

focus

on

Insolvency Law

July, 2008

The logo for Fraser Milner Casgrain LLP, consisting of the letters 'FMC' in white on a dark blue square background.

FRASER MILNER CASGRAIN LLP

EXAMINING A BANKRUPT ... AGAIN

In *Mendlowitz & Associates Inc. v. Chiang*, an Order was granted in 2006 compelling the bankrupt and others to attend for an examination by the trustee under section 163(1) of the Bankruptcy and Insolvency Act (Canada). In 2008, the trustee applied under the same section to examine the bankrupt and others again.

Section 163(1) of the BIA provides:

163(1) Examination of bankrupt and others by trustee - The trustee, on ordinary resolution passed by the creditors or on the written request or resolution of a majority of the inspectors, may, without an order, examine under oath before the registrar of the court or other authorized person, the bankrupt or any person who is or has been an agent or a mandatary, or a clerk, a servant, an officer, a director or an employee of the bankrupt, respecting the bankrupt or the bankrupt's dealings or property and may order any person liable to be so examined to produce any books, documents, correspondence or papers in that person's possession or power relating in all or in part to the bankrupt or the bankrupt's dealings or property.

While section 163(1) does not require a trustee in bankruptcy to obtain an order from the Bankruptcy Court, the trustee brought this application to compel the bankrupt's attendance.

The Court granted the order and directed the bankrupt to attend for a second examination, saying that the BIA does not limit a trustee's right of examinations to a single examination. The Court reasoned that the trustee should be entitled to conduct an examination to address all relevant matters in an orderly, informed and comprehensive basis and, if a second examination proved to be duplicative, the respondents were at liberty to seek costs or other relief on the basis of the transcript from the actual examinations conducted.

For further information please contact David Mann at 403 268-7097 or David LeGeyt at 403 268-3075, or visit our website www.fmc-law.com/insolvency.