

**Part 57**  
**Rules and Orders Promulgated**  
**under the Winding-up Act**

**(1) Petition to Wind Up Company**

**Title of petition**

**754** Every petition for the winding up of any company by the court and all notices, affidavits and other proceedings under such petition shall be intitled “In the matter of the *Winding-up Act*,” and of the company, naming the company to which such petition relates.

AR 390/68 s754

**Filing**

**755** Every such petition and the affidavits and other material intended to be used in support thereof shall on or before the day of service of notice of the application for a winding-up order, be filed in the office of the clerk of the court of the judicial district in which the head office of the company is situated or, if there is no head office in Canada, then in the judicial district where its chief place of business or one of its chief places of business is situated, and unless so filed such petition, affidavits or material shall not be read or used upon the application without special leave of the court.

AR 390/68 s755

**Service**

**756** A copy of such petition endorsed with, or accompanied by, the notice of the application for the winding-up order and copies of the affidavits and other material upon which the petitioner proposes to rely in support of the application, shall, unless the petition is presented by the company, be served at the principal or last known principal office or place of business of the company, if any such can be found, upon any member, officer or servant of the company there, or in case of no such member, officer or servant can, after due diligence, be found there, then in the manner provided for service on a corporation of ordinary process or in such other manner as the court shall direct.

AR 390/68 s756

**Copies to creditors and contributories**

**757** Every contributory or creditor of the company shall be entitled to be furnished by the solicitor for the petitioner, or by the petitioner if he shall present the petition in person, with copies of the petition, affidavits and material aforesaid, or of any portion thereof required, within twenty-four hours after the same shall have been demanded by him on paying at the rate of twenty cents per page for each copy.

AR 390/68 s757

## (2) Winding Up Order

### Advertisement and service

**758** Every order for the winding up of a company by the court or subject to its supervision shall within 15 days after the date thereof be advertised in such newspaper or newspapers having general circulation in the place where the head office or principal place of business of the company is situated, and in The Canada Gazette or The Alberta Gazette as the court may direct and shall be served upon such person or persons (if any) and in such manner as the Court may direct.

AR 390/68 s758

### Entry of order and carriage of proceedings

**759(1)** Every winding up order shall be drawn and entered within seven days after the same shall be made and in default thereof any other person interested in the winding up may draw up the order and the court may if it thinks fit give the carriage and prosecution of the order to such person.

**(2)** Upon a winding up order being entered a notice of motion shall be issued forthwith by the person having the carriage of the proceedings to proceed with the winding up of the company, and such notice of motion shall be served upon all parties who may have appeared on the hearing of the petition.

**(3)** Upon the return of the motion a time and place shall, if the court thinks fit, be fixed for the appointment of a liquidator, for the proof of debts and for the list of contributories to be brought in, and directions may be given as to the advertisements and notices, if any, to be issued or given for all or any of such purposes, and generally as to the proceedings or the parties to attend thereon.

AR 390/68 s759

### Evidence

**760** To enable the court to determine what shall be the most satisfactory method of giving notice of the application to appoint a liquidator, and the parties to whom such a notice should be given, the petitioner or other person having the carriage of the proceedings shall, in applying to the court for directions respecting such service, furnish to the court the best evidence obtainable by him on reasonable enquiry to the satisfaction of the court as to the names of the creditors, contributories and shareholders respectively, and their places of residence, and the court may require such further evidence on these or other points to be furnished as it shall think important for the purpose.

AR 390/68 s760

### Provisional liquidator

**761** Where it is desired to appoint a provisional liquidator an application for that purpose may be made at any time after the presentation of the petition for winding up of the company, without notice or advertisement, unless the

court shall otherwise direct, and such provisional liquidator may, if the court shall think fit, be appointed without security.

AR 390/68 s761

#### **Winding up order**

**762** Notwithstanding anything elsewhere in these rules contained, if it shall appear to the court, upon the first presentation of the petition that all proper parties have had sufficient notice, the court may then make the order for winding up the company and the appointment of a liquidator.

