

December 3, 2025

## **The Automatic Right of Appeal under Section 193(c) of the *BIA*: The Case for a Narrow Approach in Asset Sale Decisions**

By: Jassmine Girgis

**Case Commented On:** *Cameron Stephens Mortgage Capital Ltd v Conacher Kingston Holdings Inc*, [2025 ONCA 732 \(CanLII\)](#)

Section 193 of the *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#) (*BIA*) sets out four circumstances in which a party has an automatic right of appeal to a provincial appellate court from any order or decision of a judge. Where none of these enumerated grounds are engaged, a party can seek leave to appeal under section 193(e).

This post is about appeals dealing with the disposition of the debtor's assets by trustees or receivers.

Under section 193(c), an appeal as of right exists if the property involved in the appeal exceeds ten thousand dollars in value. Most striking is how low the threshold is: in practice, most appeals concerning the sale of the debtor's assets would easily surpass the monetary requirement in section 193(c), effectively creating an automatic right of appeal from any judgment concerning a sale of the property by a trustee or receiver. Yet, that could not have been the drafters' intention. This post discusses two considerations that support a narrow reading of the provision to ensure this does not occur.

In *Cameron Stephens Mortgage Capital Ltd v Conacher Kingston Holdings Inc*, [2025 ONCA 732 \(CanLII\)](#) (*Cameron Stephens*), the Ontario Court of Appeal examined how these provisions should be interpreted, focusing in particular on the scope of section 193(c) and its application to a receiver's sale of the debtor's assets. The Court upheld the motion judge's decision to refuse to approve the sale of the debtor's assets and to extend the bidding process after a considerably higher offer was submitted. The appellant, who had been the successful bidder before the late bid was received, argued that he had an automatic right to appeal the decision under section 193(c) or alternatively sought leave to appeal under section 193(e).

### **Facts**

In December 2023, TBD Restructuring Limited (Receiver) was appointed as the receiver over various debtor properties (Properties) in Toronto upon the application of a secured lender, Cameron Stephen Mortgage Capital Inc. The Receiver conducted a sales process in which a real estate broker listed the Properties then sent the listing to approximately 3000 parties. Although

offers were made, there was no sale. The same broker marketed the Properties again five months later, in August 2024, and in October 2024, the Receiver entered into an Agreement of Purchase and Sale with the appellant purchaser, subject to court approval (Subject Transaction).

The Receiver sought approval of the Properties by the appellant. The approval motion was scheduled for December 4, 2024.

On December 3, 2024, a third party, 1001079582 Ontario Inc (100) made two offers on the Properties, which were 6.7% and 14.2% higher than the price of the Subject Transaction. The Receiver filed a factum with the court, indicating that the court had discretion to consider these late offers, but that the offers were not “substantially higher”. The Receiver did not disclose the price of the Subject Transaction or the late offers but did provide the percentage difference between the two.

The parties appeared before the motion judge on December 4, 2024. The judge adjourned the matter, giving the parties more time to respond. The motion judge also indicated that any party wishing to submit an additional offer could do so by December 9, 2024. On December 6, 2024, 100 submitted a third offer, for 37% higher than the appellant’s offer.

At the December 10, 2024, hearing before the motion judge, the Receiver continued to seek approval of the Subject Transaction but also put forward the third offer. The Receiver proposed a court-ordered auction, requiring bidders to submit their best offers. The motion judge declined to approve the sale and re-opened the auction process.

The motion judge acknowledged that the sales process conducted by the Receiver was “unassailable” but indicated that stakeholders’ interests would be impacted by foregoing the value differential between the two offers. He allowed all the bidders who had previously submitted offers, including the appellant and 100, to rebid on the Properties.

The appellant appealed and the auction process was stayed.

### **Ontario Court of Appeal Decision**

The ONCA first determined that the appellant did not have an automatic right of appeal under section 193(c) of the *BIA*, but would have to seek leave. The Court granted leave under section 193(e).

The Court went on to consider the three issues raised by the appellant.

Under the first issue, the appellant argued that the motion judge misapplied the principles set out by the court in *Royal Bank of Canada v Soundair Corp*, [1991 CanLII 2727 \(ON CA\)](#) (*Soundair*), which dealt with four factors to be considered when reviewing and approving a receiver’s sale of property. The Court upheld the motion judge’s findings on each factor.

