to provide highlighting of the actual paragraphs he is relying on.**

**As the Bankrupt has not filed his latest materials in the Bankruptcy Court Portal, and the relief sought is entirely different from his previously sought relief, Bankrupt to file all of the latest materials filed through the Portal and SHALL pay the required fees for a new motion, as the motion before me today with respect to the Whitehorse Action was entirely different from the Motion he previously brought dealing with the Main Action.**

Costs submissions of all parties other than the Bankrupt to be filed by February 24<sup>th</sup>, not exceeding 3 pages, which pages will not include the Bill of Costs.

Responding costs submissions by the Bankrupt to be filed by 4:30 PM on February 26<sup>th</sup>.

I will endeavour to provide my Reasons prior to the Case Conference before Kimmel, J. on March 6.”

I will use the *X.L. v. Z.L. et al*, [2025 ONSC 5880 \(CanLII\)](#) (“**XL**”) and *Ko v. Li*, [2025 ONSC 2766](#) (“**Ko**”) in these reasons as well.

[15] The Trustee uploaded its Costs Submissions and the Bankrupt uploaded the case law required, which I will deal with subsequently.

[16] On February 13, 2026 the Bankrupt purported to file in the Bankruptcy Court Portal a “Notice of Abandonment of Motion”, for the Motion I heard on the February 12, 2026 which simply stated:

“The bankrupt abandon’s [sic] this motion”

[17] The Bankrupt was adjudicated Bankrupt by the Bankruptcy Order of McEwan, J. dated April 5, 2023 (the “**Bankruptcy Order**”)(reasons at *Bankruptcy of Gary Man Kin Ng*, 2023 ONSC 2250 (CanLII)).

[18] Therefore for the purposes of this Bankruptcy, claims are provable in the Bankruptcy Estate to April 5<sup>th</sup>, 2023 (the “**Date of Bankruptcy**”) which is relevant to the relief sought on this Motion and the costs that are being requested to be awarded in favour of the Trustee against the Bankrupt.

[19] On March 25, 2024 Cavanagh, J. refused the discharge of the Bankrupt (the “**Refused Discharge Order**”), which had been opposed by the Trustee and creditors, making the following findings of Fact and Law relevant to this Motion (the “**Refused Discharge Reasons**”):

“[20] The Trustee reports that the total aggregate value of Mr. Ng’s assets realized by the Trustee is approximately \$131,000 which primarily includes: (a) proceeds from the realization of an automobile in the total aggregate amount of \$119,000; (b) proceeds from an auction of certain vintage wines in the total aggregate amount of \$9,200; (c) unused retainer funds held in the trust account of Mr. Ng’s legal counsel in the total aggregate amount of \$2,151; and (d) the balance of Mr. Ng’s trading accounts in the total aggregate amount of \$480.

[21] The Trustee reports its view that the remaining assets of Mr. Ng’s estate have no material realizable value net of exemptions. The Trustee understands from discussions with Mr. Ng that he remains unemployed and has no surplus income.

[22] In his Reasons for Decision dated April 5, 2023, McEwen J. found that Mr. Ng was liable to the Applicant on his guarantee of a loan from Bridging Finance Inc. (“BFI”) in the amount of approximately \$21 million, and that the guarantee was limited to the principal amount of \$ 4 million. In so finding, McEwen J. rejected the position advanced by Mr. Ng that his liability on this guarantee was the subject of a settlement agreement and covenant not to sue by which this guarantee obligation was settled.

[23] McEwen J. also found that Mr. Ng is indebted to IIROC in respect of the financial penalty imposed on him by IIROC on May 27, 2022 for having “engaged in fraudulent conduct with respect to loan financing” and that he “failed to cooperate with Enforcement Staff who are conducting an investigation”. In his decision, McEwen J. wrote that in November 2020, IIROC initiated proceedings against Mr. Ng. Mr. Ng declined to participate. Ultimately, in May 2022, IIROC permanently banned Mr. Ng from the investment industry and levelled the maximum fine of \$5 million against him. IIROC also ordered that he pay costs in the amount of \$194,000.

[24] These claims have been admitted by the Trustee and total approximately \$9.2 million. The Trustee has received, but not yet admitted, Proofs of Claim from the other primary creditors advancing unsecured claims in a total aggregate amount exceeding \$340 million.

[25] Taking into account only the admitted claims, Mr. Ng’s total assets represent approximately 1.4% of his unsecured liabilities.

[26] At the discharge hearing, the Mr. Ng testified that he cannot be justly held responsible for the fact that his assets do not have a value equal to fifty cents on the dollar on the amount of his unsecured liabilities as accepted by the Trustee.

[27] Mr. Ng testified that he was the victim of a fraud by the principals of BFI and that the failure of BFI was caused by its principals who engaged in fraudulent activities before he was introduced to them. Mr. Ng testified that he relied on an outside advisor when he became involved with BFI and that it is unjust for him to be blamed for things in respect of which he had no involvement. He testified that he operated his companies diligently and profitably.

[28] With respect to the IIROC debt, Mr. Ng testified that he regarded the process of the IIROC hearing panel to be unfair and unjust and, on the advice of counsel, he declined to participate at the hearing. He submits that the IIROC debt (imposition of a fine and costs) is not restitutionary and that, in the circumstances, he should not be held responsible for this debt.

[29] Mr. Ng's statements given in his testimony that he is the victim of a fraud by others and that he cannot be held responsible for the guarantee debt or the IIROC debt are declaratory statements to which I give little evidentiary weight.

[30] Although Mr. Ng testified that he did not regard the processes followed by IIROC to be fair and just, and that he declined to participate in the IIROC proceedings on advice from counsel, he has not proven that this decision, which led to the IIROC penalty and imposition of a costs order, is one for which he cannot be held responsible.

[31] Mr. Ng has also failed to show that the guarantee debt or the IIROC debt are debts for which he cannot justly be held responsible.

[32] I am satisfied that the Trustee has proven the fact in s. 173(1)(a) of the BIA.

...

#### Conclusion

[53] The Trustee has proven the fact in s. 173(1)(a) of the BIA, that Mr. Ng's assets are not of a value equal to fifty cents on the dollar on the amount of his unsecured liabilities and Mr. Ng has failed to satisfy me that this fact has arisen from circumstances for which he cannot justly be held responsible.

[54] In addition, I accept that the Trustee's investigation into the affairs of Mr. Ng should be allowed to proceed in order for the Trustee to determine whether Mr. Ng committed any bankruptcy offence under the BIA. There are serious allegations of fraud made against Mr. Ng by his primary creditors and the Trustee reasonably needs more time to complete its investigation.

[55] When I consider the interests of Mr. Ng, those of his creditors and the public, and the integrity of the bankruptcy system, and given the mandatory direction in s. 172(2) of the BIA and proof of the fact mentioned in s. 173(1)(a) of the BIA, I conclude that the interests of the creditors of Mr. Ng, and those of the public, would not be served by a discharge of Mr. Ng from bankruptcy before the Trustee's investigation is completed. The automatic discharge of Mr. Ng is refused.

#### Disposition

[56] For these reasons, I make the following order:

- a. The automatic discharge of Mr. Ng is refused while the Trustee's investigation (which it believes will take at least twelve months to complete) proceeds.
- b. Mr. Ng is not permitted to apply for a discharge until after March 1, 2025, while the investigation is ongoing.
- c. The Trustee shall deliver a report every six months (or more frequently if the Trustee deems it appropriate) to this Court, Mr. Ng, the OSB, and creditors of the estate of Mr. Ng."

[20] The Bankrupt brought a Motion to apply for discharge in the Spring of 2025. On July 22, 2025, at a second discharge hearing, Cavanagh, J. a Conditional Discharge Order (the "**Conditional Discharge Order**") that included a payment condition that the Bankrupt pay 50% of his then-admitted claims, in the amount of \$13,613,167.

[21] Cavanagh, J. made the following findings of Fact and Law relevant to this Motion (the "**Conditional Discharge Reasons**"):

“[29] The Trustee seeks a condition by which Mr. Ng pays an amount equal to 50% of the value of admitted claims into his bankruptcy estate to be distributed to his creditors. The proposed payment

amount for this condition is \$13,613,167 which is 50% of the aggregate value of all admitted claims as summarized at p. 6 of the Fourth Report.

[30] The amount of the payment condition sought by the Trustee is very significant. In the circumstances, however, I accept the Trustee's report that this condition is appropriate. The following factors support the requested payment condition:

- a. Mr. Ng's bankruptcy is unusual based on the significant amounts of the claims filed in his bankruptcy.
- b. The requested payment condition reflects the quantum and nature of the significant debts in Mr. Ng's bankruptcy. This is supported by a decision dated May 6, 2025 lifting the stay of proceedings for fraud actions against Mr. Ng. In that decision, Osborne J. noted that the plaintiff in each action alleges that Mr. Ng misrepresented the extent of the assets that he and one of the entities he controlled, 889 Manitoba, could pledge as security to obtain loans from Bridging, and that the security held by Bridging either did not exist or had been grossly overstated. Osborne J. held that he was satisfied that the allegations of the Bridging Receiver and Blackrock against Mr. Ng are supported by key contextual facts on the record including the finding by the IIROC Hearing Panel that Mr. Ng has engaged in fraudulent misconduct. Osborne J. noted that he was not making any determination on the merits of the allegations in the fraud actions, but he was satisfied that the actions were not frivolous, vexatious, or have little chance of success.
- c. I am not satisfied that Mr. Ng is an honest but unfortunate debtor whose bankruptcy was caused by an intervening event and who is rightfully entitled to a discharge from his debts.
- d. The proposed payment condition will not include any portion of the \$326,473,802.68 contingent/unliquidated claims filed in the bankruptcy. These claims include alleged fraud claims which, if proven, are unlikely to be released on a discharge and, therefore, it would be inappropriate to include these claims as part of a payment condition.
- e. Mr. Ng has not contributed surplus income to the estate. The recoveries of the estate currently amount to approximately \$131,000 from the sale of Mr. Ng's car and wine collection and other small recoveries. Mr. Ng has shown himself to have been a successful businessman in the past, although he has remained unemployed during his bankruptcy. I accept that the bankruptcy has played a negative factor in his ability to find employment. The requested conditional discharge will provide Mr. Ng with time to rehabilitate and re-establish his income stream.
- f. One allegation against Mr. Ng, which he has denied, is that he represented to his creditors that his net worth was close to or in excess of \$100 million, including providing financial information indicating that he had accounts at a financial institution with a balance of \$90.4 million and a personal financial statement showing assets of \$159,655,000. The Trustee reports that there is significant uncertainty surrounding Mr. Ng's net worth. The Trustee has been able to identify only \$11.2 million in suspected reviewable transactions. The Trustee reports that adding to the uncertainty is an alleged dividend payment in the amount of \$10 million made by Bridging to Mr. Ng (through one of his entities), the proceeds of which have not been found. I accept the Trustee's view that this is a relevant factor when determining what conditions should be imposed on Mr. Ng's bankruptcy.
- g. The significant amount of the payment condition reflects the amount and nature of Mr. Ng's debts. It will take some time for him to fulfill this condition. Mr. Ng may be unable to fulfill the payment condition. [Section 172\(3\)](#) of the [BIA](#) provides that "[w]here at any time after the expiration of one year after the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of the order, the court may modify the terms of the order or of any substituted order, in such manner and on such conditions as it may think fit".

...

[41] For these reasons, I grant Mr. Ng's discharge subject to the following conditions:

- a. Mr. Ng shall pay \$13,613,167 into the estate, being 50% of the unsecured admitted claims against him;
- b. Mr. Ng shall answer the unfulfilled undertakings and refusal given during his examination;
- c. Until all other conditions are satisfied, Mr. Ng shall report to the Trustee on a monthly basis on his earnings and expenses, his efforts to seek employment and generate surplus income, and on such other matters as the Trustee may reasonably request from time to time."

[22] In the Fourth Report of the Trustee dated May 30, 2025 (the "**Fourth Report**"), relied upon by Cavanagh, J. for his Conditional Discharge Reasons, the admitted claims as at that date were \$27,226,334 with additional contingent/unliquidated claims against the Bankrupt having been filed totalling \$326,473,803, or approximately 1/3 of a Billion \$CAD.

[23] Harlang confirmed at the hearing before me that the approximate amount of \$130,000 in realizations has not changed since the Fourth Report, the Bankrupt has paid no amounts to the Estate on account of Surplus income, and no payments have been made under the terms of the Discharge Order of Cavanagh, J. The monies collected in the estate have been consumed to date by professional fees.

