Rogue White Knights and Strategic Buyers of Distressed Debt

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Introduction

On January 17, 2007, Mr. Justice Daniel H. Tingley of the Quebec Superior Court (Commercial Division) (the "*Court*") rendered an interesting judgment (the "*Minco Judgment*")[1] in the restructuring proceedings of Minco-Division Construction Inc. and Sleb 1 Inc. (collectively "*Minco*") pursuant to the *Companies' Creditors Arrangement Act* (R.S.C. 1985, c. C-36) (the "*CCAA*"). The Minco Judgment held, based on the particular and unique factual circumstances of the case, that Minco could fully satisfy the claims held by a strategic buyer of its distressed debt by paying the latter the sums that it had itself paid to acquire such distressed debt. The Court determined that the distressed debt buyer was, in reality, a "*rogue white knight*"[2] that acquired such debt at a significant discount in order to gain strategic control of the subject CCAA proceedings and then turned on its benefactors for its own Machiavellian purposes.[3]

The Minco Judgment implicitly recognized the inherent jurisdiction of Canadian insolvency courts to take into account the circumstances under which distressed debt is acquired in insolvency proceedings, especially in situations where the purchaser of such distressed debt is pursuing a hidden agenda, is acting in bad faith or "*tramples on the rights and expectations of others*"[4].

The Minco Story

Minco is an owner-developer of a mixed residential and commercial condominium project in downtown Montreal (the "*Sleb Property*"). Although the project contemplated three separate phases, only the first phase, a retrofit of an existing 10-storey building, was under construction. At the time that Minco filed for

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[1] *Minco-Division Construction Inc. v. 9170-6929 Québec Inc.* (2007), 29 C.B.R. (5th) 165, 2007 CarswellQue 420, EYB 2007-113273, 2007 QCCS 236 (Que. S.C. (Commercial Div.)), leave to appeal to C.A. refused (29 January 2007), Montreal 500-09-017423-070 (Que. C.A.), (29 January 2007), Montreal 500-09-017419-078 (Que. C.A.).

[2] *Ibid.* at paras. 1, 31.

[3] *Supra* note 1 at paras. 27, 32.

[4] *Supra* note 1 at para. 36.

court protection under the CCAA in November 2005, the construction project was behind schedule and significantly over budget. At such time, Minco had cumulative debts to its creditors of more than $32 million that included the following secured debt:

	Nature of secured debt	*Approximate Amount owed*
i)	Construction liens benefiting from legal hypothecs (ranking in priority to conventional hypothecs)	$5,500,000
ii)	First ranking conventional hypothecary loan	$12,000,000
iii)	Second ranking conventional hypothecary mezzanine loan	$13,500,000
iv)	Third ranking conventional hypothec securing balance of sale	$700,000

The first ranking conventional lender, a Canadian chartered bank (the "*Bank*"), granted debtor-in-possession financing (the "*DIP Loan*") to Minco to be used, primarily, to fund the restructuring process, to maintain and preserve the project and to enable the Bank, through the Interim Receiver that was appointed at its request, to determine whether it was prepared to fund the sums required to complete construction. Over the course of the restructuring process, the DIP Loan grew to approximately $5 million.

Ultimately, the Bank determined that it was not prepared to fund the completion of the project and it began to seek an exit strategy. In that connection, the Court authorized the Interim Receiver to conduct a marketing and tender solicitation process in order to try to elicit the highest price for the Sleb Property, in its unfinished state.

Minco and its principals realized that unless they found bridge financing to take out the Bank's position, it was likely that the Sleb Property would be sold by the Interim Receiver through the Court-authorized marketing and sale process. Consequently, Minco and its principals attempted to identify a "white knight" to buy out the Bank's position at a discount in order to allow Minco to seek permanent financing to fund a plan of arrangement and to complete construction of the project.

Black's Law Dictionary defines a white knight as:

> *"A person or corporation that rescues the target of an unfriendly corporate takeover, esp. by acquiring a controlling interest in the target corporation or by making a competing tender offer. — Also termed friendly suitor"*[5]

[5] *Black's Law Dictionary*, 8th ed., *s.v.* "white knight".