First, the motion judge found that a sufficient effort had been made to obtain the best price and that the receiver had not acted improvidently, though failing to consider the “substantially higher”

price by 100 would risk improvidence. Second, the motion judge balanced the factors appropriately by acknowledging that the appellant's interests would be prejudiced by reopening the auction process but also that the creditors seek the best possible price. Third, the motion judge found that the sales process was properly conducted. Fourth, the motion judge worked out a fair process. He acknowledged that the re-opening of the bidding process was not in the appellant's interests and attempted to remedy potential unfairness by ordering the appellant's legal costs to be reimbursed if it ended up being the unsuccessful bidder. The ONCA found that this was a "practical solution to the potential prejudice suffered by the appellant" (at para 43).

Under the second issue, the Court had to determine whether the Receiver improperly disclosed the appellant's confidential bid price. The Receiver had disclosed the percentage differences and not the gross figures, meaning only the appellant and 100 could determine the price of the Subject Transaction and the late offers. The other bidders would not have been able to determine the figures based on that information.

Under the third issue, the Court found that the motion judge had not erred by granting standing to 100 as doing so had not caused the appellant delay, extra expense, or prejudice.

## **My Commentary**

There are several interesting issues that arise in this case, including the application of the *Soundair* factors and the deference courts afford to receivers. This analysis, however, will focus only on the right of appeal under section 193(c) of the BIA.

In this case, the appellant argued that he had an automatic right of appeal under section 193(c) of the BIA. The Court of Appeal found that the appellant did not meet the requirements of section 193(c) but granted the appeal under section 193(e). Section 193(c) and (e) of the BIA provide as follows:

Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:

(c) if the property involved in the appeal exceeds in value ten thousand dollars;

...

(e) in any other case by leave of a judge of the Court of Appeal.

Under section 193(c), an appeal as of right exists if the property involved in the appeal exceeds ten thousand dollars in value. The interesting feature of this provision is how low the threshold is: in practice, most appeals dealing with the disposition of the debtor's assets would easily surpass the monetary requirement in section 193(c). Yet, section 193 also includes a separate mechanism allowing parties to apply for leave to appeal where no appeal as of right exists. This necessarily implies that some appeals must fall outside section 193(c), even if the minimal monetary threshold is met.

How, then, should this provision be interpreted? Two key considerations – the historical development of section 193(c) and the need to promote consistency across federal insolvency

legislation – support a narrow reading. A narrow interpretation ensures that the automatic right of appeal takes into account both the legislative purpose of the *BIA* and, when dealing with these sales, the inherent practical realities (*2403177 Ontario Inc v Bending Lake Iron Group Limited*, [2016 ONCA 225 \(CanLII\)](#) (*Bending Lake*)).

The first key consideration is historical. The predecessor of our current *BIA*, the *Bankruptcy Act, 1919*, c 36, also set out categories granting an appeal as of right, but unlike the current section 193, provided no means to seek leave to appeal. As a result, parties who did not fall within one of the enumerated categories had no avenue to pursue an appeal. To avoid unjust outcomes, courts interpreted the appeal provision broadly to ensure that meritorious cases could proceed. However, after the 1949 amendments introduced a leave to appeal mechanism, there was no longer a need for such an expansive interpretation.

The second key consideration relates to Canada’s other principal insolvency statute, the *Companies’ Creditors Arrangement Act*, [RSC 1985, c C-36](#) (*CCAA*). Amendments in 1992 and 1997 to both the *BIA* and *CCAA* were intended, in part, to harmonize Canada’s insolvency legislation (*Re Gauntlet Energy Corporation (Companies’ Creditors Arrangement Act)*, [2003 ABQB 894 \(CanLII\)](#) at para 19), and courts have interpreted the two statutes in a manner that promotes harmony between them (*Century Services Inc v Canada (Attorney General)*, [2010 SCC 60 \(CanLII\)](#) at para 24). Unlike the *BIA*, the *CCAA* requires parties to obtain leave to appeal from any order made under that Act (at section 13).

Applied to the relevant provisions, and without modifying how these provisions are interpreted, this approach would result in an appeal as of right for a sale by a receiver or trustee under the *BIA*, but not for a comparable sale by a *CCAA* debtor company, even though there is no principled basis for distinguishing between these two situations (*Bending Lake* at para 50).