[24] On two occasions Osborne, J. (as he then was) heard and granted Orders lifting the stay of proceedings under s.69.3 of the BIA against the Bankrupt, both of which the Bankrupt opposed.

[25] In reasons released on February 25, 2025 (*Bankruptcy of Gary Ng*, 2025 ONSC 2813 (CanLII)) Osborne, J. (as he then was) made the following findings of Fact and Law relevant to this Motion (the "**Receiver and Blackrock Lift Stay Reasons**"):

"[48] Ng makes various allegations against the Receiver in his factum filed on the motion in that action, including that:

- a. the Receiver has been an inspector in his bankruptcy and "knows very well there are no funds in the estate";
- b. the Receiver has a fiduciary duty to mitigate costs and risk, both of which are increased if the stay were lifted;
- c. the Receiver would not face any material prejudice if the stay were not lifted;
- d. the Receiver is "merely acting in a performative manner which seems to be self-serving";
- e. the Receiver "stands to gain hundreds of thousands of dollars of fees charged to the [Bridging] estate";
- f. the motion seeks to "supersede" the fact that Ng would otherwise soon be eligible to apply for a discharge;
- g. the Receiver made "callous use of the word "fraud"". "Adding fraud to a claim because you ostensibly think that it would make it not be dischargeable from a bankruptcy is lazy and suspicious";
- h. a summary procedure is appropriate; and
- i. the Receiver "is failing to respect the efficiency and time of this Court by introducing last-minute, incoherent, and wild and imaginary accusations without evidence that do not result in any financial benefit for the BFI estate".

[49] Ng goes on to submit that he has been open and direct about his dealings with the owners and principals of Bridging. In particular, he plainly admitted, on December 16, 2024, during an examination conducted by the Trustee, to paying bribes to David and Natasha Sharpe, the former CEO and CIO of Bridging respectively, after the Sharpes required bribes in exchange for overlooking potential due diligence requirements for loans to Ng's companies. Ng's own sworn evidence was that he paid to each of David and Natasha Sharpe the amount of \$500,000, in addition to which he made additional transfers of funds or items to them which he described as follows: "yeah, a couple hundred grand here and there. Gifts, like, a gold Rolex that David wanted. Natasha got a diamond necklace that she wanted."

[50] Ng submits in his factum filed on these motions, and reiterated in his submissions to the Court, that "there is no specific law that states it is illegal to give the principal and owners of a private organization a bribe". "Canadian anti-corruption laws only [apply] to government officials and the BFI owners were clearly not government officials." "The fact that Mr. Ng was open and honest about providing a bribe to the principals of Bridging shows that no fraud occurred on Mr. Ng's part".

[51] In all, I cannot accept Ng's submission that either action is frivolous, vexatious or has little chance of success, or that, as he submits that "even if the Receiver wins, there is no money to be had anyways. This is a huge waste of time and money that could otherwise go to the stakeholders of BFI". Nor do I accept his submission that I ought to ignore the findings of the IIROC Hearing Panel since it is "just a private members' club".

[52] To state the obvious, I am not making any determination on the merits of the allegations in either action. I am, however, satisfied for the purposes of these motions that the actions are not frivolous, vexatious or have little chance of success at this stage."

[26] The IIROC decision referred to by Osborne, J. (as he then was) is *Re Ng*, 2022 IIROC 15 (CanLII) (the "***IIROC Ng Decision***"), where the Panel imposed the following penalty, which is an admitted claim in the Bankruptcy:

¶ 90 Following the submissions of IIROC Senior Enforcement Counsel, the Hearing Panel concluded that the fine of \$5,000,000, as being the maximum fine permitted by the Consolidated Rules, was an appropriate penalty.

¶ 91 Such a penalty reflects the Hearing Panel's belief that its imposition constitutes an appropriate level of sanction to provide both specific and general deterrence and to send a strong message to the industry that the fraudulent misconduct of the Respondent is condemned in the strongest terms.

¶ 92 Similarly, the Respondent's refusal to participate in any manner in this hearing process reflects his disdain for the industry in which he participated in a senior role and clearly justifies his permanent ban and the award of costs being made against him.

¶ 93 The Hearing Panel therefore orders that pursuant to Rule 8210 of the Consolidated Rules:

- the maximum fine of \$5,000,000 be imposed on the Respondent, and
- a permanent bar from registration in any capacity be imposed on the Respondent.

¶ 94 The Hearing Panel further orders that pursuant to Rule 8214 of the Consolidated Rules the Respondent pay to IIROC costs in the amount of \$194,000."

[27] On October 17, 2025 Osborne, J. (as he then was) issued an Endorsement granting a Lift Stay Order on motions brought by the Coco Parties and KPMG and Serena King-Sum Lee (the "***Coco Lift Stay Endorsement***"). The Bankrupt opposed the motions brought by KPMG and the Coco Parties. Osborne, J. (as he then was), granted leave applying the same reasons as he gave in the Receiver and Blackrock Lift Stay Reasons. Notably, the Coco Parties requested costs against the Bankrupt, which were granted:

"25. These motions ought not to have been necessary. Neither KPMG nor Lee seeks costs. The Coco Parties seek costs on a partial indemnity scale in the total amount, inclusive of disbursements and HST, of \$23,288.10.

26. In my view, and exercising my discretion under [section 131](#) of the [Courts of Justice Act](#), and having considered the factors set out in rule 57, and finally having reviewed the Costs Outline filed, no materials having been filed by Ng, I am satisfied that the partial indemnity amount sought is fair, reasonable, within the reasonable expectation of Ng, and is appropriate in the circumstances.”

[28] In another decision of note at an August 5, 25 Case Conference, Osborne, J. (as he then was) refused relief sought by the Bankrupt in relation to these motions to obtain the Lift Stay orders:

“22. Ng submits that his claims ought to be permitted to proceed based on his “understanding that once a stay is lifted, the “pause” on a lawsuit is removed and all the rights of both the plaintiff and the defendants are restored”. As a result, he submits that once the stay was lifted, he should have the right to not only defend the action, but also assert counterclaims and third Party Claims.

23. In addition, he submits that, as he is being accused of fraud, which would be “non-dischargeable even after a bankruptcy if judgment is found against me”, not allowing him to pursue third parties now would be prejudicial since if found liable, he would be emerging from bankruptcy with massive debts, but no recourse against parties that were clearly involved.

24. Ng relies upon the decision of the Court of Appeal in *Luckevich*, and perhaps most fundamentally, Ng submits that “since the stay has been lifted, I no longer need to seek further permission from the Trustee or the court to defend myself or exercise rights typically afforded to a defendant in any claim.” Accordingly, he seeks today “Direction on timing, validation of service and when statements of defence from various party should be submitted by.”

25. Put differently, Ng submits that since previous orders were granted, lifting the stay of proceedings pursuant to section 69.4 of the BIA and allowing actions against him to proceed, the effect of those orders was to lift the stay for all purposes in respect of all actions or claims against - and also asserted by - him.

26. Ng further asserts that one of the reasons, if not, the principal reason, that the Trustee will not assert the claims he now seeks to bring is because “some of the inspectors were directly involved with the Bridging scandal ... . They are declining to proceed or endorse my efforts based on consultation with the inspectors... This seems highly biased as three out of the four inspectors are either directly accused of fraud and contribution or represent a firm that is being accused of fraud or contribution.”

27. Ng further submits that the limitation period argument raised by the Coco Parties cannot succeed, since at the relevant time, he was bankrupt and could take no action until the stay was lifted on May 7, 2025.

28. Ng candidly concedes that the conditions applicable to his discharge have not been met. In particular, he has made no payment whatsoever.

29. In the circumstances, and having heard from all parties and reviewed all materials, I made the following directions.

30. First, given that this is a case conference, and being mindful of the recent commentary from the Court of Appeal with respect to the jurisdiction of a judge presiding over a case conference, as well as being mindful of the fact that Ng is self represented here, I declined to make any order today dismissing Ng’s counterclaim and third-party claims.

31. I did, however, and on my own initiative, invoke the operation of rule 2.1.01 given my view, as I advised the parties, that the claims on their face appeared to be frivolous or vexatious or otherwise an abuse of process.

32. Simply put, and as I explained to Ng, in my view, the claims he has purported to assert are claims vested in the Trustee and which remain vested in the Trustee until his discharge is effective, for all of the reasons set out above. Since that discharge is not effective because the conditions have not been satisfied, Ng has, in my view, no legal capacity to bring the claims.

33. Accordingly, I invoked rule 2.1.01. That rule provides that the court may make a determination (i.e., to stay or dismiss a proceeding), subject to the procedures set out in the rule on the basis of written submissions, unless otherwise ordered.

34. Among other things, the rule provides that Ng is to be given notice that the Court is considering making the order, and he has the right, pursuant to rule 2.1.01(3)(3.) to make written submissions of no more than 10 pages in length, responding to the notice. If Ng elects to make such submissions, other parties have the right to make responding submissions within 10 days thereafter.

35. At the hearing today, I told Ng that he had that right and inquired as to whether he wished to exercise that right, given that he had made both written and oral submissions today and that I expected they largely set out his position as to why his proposed claims ought to be permitted to proceed. Ng, however, advised the Court that he wished to exercise his right provided in rule 2.1.01 to make written submissions within 15 days, and I permitted him to do so.

36. To be clear, the notice contemplated in rule 2.1.01 was given to Ng today, both orally in Court, and by this Endorsement. Accordingly, his 15 day period begins to run immediately. Ng understands this.

37. The balance of the timelines and procedures set out in rule 2.1.01 will apply thereafter, and as contemplated in the rule, I will make a determination on the basis of the written submissions.

38. Given the date or dates on which Ng delivered his claims, it is arguable that defences will be due before the initial 15 day period expires. To be very clear, and for greater certainty, while the 2.1.01 process is underway, no defences to the Ng counterclaim or third-party claims need to be delivered, and no default steps will be taken with respect thereto. Obviously, in light of the above, I am not prepared to make any direction today as requested by Ng requiring defences to be delivered.

39. Second, and for the same reasons expressed above (i.e., today's hearing was a case conference, not a formal motion, and Ng is self represented), I was not prepared to grant lift stay orders pursuant to [section 69.4](#) of the [BIA](#), as requested by the Coco Parties, Serena King-Sum and KPMG. Those orders should be sought on the basis of formal motion materials. Such motions may be scheduled before me through the Commercial List office and should be brought on notice to Ng, and the other parties.

40. If any relief is to be sought pursuant to [section 37](#) of the [BIA](#), I will address that, at the same time as the lift stay motions, assuming materials have been properly served and filed.”

[29] All underlined text in these reasons is emphasis added by me for these reasons.

[30] The Court has considered all materials and arguments raised by the parties. The Court has also read all of the materials filed by all of the parties on the Motion(s) including all of the Materials filed (belatedly) by the Bankrupt in response to my February 12 Endorsement. Any failure by the Court to refer in these reasons to specific arguments and materials raised does not reflect that the Court has not considered those arguments.

## LAW AND ANALYSIS

### **Preliminary Issue: Susceptibility of Bankrupt to Costs awards made Post Bankruptcy:**

[31] At the hearing of this Motion(s) it appeared to me that the Bankrupt was labouring under the misapprehension that he could bring motions while a Bankrupt while benefitting from total impunity from costs awards if those motions go poorly, such as this motion did.

[32] When I questioned that premise the Bankrupt exclaimed “Even though I am an undischarged Bankrupt?”

[33] I proceeded to disabuse the Bankrupt of that misapprehension, explaining to the Bankrupt that his Bankruptcy compromises “claims provable in Bankruptcy” from the date of his Bankruptcy Order, April 5,

2023, BACKWARDS to deal with all “claims provable” that existed on that date, but did not compromise liabilities incurred by a Bankrupt AFTER that date, including all costs awards incurred by the Bankrupt AFTER April 5, 2023.

[34] Specifically, s.2 of the BIA states:

“claim provable in bankruptcy, provable claim or claim provable includes any claim or liability provable in proceedings under this Act by a creditor”

[35] S.121(1) states:

Claims provable

121 (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt’s discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

[36] Costs awards incurred AFTER the Date of Bankruptcy, for proceedings participated in by the Bankrupt AFTER the Date of Bankruptcy, are specifically NOT included within the definition of “Claim Provable” under s.2 and 121(1) of the BIA.