Three of the shareholders of Minco together with a business associate of another shareholder ultimately agreed to form a company that would be used as the vehicle to purchase the Bank's claims at a discount (the "*White Knight*"). The negotiations to determine the price at which the Bank's claim would be purchased were directed by Minco and its legal counsel and, ultimately, an agreement was concluded on June 21, 2006, whereby the White Knight purchased all of the rights, title and interest of the Bank, including its DIP Loan and the corresponding priority security created by court order. The White Knight thus purchased all of the Bank's claims, having a total face value of approximately $17.5 million, for $10.25 million. Minco asserted that it was always intended that the White Knight would support its restructuring efforts and that it was implicit in the agreement that such "friendly" party would not assert claims for the full face value of the debt that it had acquired from the Bank at a steep discount.

Subsequent to the acquisition of the Bank's claims, there was a general falling out between the principals of Minco and the majority shareholder of the White Knight. The Court concluded that from that point onward the objective of the White Knight was to defeat Minco's restructuring efforts and to take the project in payment through foreclosure proceedings. In order to further strengthen its hand, the White Knight purchased the rights of the mezzanine lender, which had a face value claim of more than $13.5 million, for the sum of $800,000. Finally, the White Knight purchased a number of construction lien claims likely sufficient to control that class of creditors.

Knowing that Minco's restructuring efforts would be doomed to failure if the White Knight were permitted to claim the full face value of all of the debt that it had purchased at a substantial discount, Minco took proceedings under section 12 CCAA to have the amount of the White Knight's claim determined by the Court. Concurrently, the minority shareholders of the White Knight brought proceedings, *inter alia*, to enjoin the White Knight from voting on Minco's plan of arrangement, to determine the amount of the White Knight's claim and for a declaration that the White Knight be deemed to have accepted Minco's plan of arrangement upon payment to the White Knight of the amount determined by the Court. The Minco Judgment addressed both proceedings.

The Court determined that the majority and controlling shareholder of the White Knight was in fact a "*rogue white knight*".[6] The Court further concluded that such rogue white knight had turned on his benefactors (Minco and its shareholders) and was threatening to foreclose on the secured debt that had been acquired at the instigation of Minco unless it was paid the full face value of the acquired claims.

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[6] *Supra* note 1 at paras. 1, 31.

The Court described the objectives of the rogue White Knight in the following language:

> *"Threatening to hijack the Project and frustrate a Plan intended to bring a measure of relief to many creditors, including the purchasers of units, does not square with the good faith conduct required of contracting parties by article 1375 C.C.Q. Rather, such behaviour in the context of this case is abusive and tramples on the rights and expectations of others. The Mis en cause have turned 9170 Québec from a white knight to a speculator in distressed debt."*[7]

Based on the particular facts of the case, the Court decided to treat the claims of the White Knight as if they were "*litigious rights*"[8] because that was what the parties intended at the time that the Bank debt was acquired at a discount. Consequently, the Court ordered that Minco could satisfy and discharge all claims owing to the White Knight by paying to the latter, in the context of its plan of arrangement, the amount that the White Knight had itself paid to acquire the subject debt claims. The Court further ordered that upon payment to the White Knight of such amount, the latter would be deemed to have accepted Minco's plan of arrangement.

The effect of the Minco Judgment was that the White Knight was ordered to accept, in full satisfaction of all of its acquired claims then having an aggregate face value of approximately $33.5 million, the sum of approximately $13.5 million or roughly equivalent to what it had disbursed to acquire such claims plus interest and certain expenses.

Strategic Acquisitions of Distressed Debt

Canadian insolvency courts have, in certain cases, shown an interest in ascertaining the circumstances in which and the price at which distressed debt has been purchased by speculators. Where the issue becomes more germane is in circumstances where purchases of debt are made for strategic purposes. A strategic purchase is generally one where the acquirer of the debt gains a certain degree of control over the restructuring process. This situation usually occurs where a party acquires sufficient debt to control, or exercise a veto over, one or more creditors' classes in a restructuring proceeding.

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[7] *Supra* note 1 at para. 36.

[8] *Supra* note 1 at para. 41. See also *infra* note 16.

In *Re Canadian Airlines Corp.*[9], the Alberta Court of Queen's Bench considered the motivation of a creditor that had purchased debt in the hope of obtaining a blocking position in the following manner:

> *"The good faith of Resurgence in its vote must also be considered. Resurgence acquired a substantial amount of its claim after the failure of the Onex bid, when it was aware that Canadian's financial condition was rapidly deteriorating. Thereafter, Resurgence continued to purchase a substantial amount of this highly distressed debt. While Mr. Symington maintained that he bought because he thought the bonds were a good investment, he also acknowledged that one basis for purchasing was the hope of obtaining a blocking position sufficient to veto a plan in the proposed debt restructuring. This was an obvious ploy for leverage with the Plan proponents."*[10]

There are certain instances where Canadian courts have highlighted the differences between the interests of original creditors and those of debt speculators. Although, on the surface, there is no difference to a debtor if a dollar of debt migrates from one creditor to another, there are occasions when the circumstances of such debt transactions may impact on the court's appreciation of the rights of the transferee.