The historical consideration, as well as the need to harmonize the two statutes, support a narrow interpretation of the automatic right of appeal in the *BIA*. Recognizing this, the Ontario Court of Appeal sought to limit the scope of section 193(c) by imposing three requirements; a right of appeal is not available where the order is procedural in nature, where it does not engage the value of the debtor’s property, or where it does not result in a loss (*Bending Lake* at para 53).

These are not new concerns – these requirements trace back to earlier cases that raised similar concerns in these circumstances. Those decisions recognized the statutory right to appeal was drafted so broadly that it would be triggered in most, if not all, cases. As a result, the courts sought to narrow its scope to prevent it from applying automatically and undermining the intended limits of the provisions.

The case of *Re Dominion Foundry Co Ltd Continental Forwarding Ltd et al v Canadian Credit Men’s Association Ltd*, [1965 CanLII 596 \(MB CA\)](#) (*Re Dominion*) considered section 150(c) of the *Bankruptcy Act*, RSC 1952, c 14, the predecessor to section 193(c), which set the minimum value of the property involved in the appeal at a similarly modest amount for its time– five hundred dollars.

In *Re Dominion*, the Court of Appeal heard a motion to quash an appeal from the judgment of the trial judge. The trial judge had refused an application for an order to set aside the sale of the debtor's assets and an injunction to restrain the trustee from proceeding to complete the sale, finding that the sale was not improvident, nor that the trustee or the inspectors had acted in bad faith or contrary to the interests of creditors. The appeal was focused on the propriety of the trustee's conduct in the asset sale, and the Court of Appeal had to determine whether it was caught under section 150 of the legislation, which would have entitled the Court of Appeal to assume jurisdiction.

The Manitoba Court of Appeal observed that where a matter concerns the disposition of a bankrupt's assets, the statutory value threshold would always be met, especially when coupled with section 150(a) (the counterpart to today's section 193(a), which provides an appeal as of right when future rights are at issue). This would effectively create an automatic right of appeal from any judgment concerning a trustee's decision to sell the debtor's property. The Court reasoned that Parliament could not have intended such a result in legislation that authorizes these sales and imposes a duty on trustees and inspectors to dispose of the bankrupt's assets; adopting such an interpretation would "defeat the whole purpose of the Act" (at 81). In an effort to narrow the provision, the Court therefore held that the trustee's and inspectors' methods of asset disposition were matters of procedure, and, relying on *Re Coast Shingle Mill Company (Re)*, [1926 CanLII 564 \(BC CA\)](#) (*Re Coast*), concluded that procedural questions did not fall within either (a) or (c). The applicable bankruptcy legislation in *Re Coast* was the *Bankruptcy Act*, 1919, ch 36.

In *Cameron Stephens*, the Court found that all the limitations imposed in *Bending Lake* were applicable. First, the decision to re-open an auction process concerned the method of sale of the Properties, effectively dismissing the motion seeking approval of the Subject Transaction and setting the terms for the auction process. These factors point to this being procedural in nature. Second, the order addressed the timing of the late offers and their impact on the receivership process, rather than the value of the debtor's property. Finally, the judge's order dealt with procedure and the manner of sale and did not directly result in a loss (at para 24).

After determining that the appellant did not have an appeal as of right, the Court turned to consider whether leave to appeal should be granted under section 193(e). It granted leave, concluding that the question of whether the magnitude of a late offer can justify re-opening the auction process was an issue of general importance (at para 27).

## **Conclusion**

The automatic right of appeal under section 193(c) only works if courts apply a narrow interpretation to the provision, though if interpreted too narrowly, it may be possible to seek judicial review of the provision.

This post may be cited as: Jassmine Girgis, “The Automatic Right of Appeal under Section 193(c) of the *BIA*: The Case for a Narrow Approach in Asset Sale Decisions” (3 December 2025), online: ABlawg, [http://ablawg.ca/wp-content/uploads/2025/12/Blog\\_JG\\_BIAAppeal.pdf](http://ablawg.ca/wp-content/uploads/2025/12/Blog_JG_BIAAppeal.pdf)

To subscribe to ABlawg by email or RSS feed, please go to <http://ablawg.ca>

Follow us on Twitter [@ABlawg](https://twitter.com/ABlawg)