[37] Under the provisions of s.178 (2) (subject to the claims that are not dischargeable that are enumerated in s.178(1)):

“Claims released

(2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.”

[38] As stated by Hoy, J. (as she then was) in *Safire Infrastructure Inc. (Re)*, 2009 CanLII 66384, 2009 CarswellOnt 7440, 183 A.C.W.S. (3d) 373, 61 C.B.R. (5th) 225 (ON SC) (“*Safire Costs*”):

“[20] I accept, however, that the costs award survives the discharge because it is discretionary in nature, arose after the date of bankruptcy and is not provable under section 121 of the BIA. Section 121 of the BIA provides that,

“All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or which the bankrupt may become subject before the bankrupt’s discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceeding under this Act.”

Counsel for the respondents did not challenge Mr. Tibollo’s assertion that a costs award made after bankruptcy survives the bankruptcy and did not refer me to any authorities contrary to those relied on by Mr. Tibollo. Moreover, the costs awarded are in respect of a proceeding with respect to the bankruptcy process itself and not with respect to an obligation incurred, or a proceeding commenced, before the bankruptcy.

...

[23] In my view, \$13,500, including disbursements and GST, is a fair and reasonable amount for Safire, Mr. Tedesco and Mr. Anema to pay in respect of the appeal. They shall be jointly and severally liable for the costs award, which shall survive their respective discharges.”

[39] *Safire Costs* was followed, and expanded upon in the Bankruptcy Proposal context by R.S. Veale J. of the Supreme Court of Yukon in *Ross v. Ross Mining Ltd.* 2012 CarswellYukon 128, 2012 YKSC 102, [2012] Y.J. No. 162, 226 A.C.W.S. (3d) 336, 97 C.B.R. (5th) 241 (“*Ross*”):

“33 I note that the cases just cited are consistent with the "Claims Provable" commentary in Houlden, Morawetz and Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed., looseleaf (Toronto: Carswell, 2009):

(b) Defendant's Costs

If an unsuccessful action is brought by a debtor and he or she is ordered to pay costs or if a judgment is given against him or her before he or she becomes bankrupt, the costs are a provable claim. On the other hand, if no judgment is given against him or her and no order is made for payment of costs until after he or she becomes bankrupt, costs are not a provable debt. In such a case, there is no provable debt to which the costs are incident and there is no liability to pay by reason of any obligation incurred by the bankrupt before bankruptcy, nor are the costs a contingent liability to which the debtor can be said to be subject at the date of his or her bankruptcy: *Re British Gold Fields of West Africa Ltd.*, [[1899] 2 Ch 7]. (emphasis added)

34 The recent Supreme Court of Canada decision in *AbitibiBowater Inc., Re*, 2012 SCC 67 (S.C.C.), confirms this principle, albeit in a different context. In that case, a Companies' Creditors Arrangement Act Court judge concluded that the filing of a claim by the Environmental Protection Agency before the date of bankruptcy should be pursued as a provable claim. This conclusion was upheld by the Supreme Court of Canada. The general principles were set out in para. 26 of that judgment as follows:

These provisions highlight three requirements that are relevant to the case at bar. First, there must be a debt, a liability or an obligation to a creditor. Second, the debt, liability or obligation must be incurred before the debtor becomes bankrupt. Third, it must be possible to attach a monetary value to the debt, liability or obligation. ...

35 In my view, the test described in *AbitibiBowater Inc.*, Re case is similar to what has been outlined in caselaw considering s. 121(1) of the BIA.”

[40] *Ross* was followed by in Ontario by E.M. Morgan, J. in *Jema International Food Products Inc. v. Scholle Canada Ltd.* 2013 CarswellOnt 5801, 2013 ONSC 2785, 228 A.C.W.S. (3d) 60, 5 C.B.R. (6th) 273 (“*Jema*”) with respect to costs submissions made at a trial involving a plaintiff that had filed a proposal and whether the Stay of proceedings under s.69(1) of the BIA applied to the enforcement of the costs award against the Plaintiff. E.M. Morgan, J. stated:

“7 The counterclaim was stayed under section 69(1)(a) of the BIA, which stays any existing liability or contingent liability against a debtor once the debtor has filed a Notice of Intention to make a proposal to its creditors. In *Chaloux v. Kingston Fairways Golf Course* (2004), 2004 CanLII 25162 (ON SC), 48 C.B.R. (4th) 237 (Ont. S.C.J.), this court held that a costs award is not a contingent liability of the debtor in light of the discretionary nature of all costs awards in civil proceedings.

8 This logic has recently been analyzed at some length and adopted by the Yukon Supreme Court in *Ross v. Ross Mining Ltd.*, 2012 YKSC 102 (CanLII), [2012] Y.J. No. 162 (Y.T. S.C.), where it was noted that the refusal to impose a stay under the BIA of a costs award against an unsuccessful plaintiff/debtor was consistent with the interpretation of section 69 provided in Houlden, Morawetz and Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed., looseleaf (Toronto: Carswell, 2009). The learned authors reasoned that “if no judgment is given against him or her and no order is made for payment of costs until after he or she becomes bankrupt, costs are not a provable debt.”

9 The same principle has been applied by the Supreme Court of Canada under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, where the court found that in order to qualify for a stay “the debt, liability or obligation must be incurred before the debtor becomes bankrupt.” *AbitibiBowater Inc., Re*, 2012 SCC 67 (S.C.C.), at para 26.

10 Applying all this to the present costs question, I conclude that there was no liability — contingent or otherwise — by the Plaintiff to the Defendant at the time of the Notice of Intention to make a proposal to creditors, and so no stay of any costs award is imposed under section 69 of the BIA.”

[41] In *Global Royalties Ltd. v. Brook* 2015 CarswellOnt 16093, 2015 ONSC 6277, 259 A.C.W.S. (3d) 214, 32 C.B.R. (6th) 139 leave to appeal refused *Global Royalties Ltd. v. Brook*, 2016 CarswellOnt 517, 2016 ONCA 50, 262 A.C.W.S. (3d) 294, 33 C.B.R. (6th) 1, 344 O.A.C. 49, (“*Global Royalties*”) this case

being specifically cited by Osborne, J. (as he then was) in the reasons for both of the Lift-Stay Motions futilely opposed by the Bankrupt, and therefore familiar to him:

“[12] First, the defendant’s argument is tautological. If the claims are not claims provable in bankruptcy, they are not stayed in the first place. No order lifting the stay is required.”

[13] Second, the definition of creditor includes a contingent creditor. The plaintiffs’ claims are for unliquidated damages and have yet to be proved, to be sure, but to the extent they assert monetary claims arising pre-bankruptcy, they are creditors.

[14] I find the claims for declaratory and injunctive relief are not stayed by s. 69.3. I further find the claims for monetary damages incurred post-bankruptcy are also not stayed.

[15] Because these claims were never stayed by operation of s. 69.3, there is no need for an order lifting the stay under s. 69.4.”

[42] Put together then, under the provisions of s.121 and the jurisprudence I have cited, costs awards made against Bankrupts for proceedings participated in AFTER the Date of Bankruptcy are not “claims provable” in Bankruptcy, are not discharged under the provisions of s.178(2) of the BIA and (as explained in *Global Royalties* and *Jema*) the stay of proceedings under s.69.3(1) which states:

69.3 (1) Subject to subsections (1.1) and (2) and sections 69.4 and 69.5, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor’s property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy.

may also not apply, for claims that are not a “claim provable in bankruptcy”. As a result creditors can obtain leave to pursue the Bankrupt for costs awarded post-Bankruptcy on that basis- “Even though I am an undischarged Bankrupt”.

[43] One very common condition of discharge from bankruptcy imposed by the Bankruptcy Court is that the Bankrupt must pay ALL post-bankruptcy debts incurred to demonstrate they are rehabilitated, including ALL costs awards made post-bankruptcy, as Bankrupts should not be incurring debts while Bankrupt.

[44] Also, as it appears that the Bankrupt is contemplating at some point moving to vary the Conditional Discharge Order of Cavanagh, J. that he, *inter alia*, pay \$13.6 MILLION as a condition of discharge, I should point out that on motions to vary discharge Orders, both for refused Discharges under s.187(5) or Conditional Orders under s.172(3), the jurisprudence sets a high bar, to avoid constant attempts by Bankrupts to undermine the prior Discharge Order granted.

[45] As I set out in *Re Osztrovics* 2025 CarswellOnt 18034, [2025 ONSC 6174](#), 2025 A.C.W.S. 544, on a motion to vary a refused discharge, such as the Refused Discharge Order Cavanagh, J. initially imposed on this Bankrupt, the tests are:

“Summary of Tests under s.187(5) for Motion to Vary a Refused Discharge Order

From Fitzpatrick, J.’s reasons in *Montalban*, and the general s.187(5) jurisprudence I have cited, the following principles must be considered by a Court hearing a Motion to vary a Refused Discharge Order:

- a. The Motion is not a *trial de novo* of the initial discharge and the findings of fact of the initial Judge refusing the discharge will not be re-heard; (*Montalban, NsC*)
- b. Section 187(5) is not an alternative remedy to an appeal, nor is it designed merely to give a disgruntled party an opportunity to re-litigate questions and issues already decided. There must be new material or material indicating a change in circumstances for the court to make an order under s. 187(5) (*NsC, Catalina, HOJ, Strachan*);

- c. The question on a Section 187(5) application is not, as in an appeal, whether the original Order ought to have been made, but whether an Order ought to remain in force in the light of either of changed circumstances or in the light of fresh evidence. (*NsC, HOJ, Strachan, Levine*)
- d. S.187(5) gives to the Court discretion of a wide character to advance the ends of justice, and where a *prima-facie* case is made out, the Court ought not to be restrained from properly exercising its discretion and indulgence; (*Bryant Isard, NsC*)
- e. The discretion given by Section 187(5) must be exercised judicially and different considerations apply to the exercise of the discretion according to the character of the Order sought to be varied or rescinded (*NsC*)
- f. The onus is on the applicant to satisfy the Court that the Order should be varied or rescinded (*NsC, Strachan*)
- g. That Motions under s.187(5) do not give the Court a blank cheque to re-write its orders willy-nilly and the jurisdiction given by s.187(5) must be exercised sparingly as an indulgence and must be carefully guarded; (*Amertek*)
- h. That a Motion under s.187(5) must be made promptly and within a reasonable time of acquiring knowledge of the order sought to be varied or rescinded (*Amertek, NsC, HOJ*)
- i. If the prior judge issuing the refusal provided a “roadmap” for the Bankrupt to follow to be discharged, then the Bankrupt must provide evidence that the issues on the “roadmap” that caused the Court to refuse his discharge have been remedied; (*Montalban*)
- j. The Bankrupt must provide evidence of “what is new” to provide the basis for the Court to discharge the Bankrupt after the discharge was initially refused and the mere passage of time is not a ground to set aside a refused discharge, or as stated in *Montalban* by Fitzpatrick, J:

“Generally speaking, that such a bankrupt could simply wait out or wear down the patience of his opposing creditors would offend the public interest concerns that apply here.”

This principle is also echoed in:

- i) *Cameron, Strachan* - that the power to vary under s. 187(5) of the BIA requires new evidence of a substantial nature that could not have been known by reasonable diligence;
- ii) *Cameron*- that s. 187(5) does not permit rehearing an application based on evidence that could have been before the Registrar when the discharge order was made since no special circumstances existed;
- iii) *Kramer*- that for s. 187(5) to apply, there must be a fundamental change in circumstances between the original hearing and the time of the motion to vary; or evidence must have been discovered that was not known at the time of the original hearing and that could have led to a different result;
- iv) *Bryant Isard*- that an application for review may be founded on other admissible evidence than that which might have been before the Court on the original hearing, but new evidence merely corroborative of what was heard at the trial is not admissible; and
- v) *NsC, HOJ*- that s.187(5) permits a judge to deal with continuing matters in the bankruptcy so as not to be bound by an earlier decision, if circumstances have changed... there must be a fundamental change in circumstances between the original hearing and the time when a review is sought, or evidence must

have been discovered which was not known at the time of the original hearing and which would have led to a different result;

vi) *NsC, Strachan* - that if the applicant intends to proceed on the record that was before the Court when the original Order was made, the proper mode of proceeding is ordinarily an appeal. If there is new evidence or evidence of a change of circumstances, then an application under Section 187(5) is the appropriate remedy.

k. The conduct of the Bankrupt and the bankrupt's fulfillment of duties since the date of the refusal must also be assessed to determine the rehabilitation of the Bankrupt and whether the Court should exercise its discretion to allow the Bankrupt to be discharged (*Montalban*)

i) This principle is echoed in *Osesky* that the critical issue was what the bankrupt had done during the one-year period since the refusal to demonstrate that he was rehabilitated."