In *Canada (Minister of Indian Affairs & Northern Development) v. Curragh Inc.*[11], Farley J. of the Superior Court of Justice (Ontario) described the role of "vulture funds" as follows:

> *"[S]ome vulture funds provide a very objective (no past boggage) facility which increases the liquidity of the market for those who have a desire to cut their losses, the vulture taking a different view of the debtors prospects. Mind you, other vultures are somewhat more antisocial and may in certain circumstances be said to hold the affected parties to ransom. [. . .] I think it fair to observe that acts and deeds which legitimately advance one up the legal ladder (given our existing law) cannot be criticised legally, however eyebrows start to arch when the scene approximates a child threatening to hold his breath (or worse still [someone] else's breath) until he has his own way. Mr. Myers eloquently put the contrast between those affected persons who had put 100 cents on the dollar into the situation only to be caught in a credit crunch and those who have 'speculated' at pennies on the pound knowing that the situation is risky."*[12]

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[9](2000), [2000] 10 W.W.R. 269, 20 C.B.R. (4th) 1, 84 Alta. L.R. (3d) 9, 9 B.L.R. (3d) 41, [2000] A.J. No. 771, 2000 CarswellAlta 662, 2000 ABQB 442, 265 A.R. 201 (Alta. Q.B.) [*Canadian Airlines*].

[10]*Ibid.* at para. 105.

[11]*Canada (Minister of Indian Affairs & Northern Development) v. Curragh Inc.* (1994), 1994 CarswellOnt 3851, [1994] O.J. No. 1917 (Ont. Gen. Div. [Commercial List])

[12]*Ibid.* at para. 4.

Quebec insolvency courts have considered the rights of distressed debt speculators in cases where the public policy interest of the restructuring proceeding trumps the opportunistic maneuvers of speculators.[13] One can glean from such jurisprudence that there may be certain circumstances when a strategic buyer of distressed debt may not necessarily receive the same treatment as original creditors whose losses have not in any way been mitigated.

In assessing whether corporate conduct is unfair in oppression cases, Canadian courts have also reviewed the reasonable expectations of shareholders and creditors:

> "*In deciding what is unfair, the history and nature of the corporation, the essential nature of the relationship between the corporation and the creditor, the type of rights affected in general commercial practice should all be material. More concretely, the test of unfair prejudice or unfair disregard should encompass the following considerations: the protection of the underlying expectation of a creditor in the arrangement with the corporation, the extent to which the acts complained of were unforeseeable or the creditor could not reasonably have protected itself from such acts, and the detriment to the interests of the creditor.*"[14]

In *Abacus Cities Ltd. (Trustee of) v. Fidelity Trust Co.*[15], the Alberta Court of Queen's Bench held that for purposes of valuing creditors' claims in a bankruptcy, the court will take into consideration those acts occurring after the date of bankruptcy which resulted in a decrease in the amounts owed to the creditor as well as any acts by such creditor that would result in the mitigation of its own losses.

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[13]See *e.g. Re Uniforêt Inc.* (2002), 2002 CarswellQue 2472, 40 C.B.R. (4th) 251, [2003] R.J.Q. 161, REJB 2002-35297 (Que. S.C.), at paras. 96-97; leave to appeal to Que. C.A. refused (2002), 2002 CarswellQue 2546, 40 C.B.R. (4th) 281, REJB 2002-35785, J.E. 2003-5 (Que. C.A.); *Re Uniforêt inc.* (2003), REJB 2003-42346, 43 C.B.R. (4th) 254, [2003] Q.J. No. 9328, 2003 CarswellQue 3404, J.E. 2003-1408 (Que. S.C.) at paras. 30-33; leave to appeal to Que. C.A. refused (2003), 2003 CarswellQue 1843, REJB 2003-46288, 44 C.B.R. (4th) 158 (Que. C.A.); leave to appeal to S.C.C. refused (2004), 329 N.R. 194 (note), 2004 CarswellQue 237/238 (S.C.C.) [*Uniforêt*].

