

## Amalgamation of Companies: New Entity or Continuance of Amalgamated Entities

By Diane Bellavance

### ***Royal Bank of Canada v. Canadian Imperial Bank of Commerce (Court of Appeal)***

On May 11, 2000, the Court of Appeal for Quebec addressed the issue of the consequences of an amalgamation on the security granted by the companies prior to their amalgamation.

In this case, the Appellant, the Royal Bank of Canada ("RBC") held two guarantees granted by Jointage de Beauce inc. ("Jointage"). Furthermore, the Respondent, the Canadian Imperial Bank of Commerce ("CIBC"), held a general assignment of debts granted by 1637-1361 Québec inc. On November 17, 1989, Bois Ouvré de Beauceville inc. ("Beauceville") amalgamated with 1637-1361 Québec inc. The same day, the company resulting from this amalgamation in turn amalgamated with Jointage. This new company took on the name Bois Ouvré de Beauceville inc. ("Bois Ouvré").

RBC alleged in particular that CIBC appropriated money derived from debts and stocks on which it held prior security interests.

RBC presented arguments, among others, that these securities, an assignment of debts and a bank guarantee, survive the amalgamation, with precedence over the property of Jointage.

The Court of Appeal referred to Section 123.120 of the Quebec *Companies Act* and stated that the company resulting from the amalgamation does not constitute a new entity. It is simply the continuance of each amalgamated entity, and the assets of the original companies are legally joined. The Court of Appeal added that each creditor benefits from the security interests which extend, following

amalgamation, to all the assets of the company resulting from the amalgamation and that the rank of each security interest is established according to the priority which takes into account all security interests held by all creditors of all original companies.

As the CIBC general assignment of debts had been registered in 1981, while that given to RBC was registered in 1988, the CIBC security interest was prior and preferred to all assignments held by RBC.

Diane Bellavance

You can contact any of the following members of the Business Law group in relation with this bulletin.

**at our Montréal office**

Diane Bellavance  
Michel Blouin  
Valérie Boucher  
Serge Bourque  
René Branchaud  
Patrick Buchholz  
Pierre Caron  
André Champagne  
André D'Amours  
Andrea L. Daniels  
Pierre Denis  
Richard Dolan  
Georges Dubé  
David Eramian  
Réal Favreau  
Marie-Andrée Gravel  
Richard Hinse  
Martin Joyal  
Isabelle Lamarre  
André Laurin  
Louis A. Leclerc  
Alexandra Lee  
Larry Markowitz  
Jean Martel

John Mavridis  
Lisa Miller  
Charles Nieto  
André Paquette  
Luc Pariseau  
Jacques Paul-Hus  
Élise Poisson  
Douglas S. Pryde  
Johanne L. Rémillard  
Ian Rose  
Stéphanie Séguin  
Michel Servant  
Jean-Yves Simard  
Yves St-Cyr  
Marc Talbot  
Luc Thibaudeau  
Vincent Thibeault  
Martine Tremblay  
Richard Wagner

**at our Québec City office**

Pierre Beaudoin  
Danielle Côté  
Christian R. Drolet  
Martin J. Edwards  
André Gagnon  
Pierre C. Gagnon  
Laurier Gauthier  
Jacques R. Gingras  
Claude Larose  
Louis X. Lavoie  
Simon Lemay  
Marie-Élaine Racine  
Louis Rochette  
Jean-Pierre Roy  
Kim Thomassin  
François Vallières

**at our Laval office**

Michel M. Dagenais  
André B. Gobeille  
Luc Villiard

**Montréal**

Suite 4000  
1 Place Ville Marie  
Montréal, Québec  
H3B 4M4

Telephone:  
(514) 871-1522  
Fax:  
(514) 871-8977

**Québec City**

Suite 500  
925 chemin Saint-Louis  
Québec, Québec  
G1S 1C1

Telephone:  
(418) 688-5000  
Fax:  
(418) 688-3458

**Laval**

Suite 500  
3080 boul. Le Carrefour  
Laval, Québec  
H7T 2R5

Telephone:  
(450) 978-8100  
Fax:  
(450) 978-8111

**Ottawa**

Suite 1810  
360 Albert Street  
Ottawa, Ontario  
K1R 7X7

Telephone:  
(613) 594-4936  
Fax:  
(613) 594-8783

**Web Site**

[www.laverydebilly.com](http://www.laverydebilly.com)

All rights of reproduction reserved. This bulletin provides our clients with general comments on recent legal developments. The texts are not legal opinions. Readers should not act solely on the information contained herein.