AR 390/68 s762

### **(3) Liquidator**

#### **Advertising time and place**

**763** When a time and place has been fixed for the appointment of a liquidator, notice of such time and place shall be given to creditors, contributories and shareholders or members, or advertised in such manner as the court may direct, but so that the first or only advertisement, if any, shall be published within 15 days and not less than 7 days before the day so fixed.

AR 390/68 s763

#### **Contents of notice**

**764** The notice of the application for the appointment of a liquidator shall give the name and address and occupation of the person proposed to be appointed, and upon the application the court may appoint the person named in the notice or any other person, with or without further notice to any person, as may seem proper.

AR 390/68 s764

#### **Evidence of qualifications of liquidator**

**765** The application for the appointment of a liquidator shall be accompanied by satisfactory evidence of the qualifications and character of the party sought to be appointed as liquidator and of his fitness for the office.

AR 390/68 s765

#### **Security**

**766** Unless otherwise ordered by the court every liquidator shall give security in such manner and in such sum as the court may direct.

AR 390/68 s766

#### **Order**

**767** The liquidator shall be appointed by order which shall,

- (a) Fix a time within which the liquidator shall give security, unless he shall already have done so or the giving of security shall have been dispensed with; and
- (b) Fix the times or periods at which the liquidator is to leave his

accounts of receipts and payments at the office of the clerk of the court,  
and

- (c) Direct that all monies to be received shall be paid into some chartered bank to the account of the liquidator immediately after the receipt thereof and that an account shall be opened accordingly,

and an office copy of the order shall be lodged with such bank.

AR 390/68 s767

### **Sureties**

**768** The liquidator, if required to furnish security, shall, on each occasion of passing his account, and also whenever the court shall so require, satisfy the court that his security remains in full force and effect, and in default thereof he may be required to enter into fresh security within such time as may be directed.

AR 390/68 s768

### **Replacement of liquidator**

**769** In case of the death, removal or resignation of a liquidator another or others shall be appointed in his stead, as in the case of a first appointment, and the proceedings for the purpose may be taken by any interested party.

AR 390/68 s769

### **Duties**

**770** The liquidator shall with all convenient speed after he is appointed proceed to make up, continue, complete and rectify the books of account of the company, and shall provide and keep such books of account as shall be necessary, or as the court may direct, for the purpose aforesaid and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made under said Act.

AR 390/68 s770

### **Accounts**

**771** The accounts of the liquidator shall be filed in the office of the clerk of the court at such time as may from time to time be required by the court and such accounts shall whenever required by the court and upon notice to such parties (if any) as the court shall direct, be passed and verified in the same manner as receivers' accounts.

AR 390/68 s771

## **(4) Proof of Debts**

### **Advertisement for debts and claims**

**772(1)** For the purpose of ascertaining the creditors and claimants of the company and of requiring them to come in and prove their debts or claims

such advertisements shall be published as the court shall direct.

**(2)** Such advertisements shall fix a time for the creditors and claimants to send in their names and addresses, and the particulars of their debts or claims, the nature and amount of the security (if any) held by them respectively, with the valuation thereof on oath, and the names and addresses of their solicitors (if any) to the liquidator, and such advertisements shall appoint a day for adjudicating thereon.

AR 390/68 s772

#### **Prove of claims**

**773** The creditors and claimants need not attend the adjudication or prove their debts or claims unless they are required to do so by notice from the liquidator or from any creditor, contributory, shareholder or member of the company, but upon such notice being given they shall come in and prove their debts or claims at the time therein specified or such other time as the court may allow.

AR 390/68 s773

#### **Investigation and report**

**774** The liquidator shall investigate the debts and claims sent in to him and ascertain, so far as he is able, which of them are justly due from the company, and he shall make out and leave with the clerk of the court a list of all debts and claims sent to him, distinguishing which of the debts and claims or parts thereof so claimed are in his opinion justly due and proper to be allowed within further evidence and which of them in his opinion ought to be proved by the creditors, and he shall make and file with the said clerk, prior to the time appointed for adjudication, an affidavit setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence.