[14]*First Edmonton Place Ltd. v. 315888 Alberta Ltd.* (1988), [1988] A.J. No. 511, 60 Alta. L.R. (2d) 122, 40 B.L.R. 28, 1988 CarswellAlta 103 (Alta. Q.B.) at 57 B.L.R., cited in *Canadian Airlines*, *supra* note 9 at para. 141.

[15](1998), 222 A.R. 310, [1999] 3 W.W.R. 718, 1998 CarswellAlta 633, 63 Alta. L.R. (3d) 390, [1998] A.J. 811, 1998 ABQB 614 (Alta. Q.B.) at para. 6.

Litigious Rights

In the province of Quebec, the person from whom litigious rights are claimed is fully discharged by paying to the buyer of such rights the sale price, the costs related to the sale and interest on the price computed from the day on which the buyer paid it.[16]

It was acknowledged in the Minco case that the claims that were purchased by the White Knight were not, in themselves, litigious or in dispute. The question broached by the Court was, rather, whether at the time that the claims were acquired during the CCAA proceedings, they could be considered as akin to litigious rights.[17] In the Minco Judgment, the Court determined that the purchases by the White Knight of various claims during the CCAA process were all "*during a litigious period for litigious purposes*"[18].

What was likely most significant to the trial judge was his finding that all of the subject claims were acquired by the White Knight "*with a view to facilitating a refinancing of the Project* [by Minco] *and its completion*"[19] and that the White Knight then turned on the debtor for its own personal gain. Consequently, the Court treated the claims that were purchased by the White Knight as "litigious rights" because "*that is what was intended at the outset by the parties*"[20].

The Court held that in the context of CCAA proceedings, where a purchaser of claims is not in good faith or purchases claims under false pretenses, such breach can be redressed by limiting the claims of such purchaser to the sums that it paid to acquire the claims. In that fashion, a debtor's restructuring cannot be circumvented by a party that is using the CCAA process for purposes for which it is not intended. The application of legal principles related to "litigious rights" was a practical mechanism employed by the Court to arrive at a fair and reasonable result in the particular circumstances of the Minco case.

Farley J. has observed that in certain circumstances, insolvency courts may make orders to do "*not only what 'justice dictates', but also what 'practicality*

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[16]See Art. 1784 C.C.Q.

[17]*Supra* note 1 at para. 40, n. 14.

[18]*Supra* note 1 at para. 41.

[19]*Supra* note 1 at para. 44.

[20]*Supra* note 1 at para. 45.

demands'".[21] As well, in *Re Laserworks Computer Services Inc.*[22], the Nova Scotia Supreme Court invoked its inherent jurisdiction to prevent an abusive creditor from using purchased debts to vote down a proposal, stating:

> *"I would simply add that in light of the decision I make here persons should certainly think twice before they purchase debts in order to defeat a proposal.*
>
> *[. . .]*
>
> *By entering into this arrangement with the numbered company the eighteen creditors have tainted themselves and become embroiled in the improper purpose of Datarite. Their votes cannot stand. If Laserworks has the right to be free of this type of interference the Court must be able to fashion a remedy. This court does have the inherent jurisdiction to supervise the bankruptcy process and consequently the conduct of creditors where that conduct constitutes an abuse of the provisions of the B.I.A. While creditors can certainly vote in their own best interest, they may not collude with a third party to place a debtor in bankruptcy for an improper purpose. Such activity lacks commercial morality and offends the integrity of the bankruptcy process."*[23]

In the exercise of inherent jurisdiction, Canadian insolvency courts thus seek to balance the legitimate rights of all stakeholders, including creditors who acquired their debt claims at a steep discount, and the overall objectives of the restructuring process.

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[21]See *Canada (Minister of Indian Affairs & Northern Development) v. Curragh Inc.* (1994), 27 C.B.R. (3d) 148, 114 D.L.R. (4th) 176, 1994 CarswellOnt 294, [1994] O.J. No. 953 (Ont. Gen. Div. [Commercial List]) at 159 C.B.R. Inherent jurisdiction has been repeatedly invoked by Canadian insolvency courts in the context of both the CCAA and the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. See Scott A. Bomhof, "The Court's Inherent Jurisdiction: What are the Limits?" (2003) 15 Comm. Insol. Rep. 54; L.W. Houlden, G.B. Morawetz & Janis Sarra, *Bankruptcy and Insolvency Law of Canada*, 3rd ed., looseleaf (Scarborough, Ont.: Thomson Carswell, 2005) at I§3.