[46] These principles were echoed for motions to vary conditional Orders of discharge under s.173(2) of the BIA by Registrar Balmanoukian in *Knowles (re)*, 2023 NSSC 94 (CanLII):

"[17] A Subsection 172(3) application is not a substitute for an appeal.

[18] It is not a re-hearing.

[19] It is also not a back door to either of these things, through the modality of asking the same question on the same known facts in the hope of getting a different answer. The burden is on the applicant to "satisfy the Court that there is no reasonable probability of being in a position to comply with the order." If I am so satisfied to a civil standard then, and only then, does the Court's discretion to vary come into play.

[20] And a discretion it is: see *Re Croft*, 2002 NSSC 266, per McDougall, J. at para. 3; *Re Kanovsky*, 2012 MBQB 265 at para. 2. The language of the section is that the Court "may" modify the terms "on such conditions as it may think fit." Even if I am satisfied that the bankrupt has no "reasonable probability" of "being in a position to comply," I am not compelled to vary the order if, taking into account and placing proper weight on relevant factors, I in my discretion do not think it just and proper to do so. And if I do, I have yet a further discretion to substitute such order as I see fit in the circumstances.

[21] In *Re Kanovsky*, supra, Justice Saul framed the s. 172(3) inquiry this way:

"[17] Section 172(3) of the Act permits a bankrupt to apply to vary the terms of a conditional order of discharge after one year from the date of the order.

[18] In such an application, the onus is on the bankrupt to demonstrate that the court should exercise its discretion in his or her favour: see e.g. *Re Whyte* (1980), 35 C.B.R. (N.S.) 194 (Ont. S.C.).

[19] It is well settled that upon such an application, the court should consider the following four factors:

(1) Were there any changes in circumstances of the bankrupt that have occurred since the making of the conditional order of discharge, and were those changes within the control of the bankrupt?

(2) Is there material indicating that the bankrupt cannot comply with the terms of the conditional order of discharge? This material must be more than a statement of income and expenses.

(3) What is the credibility of the bankrupt?

(4) What is the evidence concerning the efforts that the bankrupt has made to comply with the terms of the conditional order of discharge during the preceding year?

See *Re Cowie* (1991), 6 C.B.R. (3d) 227 at para. 5 (Ont. Ct. J. (Gen. Div.) [Bkcty]), Farley J.

[20] In *Re Appleby* (2001), 2001 CanLII 28476 (ON SC), 27 C.B.R. (4th) 1 at para. 11 (Ont. Sup. Ct. J.), Deputy Registrar Sproat held that all four tests must be applied by the court and that an adverse finding on any one of them is sufficient to deny an application under section 172(3) of the Act. However, more recently, in *Re Estrin*, 2005 ABQB 234, 10 C.B.R. (5th) 176 at para. 28 (Alta. Q.B.), Veit J. described that which was stated in *Re Appleby*, supra was overly broad and urged that the four tests are guidelines. Failure to satisfy one of them does not necessarily preclude the bankrupt from securing a modification.

[22] In *Re Besner*, 2015 BCSC 27, Master Bouck also summarized several leading cases and the applicable law as follows:

“[24] In *Mossman (Re)*, 2005 BCSC 155, Dorgan J. set out the approach to be taken on this type of application:

[10] An application under s. 172(3) is not an appeal from the original order, nor is it a new hearing. What is to be determined is whether, after one year of the original order, the bankrupt has no reasonable probability of being able to comply with the terms of the order such that a modification is warranted (*Re Whyte* (1980), 35 C.B.R. (NS) 194, [1980] O.J. No. 2951 (Ont. S.C.)).

[11] A bankrupt who seeks a s. 172(3) modification must meet the test set out in *Elliot (Trustee of) v. Elliot*, (1994) 1994 CanLII 1614 (BC SC), 29 C.B.R. (3d) 174 (B.C.S.C.), which requires the court to consider:

1. Whether or not there have been changes in circumstances that have occurred since the order was made and whether those changes were within the bankrupt's control;
2. Whether or not there is material indicating that the bankrupt cannot comply with terms of the conditional order of discharge, which must be more than a statement of income and expenses;
3. The credibility of the bankrupt; and
4. Whether or not there is evidence that the bankrupt has made a bona fide effort to comply with the discharge order during the preceding year.

[12] An adverse finding on any of these factors will be sufficient to deny an application for an order of modification (*Re Appleby* (2001), 2001 CanLII 28476 (ON SC), 27 C.B.R. (4th) 1, [2001] O.J. No.3247 (Ont. S.C.)).

[25] Moreover, if the bankrupt has created circumstances that render it impossible for him to meet the discharge conditions, the court will likely refuse any modification of the original order: *Croft (Re)* (2001), 2002 NSSC 266 (CanLII), 39 C.B.R. (4th) 62.

[26] The onus is on the bankrupt to satisfy the registrar that the test has been met.”

[47] Needless to say, two key issues that this Bankrupt will have to satisfy under these tests, should he wish to attempt to vary his conditional discharge Order under either s.173(2) or s.187(5), are:

- 1) Whether the Bankrupt has made any efforts to pay any of the \$13.6 MILLION payment condition of the Conditional Discharge Order;
- 2) Whether he has incurred any post-bankruptcy liabilities, such as ALL unpaid costs awards that have been awarded against the Bankrupt post-Bankruptcy, including the existing \$23,288.10 costs award

ordered to be paid by the Bankrupt to the Coco Parties by Osborne, J. (as he then was) in his Coco Lift-stay Endorsement.

[48] In addition, with respect to general principles of litigation, for example under R.60.12 of the *Rules of Civil Procedure*, the failure of a party to pay prior ordered costs awards can also result in the Court staying proceedings brought by that party, or the striking out that party's claim or defence.

[49] As Stated by O'Marra, J. in *Esposito v. City of Toronto*, 2012 ONSC 1586 (CanLII), 40 CPC (7th) 54, in dismissing an appeal of an Order where an action was stayed for failure to pay prior costs orders:

“[14] Rule 60.12 permits a court to dismiss a proceeding or make such other order as is just where a party fails to comply with an interlocutory order.

[15] Master Hawkins case managed this case since Sept. 24, 2002. There were over 40 case conferences, most convened at Plaintiff's request. He was in an ideal position to decide costs and rendered his ruling after an extended hearing with huge filings by the Appellant.

[16] There will be situations where a claim or action should be determined for procedural reasons arising from the failure of a party to abide by Orders of the Court. If the merits of a case always had to be determined before such remedies could be imposed there would be little room for the effective application of the rules.

*Bottan v. Vroom* [2001] O.J. No. 2037 at para. 26 (S.C.J.)

Rules 57.03 and 60.12

[17] A party should not be able to set up his own pecuniosity as a shield against costs sanctions. To allow that would mean a Plaintiff could bring, resist or appeal motions with no fear of consequences, and would emasculate the powers provided in rules 57.03 and 60.12.

*Stacy v. Barrie Yacht club* [2003] O.J. No. 4171 (S.C.J.) at para. 15.

[18] Impecuniosity is not a shield where a party has consistently failed to act reasonably.”

*Burrell v. Peel (Regional Municipality) Police Services Board* 2010 ONSC 1387, at para 14 (Div. Crt.)

[50] In following *Esposito* in *Apollo Real Estate v. Streambank Funding Inc.*, 2018 ONSC 392 (CanLII) (“*Apollo*”), Firestone, RSJ summarized the following principles that are also applicable to the conduct of this Bankrupt:

“[41] These rules grant the court authority to dismiss or stay an action where a party has failed to pay a cost award. As a general principle, a matter should be heard on its merits but a “party's conduct in the course of the litigation may disentitle it from seeking adjudication on the merits”: *Talluto v. Marcus*, 2017 ONSC 1243, [2017] O.J. No. 893, at para. 22 (per Di Luca J.).

[42] In such circumstances, the enforcement of interlocutory orders is of overriding concern for the courts in ensuring the administration of justice and in upholding the integrity of the justice system. Failure to ensure compliance with court orders in the course of litigation is “corrosive of the entire justice system”: *Rana v. Unifund Assurance Co*, 2016 ONSC 2502, [2016] O.J. No. 1991, at para. 2 (per Dunphy J.).

[43] In *Rana*, at para. 50, the court considered the following principles in exercising its discretion under rules. 57.03(2) and 60.12:

- a. Where there has been non-compliance with an order of the court, the court should be alive to the possibility that its process is being abused; failing to act may deprive the moving party of justice according to law and risks rendering the court a paper tiger: *Bottan v. Vroom*, at para. 24-25;

b. The right of access to the courts must be accompanied by the responsibility to abide by the rules of civil procedure and to comply with orders of the court – to exempt impecunious parties from the enforcement of costs orders when made would amount to granting “carte blanche to continue to ignore the rules and orders of the court and take unsupportable steps in the action without fear of consequences” per Master Dash in *Heu v. Forder Estate*, 2011 CanLII 16198 (ON SC) at para. 19-20;

c. The court ought not to sit in appeal of the prior cost awards – the respondent will have had the opportunity to make submissions about impecuniosity at the prior hearings that resulted in the costs orders and seeking to relieve against prior costs orders constitutes a collateral attack on orders previously made: *Bottan v. Vroom*, at para. 23; *Visic v. University of Windsor*, 2013 ONSC 2063 (CanLII) at para. 36 and 66; *Trewin v. MacDonald*, [2008] O.J. No. 2821 (ONSC) at para. 26;

d. The court may have regard to a pattern of unnecessary and unreasonable steps taken in the proceeding, including appealing numerous orders without chance of success or knowing the risk thereby imposing costs upon the other party: *Visic v. University of Windsor* at para. 68;

e. If the orders of the court are “cavalierly ignored” and if a litigant “continuously fails to comply with her obligations as a litigant and then fails to abide by the costs consequences attendant upon that behavior, the court is justified in bringing some finality to the action” (per Master Dash in *Burrell v Peel (Regional Municipality) Police services Board*, 2007 CanLII 46173 (ONSC) at para 63; aff’d 2010 ONSC 1387 (CanLII));

f. Impecuniosity is not a shield for unreasonable conduct of litigation and a dismissal order may be made even if it resolves the matter on procedural rather than substantive grounds: *Baradaran v. Tarion Corp.*, 2014 ONSC 6870 (CanLII);

g. Self-represented litigants, while entitled to some accommodation and assistance to ensure a fair hearing, are not entitled to abuse the system or the party opposite and failure to enforce orders once made against self-represented parties is unfair to the parties opposite and undermines respect for the court in the civil justice system: per Myers J. in *Baradaran v. Tarion Corp.*, 2015 ONSC 7892 (CanLII); *Bilich v. Toronto (City) Police Services Board*, 2014 ONSC 6765 (CanLII);

h. “Courts usually talk in terms of prejudice that cannot be compensated for by costs. But, at some point, costs themselves become an inadequate form of compensation for prejudice, especially where the party on whom they are imposed refuses to pay them”: per D.M. Brown J.A. in *Schwilgin v. Szivy*, 2015 ONCA 816 at para. 23.”

[51] It appears that the Bankrupt has interpreted the multiple indulgences granted to date by prior Justices dealing with his matters regarding the imposition of costs, other than Osborne, J. (as he then was) imposing a \$23,288.10 costs award against the Bankrupt in the Coco Lift Stay Reasons, or the choice by successful opponents in not asking for costs, as creating an immunity from the payment of costs while he was bankrupt.

[52] It appears that this misapprehension has heartened the Bankrupt to bring ill considered motions, such as the series of metastasizing Motion(s) brought before me by the Bankrupt, for different sets of relief, all of which he has now withdrawn or abandoned, some after they have been heard.

[53] It is likely that these indulgences granted to date to the Bankrupt regarding the imposition of costs consequences by the Courts, and waiving of requests for costs by the Bankrupt’s opponents, will not continue.

## **Jurisdiction to Grant the Relief sought**

[54] As I advised the Bankrupt, in the 3 + decades I practiced Bankruptcy Law, I had never seen an Order such as the one he was requesting to put “guardrails” on the Trustee in the conduct of litigation, being requested by the Bankrupt in his (latest) draft Order with respect to the Whitehorse Action. Harlang, with considerably more experience from the Trustee side, also advised he had never seen such an Order.