AR 390/68 s774

#### **Claims on books**

**775** If by examination of the books, accounts or papers of the company, or by any other means, the liquidator is led to believe that any person is a creditor of, or has a claim against the company, for which such party is entitled to rank against the assets of the company, and such party shall not have sent in to the liquidator notice of his claim, the liquidator shall mention such claim and the probable amount thereof, according to the best information he shall have been able to obtain, in the affidavit required by Rule 774, with the address, or supposed address, of such person, if the liquidator shall be able to give same.

AR 390/68 s775

#### **Power of Court**

**776** At the time appointed for adjudicating upon the debts or claims, or at any adjournment thereof, the court may either allow the debts and claims upon the affidavit of the liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time

to be then fixed, and the liquidator shall give notice of allowance to the creditors whose debts or claims have been so allowed.

AR 390/68 s776

#### **Service of notice of hearing**

**777** Notice of the time and place fixed for hearing and determining debts and claims of which proof is required shall be served upon the creditors or claimants asserting such debts or claims, and such other parties, including persons who may be mentioned by the liquidator as a probable creditor or claimant under Rule 775, as the court shall direct, at least four days before the day so fixed.

AR 390/68 s777

#### **Costs**

**778** Unless the court otherwise orders, such creditors as come in and prove their debts or claims pursuant to notice may be allowed their costs of proof, and in any case a person unsuccessful in seeking to prove a claim may be ordered to pay costs.

AR 390/68 s778

### **(5) List of Contributories**

#### **List of contributories**

**779(1)** The liquidator shall, with all convenient speed, after his appointment, or at such time as the court shall direct, make out and leave with the clerk of the court a list of the contributories of the company.

**(2)** Such list shall be verified by the affidavit of the liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories, and such list may, from time to time, by leave of the court, be varied or added to by the liquidator.

AR 390/68 s779

#### **Notice of appointment to settle list**

**780** Upon such list of contributories being so left, the liquidator shall obtain an appointment for the court to settle the same, and shall give at least four days' notice in writing of such appointment to every person included in such list and stating in what character such person is included in the list and the extent of the liability of such person as a contributory; and in case any variation or addition to such list shall at any time be made by the liquidator a similar notice in writing shall be given to every person to whom such variation or addition applies.

AR 390/68 s780

#### **Clerk's certificate**

**781** The result of the settlement of the list of contributories shall be set out in a certificate made by the clerk of the court and certificates may be made

from time to time for the purpose of stating the result of such settlement down to any particular time or as to any particular person or stating any variation in the list.

AR 390/68 s781

## **(6) Calls**

### **Application for call**

**782** Every application to the court to make any call on the contributories, or any of them, shall be made by motion stating the proposed amount of such call notice of which shall be served four days at least before the day appointed for making the call on every contributory proposed to be included in such call upon the copy so served on each contributory shall be written or printed a memorandum specifying the amount which such contributory will be required to pay upon the basis of the call proposed.

AR 390/68 s782

### **Notice**

**783(1)** If the court shall so direct, notice of the intended call may be given by advertisement, and no further notice of the application need then be given to any contributory unless the court shall so order.

**(2)** When notice of the intended call is given by advertisement no notice need be given of the particular amount to be required of each contributory and the memorandum specified in Rule 782 may be dispensed with.

AR 390/68 s783

### **Contents of order**

**784** An order for a call may be made so as to direct payment not merely of the amount of the call, but also of the amounts or balances payable by the respective contributories, or by such of them as may seem proper, and the time and place of payment provided that no contributory shall be thus ordered to pay a larger sum than specified in the memorandum upon the notice of motion without notice to him or his solicitor that a larger sum is to be paid by him; but the court may upon such notice as may seem just, or, if the party appears, then without further notice, cause the memorandum to be amended so as to increase the amount or otherwise and may direct the liquidator or other party having the conduct of the proceedings to pay any additional costs to be thus incurred and may make such other terms or conditions as may seem proper.