[22](1997), 1997 CarswellNS 179, 46 C.B.R. (3d) 226, [1997] N.S.J. No. 564 (N.S. S.C.), aff'd (1997), 1997 CarswellNS 327, 48 C.B.R. (3d) 8, 164 N.S.R. (2d) 17, 491 A.P.R. 17 (N.S. S.C.), aff'd (1998), 165 N.S.R. (2d) 297, 495 A.P.R. 297, 6 C.B.R. (4th) 69, 37 B.L.R. (2d) 226, [1998] N.S.J. No. 60, 1998 CarswellNS 38 (N.S. C.A.).

[23]*Ibid.* at paras. 40, 45. See also *Fiber Connectioos Inc. v. SVCM Capital Ltd.* (2005), 2005 CarswellOnt 1963, 10 C.B.R. (5th) 192, 5 B.L.R. (4th) 271, [2005] O.J. No. 3899 (Ont. S.C.J.) at 200 C.B.R.; leave to appeal to Ont. C.A. granted (2005), 2005 CarswellOnt 1834, 10 C.B.R. (5th) 201 (Ont. C.A.).

The Obligation to Deal in Good Faith

Under Quebec law, parties are compelled to deal in good faith. This principle is consecrated in Article 7 of the *Civil Code of Quebec* ("*C.C.Q.*"), which states:

> *"No right may be exercised with the intent of injuring another or in an excessive and unreasonable manner which is contrary to the requirements of good faith."*

Similarly, Article 1375 C.C.Q. stipulates:

> *"The parties shall conduct themselves in good faith both at the time the obligation is created and at the time it is performed or extinguished."*

The Court considered the White Knight's conduct, described in the following passage of the Minco Judgment, as behavior not to be condoned:

> *"The Dalle Nogares have instructed Counsel to advise the Court that 9170 Québec [the White Knight] will vote against any plan of arrangement that proposes to pay with interest 100% of the amounts it paid to acquire the CIBC claim, the TCC claim and claims of the Lien Creditors that it has settled (collectively the Claims). Such an act, if exercised, would be tantamount to a fundamental breach of the agreement initially made by the shareholders of 9170, as noted above."*[24]

The Court also characterized the behavior of the White Knight as "*abusive*".[25] In *Houle c. Banque Canadienne Nationale*[26], the Supreme Court of Canada confirmed that the doctrine of abuse of rights is part of Quebec law and that such doctrine can encompass the use of a contract for purposes other than the ones contemplated by the parties.

The requirements of good faith must be juxtaposed with the overall purpose of the CCAA. In *Re Pacific National Lease Holding Corp.*[27], the British Columbia Supreme Court held that "during the [CCAA] stay period, *the Act is intended to prevent manoeuvers for position amongst the creditors of the company.*"[28]

This notion of excessive maneuvering was also addressed in the case of *Unifôret* where the Quebec Superior Court posed the question as to whether a plan of

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[24] *Supra* note 1 at para. 34.

[25] *Supra* note 1 at para. 36.

[26] (1990), EYB 1990-67829, 1990 CarswellQue 37/123, [1990] R.R.A. 883, 74 D.L.R. (4th) 577, [1990] 3 S.C.R. 122, 35 Q.A.C. 161, 114 N.R. 161, 5 C.B.R. (3d) 1, [1990] S.C.J. No. 120 (S.C.C.) at 164 S.C.R.

[27] [1992] B.C.J. No. 3070 (S.C.), Brenner J., aff'd (1992), 72 B.C.L.R. (2d) 368, 19 B.C.A.C. 134, 34 W.A.C. 134, 15 C.B.R. (3d) 265, 1992 CarswellBC 524 (B.C. C.A.) [*Pacific National*].

[28] *Ibid.* at para. 26.

arrangement that is fair and reasonable and both feasible and workable, and that has gained the overall support of creditors, can be "*sacrificed*" to please speculators.[29] We submit that the answer to that question will generally revolve around notions of bad faith and whether such speculators have taken undue advantage of the debtors' precarious financial position to achieve an unreasonable or unconscionable result.

Conclusion

The Minco Judgment is a good example of a creative approach in the exercise of inherent jurisdiction in a CCAA case. The Court applied by analogy (consistent with prior agreements between the parties) the principles relating to the sale of litigious rights in order to limit the claims of a speculator whose intent was to "*hijack*" and "*frustrate*" the objectives of the restructuring proceeding. In limiting such creditor's claims to the amounts that it disbursed to acquire such claims, the Court balanced the interests of the various stakeholders in the Minco restructuring with those of a creditor that was found to have breached its agreement with the debtor and to have acted abusively. Because the Minco Judgment provides for the payment of the creditor's cost of acquisition plus interest and applicable expenses, the White Knight suffers no direct financial loss as a result thereof, but is deprived of the potential gain on the transaction.