[55] The breadth of the requested disclosure in relation to the Whitehorse Action specifically meets none of the tests for disclosure on the basis of relevance and proportionality in *Ontario v. Rothmans Inc.*, 2011 CarswellOnt 2916, 2011 ONSC 2504, [2011] O.J. No. 1896, 201 A.C.W.S. (3d) 341, 5 C.P.C. (7th) 112, (“*Rothmans*”) and would have significant solicitor and client privilege implications for the Trustee.

[56] When I asked the Bankrupt who would be receiving all of the documents the Bankrupt wanted created or disclosed, including:

“...a concise cost-benefit and proportionality analysis (BIA s. 37(2)) identifying expected recovery, material risks (including collection risk and adverse costs risk), and a high-level budget and timeline”

[57] The Bankrupt said “Not Me”

[58] Then who, precisely? If the not the Inspectors, who would be tasked in imposing the “guardrails” on the Trustee for the conduct of the Whitestone Action.

[59] The Bankrupt nominated the Office of the Superintendent of Bankruptcy. The OSB did not appear on this Motion, and on any of the prior motions relating to this Bankrupt. The OSB has a formal right of intervention under s.5(4)(a) of the BIA in any BIA proceeding. It does so with a formal notice of intervention. The OSB has not intervened to date to the knowledge of the Trustee and the Court, and may be surprised that it is being drawn into policing the Whitehorse Action at the instance of the Bankrupt.

[60] I also advised the Bankrupt that it appeared to me from the Kimmel, J. Endorsement that Kimmel, J. was fully engaged in Case Managing the Whitehorse Action, along with the KSV Main Action and almost a dozen other Actions related to Bridging Finance. The latest relief that the Bankrupt was seeking in this Motion(s) appeared to be in direct conflict with the efforts of Kimmel, J. in this regard.

[61] As I advised the Bankrupt, as an Associate Justice and Registrar in Bankruptcy I have NO jurisdiction to vary, amend or stay Orders of a Superior Court Justice, such as the Kimmel, J. Endorsement.

[62] Even if I did have the jurisdiction, I would not presume to interfere with the Case Management efforts of Kimmel, J. in relation to making orders relating to the prosecution of the Whitehorse Action, or otherwise.

[63] Again, an easy answer for me was to simply say I lacked jurisdiction and leave the issues raised to be dealt with by Kimmel, J., but that would also be discourteous, and I had before me duplicative Motion(s) brought before me by the Bankrupt that I had to do something with.

[64] In addition, as the Trustee was seeking costs, and the costs submissions of the Trustee raised the issue of the legal futility of the relief sought by the Bankrupt on this Motion(s), I still need to deal with the issues raised by the Bankrupt and the counterarguments by the Trustee.

### **Allegations of Conflict against Inspectors due to alleged “relatedness”**

[65] The relief being sought by the Bankrupt in the (latest) motion appears to spring from the misapprehension of the Bankrupt of the test for relatedness under the BIA and the roles of inspectors.

[66] Firstly, much of the Bankrupt’s evidence presented relates to allegations that some of the Creditors with representation as inspectors are “related” on the basis that Krebs the former inspector that resigned on December 1, 2025, was a “Director” of FUNG, and a “principal” of RC Morris, and therefore FUNG is “related” to RC Morris. Since the alleged related party FUNG has signed an indemnity agreement with the Trustee to pay the costs of the Whitehorse Action, and R.C. Morris & Partners LLP, R.C. Morris Capital

Management Ltd., and RCM Capital Fund Management Ltd. (the “**RCM Defendants**”) are defendants to the Whitehorse Action, the Bankrupt alleges:

“The result is that a principal of a defendant group in the Whitehorse Action is funding and indemnifying the plaintiff Trustee in that same action.”

The Bankrupt alleges this “conflict” has tainted the Trustee’s decision making in commencing and prosecuting the Whitehorse Action.

[67] Prior to Kimmel, J. making the Section 38 Order the Bankrupt was making similar allegations with respect to the KSV Main Action, that has now been assigned to FUNG pursuant to that Order. These may also be the “grounds” for the Motion that the Bankrupt seems to want to bring in front of Kimmel, J. to “stay” the Section 38 Order.

[68] As I advised the Bankrupt under s.4(2) of the BIA the test for “relatedness” for corporations and individuals was one of control, just like the *Income Tax Act* test of “relatedness” that the Bankrupt would have been intimately familiar with, given that the Bankrupt was found in the *IIROC Ng Decision* to be a “... person who was a senior member of the [investment] industry”:

4(2) For the purposes of this Act, persons are related to each other and are related persons if they are

(a) individuals connected by blood relationship, marriage, common-law partnership or adoption;

(b) an entity and

(i) a person who controls the entity, if it is controlled by one person,

(ii) a person who is a member of a related group that controls the entity, or

(iii) any person connected in the manner set out in paragraph (a) to a person described in subparagraph (i) or (ii); or

I two entities

(i) both controlled by the same person or group of persons,

(ii) each of which is controlled by one person and the person who controls one of the entities is related to the person who controls the other entity,

(iii) one of which is controlled by one person and that person is related to any member of a related group that controls the other entity,

(iv) one of which is controlled by one person and that person is related to each member of an unrelated group that controls the other entity,

(v) one of which is controlled by a related group a member of which is related to each member of an unrelated group that controls the other entity, or

(vi) one of which is controlled by an unrelated group each member of which is related to at least one member of an unrelated group that controls the other entity.”

[69] As stated by the Court of Appeal in *Urbancorp Inc. v. 994697 Ontario Inc.*, [2024 ONCA 26 \(CanLII\)](#), “control” under s. 4 of the BIA means *de jure* control of the corporation through ownership of shares:

“[17] [Section 4\(5\)](#) of the BIA provides that persons who are “related” to each other are deemed not to deal with each other at arm’s length. Section 4(2) also provides a definition of “related parties,” which depends upon establishing the element of control. In *Re Panfab Corp. Ltd., Duro Lam Limited v. Last et al.*, [1970 CanLII 318 \(ON SC\)](#), [1971] 2 O.R. 202 (H.C.), Houlden J. (as he then was)

recognized, at pp. 204-205, that the concept of control was specifically imported from the *Income Tax Act* into what is now s. 4 of the BIA:

There is no doubt that, when the *Bankruptcy Act* was amended in 1966, ss. 2A and 2B were adopted from s. 139(5) and (6) [am. 1953-54, c. 57, s. 31] of the *Income Tax Act*, R.S.C. 1952, c. 148. At the time the section was included in the *Bankruptcy Act*, it was well established that “control” in the *Income Tax Act* meant de jure control and not de facto control. Control rests in the ownership of such a number of shares as carries with it the right to a majority of the votes in the election of a board of directors. This proposition was affirmed by the Supreme Court of Canada in *Minister of National Revenue v. Dworkin Furs (Pembroke) Ltd. et al.*, [1967 CanLII 112 \(SCC\)](#), [1967] S.C.R. 223, 60 D.L.R. (2d) 448 sub nom. *M.N.R. v. Aaron’s Ladies’ Apparel Ltd. et al.*, [1967] C.T.C. 50. [Citations omitted.]”

[70] As I advised the Bankrupt, commonality of directorship, without proof of control through share ownership does not make the parties “related” for the purposes of the BIA or the *Income Tax Act*. If interlocking directorship was the test for “relatedness” I suspect a large proportion of the TSX would be deemed “related”, with ensuing disastrous tax consequences.

[71] In any event, the Bankrupt presented no actual evidence of share ownership to prove his allegations that FUNG and the RCM Defendants were “related”, and as a result his central premise for granting the supervisory relief he has requested with respect to the Whitehorse Action was doomed to failure.

[72] However, as similar allegations of “conflict” have been repeated by the Bankrupt in prior hearings before the Court, an explanation of the Bankrupt’s fundamental misapprehension on this issue was required.

[73] The Bankrupt was also unaware that creditors, that were also defendants to the Action being assigned to creditors under s.38 can participate in that action, which runs counter to the Bankrupt’s central thesis that due to the alleged unproven “relatedness” of RCM Defendants and FUNG that the Whitehorse Action, and the KSV Main Action, now assigned to FUNG under the Section 38 Order, should be stayed. To be clear, it does not appear that FUNG itself is a defendant in the Whitehorse Action or the KSV Main Action.

[74] As stated by *Houlden & Morawetz* § 2:156. Parties

“If a creditor obtains an order under s. 38, the defendant in the proposed proceedings, if it is also a creditor, is entitled to participate in the s. 38 proceedings, and thus preserve its right to share rateably in the event that the proceedings against it are successful. The creditor can therefore, in effect, be both plaintiff and defendant in a s. 38 action: *Watt v. Beallor Beallor Burns Inc.* (2004), [2004 CanLII 18877 \(ON SC\)](#), 1 C.B.R. (5th) 141, 2004 CarswellOnt 429 (Ont. S.C.J.), affirmed (2004), [2004 CanLII 19821 \(ON CA\)](#), 1 C.B.R. (5th) 149, 2004 CarswellOnt 2291 (Ont. C.A.). If the defendant fails to join in the proceedings in the time fixed by the s. 38 order, the court can, if there is no prejudice, extend the time: *Re Carex Distributors Inc.* (1981), 43 C.B.R. (N.S.) 209 (Ont. C.A.); *C.I.B.C. v. Jones* (1982), 45 C.B.R. (N.S.) 10 (Ont. C.A.); *Re Parallels Restaurant Ltd.* (1988), [1988 CanLII 2836 \(BC SC\)](#), 68 C.B.R. (N.S.) 266, 26 B.C.L.R. (2d) 385 (S.C.).

...

Where a defendant decides to participate in s. 38 proceedings, it cannot participate as a full plaintiff. For obvious reasons, it cannot be involved in the strategy and presentation of the case: *Manitoba Capital Fund Ltd. Partnership v. Royal Bank* (2001), 27 C.B.R. (4th) 265, [2001 MBQB 197](#), 158 Man. R. (2d) 117, 2001 CarswellMan 381 (Man. Q.B.). Where a proposed defendant wishes to participate in the proceedings, he or she must share in the risk and expense of the proceedings, including costs: *Re B. Donovan Interiors Ltd.* (1990), 3 C.B.R. (3d) 196, 1990 CarswellINS 30 (N.S.T.D.).”

[75] Also, the Trustee filed the form of the indemnity agreement between FUNG and the Trustee, that has a “only agreement” provision where FUNG agrees to indemnify the Trustee for the costs of the Whitehorse Action. It does not appear that any of the allegations made by the Bankrupt relating to the alleged conflict

are supported by the terms of this Agreement, or that the extraordinarily broad production demanded by the Bankrupt is required as a result of the terms of this agreement or the underlying indemnity.

[76] Also the Bankrupt seems to fundamentally misapprehend the role of Inspectors under the BIA. Inspectors do not “Order” the Trustee to do anything. Under the provisions of s. 30(1) of the BIA:

“30 (1) The trustee **may, with the permission** of the inspectors, do all or any of the following things:”

[77] The Trustee administers the estate. The Trustee consults with the Inspectors with respect to certain decisions. The BIA operates on the premise that the creditors should have some say in the administration of the Estate by the Trustee, as it is being done for their benefit. They elect Inspectors at the Meeting of Creditors to oversee that administration as fiduciaries acting for the benefit of the creditors generally.

[78] As stated in *Houlden & Morawetz* § 6:66. Inspectors Generally:

“The participation of inspectors is part of the bankruptcy system to protect and advance the interests of unsecured creditors, through the trustee in bankruptcy and in consultation with the Superintendent in Bankruptcy: *Re St. Anne-Nackawic Pulp Co.* (2005), 2005 CarswellNB 506, [2005] N.B.J. No. 364, 2005 NBQB 303, 14 C.B.R. (5th) 109 (N.B. Q.B.).

In *Re Bryant, Isard & Co.* (1923), 4 C.B.R. 41 at 48 (Ont. S.C.), Fisher J. summed up the position of inspectors in these words: “Inspectors stand in a fiduciary relation to the general body of creditors and should perform their duties impartially and in the interests of the creditors who appoint them. They should see that the trustee acts in accordance with the *Bankruptcy and Insolvency Act*, and if it is brought to their notice it has not done so, they should discipline the trustee and if necessary, take steps to have the trustee removed.”