AR 390/68 s784

### **Order where memo not served**

**785** Unless for special reasons it shall seem just and proper, where the memorandum specified in Rule 782 is not served either by advertisement or otherwise, the order shall specify merely the amount of the call to be made and shall not direct payment of specific sums by the respective contributories.

AR 390/68 s785

**Service of order and notice of amount due**

**786** A copy of an order for a call shall be forthwith served upon each of the contributories included in such call; and upon each contributory so included not directed by the order itself to pay a specific sum in respect of such call, there shall be served, with the order, a notice from the liquidator, or other party having the conduct of the proceedings for a call, specifying the amount of balance due from such contributory in respect of such call; but an order for a call need not be advertised unless the court shall so direct.

AR 390/68 s786

**Adjournment**

**787(1)** At the time of the making of an order for a call, if the order shall not specify the particular sum payable by each contributory included in the call, or if the court or a judge shall otherwise deem it proper, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof and afterwards from time to time so long as may be necessary.

**(2)** At the time appointed by any such adjournment, or upon a motion to enforce payment of the call and upon proof of the service of the order and notice of the amount due, required by Rule 786 and non-payment thereof, an order may be made for such of the contributories who have made default, or for such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively and any order may be made that shall seem just and proper for payment by such contributories or any of them, of the costs of such adjournment or further application and order, or of any portion thereof.

AR 390/68 s787

**Receipt of bank**

**788** Any contributory may deposit with the clerk of the court a receipt or acknowledgement of the bank into which an amount is payable by him in respect of a call, or of the proper officer of the court, where the same is payable into court, or of the party authorized by the order to receive such payment, which receipt or acknowledgement shall show the amount so paid in respect of such call.

AR 390/68 s788

**Issue of non-payment**

**789** Where a contributory is, by the order for a call or by a subsequent order, directed to pay a specific amount in respect of a call, then at the expiration of the time for payment, if no such receipt shall have been so deposited with the clerk of the court, or if the receipt or acknowledgment deposited shall not show the proper amount to have been paid, executions may without further order be issued by the clerk of the court, for realizing the amount so ordered, or the deficiency (if any) appearing by such receipt or acknowledgement, and with this may be included any sum for taxed costs where the same can be conveniently included according to the usual practice.

AR 390/68 s789

## (7) Proceedings Before the Court

### Application in chambers and upon notice

**790** Any application to the court for any purpose under the winding-up order shall be made in chambers unless the court shall in the particular matter otherwise direct and all such applications in chambers shall, unless the case be a proper one for an ex parte order, be made upon notice.

AR 390/68 s790

### Sanction of compromise

**791(1)** Every application for the sanction of the court to a compromise or other arrangement with any contributory or other person indebted or liable to the company, or with creditors or persons claiming to be creditors of the company, shall be supported by the affidavit of the liquidator that he believes that the proposed compromise will be beneficial to the company and the reasons for such belief, and showing (where the state of affairs of such contributory or other person is one of such reasons) that the liquidator has investigated the affairs of such contributory or other person and the result of such investigation.

**(2)** The facts supporting such reasons for the liquidator's belief shall, as far as conveniently practicable, be proved, and upon the application such further evidence may be required as may to the court appear proper.

AR 390/68 s791

### Memorandum of clerk

**792** The sanction of the court under the last preceding Rule shall be testified by a memorandum signed by the clerk on the agreement of compromise or arrangement unless any party shall desire to appeal from the decision of the court in which case an order shall be drawn up and issued for that purpose.

AR 390/68 s792

## (8) Advertisements

### Advertisements

**793** Where an advertisement is required for any purpose, the same is to be published only in such newspaper or other publication, and for such number of times, as may be specially provided by these Rules, or by order of the court; provided that the court may in such cases as it may think fit dispense with any advertisement otherwise required by these Rules.