There is a clear and appropriate bias on the part of Canadian courts exercising insolvency jurisdiction to promote and facilitate corporate restructurings and to discourage manoeuvres on the part of creditors and other stakeholders that appear to run counter to the overall objectives of the restructuring process.[30] It is where strategic buyers of distressed debt overreach, by reneging upon commitments made at the time of the acquisition of their debt, that we see judicial intervention of the type evidenced by the Minco Judgment.

On the other hand, we are of the view that the Minco Judgment does not address nor apply to situations where distressed debt instruments are bought and sold in insolvency proceedings based on normal commercial considerations and imperatives. "Speculation" should not, in itself, be considered a pejorative term and the Minco Judgment should not be interpreted as a limit or disincentive to the buying and selling of creditors' claims that occurs in most significant restructuring cases. An active and vibrant secondary market for the trading in distressed debt instruments is certainly to be encouraged since creditors with lower cost bases

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[29]See *Uniforêt*, *supra* note 13.

[30]See *Re Cansugar Inc.* (2004), 2004 CarswellNB 9, 2004 NBQB 7, [2004] N.B.J. No. 7 (N.B. Q.B.) at para. 6; *Re Juniper Lumber Co.* (2000), 2000 CarswellNB 130, 226 N.B.R. (2d) 115, 579 A.P.R. 115, [2000] N.B.J. No. 144 (N.B. C.A.), at para. 1; *Pacific National*, *supra* note 27 at para. 26.

and higher risk tolerances are often better equipped to engage in the "*rough and tumble negotiations*"[31] and creative solutions that are the hallmark of successful restructuring cases. Claims traders, or "vultures", can also offer certain advantages to the restructuring process and afford original creditors the possibility of an early exit strategy.[32]

In conclusion, we submit that the following legal principles can be extracted from the Minco Judgment and the jurisprudential trends discussed in this article:

1. Absent clear findings of bad faith or abuse of rights, Canadian insolvency courts will generally not interfere with market-driven distressed debt transactions nor differentiate between creditors as a function of whether their debt claims have a cost base "at par" or were acquired at a discount.

2. Where a plan sponsor or lender agrees to provide funding to support a debtor's restructuring and receives a control or veto position over the restructuring process, it is appropriate for Canadian insolvency courts to consider whether such "white knight" has acted in a manner that is consistent with the reasonable expectations of the debtor and/or other stakeholders at the time that such funding or support was agreed, especially in cases where such party was brought in by the debtor as its supposed saviour.

3. In those restructuring cases where it can be established that a distressed debt speculator or white knight has trampled on the legitimate expectations of others or has acted in bad faith, Canadian insolvency courts may exercise their inherent jurisdiction to limit or mitigate the claims and rights of such parties in order to redress such inequities.

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[31] See *Uniforêt*, *supra* note 13 at para. 38, n. 46; *Re T. Eaton Co.* (1999), [1999] O.J. No. 4216, 14 C.B.R. (4th) 288, 1999 CarswellOnt 3542 (Ont. S.C.J. [Commercial List]), at para. 6; *Re Keddy Motor Inns Ltd.* (1992), 299 A.P.R. 246, 90 D.L.R. (4th) 175, 13 C.B.R. (3d) 245, 6 B.L.R. (2d) 116, 110 N.S.R. (2d) 246, 1992 CarswellNS 46 (N.S. C.A.) at 258 C.B.R.

[32] Christopher Besant & Frank Spizzirri, "'Vulture' Culture is Here to Stay in Insolvency Process" *The Lawyers Weekly* 21:3 (18 May 2001) 9 (QL). The authors indicate that "*[c]reditors who sell their claims receive their money faster, save on collection time, expense and effort, and save the cost of participation in the insolvency process, as most organizations (financial institutions excepted) lack the internal expertise to participate effectively in a protracted insolvency proceeding.*" The authors note that, in return, vultures enjoy certain advantages, such as "*acquiring claims at a discount, being able to 'pick and choose' claims and insolvency proceedings in which to participate (thereby dealing only in claims where recovery will be profitable) and, if they assemble a large enough block of claims, being able to exert pressure on the reorganizing debtor to increase the distribution to creditors or see its reorganization voted down.*"