[79] The Bankrupt has provided no evidence whatsoever of any impropriety on the part of the Trustee in commencing the Whitehorse Action to preserve the claim, and obtaining an indemnity agreement from FUNG to ensure that the Trustee does not incur personal liability for costs for pursuing the Whitehorse Action, as there are no funds currently in the estate.

[80] In part this lack of funding results from the Bankrupt’s total failure of his duties to pay any amount of the \$13.6 MILLION Conditional Discharge Order, or any surplus income that may be calculated as owing.

### **Bankrupt Does Meet Tests To Seek Relief Under S.37 and S.119(2) of the BIA**

[81] The Bankrupt brought this Motion(s) *inter alia* as an “aggrieved person” under s.37 of the BIA (which he cited as s.37(2), which does not exist), in order to try to obtain relief with respect to the “decisions” of the Trustee relating to the Whitehorse Action.

[82] In order to do so the Bankrupt must prove that meets the test in *David Brook (Re)*, 2016 ONSC 6277 (CanLII) 73 ACWS (3d) 26, 41 CBR (6th) 228 (“*David Brook*”):

[13] The BIA does not define the word “aggrieved”. The cases regarding the definition of an “aggrieved person” establish that it is necessary for a claimant to demonstrate that it was deprived of a legal right or was otherwise wrongfully deprived of something.

[14] In a decision involving section 37 of the BIA, *Liu v. Sung*, (1989), 72 C.B.R. (N.S.) 224, 1989 CanLII 2822 (B.C.S.C.), the court held, at para. 12, as follows:

In order to have status, the applicants must be found to be persons who are aggrieved by the decision of the Trustee in refusing to take action under s. 225 of the Company Act. The word "aggrieved" is not defined in the *Bankruptcy Act*. In the Oxford Universal Dictionary, 3rd ed., it is

defined as "injuriously affected". Counsel for the Trustee has cited the definition made by James L.J. in *RE Sidebotham; Ex Parte Sidebotham* (1880) 14 Ch. B. 458 at 465:

But the words 'person aggrieved' do not mean a person who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.

[15] A similar statement is found in *Re Pachal's Beverages Ltd.*, (1969), 7 D.L.R. (3d.) 113, at para. 14 (S.K.C.A.) as follows:

While s. 15 [currently section 37] gives to the court a wide discretionary power: *Imperial Bank of Canada v. Barber* (1921), 1921 CanLII 465 (ON SC), 50 O.L.R. 380, 1 C.B.R. 485, and *Re Hancock, Ex parte Spraggett*, 1952 CanLII 123 (ON CA), [1952] O.R. 121, 32 C.B.R. 96 (C.A.), that power must be judicially exercised. To obtain relief under this section, the onus rests upon the applicant to show that it has been aggrieved by the decision of the trustee, or has suffered damage or prejudice as a result of the trustee's action: *Re Gareau (English & Scotch Woollen Co.)*, *Ex parte Joseph Bros.* (1922), 3 C.B.R. 76 (Que.).

[83] The Bankrupt filed no evidence of how he was "...was deprived of a legal right or was otherwise wrongfully deprived of something." that established that the Bankrupt was an "aggrieved person" under the test in *David Brook* as a result of FUNG indemnifying the Trustee, to allow the Trustee to pursue the Whitehorse Action for the benefit of the Bankruptcy Estate, and the creditors of the Bankrupt generally. The Bankrupt had to prove this as a precondition of the Bankrupt bringing the Motion under s.37. As a result the Bankrupt's Motion(s) under s.37 was doomed to failure.

[84] In addition, the Bankrupt sought relief under s.119(2) but the Bankrupt has filed no evidence that is sufficient to meet the following test set out by Hoy, J. in the decision that arose prior to her *Safire Costs* decision, reported as *Safire Infrastructure Inc.*, *Re* 2009 CarswellOnt 6374, 181 A.C.W.S. (3d) 638, 60 C.B.R. (5th) 87 ("**Safire s.119(2)**"):

26 The Trustee and the Firm note that s. 119(2) of the BIA provides that decisions of the inspectors are subject to review by the court at the instance of the trustee or any interested person. They submit that, in their Notice of Motion, the Respondents did not seek to have the decisions of the Inspector reviewed, the bankrupts are not in any event "interested persons", and, moreover, the Respondents failed to show that the Inspector acted fraudulently, or not in good faith for the benefit of the Estates, as is required by *Feldman, Re* (1932), 13 C.B.R. 313 (Ont. C.A.), at para. 5 and *Rizzo & Rizzo Shoes Ltd., Re* (1998), 1998 CanLII 2673 (ON CA), 38 O.R. (3d) 280 (Ont. C.A.) at paras. 21-22 before a decision of an Inspector will be set aside.

27 Counsel for the Respondents submits it is implicit that the Registrar concluded that in permitting a s. 163 examination that could also be for the benefit of the s. 38 proceeding the Inspector was not acting in good faith for the benefit of the Estate.

28 The Respondents did refer to s. 119(2) of the BIA in their Notice of Motion. There is, however, no indication of a possible surplus in the Estates, such that the bankrupts could be found to be "interested persons". See *Ethier, Re* (1991), 7 C.B.R. (3d) 268 (Ont. Bkcty.). Moreover, I have concluded above that the action of the Inspector in signing the resolutions was not improper. In my respectful view, the Registrar erred in principle in effectively setting aside the decision of the Inspector."

[85] There is no evidence that the Trustee bringing the Whitehorse Action, as a result of a "decision" of Krebs or the Inspectors generally, that the Inspectors and/or Krebs were acting "...fraudulently, or not in good faith for the benefit of the Estate".

[86] In addition, the Bankrupt having not paid a penny of the \$13.6 MILLION Conditional Order is not an "interested person" for the purposes of the *Safire s.119(2)* test, as he has no economic interest in a Bankruptcy estate, which estate has no possibility of generating a surplus payable to the Bankrupt, at least

until the Bankrupt pays under the Conditional Discharge Order the amount he owes the estate of \$13.6 MILLION.

[87] The Bankrupt also failed to meet the tests he (or his AI Barrister) cited in the jurisprudence that was filed by the Bankrupt on the tests under s.37 and s.119 deal after I made the February 12 Endorsement due to his failure to comply with the provisions of R.4.06.1, by not having properly hyperlinked materials to a published authority. The Bankrupt specifically failed to meet the tests he himself cited in *Rizzo & Rizzo Shoes Ltd. (Bankruptcy of)* (1998), 38 O.R. (3d) 280 (C.A.), [1998 CanLII 2673 \(ON CA\)](#) and *Roberts v. E. Sands & Associates Inc.*, [2013 BCSC 902](#).

[88] Yes, in appropriate circumstances under the jurisprudence cited Courts can remove inspectors. No, these were not the circumstances where the Court would do so, and in any event Krebs, the allegedly offending inspector was replaced in December of 2025.

[89] So again, the Bankrupt did not qualify to seek relief under s.119(2) and his Motion(s) was doomed to failure.

### **Bankrupt's Use of AI**

[90] If the Bankrupt was unaware of the restrictions, requirements and possible consequences of use of AI Court Materials, he cannot say that after these reasons are released he is unaware of the requirements to advise the Court as to the use of the AI materials, the requirements to comply with the provisions of the [Rules of Civil Procedure](#), the Commercial List Practice Direction, and the Bankruptcy Court Practice Direction, and specifically the Practice Direction dated June 15, 2023 "K. The Use of Artificial Intelligence (AI) for Court Proceedings" to file compliant Court materials.

[91] In Particular, the Bankrupt MUST comply with these specific provisions of the [Rules of Civil Procedure](#) for any further motion he chooses to bring or participate in, for all materials that he files:

(3) A factum that is filed electronically must meet the following requirements for facta and books of authorities:

1. The factum must include bookmarks, as appropriate, for each section.
2. Each citation to an authority that is published on a website referred to in subrule 4.05.3 (7.1) must be hyperlinked to the published authority or, if possible, to the relevant provision or portion of the published authority. O. Reg. 300/24, s. 3.

And

2. If the book of authorities is being filed in electronic format,
  - i. for each cited authority that is published on a website referred to in subrule 4.05.3 (7.1), a hyperlink from the table of contents to that document, and
  - ii. for each cited authority that is not published on a website referred to in subrule 4.05.3 (7.1), a copy of that authority with a hyperlink to it from the table of contents.

[92] The consequences for the failure to comply with the Rules regarding AI Materials are set out in detail in *Ko* and *XL*, which I have quoted from extensively. The Bankrupt can no longer plead ignorance of the implications of using AI improperly in future matters, including having Courts finding him to be in contempt.

### **Implications of Making Unfounded Allegations of Conflict Fraud and Bad Faith:**

[93] This is not the first time the Bankrupt has made unfounded accusations relating to the conduct of the Trustee and the Inspectors. Litigation involving Trustees in Bankruptcy, as officers of the Court is not normal civil litigation.

[94] Osborne, J., (as he then was) in the Receiver and Blackrock Lift Stay Reasons rejected a prior raft of accusations brought by the Bankrupt against the Receiver. In all of the versions of the Bankrupt's materials for this Motion(s) the Bankrupt makes accusations of conflict and impropriety against the Trustee and the Inspectors that is the basis for the varied and assorted relief he has been seeking on this Motion(s), from time to time.

[95] As I set out in *Re Bannikova* 2023 CarswellOnt 14017, [2023 ONSC 5131](#), 2023 A.C.W.S. 4499 ("**Bannikova**"):

"170 In *Kaptor Financial Inc. v. SF Partnership, LLP*, 2016 CarswellOnt 17052, [2016 ONSC 6607](#), [2016] O.J. No. 5612, 272 A.C.W.S. (3d) 25, 41 C.B.R. (6th) 262, ("*Kaptor* ") Newbould J. applied relevant civil jurisprudence including *Davies v. Clarington (Municipality)*(2009), [2009 ONCA 722 \(CanLII\)](#), 100 O.R. (3d) 66 (Ont. C.A.) ("*Davies*") to a costs determination in a Bankruptcy context.

171 In *Kaptor*, Newbould, J. stated the following that is relevant to the allegations made by MCO against the Administrator, the Consumer Debtor and Manis on this Motion:

"3 The normal rule is that costs are to be paid on a partial indemnity basis. However, conduct of a party that is reprehensible, scandalous or outrageous are grounds for costs to be awarded on a substantial or complete indemnity basis. See *Young v. Young*, [1993 CanLII 34 \(SCC\)](#), [1993] 4 S.C.R. 3 (S.C.C.). The conduct giving rise to such an award can be conduct either in circumstances giving rise to the cause of action or in the proceedings themselves. See Orkin, *The Law of Costs*, 2nd ed. at para. 219.1; *Ford Motor Co. of Canada v. Ontario (Municipal Employees Retirement Board)* (2006), 17 B.L.R. (4th) 169 (Ont. C.A.) and *Mortimer v. Cameron* (1994), [1994 CanLII 10998 \(ON CA\)](#), 17 O.R. (3d) 1 (Ont. C.A.).

4 Unfounded allegations of improper conduct seriously prejudicial to the character or reputation of a party can give rise to costs on a substantial indemnity scale. See *131843 Canada Inc. v. Double "R" (Toronto) Ltd.* (1992), 7 C.P.C. (3d) 15 (Ont. Gen. Div.) per Blair J. (as he then was). In *Bisyk (No. 2), Re* (1980), [1980 CanLII 1843 \(ON SC\)](#), 32 O.R. (2d) 281 (Ont. H.C.); aff'd [1981] O.J. No. 1319 (Ont. C.A.), Robins J. (as he then was), held that unproven allegations of undue influence in the preparation of a will were allegations of improper conduct seriously prejudicial to the character or reputation of a party deserving of costs on a solicitor and client basis. Both of these cases were referred to with acceptance in *Davies v. Clarington (Municipality)* (2009), [2009 ONCA 722 \(CanLII\)](#), 100 O.R. (3d) 66 (Ont. C.A.) at para. 47.

5 In this case, the position of Mr. Inspektor that the settlement release was no bar to the claim of Trendi Deziign Incorporated was doomed to fail and an abuse of process in an attempt to circumvent the settlement. As stated in my endorsement allowing the motion of the plaintiffs, what Mr. Inspektor was attempting to do amounted to an end-run around the clear terms of a release negotiated to protect the participants from this very situation. This entitles the plaintiffs to their costs on a substantial indemnity basis. Moreover, the completely unsubstantiated allegations of Mr. Inspektor in his argument regarding costs of Mr. Larry breaching an undertaking given to the court are grounds for the higher level of costs.