AR 390/68 s793

## (9) Register and File of Proceedings

### Register of proceedings

**794** The clerk of the court shall attend before the court upon such proceeding and shall keep a register of all proceedings in chambers or in court in each matter under this Act except on an appeal or other matter before the appellate division, in which case the registrar of the court, or some one appointed by him or the court, shall attend and keep a register of such proceeding with, and in the same manner as in other matters before the appellate division.

AR 390/68 s794

### Deposit and filing of documents

**795** All documents or proceedings required to be deposited or filed in court shall be deposited or filed with the clerk of the court in whose office the petition has been filed except on appeals to the appellate division, in which case documents and proceedings connected therewith shall be filed with the registrar.

AR 390/68 s795

### Custody of documents not filed

**796** All orders, exhibits, admissions, memorandums and all other documents relating to the winding-up of any company not required by these Rules or the usual practice or the special direction of the court to be filed in court shall be filed and kept by the liquidator in his own office and shall be produced in court and otherwise, as may be required.

AR 390/68 s796

### Inspection of documents

**797** Every contributory, and every creditor whose debt or claim has been allowed, shall be entitled at all reasonable times to inspect such documents as are filed or deposited with the liquidator, clerk of the court or registrar in reference to proceedings under the said Act, free of charge, and to take copies thereof or extracts therefrom at his own expense, not removing the same from the office where the same are filed or deposited, or to be furnished with any such copies or extracts on paying therefor at a rate not exceeding twenty cents per page.

AR 390/68 s797

## (10) Provisional Liquidator

### Rules apply

**798** All rules relating to liquidators shall, so far as the same are applicable, and subject to the directions of the court in each case, apply to provisional liquidators.

AR 390/68 s798

## (11) Attendance and Appearance of Parties

### Attendance and appearance of parties

**799** Every person for the time being on the list of contributories left by the liquidator with the clerk of the court, and every person having a debt or claim against the company which is allowed by the court, shall be at liberty, at his own expense, to attend the proceedings in reference to the winding-up of the company, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the court before whom any proceeding is taken shall be of the opinion that the attendance of any such person upon any such proceeding has occasioned any additional costs which ought not to be borne by the funds of the company, such person may be directed to pay such costs or a gross sum in lieu thereof and such person shall not be entitled to attend any further proceedings until he shall have paid the same, and the liquidator shall have the right to take any proceedings for collection of the same which might be taken for the collection of any costs awarded by any order of the court.

AR 390/68 s799

### Appointment of representative of class

**800(1)** The court may from time to time appoint any one or more of the contributories or creditors, as it thinks fit, to represent before it, at the expense of the company or otherwise as shall seem proper, all or any class of the contributories or creditors upon any question as to a compromise with any of the contributories or creditors, or in and about any other proceedings before it relating to the winding-up of the company and may remove the person or persons so appointed.

**(2)** In case more than one person shall be so appointed they shall unite in employing the same solicitor to represent them.

**(3)** No costs shall be allowed against the company to any such person in respect of any proceedings unless he shall have been specially requested by the court to attend on such proceeding.

AR 390/68 s800

### Conditions of attendance at proceedings in chambers

**801** No contributory or creditor shall be entitled to attend any proceedings before the court unless and until he has entered his name and address, and the name and address of his solicitor (if any) in a book to be kept for that purpose by the clerk of the court, and unless and until, upon any change of his address, or of his solicitor, he has entered in such book his new address, and the name and address of his new solicitor.

AR 390/68 s801

## (12) Service of Summons, Notices, Etc.

### Method of service

**802** Service upon contributories or creditors shall be effected, except when personal or other service is specifically required by sending the notice, or a copy of the summons or order or other proceeding, through the post, in a prepaid registered letter addressed to the solicitor of the party to be served (if any), or otherwise to the party himself, at the address entered or last entered pursuant to Rule 801, or, if no address has been so entered, at the address of such party appearing on the records of the company, and such notice or copy of summons, order or other proceeding shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post office, and notwithstanding the same may be returned by the post office; the court shall not be obliged to receive proof on oath of such time but may act on its own knowledge of the course of the mails, or such information as it may think reliable.

AR 390/68 s802

## (13) Termination of Winding Up

### Release of liquidator

**803** Upon the termination of proceedings in court for the winding up of any company a balance sheet shall be brought in by the liquidator of his receipts and payments, and verified by his affidavit and the liquidator shall pass his final account and the balance (if any) due thereon shall be certified and upon payment of such balance in such manner as the court shall direct any recognizance entered into by the liquidator and his sureties may be vacated.

AR 390/68 s803

### Clerk's certificate of dissolution

**804** When the liquidator has passed his final account and the balance (if any) certified to be due thereon has been paid in such manner as the court shall direct, a certificate shall be issued by the clerk that the affairs of the company have been completely wound up; and, in case the company has not already been dissolved, the liquidator shall, immediately after such certificate has become binding, apply to the court for an order that the company be dissolved from the date of such order.

AR 390/68 s804

### Deposit of file

**805** When the proceedings for winding up any company have been completed, the file of proceedings and the book containing the official liquidator's account shall be deposited in the office of the clerk of the court.

AR 390/68 s805

## (14) Solicitor of Liquidator

### Solicitor to conduct proceedings

**806** The solicitor of the liquidator shall conduct all such proceedings as are ordinarily conducted by solicitors of the court; and where attendance is required on any proceeding in court or chambers the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor or the court shall direct him to attend.

AR 390/68 s806

## (15) Forms

### Forms

**807** Until other forms are directed, the forms in use in winding-up proceedings in England, with such variations as may be necessary to adapt them to the practice under these rules and the said Act and as the circumstances of each case may require may be used.

AR 390/68 s807

## (16) Delegation

### Delegation of powers of court

**808** When a winding-up order has been made the court may by the said order or by subsequent order refer and delegate to a master in chambers or an officer of the court any of the powers conferred upon the court.

AR 390/68 s808

## (17) Costs

### Fees

**809** The fees allowed to solicitors, counsel, clerks, sheriffs, and the registrar in proceedings under said Act shall, so far as applicable and unless otherwise directed by the court or a judge, be those authorized under Schedule C and the tariff of fees for court officials.

AR 390/68 s809

### Taxation

**810** Where an order is made in court or in chambers for payment of any costs, unless otherwise directed, the same shall be taxed by the clerk, subject to appeal from such taxation as in ordinary proceedings in the supreme court.

AR 390/68 s810

**(18) Power of Judge**

**Power of judge unaffected**

**811** The power of the court, or of a judge in chambers, to enlarge or abridge the time for doing any act, or taking any proceedings, to adjourn or review any proceeding and to give any direction as to the conduct of proceedings is unaffected by these rules.

AR 390/68 s811

**(19) General Direction**

**General practice to apply**

**812** The general practice and rules of the court shall in cases not provided for by said Act and amendments thereto, or these rules, and so far as the same are applicable and not inconsistent with the said Act or these rules, apply to all proceedings for winding up a company.

AR 390/68 s812

Made, framed and settled by the Chief Justice of Alberta and the undersigned judges of the Supreme Court of Alberta, constituting a majority of the Judges of the said Court this 3rd day of July, 1968, to come into force on the date upon which the Rules of the Supreme Court of Alberta, 1968, come into force, whereupon all rules heretofore made under the *Winding-Up Act* shall cease to be in force, without prejudice to any proceedings under such last mentioned rules which may have been taken prior to the said date.

S. BRUCE SMITH, C.J.A.	C. C. McLAURIN, C.J.T.D
.....	NEIL PRIMROSE J.
.....	PETER GRESCHUK J.
.....	H. W. RILEY J.
H.G. JOHNSON J.A.	.....
E. W. S. KANE J.A.	M. E. MANNING J.
N.D. McDERMID J.A.	.....
G. H. ALLEN J.A.	A. M. DECHENE J.
	M. B. O'BYRNE J.
	H.J. McDONALD J.

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