6 Regarding the Trustee, Mr. Inspektor's motion materials made several serious and unsubstantiated allegations against the Trustee/Receiver designed to discredit Crowe Soberman. These allegations which were completely unrelated to the relief sought, included allegations that Crowe Soberman was part of a conspiracy with Steven Uster to expose Mr. Inspektor's theft of funds from the Kaptor Group, ignored material facts in its reports to the Court, and in fulfilling its Court ordered duties and statutory obligations as Court-Appointed Receiver of the Kaptor Group engaged in "creative accounting" and disregarded generally accepted accounting (GAPP) principles.

7 Mr. Inspektor's allegations have been filed in the public record. To make reckless allegations with respect to the integrity of a court-officer occupying a position of public trust is a serious matter. This is not the first time that Mr. Inspektor has brought proceedings in his fight with the litigation committee. The Trustee/Receiver says that this motion was part of a troubling trend in the receivership/bankruptcy proceedings of the Kaptor Group, in which Crowe Soberman has been forced to spend considerable time and resources at the expense of the estates in addressing and responding to Mr. Inspektor's efforts to advance his own personal interests. In this the Trustee/Receiver appears to be right. In the circumstances the Trustee/Receiver is entitled to costs on a substantial indemnity basis."

#### DISPOSITION

[96] I do not know what was the legal effect the Bankrupt filing on February 13, 2026 his "Notice of Abandonment of Motion", for the Motion I had already heard the day before, on February 12, 2026, in the presence of a half-dozen gowned counsel. Accordingly, I will determine the Motion(s) that I heard.

[97] In the context of this Motion(s), on all of the evidence before me, and in exercising my discretion as Registrar, I am NOT satisfied that any of the relief requested by the Bankrupt, which I have quoted in these reasons as it was constantly changing, should be granted, for the reasons that I have set out in detail.

[98] After considering:

- A) all of the factual admissions made by the Bankrupt, and in all of the Bankrupt's filed motion materials, which I have summarized above and will not repeat, and
- B) the Evidence filed by the Trustee in response to the Bankrupt's Motion(s), and the submissions of the Bankrupt, the Trustee, as well as counsel for FUNG, Blackrock, and the Receiver,

I find that on the evidence before me on this Motion that the Bankrupt has not met the onus to establish that he had the ability to bring the Motion(s) under the provisions of s.37 and s.119(2).

[99] In any event, My Judicial discretion as Registrar under the BIA should NOT be exercised to grant any of the relief the Bankrupt has requested, in any of his materials.

[100] This Order is with prejudice with respect to all of the relief sought by the Bankrupt in any of the motions before me, that I have specifically quoted in these Reasons..

[101] Given the breadth of the relief requested, and the Costs Order I will make, I believe that the result should be memorialized through a formal Order. I would ask that the parties provide to me through the Bankruptcy Court Office a word version of a Draft Order that I will settle.

## COSTS

### Implications of Abandonment of Motion(s)

[102] Firstly, with respect to the post-hearing withdrawal or abandonment of the Motion(s) by the Bankrupt, that, in no way, insulates the Bankrupt from the costs consequences of bringing the Motion(s).

[103] In the leading decision of *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (ON CA) 71 OR (3d) 291, 132 ACWS (3d) 15, 188 OAC 201, 48 CPC (5th) 56, [2004] CarswellOnt 2521, [2004] OJ No 2634 (QL) (“*Boucher*”) the Court of Appeal stated the following with respect to the costs consequences of abandoned Applications, BEFORE they were heard:

[14] The appellants accept that the respondents are entitled to their costs of the abandoned application pursuant to rule 37.09(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, which provides: [page296]

37.09(3) Where a motion is abandoned or is deemed to have been abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith, unless the court orders otherwise.

However, the appellants submit that those costs ought not to be fixed by a judge in accordance with the costs grid established by rule 57.01(3). The appellants rely upon rule 57.01(3.1), which states:

57.01(3.1) Despite subrule (3), in an exceptional case the court may refer costs for assessment under Rule 58.

Rule 58 sets out a code of procedure for the assessment of costs by an assessment officer.

[15] The motions judge concluded, correctly in my view, that there is now a presumption that costs shall be fixed by the court unless the court is satisfied that it has before it an exceptional case. The appellants submitted to the motions court and to this court that the case at bar is such a case. The motions judge, in deciding that this was not an exceptional case, said [at para. 52]:

Only if the assessment process will be more suited to effect procedural and substantive justice should the Court refer the matter for assessment. There must be some element to the case that is out of the ordinary or unusual that would warrant deviating from the presumption that costs are to be fixed. Neither complex litigation nor significant amounts in legal fees will be enough for a case to be exceptional. The judge should be able to fix costs with a reasonable review of the work completed without having to scrutinize each and every docket. If that type of scrutinizing analysis is required, then perhaps, the matter would fall within the exception and be referred to assessment: *BNY Financial Corp.-Canada v. National Automotive Warehousing Inc.*, [1999] O.J. No. 1273 (Commercial List, Gen. Div.) (BNY Financial).

[16] I agree with the motions judge that if a judge is able to effect procedural and substantive justice in fixing costs, she ought to do so. See *Murano v. Bank of Montreal* (1998), 1998 CanLII 5633 (ON CA), 41 O.R. (3d) 222, 163 D.L.R. (4th) 21 (C.A.) at p. 245 O.R., per Morden A.C.J.O.

[17] The appellants argued before us that an abandoned motion falls into the category of an exceptional case because the judge fixing the costs does not have the benefit of a hearing involving the presentation of evidence and legal argument. While there is no doubt that the judge who has heard a case is in the best position to determine a just costs award, it does not follow, that in the circumstances which exist here, the motions judge was obliged to decline the task.

[18] I also observe that rule 57.01(3.1) is discretionary. It provides that in an exceptional case, the trial judge may refer costs for assessment. It is not required that she do so. This is a somewhat complex case with several parties and a number of counsel, [page297] including one party with two senior counsel. Although another judge might have exercised his or her discretion under rule 57.01(3.1) differently, I see no basis upon which to interfere with the motions judge's discretion not to refer the costs for assessment.”

[104] I was not directed to, and have been unable to find on my own, a decision that deals with the costs of a Motion that was abandoned AFTER it was heard and responded to, so I will proceed to assess costs in the usual manner, per the tests set out, *inter alia*, in *Boucher and Davies v. Clarington (Municipality)*(2009), 2009 ONCA 722 (CanLII), 100 O.R. (3d) 66 (Ont. C.A.) ("*Davies*").

### **Bankruptcy Context for determination of Costs:**

[105] I set out in detail in *Bannikova* the interplay between the provisions of the BIA for the assessment of Costs under s.197, and the provisions of s.131 of the *Ontario Courts of Justice Act* and Rule 57 of the *Ontario Rules of Civil Procedure*, for the Bankruptcy Court in determining costs for Motions brought under the BIA:

“166 Subject to the provisions of an Act or the *Rules of Civil Procedure*, the costs incurred during a proceeding or a step in a proceeding are in the discretion of the Court. The Court must determine by whom and to what extent costs shall be paid (s. 131(1), *Courts of Justice Act (Ontario)*).

167 Under the relevant general provisions of s.197 the BIA:

197(1) Costs in discretion of court

Subject to this Act and to the General Rules, the costs of and incidental to any proceedings in court under this Act are in the discretion of the court.

197(2) How costs awarded

The court in awarding costs may direct that the costs shall be taxed and paid as between party and party or as between solicitor and client, or the court may fix a sum to be paid in lieu of taxation or of taxed costs, but in the absence of any express direction costs shall follow the event and shall be taxed as between party and party.

168 Bankruptcy Courts have interpreted these provisions in exercising their discretion as to costs under s.197 of the BIA by citing jurisprudence generally interpreting the provincial *Rules of Civil Procedure*, such as the Registrar in *Eastern Ontario District Soccer Association (Re)*2017 CarswellOnt 13201, 2017 ONSC 4932, 283 A.C.W.S. (3d) 696, 51 C.B.R. (6th) 305 stating:

"13 In my view section 197 of the BIA does in fact govern the issue of costs on this motion but it does not do so in a vacuum. There is ample case law in bankruptcy proceedings applying the factors set out in rule 57.01(1) in the determination of costs."

The Registrar in that case also applied the very influential Ontario Civil decision of *Boucher v. Public Accountants Council (Ontario)*2004 CanLII 14579 (ON CA), [2004 CarswellOnt 2521 (Ont. C.A.)], 2004 CanLII 14579 ("*Boucher*") in assessing the costs award.

169 In *Sally Creek Environs Corp. Re* 2010 CarswellOnt 2634, 2010 ONCA 312, 188 A.C.W.S. (3d) 344, 261 O.A.C. 199, 67 C.B.R. (5th) 161, ("*Sally Creek*") the Ontario Court of Appeal stated:

"148 We agree, in part, with the appellant. We note that s. 197 of the BIA grants a very broad discretion on the court to award costs. Section 197(1) states that, subject to the BIA and the General Rules, "the costs of and incidental to any proceedings in court under this Act are in the discretion of the court." Subsections (2) and (3) create presumptions for party and party costs to be paid from the estate unless the court orders otherwise. In our view, this wide discretion allows the court to balance the myriad factors and diverse interests at play in bankruptcy proceedings.

149 We agree with the respondents that, in exercising this discretion, registrars and courts have often been guided by the *Rules of Civil Procedure*, the *Courts of Justice Act* and the case law flowing from them. Rule 3 of the General Rules states: "In cases not provided for

in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules." Provincial rules of procedure thus perform a gap filling function in the interpretation and application of the General Rules. With respect to costs, reference to the Rules of Civil Procedure has been made in determining whether an appellant should post security for costs of an appeal (*Towers Marts & Properties Ltd., Re*, 1968 CanLII 270 (ON SC), [1968] 1 O.R. 605 (Ont. S.C.)) and the effect of an offer to settle on a costs award (*Baltman v. Coopers & Lybrand Ltd.* (1997), 47 C.B.R. (3d) 121 (Ont. Bkcty.).

150 In the present case, although reference to the *Rules of Civil Procedure* or *Courts of Justice Act* may have been helpful, the Supreme Court's clear direction in *Young v. Young* governs. As noted above, this case held that solicitor and client costs are to be awarded only in the rarest of occasions. Although not decided in the bankruptcy context, that case laid out broad principles that we would apply to the present case."

170 In *Kaptor Financial Inc. v. SF Partnership, LLP*, 2016 CarswellOnt 17052, 2016 ONSC 6607, [2016] O.J. No. 5612, 272 A.C.W.S. (3d) 25, 41 C.B.R. (6th) 262, ("*Kaptor* ") Newbould J. applied relevant civil jurisprudence including *Davies v. Clarington (Municipality)*(2009), 2009 ONCA 722 (CanLII), 100 O.R. (3d) 66 (Ont. C.A.) ("*Davies* ") to a costs determination in a Bankruptcy context."

...

172 Very recently, Osborne, J. confirmed these principles of assessment of costs under the BIA in *BMO v. Can United Consulting Corporation* 2023 ONSC 4773 (CanLII), ("*Can United*") in the context of proceedings relating to a Receiver appointed under s.243 of the BIA stating:

"19. This proceeding was brought, and the Receiver was appointed, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (BIA) and section 101 of the *Courts of Justice Act* (CJA). This Court has the discretion to award costs of BIA proceedings pursuant to section 197 of the BIA and has the discretion to award costs in any civil proceeding pursuant to section 131 of the CJA (taking into account the factors set out in Rule 57.01).

20. The discretion under both statutes includes the discretion to determine whether costs should be paid, and if so by whom, and to what extent. This discretion includes the jurisdiction to award costs against a non-party: *Dallas/North Group Inc. (Re)*, 2001 CanLII 3636 (ON CA), [2001] 148 O.A.C. 288, O.J. No. 2743 (C.A.) at paras. 6-15; *1730960 Ontario Ltd. (Re)*, 2009 ONCA 720, O.J. No. 4182 at para. 8; and *2403177 Ontario Inc. v. Bending Lake Iron Group Limited*, 2017 ONSC 3566, O.J. No. 3374 at paras. 27 - 28.

[106] As a result, following the Court of Appeal in *Boucher, Davies* and *Sally Creek*, Newbould, J. in *Kaptor*, and Osborne, J. (as he then was) in *Can United* I will apply the *Rules of Civil Procedure* and the cases interpreting those rules in this Bankruptcy context, unless there is specific authority in Bankruptcy that contradicts those principles.

[107] In exercising its discretion in determining costs the court may consider, inter alia, the factors set out in Rule 57.01(1) of the *Ontario Rules of Civil Procedure*, which reads:

#### Factors in Discretion

57.01 (1) In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

(a) the amount claimed and the amount recovered in the proceeding;

- (b) the apportionment of liability;
- (c) the complexity of the proceeding;
- (d) the importance of the issues;
- (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding; whether any step in the proceeding was,
  - (i) improper, vexatious or unnecessary, or
  - (ii) taken through negligence, mistake or excessive caution;
- (f) a party's denial of or refusal to admit anything that should have been admitted;
- (g) whether it is appropriate to award any costs or more than one set of costs where a party,
- (h) commenced separate proceedings for claims that should have been made in one proceeding, or
  - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer;
- (h.1) whether a party unreasonably objected to proceeding by telephone conference or video conference under rule 1.08; and
- (i) any other matter relevant to the question of costs

...

#### Authority of Court

(4) Nothing in this rule or rules 57.02 to 57.07 affects the authority of the court under [section 131](#) of the [Courts of Justice Act](#),

- (a) to award or refuse costs in respect of a particular issue or part of a proceeding;
- (b) to award a percentage of assessed costs or award assessed costs up to or from a particular stage of a proceeding;
- (c) to award all or part of the costs on a substantial indemnity basis;
- (d) to award costs in an amount that represents full indemnity; or
- (e) to award costs to a party acting in person.

[108] Fairness and reasonableness are the overriding principles to be considered by the Court in determining costs: *Boucher and Deonath v. Iqbal* 2017 ONSC 3672 (Ont. S.C.J.) at paras. 20-21 (*"Deonath"*).

[109] Generally, costs on a partial indemnity scale should follow the event, and this principle should only be departed from for very good reasons such as findings of misconduct by a party, where there has been a miscarriage in procedure or where there is oppressive or vexatious conduct (*1318706 Ontario Ltd. v. Niagara (Regional Municipality)*(2005), 2005 CanLII 16071 (ON CA), 75 O.R. (3d) 405 (Ont. C.A.) *Lakeshore Oakville Holdings Inc. v. Misek* 2010 ONSC 7238 (Ont. S.C.J.) at paras. 10, 12-14).

[110] In order for a Court to make its determination as to costs, Rule 1.04(1) must also be considered, to ensure that the Court makes a just, expeditious and least expensive determination of every civil proceeding on its merits and under Rule 1.04(1.1) so that costs orders are made which are proportionate to the importance and complexity of the issues and to the amount in dispute in the proceeding between the parties (*Deonath* at para. 21).

[111] In *Davies* the Court of Appeal stated as follows (at paragraph 52):

"Rather than engage in a purely mathematical exercise, the judge awarding costs should reflect on what the court views as a reasonable amount that should be paid by the unsuccessful party rather than any exact measure of the actual costs of the successful litigant."

### **Analysis of Tests under s.197 of the BIA and R.57.01 and R.1.04**

[112] The Bankrupt failed to obtain any of the relief he sought on this Motion, which he had abandoned, after it was heard. The Trustee was entirely successful in its opposition.

[113] The Trustee is requesting costs on a substantial indemnity basis, but not a full indemnity basis. The Bankrupt opposes this request.

[114] On a substantial indemnity basis the Trustee is requesting costs \$12,366.72 or, alternatively, on a partial indemnity scale in the amount of \$8,244.48. Both figures are inclusive of HST and disbursements.

### **Importance of issues**

[115] The Bankrupt, on this Motion was attempting to have imposed on the Trustee substantial disclosure requirements, and "guardrails" for the conduct of the Whitehorse Action, with possible serious privilege implications for the Trustee, and large professional costs for the Trustee to fulfill. With his previously abandoned relief, the Bankrupt had also attempted to stay the granting of the Section 38 Order for the KSV Main Action and the Whitehorse Action, pending fulfillment by the Trustee of similar documentary disclosure and imposition of "guardrails" on the Trustee's conduct of the KSV Main Action.

[116] These issues were important to both the Trustee, as well as to the creditors of the Bankrupt's estate, with proven claims exceeding \$26 MILLION dollars.

### **Complexity of Motion**

[117] As can be discerned from my Reasons, there were many complex issues raised by the Bankrupt that arose as a result of his misapprehension of the provisions of the BIA and his requests for relief that could not be granted by this Court, or generally under the BIA, when the Bankrupt had no standing under the provisions of s.37 and s.119(2) to request that relief.

[118] This motion was complex.

### **Whether any step in the proceeding was improper, vexatious or unnecessary, or taken through negligence, mistake or excessive caution, and did the conduct of any party tend to shorten or to lengthen unnecessarily the duration of the proceeding**

[119] The entirety of the Bankrupt's Motion(s) and the shifting relief sought was misconceived, brought without standing to do so under s.37 and s.119 of the BIA and doomed to failure for the reasons I have set out in detail in these Reasons.

[120] The entirety of the conduct of the Bankrupt

- rolling forward various requests for relief with respect to first then KSV Main Action,
- then the Whitehorse Action, and
- filing materials at literally the 11<sup>th</sup> hour seeking entirely new, different, relief, and
- filing AI Generated materials in violation of the *Rules of Civil Procedure* and the various Practice Directions,

was in its totality improper, unnecessary, taken through negligence and in every possible way lengthened unnecessarily the duration of the proceeding for the purposes of the R.57 tests as well for the tests under s.4.2 of the BIA regarding the duty of good faith, as set out in the tests summarized in *CWB Maxium Financial Inc v 2026998 Alberta Ltd*, 2021 ABQB 137 (CanLII).

### Principle of Indemnity and Scale of Costs

[121] The principle of indemnity is particularly important in the case of Bankruptcy proceedings involving the Trustee, as this is not ordinary Civil Litigation. Here the Trustee is appointed by operation of the BIA, as the Court's Officer to administer the assets of the Bankruptcy Estate.

[122] Actions against the Trustee are not just costs of a particular litigant in a civil proceeding, but are direct costs to all of the creditors of the Estate, as by virtue of the priority granted to the costs of Trustees under s.136 of the BIA, it is the other creditors that are most affected by the costs forced to be incurred by the Trustee in responding to the Bankrupt, who, to date, has not paid a penny of the \$13.6 MILLION Conditional Discharge Order.

[123] The reasoning of Newbould, J. in *Kaptor* is particularly applicable here:

"4 Unfounded allegations of improper conduct seriously prejudicial to the character or reputation of a party can give rise to costs on a substantial indemnity scale. See *131843 Canada Inc. v. Double "R" (Toronto) Ltd.* (1992), 7 C.P.C. (3d) 15 (Ont. Gen. Div.) per Blair J. (as he then was). In *Bisyk (No. 2), Re* (1980), 1980 CanLII 1843 (ON SC), 32 O.R. (2d) 281 (Ont. H.C.); aff'd [1981] O.J. No. 1319 (Ont. C.A.), Robins J. (as he then was), held that unproven allegations of undue influence in the preparation of a will were allegations of improper conduct seriously prejudicial to the character or reputation of a party deserving of costs on a solicitor and client basis. Both of these cases were referred to with acceptance in *Davies v. Clarington (Municipality)* (2009), 2009 ONCA 722 (CanLII), 100 O.R. (3d) 66 (Ont. C.A.) at para. 47.

...

7 Mr. Inspektor's allegations have been filed in the public record. To make reckless allegations with respect to the integrity of a court-officer occupying a position of public trust is a serious matter This is not the first time that Mr. Inspektor has brought proceedings in his fight with the litigation committee. The Trustee/Receiver says that this motion was part of a troubling trend in the receivership/bankruptcy proceedings of the Kaptor Group, in which Crowe Soberman has been forced to spend considerable time and resources at the expense of the estates in addressing and responding to Mr. Inspektor's efforts to advance his own personal interests. In this the Trustee/Receiver appears to be right. In the circumstances the Trustee/Receiver is entitled to costs on a substantial indemnity basis."

[124] The Bankrupt's conduct in impugning the conduct of the Trustee and inspectors with spurious conflict claims, and attempting to stay the commencement and prosecution by the Trustee of the KSV Main Action, and when that was frustrated by the Section 38 Order, the Whitehorse Action, and then attempting to impose the conditions and documentary productions requested in his various requests for relief, is precisely the type of behaviour that Newbould, J. in *Kaptor* stated should be subject to the sanction by the Court of the award of Substantial Indemnity Costs.

[125] As noted in *Davies*, Substantial Indemnity scale costs (or Solicitor and Client Costs for the purposes of s.197(2) of the BIA) are awarded outside of the usual costs regime of Partial Indemnity costs as an explicit sanction and penalty by the Court of egregious conduct "...which makes such costs desirable as a form of chastisement."

[126] Substantial Indemnity Costs (or Solicitor and Client Costs for the purposes of s.197(2) of the BIA) are awarded over and above the ordinary principles of proportionality and indemnity, in part to discourage this Bankrupt, as well as other parties from engaging in similar behaviour, as "guardrails" on the future conduct of the Bankrupt, particularly in the context of Bankruptcy Proceedings, and to protect the Court's Officer.

[127] Accordingly, given that the conduct of the Bankrupt meets these tests, and in applying s.4.2 of the BIA, I will exercise my Registrar's Discretion to determine the costs of the Trustee on a Substantial Indemnity Scale under the provisions of s.131 of the *Courts of Justice Act*, and Rule 57.01 or "solicitor and client costs" in the language of s.197(2) of 90% of the amounts properly claimed by the Trustee after the determination of quantum.

### Quantum of costs

[128] I have reviewed in detail the Costs Outline submitted by the Trustee as an exhibit to the Trustee's Submissions. The information presented is sufficiently detailed to allow me to make determinations of quantum and permissible costs for the purposes of determining the proper quantum of costs, and to determine the proportionality of the costs for the purposes of s.197 and 4.2 of the BIA and R.57 and R.1.04(1.1) of the *Rules of Civil Procedure*.

[129] I find in exercising my Registrar's Discretion to assess costs under the BIA, under the CJA and under the Rules, that the \$15,957,50 in actual fees (exclusive of HST) claimed by the Trustee are fair and reasonable in the circumstances, and in terms of the provisions of s.197 of the BIA and Rule 1.04(1.1), I find that the costs requested are proportionate to the importance and complexity of the issues, as per the tests of proportionality in *Deonath* and *Rothmans*.

[130] Therefore for the purposes of calculating the quantum of the claim I will use 90% of the total amount of \$15,957,50 in fees claimed, which would be \$10,944.00, with HST of \$1,422.72 would total \$12,366.72 on the Substantial Indemnity Scale (or a Solicitor and Client Costs for the purposes of s.197(2) of the BIA).

[131] I find that the amount of costs of \$12,366.72 (inclusive of HST) on a Substantial Indemnity Scale (or a Solicitor and Client Scale for the purposes of s.197 of the BIA) is an amount that the Bankrupt could reasonably have expected to pay in relation to this Motion(s), given the importance of the issues to the Trustee, the allegations made by the Bankrupt as per *Kaptor* relating to the Trustee's administration of the Bankruptcy Estate, the factual and legal complexity of the issues being raised, and my finding that the Bankrupt's conduct unnecessarily and improperly necessitated, and lengthened this hearing, and lengthened and complicated the administration of the his estate, for the purposes of the R.57 and R.1.04(1.1) tests.

[132] A costs award in this range was clearly within the contemplation of the Bankrupt, having previously had costs of \$23,288.10 assessed against him by Osborne, J. (as he then was) in the *Coco Lift Stay Endorsement* as a result of the Bankrupt's failed opposition to that Motion. I also note that the Panel in the *IIROC Ng Decision* imposed costs on the Bankrupt of \$194,000.

[133] Following *Davies*, rather than engaging in a purely mathematical exercise, I find that the costs awards to the Trustee of \$12,366.72 (inclusive of HST) on the Substantial Indemnity Scale (or a Solicitor and Client Costs for the purposes of s.197(2) of the BIA) is a fair and reasonable amount that should be paid by the Bankrupt, forthwith, and shall be paid by the Bankrupt to the Trustee, IN FULL within 30 days of the release of this Endorsement, as the unsuccessful party on this Motion(s), rather than any exact measure of the actual costs of the successful litigant Trustee.

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Associate Justice Ilchenko  
Registrar in Bankruptcy  
Superior Court of Justice